



Civil Justice Subcommittee

Wednesday, February 19, 2014

8:00 AM

404 HOB

Will Weatherford
Speaker

Larry Metz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time: Wednesday, February 19, 2014 08:00 am
End Date and Time: Wednesday, February 19, 2014 12:00 pm
Location: Sumner Hall (404 HOB)
Duration: 4.00 hrs

Consideration of the following bill(s):

CS/HB 255 Discriminatory Insurance Practices by Insurance & Banking Subcommittee, Gaetz
HB 489 Residential Property Sales/Subsurface Rights by Spano
HB 561 Attorneys for Dependent Children with Disabilities by Fresen
HB 609 Article V Constitutional Convention by Wood
HB 685 Business Organizations by Rooney

Consideration of the following proposed committee bill(s):

PCB CJS 14-04 -- Security of Confidential Personal Information
PCB CJS 14-05 -- Pub. Rec./Security of Confidential Personal Information

Consideration of the following proposed committee substitute(s):

PCS for HB 331 -- Renters Insurance
PCS for HB 635 -- Guardianship

NOTICE FINALIZED on 02/12/2014 16:27 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 255 Discriminatory Insurance Practices
SPONSOR(S): Insurance & Banking Subcommittee; Gaetz and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 424

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 1 N, As CS	Salzverg	Cooper
2) Civil Justice Subcommittee		Bond <i>NB</i>	Bond <i>NB</i>
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Current insurance law prohibits certain unfair insurance trade practices, such as misrepresentations and false advertising, false statements, unlawful rebates, or unfair discriminatory practices.

Additionally, an insurer may not deny coverage, increase any premium, or otherwise discriminate against any insured or applicant on the basis of the lawful ownership or possession of a firearm or ammunition. This prohibition is not tied to the unfair trade practice provisions in the insurance law and thus may lack specific enforcement authority.

This bill amends the insurance laws to specify that it is an unfair discriminatory practice for a personal lines property or personal lines automobile insurer to discriminate against an applicant or insured because of firearm ownership. However, an insurance company may charge a supplemental premium should the value of the firearms exceed the standard policy coverage.

This bill also prohibits an insurance company from disclosing an insured's or applicant's ownership or possession of a firearm to a third party or affiliated entity unless the insurer discloses to the insured or applicant a specific need to disclose the information and the insured or applicant expressly consents to the disclosure, or the disclosure is necessary to quote or bind coverage, continue coverage, or adjust a claim. Disclosure from the company to the agent is authorized where necessary for the purpose of excess coverage.

This bill does not appear to have a fiscal impact on Florida insurers because gun ownership is not currently used in determining liability in rate-setting. In some cases, insurers may have to alter their current disclosure and notice procedures to comply with this bill, resulting in an indeterminate amount of administrative costs. However, insurers may be able to reduce those costs by not having to obtain specific consent from the applicant or insured to share information regarding ownership or possession of firearms, if such disclosure is necessary to quote or bind coverage, continue coverage, or adjust a claim.

The bill takes effect July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Firearm Ownership and Possession, Generally

Current law at s. 790.338(7), F.S., prohibits an insurer from denying coverage, increasing any premium, or otherwise discriminating against any insured or applicant on the basis of the lawful ownership or possession of a firearm or ammunition. This provision does not prevent an insurer from considering the fair market value of firearms or ammunition in the setting of premiums for scheduled personal property coverage.¹ Although unrelated parts of the bill creating subsection (7) were struck down in a legal challenge, the subsection relating to firearms still remains good law today.² A perceived issue with the current law is that it lacks specific authority to take action against any insurers which violate the proscribed behavior because the prohibition is not a part of the insurance laws. However, the law would be enforceable in a civil action by an insured or an applicant against an insurance company that violated the prohibition.

Regulation of Insurance Companies by the State

Currently, the Office of Insurance Regulation (OIR) is tasked with enforcement of Florida laws relating to the operation of insurance companies, including rate-setting proposed by insurers.³ Additionally, OIR in reviewing rate filings must make sure insurers do not practice unfair methods of competition or unfair or deceptive acts as outlined by current law.⁴ Such unfair practices include, but are not limited to: misrepresentations and false advertising, false statements, unlawful rebates, or unfair discriminatory practices.

Current law specifically prohibits insurers from knowingly making or permitting unfair discrimination between individuals of the same actuarially supportable class when setting a rate for an insurance policy. For example, insurers may not take into account an insured's or applicant's past claim for abuse or any actions taken for treatment of abuse when underwriting, issuing, reissuing, or terminating a policy or paying a claim.⁵

OIR encounters discriminatory practices in the following ways:⁶

- In proposed rate filings, in which OIR will not approve if the rate reflects unfair discrimination in the setting of the rate or issuance of the policy.
- When a complaint is made to OIR via the Division of Consumer Services of the Department of Financial Services. The alleged discriminatory practice is examined by the Bureau of Market Investigations within OIR and corrective action may be pursued.

For personal lines property or personal lines automobile insurance, insurers will provide coverage for liability and for property loss. Inquiring into whether an insured party or applicant lawfully owns or possesses a firearm is not common practice within the insurance industry in Florida when determining

¹ Section 790.338(7), F.S., as created by HB 155, ch. 2011-112, Laws of Florida.

² *Wollschlaeger v. Farmer*, 880 F.Supp.2d 1251 (2012).

³ Section 627.062, F.S.

⁴ Section 626.9541, F.S.

⁵ Section 626.9541(1)(g)(1), F.S.

⁶ Information obtained from the Office of Insurance Regulation, 01/15/2014. On file with the Insurance & Banking Subcommittee staff.

liability coverage in setting rates.⁷ Insurers generally provide property loss coverage for firearms in two ways. Firearms may be covered as a part of the standard policy or as a "rider." A rider covers specific property loss in excess of the coverage amount found in usual insurance policies. Disclosure of the insured or applicant's firearms is necessary to catalog the property being covered by the rider. Often this information is shared with parties within the insurance company structure when issuing and servicing a policy, such as: independent adjusters, insurance agents, managing general agents, and customer service representatives, which could be labeled as third party or affiliated entities.⁸

Effect of the Bill

This bill amends s. 626.9541, F.S., making it an unfair discriminatory practice for a personal lines property or personal lines automobile insurer to refuse to issue, reissue, or renew a policy, to cancel or otherwise terminate a policy, or to charge a discriminatory rate based on an insured's or applicant's or such person's household member's lawful use, possession, or ownership of a firearm.

The bill does not prevent an insurer from charging a supplemental premium that is not unfairly discriminatory for a separate rider voluntarily requested by the insurance applicant to insure a firearm or a firearm collection whose value exceeds the standard policy coverage.

The bill also prohibits a personal lines property or personal lines automobile insurer from disclosing an insured's or applicant's or such person's household member's ownership or possession of a firearm to a third party or affiliated entity unless the insurer discloses to the insured or applicant a specific need to disclose the information and the insured or applicant expressly consents to the disclosure, or the disclosure is necessary to quote or bind coverage, continue coverage, or adjust a claim.

The prohibition on sharing information does not prevent the sharing of information between an insurance company and its licensed insurance agent if a separate rider has been voluntarily requested by the policyholder or prospective policyholder to insure a firearm or a firearm collection whose value exceeds the standard policy coverage.

B. SECTION DIRECTORY:

Section 1: Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts by an insurer.

Section 2: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁷ Information obtained from the Office of Insurance Regulation, 01/15/2014. On file with the Insurance & Banking Subcommittee staff.

⁸ According to representatives of the Florida insurance industry, as provided to the staff of the Insurance & Banking Subcommittee on 01/20/2014.

2. Expenditures:

This bill does not appear to have any impact on state expenditures. The OIR has stated that enforcement of this bill would be absorbed into their current operations, with only minimal, if any additional workload.⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have any impact on local revenue.

2. Expenditures:

This bill does not appear to have any impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Consumers: The bill should not have a substantial economic impact on Florida policyholders. Any consumers that were denied coverage or their coverage was cancelled in the past because of their lawful possession of a firearm will now be able to acquire personal lines of property and automobile insurance without their lawful ownership of a firearm being unfairly taken into account in the setting of the rate. Additionally, Florida policyholders who were charged a higher rate for their policies because of their lawful ownership of a firearm may see a reduction in their policy premiums, reflecting the insurers' inability to charge a higher rate because of a firearm. The bill does not impede an individual's ability to obtain a rider with their insurance policy for property loss coverage of their firearms.
2. Insurance Providers: This bill should have little, if any, effect on the information insurers request when issuing, reissuing, or canceling a policy. Only one insurance company in Florida is known to have inquired whether a specific type of firearm (assault rifles) was owned by the applicant before issuing them a policy.¹⁰ Consequently, since such information is not used in determining liability, restricting the disclosure of such information should not pose a problem to insurers. Additionally, the bill does not impede an insurer's ability to offer a rider for property loss coverage of firearms.

This bill may have an indeterminate amount of administrative costs on insurers in revising their notice and disclosure practices to comply with the bill. However, insurers may be able to reduce those costs by not having to obtain specific consent from the applicant or insured to share information regarding ownership or possession of firearms, if such disclosure is necessary to quote or bind coverage, continue coverage, or adjust a claim.

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 an action requiring the expenditure of funds; reduce the authority that counties or municipalities have

⁹ Information obtained from the Office of Insurance Regulation, 01/15/2014. On file with the Insurance & Banking Subcommittee staff.

¹⁰ Information obtained from the Office of Insurance Regulation, 01/15/2014. On file with the Insurance & Banking Subcommittee staff.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Current law prohibits discrimination against firearm ownership or possession in any insurance line, although that prohibition perhaps may only be enforced in a civil action filed by a person against an insurance company. The apparent intent of the bill is to make such discrimination enforceable by the Office of Insurance Regulation. If so, it is unclear why such enforceability is limited to certain personal lines policies. It is also unclear why the current, less specific prohibition at s. 790.338(7), F.S., is not being repealed as a part of this bill.

The bill uses the limiting terms "personal lines property" insurer and "personal lines automobile insurer" in describing the types of insurance products to which this newly created law applies. While the terms are apparently commonly used by persons in the insurance industry, there is no statutory definition or description of the terms "personal lines," "personal lines property insurer," or "personal lines automobile insurer." Thus, the bill is perhaps unclear in its application and thus may be subject to legal challenge.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2014, the Insurance & Banking Subcommittee met and passed HB 255 with a strike all amendment. This amendment included the same or similar provisions that were in the bill relating to rates and disclosure regarding firearms. It also clarified that an insurer is not prevented from charging a supplemental premium that is not unfairly discriminatory for a separate rider voluntarily requested by the insurance applicant to insure firearms. It also allowed disclosure of firearm ownership when necessary to quote or bind coverage, continue coverage, or adjust a claim. Finally, for the purposes of providing insurance coverage, it did not prevent the sharing of information between an insurance company and its agent when separate riders have been requested by a policyholder or applicant. This staff analysis has been updated to reflect the amendment's changes.

1 A bill to be entitled
 2 An act relating to discriminatory insurance practices;
 3 amending s. 626.9541, F.S.; providing that unfair
 4 discrimination on the basis of gun ownership in the
 5 provision of personal lines property or personal lines
 6 automobile insurance is a discriminatory insurance
 7 practice; clarifying that insurers are not prevented
 8 from charging supplemental premiums or sharing
 9 information between an insurer and its agent if a
 10 separate rider has been requested; providing an
 11 effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Paragraph (g) of subsection (1) of section
 16 626.9541, Florida Statutes, is amended to read:

17 626.9541 Unfair methods of competition and unfair or
 18 deceptive acts or practices defined.—

19 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
 20 ACTS.—The following are defined as unfair methods of competition
 21 and unfair or deceptive acts or practices:

22 (g) Unfair discrimination.—

23 1. Knowingly making or permitting ~~any~~ unfair
 24 discrimination between individuals of the same actuarially
 25 supportable class and equal expectation of life, in the rates
 26 charged for a ~~any~~ life insurance or annuity contract, in the

27 dividends or other benefits payable thereon, or in any other
 28 term or condition ~~of the terms and conditions~~ of such contract.

29 2. Knowingly making or permitting ~~any~~ unfair
 30 discrimination between individuals of the same actuarially
 31 supportable class, as determined at the ~~original~~ time of initial
 32 issuance of the coverage, and essentially the same hazard, in
 33 the amount of premium, policy fees, or rates charged for a ~~any~~
 34 policy or contract of accident, disability, or health insurance,
 35 in the benefits payable thereunder, in ~~any of~~ the terms or
 36 conditions of such contract, or in any other manner ~~whatever~~.

37 3. For a health insurer, life insurer, disability insurer,
 38 property and casualty insurer, automobile insurer, or managed
 39 care provider to underwrite a policy, or refuse to issue,
 40 reissue, or renew a policy, refuse to pay a claim, cancel or
 41 otherwise terminate a policy, or increase rates based upon the
 42 fact that an insured or applicant who is also the proposed
 43 insured has made a claim or sought or should have sought medical
 44 or psychological treatment in the past for abuse, protection
 45 from abuse, or shelter from abuse, or that a claim was caused in
 46 the past by, or might occur as a result of, any future assault,
 47 battery, or sexual assault by a family or household member upon
 48 another family or household member as defined in s. 741.28. A
 49 health insurer, life insurer, disability insurer, or managed
 50 care provider may refuse to underwrite, issue, or renew a policy
 51 based on the applicant's medical condition, but may ~~shall~~ not
 52 consider whether such condition was caused by an act of abuse.

- 53 For purposes of this section, the term "abuse" means the
 54 occurrence of one or more of the following acts:
- 55 a. Attempting or committing assault, battery, sexual
 56 assault, or sexual battery;
 - 57 b. Placing another in fear of imminent serious bodily
 58 injury by physical menace;
 - 59 c. False imprisonment;
 - 60 d. Physically or sexually abusing a minor child; or
 - 61 e. An act of domestic violence as defined in s. 741.28.

62
 63 This subparagraph does not prohibit a property and casualty
 64 insurer or an automobile insurer from excluding coverage for
 65 intentional acts by the insured if such exclusion is ~~does~~ not
 66 ~~constitute~~ an act of unfair discrimination as defined in this
 67 paragraph.

- 68 4. For a personal lines property or personal lines
 69 automobile insurer to:
- 70 a. Refuse to issue, reissue, or renew a policy; cancel or
 71 otherwise terminate a policy; or charge an unfairly
 72 discriminatory rate in this state based on the lawful use,
 73 possession, or ownership of a firearm by the insurance
 74 applicant, insured, or a household member of the applicant or
 75 insured. This sub-subparagraph does not prevent an insurer from
 76 charging a supplemental premium that is not unfairly
 77 discriminatory for a separate rider voluntarily requested by the
 78 insurance applicant to insure a firearm or a firearm collection

79 whose value exceeds the standard policy coverage.
 80 b. Disclose the lawful ownership or possession of firearms
 81 of an insurance applicant, insured, or household member of the
 82 applicant or insured to a third party or an affiliated entity of
 83 the insurer unless the insurer discloses to the applicant or
 84 insured the specific need to disclose the information, and the
 85 applicant or insured expressly consents to the disclosure, or
 86 the disclosure is necessary to quote or bind coverage, continue
 87 coverage, or adjust a claim. For purposes of underwriting and
 88 issuing insurance coverage, this sub-subparagraph does not
 89 prevent the sharing of information between an insurance company
 90 and its licensed insurance agent if a separate rider has been
 91 voluntarily requested by the policyholder or prospective
 92 policyholder to insure a firearm or a firearm collection whose
 93 value exceeds the standard policy coverage.

94 Section 2. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 331 Renters Insurance
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 422

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Cary ✓	Bond ✓

SUMMARY ANALYSIS

The "Florida Residential Landlord and Tenant Act," or "Act," governs the relationship between landlords and tenants under a residential rental agreement. The Act contains certain mandatory or conditional provisions and disclosures that a landlord must provide to a tenant or prospective tenant.

The Proposed Committee Substitute (PCS) mandates one of two provided provisions relating to renter's insurance to be included in any written rental agreement for a residential tenancy.

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

The PCS provides an effective date of January 1, 2015, and applies to any residential lease governed by the Act signed or renewed after that date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Part II of ch. 83, F.S., entitled the "Florida Residential Landlord and Tenant Act," or "Act," governs the relationship between landlords and tenants under a residential rental agreement. The Act contains certain mandatory or conditional provisions and disclosures that a landlord must provide to a tenant or prospective tenant. For example:

- If the landlord requires a security deposit, the Act requires a disclosure regarding the tenant's rights and responsibilities with respect to the security deposit.¹
- The landlord must disclose his or her address.²
- If there is a liquidated damages provision in the lease, the Act provides language that must be included in the lease.³
- If the rental agreement indemnifies the landlord for storage or disposition of personal property of the tenant after the tenant surrenders the dwelling, the Act requires language within the lease to notify the tenant to that effect.⁴

Effect of the Bill

The Proposed Committee Substitute (PCS) creates s. 83.491, F.S., to mandate one of two provided provisions in any written rental agreement for a residential tenancy. The notice must be in the same or larger type size as the majority of the rental agreement and must be separately initialed by the tenant.

If the rental agreement requires the purchase of a tenant's policy of insurance as a condition of the lease, the rental agreement must include a statement providing substantially the following language:

A landlord is generally not liable for loss or damage to your personal property. This rental agreement requires you to purchase and maintain a tenant's policy of insurance covering loss or damage to your personal property from a company of your choice with a minimum coverage amount of (insert coverage requirements here).

If the rental agreement does not require the purchase of a tenant's policy of insurance, the rental agreement must include a statement providing substantially the following language:

A landlord is generally not liable for loss or damage to your personal property. This rental agreement does not require you to purchase and maintain a tenant's policy of insurance. You should consider purchasing a tenant's policy of insurance covering loss or damage to your personal property from a company of your choice.

The PCS provides that an unwritten agreement, or one that fails to provide the required notice, is presumed not to require the purchase of a tenant's insurance policy.

The PCS provides, as the sole remedy for a landlord's failure to include the required notice, that the tenant may terminate the lease as if the tenancy was without a specific duration as provided in s. 83.57,

¹ Section 83.49(2)(d), F.S.

² Section 83.50, F.S.

³ Section 83.595(4), F.S.

⁴ Section 83.67(5), F.S.

F.S.⁵ For most residential leases in Florida, this would allow the tenant to terminate the lease with a 15 days' notice prior to the end of a term.

The PCS also provides that a tenant does not have a cause of action against the landlord for the landlord's failure to enforce an insurance requirement. Essentially, if the tenant does not purchase a policy as required by the lease, the tenant cannot recover damages from the landlord for the tenant's violation of the lease agreement.

The PCS also provides that no person will be deemed a third party beneficiary of a requirement to purchase tenant's insurance. Thus, a third party cannot sue a landlord for a landlord's failure to enforce a requirement to purchase insurance.

The PCS provides an effective date of January 1, 2015, and applies to any residential lease governed by the Act and signed or renewed after that date.

B. SECTION DIRECTORY:

Section 1 creates s. 83.491, F.S., relating to an insurance requirement.

Section 2 provides an effective date of January 1, 2015, and an applicability statement.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill creates a new requirement for standard lease forms. The Florida Bar develops, and the Florida Supreme Court approves, residential lease forms for use in the state.⁶ This PCS would likely require the promulgation of new lease forms.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires that companies that regularly lease residential dwellings update their lease forms, but the bill provides until January 1, 2015, to do so, which should provide enough time in most cases to utilize current forms and develop a new standard lease form with minimal expense.

⁵ Section 83.57, F.S., provides that if the tenancy is from year to year, the tenant must provide 60 days' notice. If the tenancy is from quarter to quarter, the tenant must provide 30 days' notice. If the tenancy is from month to month, which is the typical residential tenancy in Florida, the tenant must provide 15 days' notice. If the tenancy is from week to week, the tenant must provide 7 days' notice.

⁶ See *In re Revisions to Simplified Forms Pursuant to Rule 10-2.1(A) of Rules Regulating the Florida Bar*, 50 So.3d 503 (Fla. 2010).

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to residential tenant insurance
 3 policies; creating s. 83.491, F.S.; requiring a
 4 residential rental agreement to specify whether
 5 insurance coverage is required; creating required
 6 disclosures; limiting scope to written rental
 7 agreements; limiting recoveries; providing an
 8 effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Section 83.491, Florida Statutes, is created to
 13 read:

14 83.491 Insurance requirement.—
 15 (1) As to every written rental agreement governed by this
 16 part:
 17 (a) If the rental agreement requires that the tenant obtain
 18 a tenant's policy of insurance, the rental agreement must
 19 include a statement that reads, in substantially this form: "A
 20 landlord is generally not liable for loss or damage to your
 21 personal property. This rental agreement requires you to
 22 purchase and maintain a tenant's policy of insurance covering
 23 loss or damage to your personal property from a company of your
 24 choice with a minimum coverage amount of (insert coverage
 25 requirements here)."
 26 (b) If the rental agreement does not require that the

27 tenant obtain a tenant's policy of insurance, the rental
 28 agreement must include a statement that reads, in substantially
 29 this form: "A landlord is generally not liable for loss or
 30 damage to your personal property. This rental agreement does not
 31 require you to purchase and maintain a tenant's policy of
 32 insurance. You should consider purchasing a tenant's policy of
 33 insurance covering loss or damage to your personal property from
 34 a company of your choice."

35 (2) A notice required by subsection (1) must be in the same
 36 or larger type size as the majority of the rental agreement and
 37 must be separately initialed by the tenant.

38 (3) An unwritten agreement, or one that fails to include
 39 the required notice, is presumed to not require a tenant's
 40 policy of insurance.

41 (4) The sole remedy of a tenant for a landlord's failure to
 42 include either required notice in a written lease agreement is
 43 that the lease agreement may be, at the option of the tenant,
 44 terminable pursuant to s. 83.57. A tenant shall not have any
 45 cause of action against a landlord related to a landlord's
 46 failure to enforce an insurance requirement. No person shall be
 47 deemed a third party beneficiary of a requirement to purchase
 48 tenant's insurance.

49 Section 2. This act shall take effect January 1, 2015, and
 50 shall apply to any residential lease governed by Part II of
 51 Chapter 83 of the Florida Statutes that is entered into, or
 52 renewed after, said effective date.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing PCB: Civil Justice Subcommittee
 2 Representative Fullwood offered the following:

3
 4 **Amendment**
 5 Remove line 25 and insert:
 6 requirements here)." A rental agreement may require that the
 7 tenant purchase and maintain insurance other than that referred
 8 to in this paragraph.
 9



Amendment No. 2

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 PCB: Civil Justice Subcommittee
 2 Representative Fullwood offered the following:

3
 4
 5
 6
 7

Amendment

Remove lines 41-44 and insert:
(4) A tenant shall not have any

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 489 Residential Property Sales/Subsurface Rights

SPONSOR(S): Spano

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1032

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary <i>JMC</i>	Bond <i>NB</i>
2) Business & Professional Regulation Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Most owners of real property simply think of the surface boundaries when defining the extent of the ownership. However, real property theory is that the owner owns a projection from the center of the Earth to the extent of the Earth's atmosphere. Thus, the owner of the surface rights generally owns the oil, gas and minerals underneath the owner's real property. However, a landowner may lease or sell the right to subsurface rights (the right to oil, gas and minerals) separate from the right to own and occupy the surface of the land, thereby creating two separate estates. In general, separation of the estates is uncommon in much of Florida.

Recently, some developers have sole residential homes on property where the subsurface rights were previously severed. Buyers asserted that they had little or no notice that their property did not include subsurface rights.

The bill requires a seller who intends to retain any subsurface rights as part of a contract or deed for the sale of residential property to provide a prospective purchaser and his or her real estate agent with written notification of the property interest that the seller is seeking to retain. The bill provides that a purchaser has 3 business days after the contract or deed is fully executed to rescind the contract or deed if a seller fails to provide the required notice.

The bill provides that if proper notice was not provided to the prospective purchaser, the court must issue an order declaring that the provision in the contract or deed that reserved, retained, or severed the property interest is void.

The bill provides that a seller who knowingly violates the law commits a first-degree misdemeanor, which is punishable by up to one year imprisonment and a fine of up to \$1000.

The bill may have an unknown minimal negative fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Most owners of real property simply think of the surface boundaries when defining the extent of the ownership. However, common law real property theory is that the owner owns a projection from the center of the Earth to the extent of the Earth's atmosphere.¹

The owner of land is entitled to the surface of the land and all that is below it, provided that the deed does not contain a reservation of mineral, or subsurface, rights. However, upon transfer, the deed may convey only the surface rights while the transferor may retain the subsurface rights, creating two separate estates.² A deed that is silent on the issue is deemed to convey all property rights.

Generally, a reservation or grant of mineral rights reflects an intent to sever the surface estate from the underlying mineral estate, thus establishing two separate estates.³ A property owner may sever the estates by either:

- Granting the mineral rights;⁴ or
- Conveying the property but retaining the mineral rights.⁵

The owner of each estate has the right to exercise all the rights of ownership, subject to any laws and reservations that the deed may contain.⁶ Therefore, the owner of the subsurface rights is entitled to the profits from any minerals that are extracted from beneath the surface of the land.

When the estate is severed into separate surface and subsurface estates, the mineral estate is the dominant estate, and therefore the owner of the mineral estate has the right of ingress and egress to explore for, locate, and remove the minerals. However, in doing so, the owner of the mineral estate may not so abuse the surface estate so as to unreasonably injure or destroy its value.⁷ A grant or reservation of oil and mineral rights implies an easement for ingress and egress to explore for and remove the oil and minerals found on or underneath the surface estate, even if not specifically granted at the conveyance.⁸

In practice, some developers retain mineral rights without a reference to the mineral rights on the face of the deed. A catch-all provision in the deed, such as, "Subject to Covenants, Conditions, Restrictions, Reservations, Limitations, Easements and Agreements of Records, if any," may be all that appears on the face of the deed to the prospective purchaser. In such cases, a separate grant may have been filed in the public records that list the lots within a development for which mineral rights are being retained by the developer. The developer may also waive its rights of ingress and egress, effectively retaining ownership of any valuable minerals that may reside in the subsurface, but waiving any claim to an easement that would interfere with or even be recognized by the surface owner. While this practice may satisfy constructive notice requirements to make the reservation of mineral rights legally effective,

¹ 42 Fla. Jur 2d Property s. 7

² 36 Fla. Jur 2d Mines and Minerals s. 54

³ *Noblin v. Harbor Hills Development, L.P.*, 896 So.2d 781, 783 (Fla. 5th DCA 2005).

⁴ *Neel v. Rudman*, 33 So.2d 234 at 237 (Fla. 1948).

⁵ *P & N Inv. Corp. v. Florida Ranchettes, Inc.*, 220 So.2d 451 (Fla 1st DCA 1969).

⁶ 58 C.J.S. Mines and Minerals s. 197.

⁷ *Id.* at 453.

⁸ *Noblin* at 784-85.

it arguably does not provide adequate notice to the purchaser of the surface property that the purchaser does not own the subsurface rights to the property.⁹

Effect of the Bill

The bill creates s. 689.263, F.S., to require a seller who intends to retain any subsurface rights as part of a contract or deed for the sale of residential property to provide a prospective purchaser and his or her real estate agent with written notification of the property interest that the seller is seeking to retain.

The bill creates s. 689.263(1), F.S., to require the seller to provide a written notification to the seller at least three business days before entering into any sales contract for the purchase of residential property. The purchaser must provide a signed, written acknowledgment of receipt of the notification.

The bill creates s. 689.263(2), F.S., to provide requirements for the written notification. The bill provides language that must be used and requires the notification to be provided on an 8 ½ by 11 inch sheet of paper that addresses no other subject and is double-spaced in at least a 12-point font.

The bill creates s. 689.263(3), F.S., to provide definitions. The bill defines a residential property as “real estate on which there is located, or will be located, any single-family dwelling, duplex, triplex, quadruplex, or condominium.” The bill also defines subsurface rights as “rights to the phosphate, minerals, metals, petroleum, or oil that is or may be in, on, or under any land being transferred to the prospective purchaser.”

The bill creates s. 689.263(4), F.S., to provide that a purchaser has 3 business days after the contract or deed is fully executed to rescind the contract or deed if a seller fails to provide the required notice. The purchaser must provide the rescission notification to the seller in writing.

The bill creates s. 689.263(5), F.S., to provide that if proper notice was not provided to the prospective purchaser, the court must issue an order declaring that the provision in the contract or deed that reserved, retained, or severed the property interest is void. Effectively, this remedy would only apply to the original transfer that severs the title, because any subsequent transfers of the surface estate would not be between owners of the respective estates.

The bill creates s. 689.263(6), F.S., to provide jurisdiction and venue in the circuit court of the county in which the real property is located.

The bill creates s. 689.263(7), F.S., to provide that a seller who knowingly violates the law commits a first-degree misdemeanor, which is punishable by up to one year imprisonment and a fine of up to \$1000.¹⁰

The bill provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1 creates s. 689.263, F.S., relating to the sale of residential property and disclosure of seller’s intent to retain subsurface rights.

Section 2 provides an effective date of July 1, 2014.

⁹ See, e.g., “Attorney General Pam Bondi Announces that Home Builder is Notifying Florida Homeowners of Option to Request Mineral Rights.” Attorney General Pam Bondi News Release, Feb. 7, 2014. http://myfloridalegal.com/_852562220065EE67.nsf/0/06535F8FE26017C785257C780071C51D?Open&Highlight=0,hort on (last viewed Feb 13, 2014).

¹⁰ Sections 775.082 and 775.083, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any fiscal impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill appears to have a minimal direct economic impact on the private sector related to the cost of providing notice to buyers. Given that sellers of real property in Florida rarely sever subsurface rights, the overall impact on the private sector should be negligible.

D. FISCAL COMMENTS:

The provision in the bill creating a misdemeanor offense may have an unknown minimal negative fiscal impact on state and local government expenditures. If prosecuted, it would require judicial resources for courts, judges, state attorneys, public defenders and clerks of court payable from state funds. State expenditures may somewhat be offset if fines were collected. If prosecuted, it would also require law enforcement, courthouse space, and county jail admissions costs payable from the counties. However, it is likely that the number of offenses would be small, and thus the impact to all governments would likely be negligible and likely to be absorbed within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The definition for "residential property" in the bill includes real estate on which there is located, or will be located, any single-family dwelling, duplex, triplex, quadruplex, or condominium. This definition fails to

include certain types of residential residences, such as a cooperative or a mobile home park. Furthermore, the inclusion of land where a dwelling "will be" located may be legally problematic, as most any property could, at some point in the future, be subject to redevelopment and rezoning to become residential property. This definition could potentially apply to every parcel of real estate in the state.

The bill contains proscribed language that must be provided as a written notice to a purchaser at least three days prior to closing the sale. The bill is drafted so that a single typo in the written notice could be interpreted to subject the seller to criminal penalties and a voided property interest.

The misdemeanor criminal offense makes any violation of the section an offense. The actions punishable should perhaps be better defined.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to residential property sales;
 3 creating s. 689.263, F.S.; requiring a seller of
 4 residential property to provide written notification
 5 to a prospective buyer of the seller's intent to
 6 retain subsurface rights; providing the form for such
 7 notification; providing definitions; providing for
 8 rescission of a contract under certain circumstances;
 9 specifying jurisdiction and venue for enforcement;
 10 providing penalties; providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:
 13

14 Section 1. Section 689.263, Florida Statutes, is created
 15 to read:

16 689.263 Sale of residential property; disclosure of
 17 seller's intent to retain subsurface rights.-

18 (1) Notwithstanding any other provision of law, a seller
 19 who intends to retain any subsurface rights as part of a
 20 contract or deed for the sale of residential property shall
 21 provide to the prospective purchaser, and the prospective
 22 purchaser's real estate agent if the prospective purchaser is
 23 using a real estate agent, written notification of the property
 24 interest that the seller is seeking to retain. The prospective
 25 purchaser must receive a copy of the written notification at
 26 least 3 business days before entering into any sales contract

27 | for the purchase of the residential property and must
 28 | acknowledge receipt of the written notification by his or her
 29 | signature.

30 | (2) The written notice required under this section shall
 31 | be provided on a sheet of paper that is 8 1/2 inches by 11
 32 | inches, shall address no other subject, shall be double-spaced,
 33 | and shall include the following information in a font size of at
 34 | least 12 points:

35 |
 36 | RETENTION OF SUBSURFACE RIGHTS
 37 |

38 | AS REQUIRED BY FLORIDA LAW, ... (SELLER'S NAME) ... HEREBY
 39 | PROVIDES 3 BUSINESS DAYS' NOTICE TO ... (PROSPECTIVE PURCHASER'S
 40 | NAME) ... THAT THE SELLER, AS PART OF THE TRANSFER OF THE
 41 | RESIDENTIAL PROPERTY LOCATED AT ... (PROPERTY ADDRESS) ... ,
 42 | INTENDS TO SEVER, RETAIN, RESERVE, OR OTHERWISE KEEP CERTAIN
 43 | SUBSURFACE RIGHTS AS PART OF THE SALE OF THAT PROPERTY. THESE
 44 | RIGHTS MAY INCLUDE THE RIGHT TO PHOSPHATE, MINERALS, METALS,
 45 | PETROLEUM, OR OIL THAT MIGHT BE IN, ON, OR UNDER THE RESIDENTIAL
 46 | PROPERTY. BY THIS NOTICE, THE PROPSECTIVE PURCHASER MAY
 47 | RENEGOTIATE THE CONTRACT TERMS TO REFLECT THE DIMINUTION OF
 48 | VALUE RESULTING FROM THE SEVERANCE OF THOSE SUBSURFACE PROPERTY
 49 | INTERESTS.

50 |
 51 | (3) As used in this section, the term:

52 | (a) "Residential property" includes real estate on which

53 there is located, or will be located, any single-family
 54 dwelling, duplex, triplex, quadruplex, or condominium.

55 (b) "Subsurface rights" includes rights to the phosphate,
 56 minerals, metals, petroleum, or oil that is or may be in, on, or
 57 under any land being transferred to the prospective purchaser.

58 (4) A purchaser has 3 business days after the contract or
 59 deed is fully executed to rescind the contract or deed if a
 60 seller fails to provide the notice as required by this section.
 61 The rescission notification must be provided in writing to the
 62 seller.

63 (5) If a court establishes that proper notice as required
 64 by this section was not given to the prospective purchaser, the
 65 court shall issue an order declaring that the provision in the
 66 contract or deed that reserved, retained, or severed the
 67 property interest is void.

68 (6) Jurisdiction and venue for enforcement of this section
 69 is in the circuit court of the county where the subject real
 70 property is located.

71 (7) A seller who knowingly violates this section commits a
 72 misdemeanor of the first degree, punishable as provided in s.
 73 775.082 or s. 775.083.

74 Section 2. This act shall take effect July 1, 2014.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative Spano offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

6 Section 1. Section 689.263, Florida Statutes, is created
7 to read:

8 689.263 Sale of residential property; disclosure of
9 seller's intent to retain subsurface rights.-

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

11 (a) "Residential property" includes any real estate which,
12 at the time of the sale, is zoned for residential use.

13 (b) "Subsurface rights" includes rights to the phosphate,
14 minerals, metals, natural gas, petroleum, or oil that is or may
15 be in, on, or under any land being transferred to the
16 prospective purchaser.

17 (2) A seller who intends to retain any subsurface rights as



Amendment No. 1

18 part of a contract or deed for the sale of residential property,
19 or a seller who has previously transferred or has knowledge
20 concerning the prior transfer of such rights, shall provide to
21 the prospective purchaser, and the prospective purchaser's real
22 estate agent if the prospective purchaser is using a real estate
23 agent, written notification of the property interest that the
24 seller is seeking to retain or that was previously severed. The
25 seller, or the seller's agent if applicable, shall notify the
26 buyer by providing notice under subsection (3) herein at least 3
27 business days prior to entering into any sales contract for the
28 purchase of the residential property and must acknowledge
29 receipt of the written notification by his or her signature.

30 (3) The written notice required under subsection (2) shall
31 be provided on a sheet of paper that is 8 1/2 inches by 11
32 inches, shall address no other subject, shall be double-spaced,
33 and shall include substantially the following information in a
34 font size of at least 14 points:

35
36 RETENTION OF SUBSURFACE RIGHTS

37
38 AS REQUIRED BY FLORIDA LAW, UNDER SECTION 689.263, FLORIDA
39 STATUTES, ... (SELLER'S NAME)... HEREBY PROVIDES 3 BUSINESS DAYS'
40 NOTICE TO ... (PROSPECTIVE PURCHASER'S NAME)... THAT THE SELLER,
41 AS PART OF THE TRANSFER OF THE PROPERTY LOCATED AT ... (PROPERTY
42 ADDRESS)..., INTENDS TO SEVER, RETAIN, RESERVE, OR OTHERWISE
43 KEEP CERTAIN SUBSURFACE RIGHTS AS PART OF THE SALE OF THAT



Amendment No. 1

44 PROPERTY HAS PREVIOUSLY TRANSFERRED SUCH RIGHTS, OR HAS
45 KNOWLEDGE CONCERNING THE PRIOR TRANSFER OF SUCH RIGHTS. THESE
46 RIGHTS MAY INCLUDE THE RIGHT TO PHOSPHATE, MINERALS, METALS,
47 NATURAL GAS, PETROLEUM, OR OIL THAT MIGHT BE IN, ON, OR UNDER
48 THE PROPERTY.

49
50 I/WE ACKNOWLEDGE RECEIPT OF THIS NOTICE.

51
52 (signature of prospective purchaser)

53
54 (4) A purchaser has 3 business days after the contract is
55 fully executed to rescind the contract if a seller fails to
56 provide the notice as required herein. The rescission
57 notification must be provided in writing to the seller or the
58 seller's agent, if applicable. If the purchaser rescinds the
59 contract, the rescission is the purchaser's sole remedy.

60 (5) If a proper notice is not provided to the purchaser
61 and agent, if applicable, and if the seller retains the
62 subsurface rights, the severance of the subsurface estate is
63 voidable by the purchaser. However, if the subsurface rights
64 were subsequently conveyed by the seller, then the purchaser is
65 entitled to damages as if the seller failed to provide a notice
66 as required herein. If a proper notice was not provided to the
67 purchaser, and if the seller has sold or otherwise transferred
68 the subsurface rights to a wholly- or partially-owned
69 subsidiary, the purchaser has a cause of action against the



Amendment No. 1

70 seller and is entitled to either \$5000 in liquidated damages or
71 actual damages, whichever is greater, plus all costs of the
72 action and a reasonable attorney's fee. Relief under this
73 subsection is the only remedy authorized by law.

74 (6) Jurisdiction and venue for enforcement of this section
75 is in the circuit court of the county where the subject real
76 property is located.

77 (7) The failure to give a notice required by this section
78 shall not affect the title to real property nor affect the
79 insurability thereof. This subsection does not apply to the
80 holder of subsurface rights, whose title may be impacted by this
81 section.

82 Section 2. This act shall take effect July 1, 2014.

83
84
85
86

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

87
88 Remove everything before the enacting clause and insert:
89 An act relating to residential property sales; creating s.
90 689.263, F.S.; providing definitions; requiring a seller of
91 residential property to provide written notification to a
92 prospective buyer of the seller's intent to retain subsurface
93 rights; providing the form for such notification; providing for
94 rescission of a contract under certain circumstances; providing
95 a cause of action and a remedy for failure to provide a required



Amendment No. 1

96 notification; specifying jurisdiction and venue for enforcement;
97 providing that failure to give a notice does not affect the
98 title the surface estate; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 561 Attorneys for Dependent Children with Disabilities
SPONSOR(S): Fresen
TIED BILLS: None **IDEN./SIM. BILLS:** SB 972

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Ward <i>JW</i>	Bond <i>VB</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

"Dependency" is a legal determination that an abandoned, neglected, or abused child requires intervention by the state. The term "dependent child" means that the child has been determined by a court to be dependent on the state for support or services. Some dependent children are disabled.

The bill provides legislative findings that a disabled child in the dependency system has a particular need for legal services, and that the court should appoint an attorney to represent such a child.

The bill directs that the appointed attorney be adequately compensated, and be provided with funds for appellate counsel and litigation costs. The implementation of the law is subject to appropriations expressly made for that purpose.

The bill provides that services should be provided to the following children:

- A medically dependent or technologically dependent child who because of a medical condition requires continuous therapeutic interventions or supervision and resides in a skilled nursing facility or is being considered for placement in a skilled nursing facility;
- A dependent child who has been prescribed a psychotropic medication;
- A dependent child with a suspected diagnosis of developmental disability; or
- A dependent child who has been a victim or perpetrator of sexual abuse or human trafficking and who is suspected to be in need of mental health treatment.

The bill appears to have an unknown significant negative fiscal impact on state expenditures payable from the General Revenue Fund. The bill does not appear to have a fiscal impact on local governments.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Dependent Children

Proceedings related to children are governed by ch. 39, F.S. The stated purpose of the chapter is to "provide for the care, safety, and protection of dependent children in an environment that fosters healthy social, emotional, intellectual, and physical development; to ensure secure and safe custody; to promote the health and well-being of all children under the state's care; and to prevent the occurrence of child abuse, neglect, and abandonment."¹

"Dependency" and "dependent child" and "adjudication of dependency" are terms used throughout chapter 39 to describe the legal process whereby parental rights and responsibilities are partially or fully surrendered to the state. The statutes do not define "dependency" per se, but define the "dependent child."² The "dependent child," is defined by the adjudication of the condition, after notice and hearing,³ based upon one or more of the findings set out in the statute.⁴

The dependency process in Florida begins with an investigation into an allegation of child abuse, abandonment, or neglect.⁵ A child protection investigator conducts an on-site investigation of the alleged abuse or neglect.⁶ If warranted, a dependency petition is filed with the court by the Department of Children and Families.⁷

A child may be taken into custody and placed in a shelter without a hearing if there is probable cause of imminent danger or injury to the child.⁸ If a child is taken into custody, a hearing is held within 24 hours.⁹ A guardian ad litem¹⁰ will be, and an attorney ad litem¹¹ may be appointed to represent the child's best interests in the proceeding. An adjudicatory hearing is held to determine whether the child is dependent, based upon a preponderance of the evidence.¹² A disposition hearing is held to determine appropriate services and placement setting for the child.¹³ A case plan¹⁴ determining permanency of the child placement, with goals such as reunification of the family or another outcome, is also approved by the court.¹⁵

The court holds periodic judicial reviews, generally every six months, until supervision is terminated, to determine the child's status, the progress in following the case plan, and the status of the goals and objectives of the case plan.¹⁶ After twelve months, if the case plan goals have not been met, the court holds a permanency hearing to determine the child's permanent placement goal.¹⁷

¹ Section 39.001(1)(a), F.S.

² Section 39.01(15), F.S.

³ Section 39.502(1), F.S.

⁴ Section 39.01(15), F.S.

⁵ Section 39.301(1), F.S.

⁶ *Id.*

⁷ Section 39.501(3)(c), F.S.

⁸ Section 39.402(1), F.S.

⁹ Sections 39.01(69) and 39.402(8)(a), F.S.

¹⁰ Section 39.822(1), F.S.

¹¹ Section 39.4085(20), F.S.

¹² Section 39.507, F.S.

¹³ Sections 39.01(25) and 39.521, F.S.

¹⁴ Section 39.01(11), F.S.

¹⁵ Section 39.521(1), F.S. *See also*, s. 39.6011, F.S., *et seq.*

¹⁶ Section 39.521(1)(c), F.S.

¹⁷ Section 39.621(1), F.S.

Dependent Children in Nursing Homes

In December 2011, the U.S. Department of Justice (DOJ) opened an investigation against the State of Florida regarding the services the state provides to children with disabilities. The DOJ visited a number of nursing homes that served severely disabled children throughout Florida. The DOJ found that the children housed at these facilities had little social activity, received little stimulation, and were often confined to their rooms or housed among the elderly. The DOJ found that the state failed to provide for these children as required by the Americans with Disability Act. In a letter from the DOJ, which was received by Attorney General Pam Bondi on September 1, 2012, the DOJ warned: "In the event we determine that we cannot secure compliance voluntarily to correct the deficiencies described in this letter, the [U.S.] Attorney General may initiate a lawsuit pursuant to the ADA."¹⁸

Representation in Dependency Cases

The court may appoint an attorney to represent a child in a dependency proceeding, but it is not mandatory. A guardian ad litem is appointed to represent the best interests of the child in a dependency proceeding.¹⁹

Effect of the Bill

The bill creates the classifications of children to be served by the bill in its definition of "dependent child with a suspected or known disability" as:

- A medically dependent or technologically dependent child who because of a medical condition requires continuous therapeutic interventions or supervision and resides in a skilled nursing facility or is being considered for placement in a skilled nursing facility;
- A dependent child who has been prescribed a psychotropic medication;
- A dependent child with a suspected diagnosis of developmental disability as defined in s. 393.063; or
- A dependent child who has been a victim or perpetrator of sexual abuse or human trafficking and who is suspected to be in need of mental health treatment.

The bill provides legislative findings that:

- All children in chapter 39 proceedings have important interests at stake;
- A dependent child with a suspected or known disability has a particular need for an attorney in dependency through appellate proceedings;
- A dependent child with a suspected or known disability has a particular need for an attorney to address medical and related needs of the child; and
- It is the intent of the Legislature that the court appoint an attorney to represent each dependent child with a suspected or known disability.

The bill provides that:

- An order appointing an attorney for a dependent child with a suspected or known disability must be in writing;
- The appointment of the attorney continues in effect until the case is closed or the attorney is discharged by the court;
- With permission of the court, the attorney may arrange for counsel to handle an appellate proceeding;

¹⁸ Letter to Attorney General Pam Bondi from Thomas E. Perez, Assistant Attorney General, Department of Justice (September 4, 2012), available at http://www.ada.gov/olmstead/documents/florida_findings_letter.pdf (last visited February 13, 2014).

¹⁹ Section 39.822, F.S.

- The appointed attorney must be adequately compensated; and
- The appointed attorney must be provided with costs of litigation.

The bill does not limit the authority of the court to appoint an attorney for a proceeding under ch. 39, F.S.

The bill provides that implementation of the law is subject to appropriations expressly made for the purposes of the law.

The bill has an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1 creates s. 39.01305, relating to appointment of an attorney for a dependent child with disabilities.

Section 2 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill appears to have a significant unknown negative fiscal impact on state expenditures. There is no apparent cap on attorney's fees that could be charged to the state under this bill. The source of funds for payment of the services required by the bill is not stated and thus is payable from the General Revenue Fund unless a different source is specified in the General Appropriations Act.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

The bill requires that an attorney representing a dependent child with a disability must be "adequately" compensated and provided with funds for costs of litigation (lines 65-66). There is no standard for determination of fees and costs, nor is there a limit. Other statutes providing for attorneys' fees pre-determine those fees in some fashion, and have a "reasonable" standard for costs and fees.²⁰ The bill does provide, however, that implementation of the statute is "subject to appropriations expressly made

²⁰ See, e.g., ss. 16.0155(5), and all of s. 27.5304, F.S.

for that purpose." Note, however, that the Florida Supreme Court has found that attorneys' fees and costs for court appointed counsel can exceed statutory minimums in certain circumstances.²¹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 25-26 providing a partial definition of the term "dependent child with a suspected or known disability" includes all children dependent upon medical or technological means, rather than "dependent" children as used particularly in ch. 39, F.S.

The bill provides for appointment of an attorney for a "perpetrator of sexual abuse or human trafficking." See lines 37-38.

The apparent intent of the bill is to provide attorneys for certain vulnerable children but the bill does not specifically require appointment of an attorney.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

²¹ *Makemson v. Martin County*, 491 So.2d 1109 (Fla. 1986); *Bd. of County Comm'rs of Hillsborough County v. Scruggs*, 545 So.2d 910, 912 (Fla. 2d DCA 1989)(expanding *Makemson* to court-appointed attorneys in civil dependency hearings).
STORAGE NAME: h0561.CJS.DOCX
DATE: 2/15/2014

1 A bill to be entitled
2 An act relating to attorneys for dependent children
3 with disabilities; creating s. 39.01305, F.S.;
4 defining the term "dependent child with a suspected or
5 known disability"; providing legislative findings and
6 intent; requiring an attorney to be appointed for a
7 child in a proceeding under chapter 39, F.S., if the
8 child has a suspected or known disability; requiring
9 the appointment to be in writing; requiring that the
10 appointment continues in effect until the attorney is
11 allowed to withdraw or is discharged by the court or
12 until the case is terminated; requiring that the
13 attorney be adequately compensated for his or her
14 services; providing for applicability; providing an
15 effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Section 39.01305, Florida Statutes, is created
20 to read:

21 39.01305 Appointment of an attorney for a dependent child
22 with disabilities.-

23 (1) As used in this section, the term a "dependent child
24 with a suspected or known disability" means:

25 (a) A medically dependent or technologically dependent
26 child who because of a medical condition requires continuous

27 therapeutic interventions or skilled nursing supervision and
 28 resides in a skilled nursing facility or is being considered for
 29 placement in a skilled nursing facility;

30 (b) A dependent child who has been prescribed a
 31 psychotropic medication;

32 (c) A dependent child with a suspected diagnosis of
 33 developmental disability as defined in s. 393.063;

34 (d) A dependent child being placed in a residential
 35 treatment center or being considered for placement in a
 36 residential treatment center; or

37 (e) A dependent child who has been a victim or perpetrator
 38 of sexual abuse or human trafficking and who is suspected to be
 39 in need of mental health treatment.

40 (2)(a) The Legislature finds that:

41 1. All children in proceedings under this chapter have
 42 important interests at stake, such as health, safety, and well-
 43 being and the need to obtain permanency.

44 2. A dependent child with a suspected or known disability
 45 has a particular need for an attorney to represent the dependent
 46 child in such proceedings, as well as in fair hearings and
 47 appellate proceedings, so that the attorney may address the
 48 medical and related needs and the services and supports
 49 necessary for the child to live successfully in the community.

50 (b) It is the intent of the Legislature that the court
 51 appoint an attorney to represent each dependent child who has a
 52 suspected or known disability.

53 (3) An order appointing an attorney for a dependent child
 54 who has a suspected or known disability must be in writing.

55 (4) The appointment of an attorney for a dependent child
 56 with a suspected or known disability continues in effect until
 57 the attorney is allowed to withdraw or is discharged by the
 58 court, or until the case is dismissed. An attorney who is
 59 appointed to represent the child shall provide the complete
 60 range of legal services from removal from the home or initial
 61 appointment through all available appellate proceedings. With
 62 the permission of the court, the attorney for the dependent
 63 child may arrange for supplemental or separate counsel to handle
 64 proceedings at an appellate hearing.

65 (5) The attorney must be adequately compensated and
 66 provided with access to funding for expert witnesses,
 67 depositions, and other costs of litigation.

68 (6) This section does not limit the authority of the court
 69 to appoint an attorney for a dependent child in a proceeding
 70 under this chapter.

71 (7) Implementation of this section is subject to
 72 appropriations expressly made for that purpose.

73 Section 2. This act shall take effect July 1, 2014.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative Fresen offered the following:

3

4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Section 39.01305, Florida Statutes, is created
 7 to read:

8 39.01305 Appointment of an attorney for a dependent child
 9 with disabilities.-

10 (1)(a) The Legislature finds that:

11 1. All children in proceedings under this chapter have
 12 important interests at stake, such as health, safety, and well-
 13 being and the need to obtain permanency.

14 2. A dependent child with a suspected or known disability
 15 has a particular need for an attorney to represent the dependent
 16 child in such proceedings, as well as in fair hearings and
 17 appellate proceedings, so that the attorney may address the



Amendment No. 1

18 medical and related needs and the services and supports
19 necessary for the child to live successfully in the community.

20 (b) It is the intent of the Legislature that the court
21 appoint an attorney to represent each dependent child who has a
22 suspected or known disability.

23 (c) The Legislature recognizes that there already exist
24 organizations that provide attorney representation to children
25 in certain jurisdictions throughout the state. Some of these
26 organizations have been proven effective through independent
27 rigorous evaluation in producing significantly improved outcomes
28 for children and many have been embraced by their local
29 jurisdictions. The Legislature therefore does not intend that
30 funding provides for representation under this section supplant
31 proven and existing organizations representing children.
32 Instead, the Legislature intends that funding provided for
33 representation under this section be an additional source for
34 the representation of more children in these jurisdictions to
35 the extent necessary to meet the requirements of ch. 39 and with
36 the cooperation of existing local organizations or through the
37 expansion of such organizations. The Legislature encourages the
38 expansion of pro bono representation for children. This section
39 is in no way is intended to limit the ability of a pro bono
40 attorney to appear on behalf of a child.

41 (2) An attorney shall be appointed for a dependent child
42 with disabilities who meets one or more of the following
43 criteria:



Amendment No. 1

44 (a) A dependent child who is medically dependent or
45 technologically dependent, who because of a medical condition
46 requires continuous therapeutic interventions or skilled
47 interventions, and who resides in a skilled nursing facility or
48 is being considered for placement in a skilled nursing facility;

49 (b) A dependent child who has been prescribed a
50 psychotropic medication and who refuses to take the psychotropic
51 medication;

52 (c) A dependent child with a suspected or known diagnosis
53 of developmental disability as defined in s. 393.063;

54 (d) A dependent child being placed in a residential
55 treatment center or being considered for placement in a
56 residential treatment center; or

57 (e) A dependent child who has been a victim of sexual abuse
58 or human trafficking and who is suspected to be in need of
59 mental health treatment.

60 (3) A court order appointing an attorney under this section
61 must be in writing. The appointment continues in effect until
62 the attorney is allowed to withdraw, the attorney is discharged
63 by the court, or the case is dismissed. An attorney who is
64 appointed to represent the child shall provide the complete
65 range of legal services from removal from the home or initial
66 appointment through all available appellate proceedings. With
67 the permission of the court, the attorney for the dependent
68 child may arrange for supplemental or separate counsel to handle
69 proceedings at an appellate hearing.



Amendment No. 1

70 (4) Except where the attorney has agreed to provide pro
71 bono services, an appointed attorney must be adequately
72 compensated and provided with access to funding for expert
73 witnesses, depositions, and other costs of litigation. Payment
74 to an attorney is subject to appropriations and subject to
75 review by the Justice Administrative Commission for
76 reasonableness. The Justice Administrative Commission may
77 contract with attorneys selected by the Guardian ad Litem
78 program.

79 (5) This section does not limit the authority of the court
80 to appoint an attorney for a dependent child in a proceeding
81 under this chapter.

82 (6) Implementation of this section is subject to
83 appropriations expressly made for that purpose.

84 Section 2. This act shall take effect July 1, 2014.

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

Remove everything before the enacting clause and insert:
An act relating to attorneys for dependent children with
disabilities; creating s. 39.01305, F.S.; providing legislative
findings and intent; requiring appointment of an attorney to
represent a dependent child with a suspected or known
disability; requiring the appointment to be in writing;



Amendment No. 1

96 requiring that the appointment continues in effect until the
97 attorney is allowed to withdraw or is discharged by the court or
98 until the case is terminated; requiring that the attorney not
99 acting in a pro bono capacity be adequately compensated for his
100 or her services; providing for financial oversight by the
101 Justice Administrative Commission; providing for applicability;
102 providing an effective date.



Amendment No. 2

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: Civil Justice Subcommittee
 2 Representative Hager offered the following:

3
 4 **Amendment to Amendment (363121) by Representative Fresen**
 5 **(with title amendment)**

6 Remove line 76 of the amendment and insert:
 7 reasonableness. The fees for representation of one child shall
 8 not exceed \$2500 annually. The Justice Administrative Commission
 9 may

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

Remove line 100 of the amendment and insert:
 or her services; providing an annual limit on fees; providing
 for financial oversight by the

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 609 Article V Constitutional Convention
SPONSOR(S): Wood
TIED BILLS: None IDEN./SIM. BILLS: SB 1008

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Aziz <i>Aziz</i>	Bond <i>YB</i>
2) Ethics & Elections Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

One method of proposing amendments to the United States Constitution is through a constitutional convention. No convention has ever been convened under the current constitution. State law does not provide for appointment or governing of Florida's delegates if there was a convention.

The bill creates the Article V Constitutional Convention Act, which outlines the procedures in appointing and removing delegates if a constitutional convention is called. The bill creates an advisory board to counsel the delegates and to remove the delegates if necessary. The bill also provides that a delegate who acts without proper authority commits a third degree felony.

The bill has an undetermined but likely minimal fiscal impact on state government that would only apply if a convention were called. The bill does not appear to have a fiscal impact on local governments.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Article V of the United States Constitution provides two methods for proposing amendments to the Constitution. The first method authorizes Congress to propose amendments to the states which are approved by two-thirds vote of both Houses of Congress.¹ Amendments approved in this manner do not require the President's signature and are transmitted to each state for ratification.² Starting with the Bill of Rights in 1789, Congress has used this method to submit 33 amendments to the states. Of those 33 proposals, 27 amendments to the Constitution have been approved by the states.³

The second method, which has never been used⁴, requires Congress to call a convention for proposing amendments when two-thirds of the state legislatures make application to Congress for a convention.⁵ Currently, 34 states would need to make applications to meet the two-thirds requirement to call an Article V Convention. The form of a convention is not specified in the Constitution, it is believed that Congress would be required to set forth the time, place and manner of such a convention.

Nothing in Florida law gives guidance to how delegates are chosen if an Article V Convention is called. The bill provides such guidance by outlining how delegates are appointed and removed.

Effect of the bill

The bill creates ss. 11.93-11.9352, F.S., known as the "Article V Constitutional Act", which applies should an Article V Convention be called. The bill provides guidance on eligibility, appointment and restrictions of delegates. The bill also creates an advisory group to give advice to the delegates.

Delegates

Appointment and Qualifications

The bill provides that the House of Representatives and Senate will appoint the number of delegates from the call and an equal number of alternate delegates. In order to be a delegate, a person must reside in the state, be a registered voter, and not be a lobbyist or a federal employee. Unless provided elsewhere, it is presumed that there will only be two delegates and two alternate delegates. Each alternate delegate will be paired with a delegate. The delegates will be appointed by a majority vote by each chamber and can be recalled at any time.

Vacancy

The bill provides that the Legislature may, at any time, fill a vacancy with another eligible person. If the Legislature is not in session, then the Governor must call the Legislature into a special session for the purpose of fulfilling the vacancy.

Compensation

Delegates will not receive compensation. However, delegates may be reimbursed for per diem and travel expenses.

¹ U.S. CONST. art. V.

² *The Constitutional Amendment Process*, U.S. National Archives and Records Administration, <http://www.archives.gov/federal-register/constitution> (last visited February 13, 2014).

³ *Id.*

⁴ See Sara R. Ellis et al., *Article V Constitutional Conventions: A Primer*, 78 Tenn. L. Rev. 663, 665 (2011) ("Despite the submission of approximately 750 applications for an Article V convention, including applications by all fifty states, no constitutional convention has ever been called.")

⁵ U.S. CONST. art. V.

Oath; Instructions to Delegates

Delegates must execute an oath to support the constitutions of the United States and the state and abide by the instructions of the Legislature. After delegates are appointed, the Legislature adopts a concurrent resolution to provide instructions to the delegates.

Votes Cast Outside the Scope of Instructions

The bill provides that, if a delegate votes outside the scope of the instructions of the Legislature, then:

- The vote is void;
- The delegate's appointment is forfeited; and
- The delegate commits a third degree felony.⁶

If all of the delegates and alternate delegates vote outside the scope of the instructions of the Legislature, then the application of the Legislature to call an Article V Convention is withdrawn.

Advisory Group

The bill creates an advisory group to counsel the delegates on whether their vote will violate the instructions set forth by the Legislature. The advisory group consists of the Chief Justice of the Florida Supreme Court, an attorney appointed by the President of the Senate, and an attorney appointed by the Speaker of the House of Representatives.

Advisory Determinations

If requested by a delegate, President of the Senate, Speaker of the House of Representatives or Attorney General, the advisory group must render a determination on whether a vote would violate the Legislature's instructions. The advisory group can hold a hearing or an evidentiary proceeding for the determination. Any determination must be delivered within twenty-four hours after receiving the request. The advisory group will notify the Attorney General when there is reason to believe that a delegate will violate the instructions set forth by the Legislature. The bill allows the Attorney General to revoke the delegate's credentials and inform the convention that the vote outside the Legislature's instructions is void.

The bill provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1 creates s. 11.93, F.S., creating a short title of the "Article V Constitutional Convention Act."

Section 2 creates s. 11.931, F.S., relating to the applicability of the Act.

Section 3 creates s. 11.932, F.S., relating to definitions.

Section 4 creates s. 11.933, F.S., relating to qualifications of delegates and alternate delegates.

Section 5 creates s. 11.9331, F.S., relating to the appointment of delegates.

Section 6 creates s. 11.9332, F.S., relating to the appointment of delegates.

Section 7 creates s. 11.9333, F.S., relating to the recall of delegates.

Section 8 creates s. 11.9334, F.S., relating to the method of appointment and recall of delegates.

Section 9 creates s. 11.9335, F.S., relating to the reimbursement of delegates.

⁶ A third degree felony is punishable by up to five years imprisonment, a \$5,000 fine, or both. Sections 775.082 and 775.083, F.S.

Section 10 creates s. 11.9336, F.S., relating to the oath for delegates.

Section 11 creates s. 11.9337, F.S., relating to the filing of the oath for delegates.

Section 12 creates s. 11.934, F.S., relating to the instructions to the delegates.

Section 13 creates s. 11.9341, F.S., relating to the duties of the alternate delegates.

Section 14 creates s. 11.9342, F.S., relating to votes cast outside the scope of instructions.

Section 15 creates s. 11.9343, F.S., relating to votes cast outside the scope of instructions.

Section 16 creates s. 11.9344, F.S., relating to votes cast outside the scope of instructions.

Section 17 creates s. 11.9345, F.S., relating to votes cast outside the scope of instructions.

Section 18 creates s. 11.935, F.S., relating to the Article V Convention advisory group.

Section 19 creates s. 11.9351, F.S., relating to the oversight of delegates with respect to instructions.

Section 20 creates s. 11.9352, F.S., relating to advisory determination concerning a vote outside the scope of instructions.

Section 21 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill appears to have a minimal impact on state expenditures. If an Article V Constitutional Convention were convened, the state would reimburse delegates for travel expenses as well as the cost of calling a special session or sessions to appoint delegates and take other actions contemplated by this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article II, Section 3 of the Florida Constitution provides that “[t]he powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.” Because the federal constitution amendment process appears to be solely a legislative function, the bill may impact the separation of powers provision in the following ways:

- The bill requires the Chief Justice of the Florida Supreme Court to serve as chair of the advisory group.
- The bill requires the Governor to convene special sessions regarding appointment of delegates, instructions, removal and replacement.
- The bill involves the Attorney General in advisory determinations which may lead to sanctions against a delegate and may lead to other consequences.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that a delegate’s vote that is beyond the instructions is void (lines 175-185). Also, the bill provides that if all of Florida’s delegates vote beyond the instructions, then the Legislature’s application for a convention is withdrawn (lines 205-218). It is unclear how this statute would or could bind the convention once a vote is cast and final according to the rules of the convention.

The bill makes it a third degree felony for a delegate to vote outside the scope of the instructions set forth by the Legislature. Under current law, a person is only subject to prosecution for an offense if it is committed “wholly or partly within the state.”⁷ It is possible that the only way a delegate could be prosecuted for this is if the Article V Convention is held within the State of Florida or if somehow the delegates act from their respective home states.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
2 An act relating to Article V constitutional
3 conventions; creating s. 11.93, F.S.; providing a
4 short title; creating s. 11.931, F.S.; providing for
5 applicability; creating s. 11.932, F.S.; providing
6 definitions; creating s. 11.933, F.S.; establishing
7 qualifications of delegates and alternate delegates to
8 an Article V constitutional convention; creating s.
9 11.9331, F.S.; providing for the appointment of
10 delegates by the Legislature; creating s. 11.9332,
11 F.S.; requiring majority vote approval in each chamber
12 for the appointment of delegates; creating s. 11.9333,
13 F.S.; authorizing the Legislature to recall a delegate
14 and fill a vacancy; authorizing the Governor to call a
15 special legislative session to fill a vacancy;
16 creating s. 11.9334, F.S.; establishing a legislative
17 method for appointments and recalls; creating s.
18 11.9335, F.S.; providing for the reimbursement of
19 delegates and alternate delegates for per diem and
20 travel expenses; creating s. 11.9336, F.S.; requiring
21 delegates and alternate delegates to execute a written
22 oath of responsibilities; creating s. 11.9337, F.S.;
23 providing for the filing of delegates' oaths and the
24 issuance of commissions; creating s. 11.934, F.S.;
25 providing for instructions to delegates and alternate
26 delegates; creating s. 11.9341, F.S.; establishing

27 duties of alternate delegates; creating s. 11.9342,
 28 F.S.; establishing circumstances under which a
 29 convention vote is declared void; creating s. 11.9343,
 30 F.S.; providing circumstances under which a delegate
 31 or alternate delegate's appointment is forfeited;
 32 creating s. 11.9344, F.S.; establishing circumstances
 33 under which the application to call an Article V
 34 convention ceases to be a continuing application and
 35 is deemed to have no effect; creating s. 11.9345,
 36 F.S.; providing penalties for a delegate or alternate
 37 delegate who votes or attempts to vote outside the
 38 scope of the Legislature's instructions or the limits
 39 of the call for a constitutional convention; creating
 40 ss. 11.935, 11.9351, and 11.9352, F.S.; establishing a
 41 delegate advisory group, its membership, duties, and
 42 responsibilities; providing an effective date.

43
 44 Be It Enacted by the Legislature of the State of Florida:

45
 46 Section 1. Section 11.93, Florida Statutes, is created to
 47 read:

48 11.93 Short title.—Sections 11.93-11.9352 may be cited as
 49 the "Article V Constitutional Convention Act."

50 Section 2. Section 11.931, Florida Statutes, is created to
 51 read:

52 11.931 Applicability.—Sections 11.93-11.9352 shall apply

53 when an Article V convention is called for the purpose of
 54 proposing amendments to the Constitution of the United States.

55 Section 3. Section 11.932, Florida Statutes, is created to
 56 read:

57 11.932 Definitions.—As used in ss. 11.93-11.9352, the
 58 term:

59 (1) "Alternate delegate" means an individual who is
 60 appointed as an alternate delegate as provided by law.

61 (2) "Article V convention" means a convention called for
 62 by the states under Article V of the Constitution of the United
 63 States for the purpose of proposing amendments to the
 64 Constitution of the United States.

65 (3) "Chamber" means either the Senate or the House of
 66 Representatives.

67 (4) "Delegate" means an individual appointed to represent
 68 Florida at an Article V convention.

69 (5) "Paired delegate" means the delegate with whom an
 70 alternate delegate is paired.

71 Section 4. Section 11.933, Florida Statutes, is created to
 72 read:

73 11.933 Qualifications of delegates and alternate
 74 delegates.—

75 (1) To be appointed as a delegate or alternate delegate to
 76 an Article V convention, a person must:

77 (a) Reside in this state.

78 (b) Be a registered voter in this state.

79 (c) Not be registered or required to be registered as a
 80 lobbyist under the laws of this state.

81 (2) A person may not be appointed as a delegate if he or
 82 she holds a federal office.

83 Section 5. Section 11.9331, Florida Statutes, is created
 84 to read:

85 11.9331 Appointment of delegates by Legislature.-

86 (1) Whenever an Article V convention is called, the Senate
 87 and House of Representatives shall appoint, under rules adopted
 88 jointly by the Senate and House of Representatives:

89 (a) The number of delegates allocated to represent
 90 Florida.

91 (b) An equal number of alternate delegates.

92 (2) Unless otherwise established by the rules of procedure
 93 of an Article V convention, it is presumed that Florida has two
 94 delegates and two alternate delegates designated to represent
 95 the state.

96 (3) If the Legislature is not in session when delegates
 97 must be appointed, the Governor shall call the Legislature into
 98 special session pursuant to s. 3(c), Art. III of the State
 99 Constitution for the purpose of appointing delegates and
 100 alternate delegates.

101 Section 6. Section 11.9332, Florida Statutes, is created
 102 to read:

103 11.9332 Appointment by majority vote of each chamber;
 104 pairing delegates and alternate delegates.-

105 (1) To be appointed as a delegate or an alternate
 106 delegate, a person must receive, in each chamber, the vote of a
 107 majority of all the members elected to that chamber.

108 (b) At the time of appointment, each alternate delegate
 109 must be paired with a delegate as provided by a concurrent
 110 resolution adopted by the Legislature.

111 Section 7. Section 11.9333, Florida Statutes, is created
 112 to read:

113 11.9333 Recall; filling a vacancy; special legislative
 114 session.—

115 (1) The Legislature may, at any time, recall a delegate or
 116 alternate delegate and replace that delegate or alternate
 117 delegate with an individual appointed under ss.11.93-11.9352.

118 (2) The Legislature may, at any time, fill a vacancy in
 119 the office of delegate or alternate delegate with a person
 120 appointed under ss. 11.93-11.9352. If the Legislature is not in
 121 session when a vacancy occurs with respect to both a delegate
 122 and the paired alternate delegate, the Governor shall call the
 123 Legislature into special session pursuant to s. 3(c), Art. III
 124 of the State Constitution for the purpose of appointing a
 125 delegate and an alternate delegate to fill the vacancies.

126 Section 8. Section 11.9334, Florida Statutes, is created
 127 to read:

128 11.9334 Method of appointment and recall.—The Legislature
 129 shall appoint or recall delegates or alternate delegates by
 130 concurrent resolution.

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131 Section 9. Section 11.9335, Florida Statutes, is created
 132 to read:

133 11.9335 Reimbursement of per diem and travel expenses.—A
 134 delegate or alternate delegate shall serve without compensation
 135 but may be reimbursed for per diem and travel expenses pursuant
 136 to s. 112.061.

137 Section 10. Section 11.9336, Florida Statutes, is created
 138 to read:

139 11.9336 Oath.—Each delegate and alternate delegate shall,
 140 before exercising any function of the position, execute an oath
 141 in writing that the delegate or alternative delegate will:

142 (1) Support the Constitution of the United States and the
 143 State Constitution.

144 (2) Faithfully abide by and execute any instructions to
 145 delegates and alternate delegates adopted by the Legislature.

146 (3) Otherwise faithfully discharge the duties of a
 147 delegate or alternate delegate.

148 Section 11. Section 11.9337, Florida Statutes, is created
 149 to read:

150 11.9337 Filing of oath; issuance of commission.—The
 151 executed oath of a delegate or alternate delegate shall be filed
 152 with the Secretary of State. After the oath is filed, the
 153 Governor shall issue a commission to the delegate or alternate
 154 delegate.

155 Section 12. Section 11.934, Florida Statutes, is created
 156 to read:

157 11.934 Instructions to delegates.-

158 (1) When delegates and alternate delegates are appointed,
 159 the Legislature shall adopt a concurrent resolution to provide
 160 instructions to the delegates and alternate delegates regarding
 161 the rules of procedure and any other matter relating to the
 162 Article V convention that the Legislature considers necessary.

163 (2) The Legislature may amend the instructions at any time
 164 by concurrent resolution.

165 Section 13. Section 11.9341, Florida Statutes, is created
 166 to read:

167 11.9341 Duties of alternate delegates.-An alternate
 168 delegate:

169 (1) Shall act in the place of the paired delegate when the
 170 paired delegate is absent from the Article V convention.

171 (2) Replaces the paired delegate if the alternate
 172 delegate's paired delegate vacates the office.

173 Section 14. Section 11.9342, Florida Statutes, is created
 174 to read:

175 11.9342 Vote cast outside the scope of instructions or
 176 limits; status of vote.-A vote cast by a delegate or an
 177 alternate delegate at an Article V convention is void if the
 178 vote is outside the scope of:

179 (1) The instructions established by a concurrent
 180 resolution adopted pursuant to ss. 11.93-11.9352; or

181 (2) The limits placed by the Legislature in a concurrent
 182 resolution or memorial that calls for an Article V convention

183 for the purpose of proposing one or more amendments to the
 184 Constitution of the United States on the subjects and amendments
 185 that may be considered by the Article V Convention.

186 Section 15. Section 11.9343, Florida Statutes, is created
 187 to read:

188 11.9343 Vote cast outside the scope of instructions or
 189 limits; appointment forfeited.-

190 (1) A delegate or alternate delegate forfeits his or her
 191 appointment by virtue of a vote or attempt to vote that is
 192 outside the scope of:

193 (a) The instructions established by a concurrent
 194 resolution adopted pursuant to ss. 11.93-11.9352; or

195 (b) The limits placed by the Legislature in a concurrent
 196 resolution or memorial that calls for an Article V convention
 197 for the purpose of proposing one or more amendments to the
 198 Constitution of the United States on the subjects and amendments
 199 that may be considered by the Article V convention.

200 (2) If a delegate forfeits an appointment under subsection
 201 (1), the paired alternate delegate of the delegate becomes the
 202 delegate at the time the forfeiture of the appointment occurs.

203 Section 16. Section 11.9344, Florida Statutes, is created
 204 to read:

205 11.9344 Vote cast outside the scope of instructions or
 206 limits; status of application.-The application of the
 207 Legislature to call an Article V convention for proposing
 208 amendments to the Constitution of the United States ceases to be

209 a continuing application and shall be treated as having no
 210 effect if all of the delegates and alternate delegates vote or
 211 attempt to vote outside the scope of:

212 (1) The instructions established by a concurrent
 213 resolution adopted pursuant to ss. 11.93-11.9352; or

214 (2) The limits placed by the Legislature in a concurrent
 215 resolution or memorial that calls for an Article V convention
 216 for the purpose of proposing one or more amendments to the
 217 Constitution of the United States on the subjects and amendments
 218 that may be considered by the Article V convention.

219 Section 17. Section 11.9345, Florida Statutes, is created
 220 to read:

221 11.9345 Vote cast outside the scope of instructions;
 222 criminal liability.-A delegate or alternate delegate commits a
 223 felony of the third degree, punishable as provided in s. 775.082
 224 or s. 775.083, who knowingly or intentionally votes or attempts
 225 to vote outside the scope of:

226 (1) The instructions established by a concurrent
 227 resolution adopted pursuant to ss. 11.93-11.9352; or

228 (2) The limits placed by the Legislature in a concurrent
 229 resolution or memorial that calls for an Article V convention
 230 for the purpose of proposing one or more amendments to the
 231 Constitution of the United States on the subjects and amendments
 232 that may be considered by the Article V convention.

233 Section 18. Section 11.935, Florida Statutes, is created
 234 to read:

235 11.935 Article V convention advisory group.-
 236 (1) As used in this section, the term "advisory group"
 237 means the Article V convention delegate advisory group.
 238 (2) The advisory group consists of the following members:
 239 (a) The Chief Justice of the Supreme Court, who shall
 240 serve as the chair.
 241 (b) An attorney appointed by the President of the Senate.
 242 (c) An attorney appointed by the Speaker of the House of
 243 Representatives.
 244 (3) The advisory group shall meet at the call of the chair
 245 and shall establish the policies and procedures that the
 246 advisory group determines necessary to carry out ss. 11.93-
 247 11.9352.
 248 (4) Upon the request of a delegate or alternate delegate,
 249 the advisory group shall advise the delegate or alternate
 250 delegate whether there is reason to believe that an action or an
 251 attempt to take an action by a delegate or alternate delegate
 252 would:
 253 (a) Violate the instructions established by a concurrent
 254 resolution adopted by the Legislature under ss. 11.93-11.9352;
 255 or
 256 (b) Exceed the limits placed by the Legislature in a
 257 concurrent resolution or memorial that calls for an Article V
 258 convention for the purpose of proposing one or more amendments
 259 to the Constitution of the United States on the subjects and
 260 amendments that may be considered by the Article V convention.

261 (5) The advisory group:

262 (a) May render an advisory determination under this
 263 section in any summary manner considered appropriate by the
 264 advisory group.

265 (b) Shall render an advisory determination under this
 266 section within 24 hours after receiving a request for a
 267 determination.

268 (c) Shall transmit a copy of an advisory determination
 269 under this section in the most expeditious manner possible to
 270 the delegate or alternate delegate who requested the advisory
 271 determination.

272 (c) If the advisory group renders an advisory
 273 determination under this section, the advisory group may also
 274 take an action permitted under s. 11.9351.

275 Section 19. Section 11.9351, Florida Statutes, is created
 276 to read:

277 11.9351 Oversight of delegates with respect to
 278 instructions.—

279 (1) The advisory group, on its own motion, or upon the
 280 request of the President of the Senate, the Speaker of the House
 281 of Representatives, or the Attorney General, shall advise the
 282 Attorney General whether there is reason to believe that a vote
 283 or an attempt to vote by a delegate or alternate delegate has:

284 (a) Violated the instructions established by a concurrent
 285 resolution adopted by the Legislature under ss. 11.93-11.9352;
 286 or

287 (b) Exceeded the limits placed by the Legislature in a
 288 concurrent resolution or memorial that calls for an Article V
 289 convention for the purpose of proposing one or more amendments
 290 to the Constitution of the United States on the subjects and
 291 amendments that may be considered by the Article V convention.

292 (2) The advisory group shall issue the advisory
 293 determination under this section by one of the following summary
 294 procedures:

295 (a) Without notice or an evidentiary proceeding; or

296 (b) After a hearing conducted by the advisory group.

297 (3) The advisory group shall render an advisory
 298 determination under this section within 24 hours after receiving
 299 a request for an advisory determination.

300 (4) The advisory group shall transmit a copy of an
 301 advisory determination in the most expeditious manner possible
 302 to the Attorney General.

303 Section 20. Section 11.9352, Florida Statutes, is created
 304 to read:

305 11.9352 Advisory determination concerning a vote outside
 306 the scope of instructions.—Immediately, upon receipt of an
 307 advisory determination that finds that a vote or attempt to vote
 308 by a delegate or alternate delegate is a violation as described
 309 in s. 11.9351 or in excess of the authority of the delegate or
 310 alternate delegate, the Attorney General shall inform the
 311 delegates, alternate delegates, the President of the Senate, the
 312 Speaker of the House of Representatives, and the Article V

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313 convention that:

314 (1) The vote or attempt to vote did not comply with
315 Florida law, is void, and has no effect.

316 (2) The credentials of the delegate or alternate delegate
317 who is the subject of the determination are revoked.

318 Section 21. This act shall take effect July 1, 2014.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Wood offered the following:

3

4 **Amendment (with title amendment)**

5 Remove lines 97-99 and insert:

6 must be appointed, the presiding officers shall call the
7 Legislature into special session pursuant to s. 11.011 for the
8 purpose of appointing delegates and

9

10 Remove lines 122-124 and insert:

11 and the paired alternate delegate, the presiding officers shall
12 call the Legislature into special session pursuant to s. 11.011
13 for the purpose of appointing a

14

15

16

17



Amendment No. 1

18
19
20
21

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

Remove line 14 and insert:
and fill a vacancy; authorizing the call for a



Amendment No. 2

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: Civil Justice Subcommittee
 2 Representative Wood offered the following:

3

4 **Amendment**

5 Remove line 140 and insert:

6 before exercising any function of the position, execute an oath
 7 in the state and

8

9 Remove line 224 and insert:

10 or s. 775.083, who signs an oath of office as required
 11 by s. 11.9336 in the state and who thereafter violates the oath
 12 by knowingly or intentionally voting or attempting

13



Amendment No. 3

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: Civil Justice Subcommittee
 2 Representative Wood offered the following:

Amendment

Remove lines 239-243 and insert:

6 (a) An attorney appointed by the President of the Senate.

7 (b) An attorney appointed by the Speaker of the House of

8 Representatives.

9 (c) An attorney selected by agreement between the
 10 attorneys appointed under paragraphs (a) and (b), who shall
 11 serve as the chair.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 635 Guardianship
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: None IDEN./SIM. BILLS: CS/SB 634

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Ward <i>EW</i>	Bond <i>MB</i>

SUMMARY ANALYSIS

A guardian is a person who has been appointed by the court to act on behalf of a ward's person or property, or both. Guardians are appointed according to statutory criteria, and are deemed to be professional guardians if they manage the property of more than three wards. Professional guardians, among other requirements, must submit to a criminal background check and a credit history report. Every guardian of the property must file an annual guardianship report with the court, which includes the annual accounting. The accounting is subject to review by the clerk and the court. The bill:

- Requires that nonprofessional guardians submit to a credit history and Level 2 background screening unless waived by the court;
- Authorizes nonprofessional guardians to petition the court for reimbursement for screening costs;
- Provides that a guardian may be removed for failure to submit guardianship records during the clerk's audit of the annual report;
- Provides that a proposed guardian may not deny or fail to acknowledge a sealed or expunged offense;
- Adds to the definition of the term, "audit," to include, "various practices that meet professional standards such as verifications, reviews of substantiating papers and accounts, interviews, and hearings, inspections, and investigations;"
- Provides that the clerk may, at the direction of the court, "obtain and review records and documents that reasonably impact guardianship assets, including, but not limited to, the beginning inventory balance and any fees charged to the guardianship;" and
- Provides that the clerk may, upon application to the court supported by affidavit, exercise the power to issue and serve subpoenas upon parties and nonparties and compel the production of books, papers, documents, and other evidence.

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

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Guardians and Guardianship, In General

"A guardianship has been defined as a trust relationship of the most sacred character, in which one person, called a 'guardian,' acts for another, called the 'ward,' whom the law regards as incapable of managing his own affairs."¹

A "ward" is a "person for whom a guardian has been appointed."² "A 'guardian' is a person who has been appointed by the court to act on behalf of a ward's person or property, or both."³

The statutes recognize both professional⁴ and nonprofessional⁵ guardians. Potential professional guardians and their employees must submit to a "Level 2" criminal background⁶ and credit history check.⁷

Nonprofessional guardians must complete a state and national criminal history check by submitting fingerprints to the Florida Department of Law Enforcement, which returns the results to the clerk of court. The clerk is directed to keep the results and make them known to the court.⁸ The court in its discretion may require an employment screening as described below of any nonprofessional guardian as well.⁹

Employment background screenings required by law¹⁰ are addressed in Chapter 435, F.S. A "Level 1" background screening includes but is not limited to checks of:

- Employment history;
- Statewide criminal history through the Department of Law Enforcement;
- The Dru Sjodin National Sex Offender Public Website; and
- Optional checks through local law enforcement agencies.¹¹

A Level 1 screening also eliminates any person with an arrest awaiting adjudication or a plea of nolo contendere to any felony listed in the succeeding statute,¹² or any history of domestic violence. A Level 2 screening¹³ includes the above requirements, plus the submission of fingerprints, and national criminal history records check through the Federal Bureau of Investigation.¹⁴

¹ 28 Fla. Jur 2d Guardian and Ward §1.

² Section 744.102(22), F.S.

³ 28 Fla. Jur 2d Guardian and Ward §1, citing s. 744.102(9), F.S.

⁴ "Professional guardian" means any guardian who has at any time rendered services to three or more wards as their guardian." s. 744.102(17), F.S.

⁵ Section 744.3135(2), F.S.

⁶ Sections 744.1083(4), 744.1085(5), and 744.3135(4)(a), F.S.

⁷ Sections 744.1083(4), 744.1085(4), and 744.3151(1) and (5), F.S.,

⁸ Section 744.3135(2), F.S.

⁹ Section 744.3135(1), F.S. currently provides for a Level 1 screening pursuant to s. 435.03, F.S.

¹⁰ Section 435.01(1)(a), F.S.

¹¹ Section 435.03, F.S.

¹² Section 435.04, F.S.(2).

¹³ Section 435.04, F.S.

¹⁴ Section 435.04(1)(a), F.S.

Persons currently disqualified from acting as a guardian include those who have been convicted of or pled nolo contendere to any of the offenses listed in the Level 2 employment screening standards given in s. 435.04, F.S., and persons convicted of committing abuse, abandonment or neglect of a child.¹⁵ Further, a guardian may be removed for a number of reasons as set out in s. 744.474, F.S., including abuse of his or her powers,¹⁶ embezzlement of the ward's property,¹⁷ conviction of a felony¹⁸ or having been found guilty of or pleading nolo contendere or guilty to any offense set out in the Level 1 employment screening statute,¹⁹ among other reasons.²⁰ Proceedings for removal of a guardian may be instituted by the court or other interested person, including the ward.²¹

When a guardian of the property resigns,²² is removed,²³ or the guardianship terminates, the guardian is required to file a final accounting with the court.²⁴

Annual Accountings

An initial verified inventory as part of the initial guardianship plan is required of every guardian of the property within 60 days of appointment.²⁵ The inventory must include all assets and sources of income of the ward.²⁶ The initial inventory is audited by the clerk,²⁷ which receives a fee for the audit, according to the value of the assets.²⁸ Upon reasonable written request, the guardian must make substantiating information available to all persons entitled to inspect the inventory, which includes the clerk.²⁹

Annual accountings are required of all guardians of the property.³⁰ Every guardian of the property must file an annual guardianship report with the court, which includes the annual accounting.³¹ Guardians not filing a timely report are subject to court sanctions, including contempt of court.³² These accounting records are sealed from public view.³³

The clerk of court is required to review³⁴ and audit³⁵ the annual accounting, for which the clerk receives a fee tied to the value of the guardianship estate.³⁶ "Upon reasonable written request, the guardian of the property must make the substantiating documents available for examination to persons entitled to receive or inspect the annual accounting."³⁷ Interim records may also be requested by the

¹⁵ Section 744.309(3), F.S.

¹⁶ Section 744.474(3), F.S.

¹⁷ Section 744.474(7), F.S.

¹⁸ Section 744.474(9), F.S.

¹⁹ Section 744.474(12).

²⁰ See generally, s. 744.474, F.S., "Reasons for removal of guardian."

²¹ Section 744.477, F.S.

²² Section 744.467, F.S.

²³ Section 744.511, F.S.

²⁴ Sections 744.521, 744.524, and 744.527, F.S.

²⁵ Section 744.362(1), F.S.

²⁶ Section 744.365, F.S.

²⁷ Section 744.368(1)(f), F.S.

²⁸ Section 744.365(6), F.S.

²⁹ Fla. R. Prob. 5.620; Section 744.3701(1), F.S.

³⁰ Section 744.367(3), and 744.3678(1), F.S.

³¹ Section 744.367(3), and 744.3678(1), F.S.

³² Section 744.3685, F.S.

³³ "Unless otherwise ordered by the court, any initial, annual, or final guardianship report or amendment thereto is subject to inspection only by the court, the clerk or the clerk's representative, the guardian and the guardian's attorney, . . ."
Section 744.3701(1), F.S.

³⁴ Section 744.368(1)(f), F.S.

³⁵ Section 744.368(3), F.S.

³⁶ Section 744.3678(4), F.S. The statute also provides that the fee may be waived.

³⁷ Section 744.373, F.S.; Fla. Prob. R. 5.696(b).

clerk, the court, the attorney for the guardian, or the ward.³⁸ Interim judicial review of the guardianship may be requested by any interested party.³⁹

Audits

An "audit" is defined in the guardianship statute as, "a systematic review of financial and all other documents to ensure compliance⁴⁰ with s. 744.368, rules of court, and local procedures using generally accepted accounting principles." The Florida Probate Rules provide: "On the petition of an interested person, or on its own motion, the court may require any personal representative or guardian to produce satisfactory evidence that the assets of the estate are in the possession or under the control of the personal representative or guardian and may order production of the assets in the manner and for the purposes directed by the court."⁴¹

Sealed or Expunged Records

Sections 943.0585 and 943.059, F.S., provide for the court ordered sealing or expunction⁴² of certain criminal history records. One effect of a sealing or expunction is that the subject of a sealed or expunged history may lawfully deny or fail to acknowledge an arrest. There are numerous exceptions whereby the existence of a sealed or expunged record will be revealed by state authorities and accordingly the subject cannot lawfully deny the prior arrest.⁴³ Appointment as a guardian is not such an exception.

Effect of the Bill

Guardians and Guardianship, In General

The bill amends s. 744.3135, F.S., in respect to nonprofessional guardians to:

- Require that they submit to a credit history investigation and Level 2 background screening;⁴⁴
- Provide that they may petition the court to waive either or both; and
- Provide that they may petition the court for reimbursement of the reasonable expenses of the credit history investigation and background screening.

The bill adds to s. 744.3135, F.S. that at any time the court may order a guardian to undergo a Level 1 or a Level 2 employment background screening.

The bill adds to section 744.474, F.S., that a guardian may be removed for a "bad faith failure to submit guardianship records during the audit pursuant to s. 744.368." This provision creates grounds for removal of a guardian for failure to comply with the clerk's request for supporting documentation under the amendments to s. 744.368, F.S.

³⁸ Fla. Prob. R. 5.696(c).

³⁹ Sections 744.3715(1) and 744.372, F.S.

⁴⁰ Section 744.102(2), F.S.

⁴¹ Fla. Prob. R. 5.160

⁴² Section 943.045(16), F.S.

⁴³ For instance, the subject of an expunged record must acknowledge the arrest if applying for a job with a criminal justice agency, is a defendant in a criminal prosecution, if applying for a subsequent sealing or expunction, applies for admission to the Florida Bar, is seeking employment or licensing where he or she will be in contact with children, disabled or elderly persons, or is seeking employment in a school or day care center. Section 943.0585(4)(a), F.S.

⁴⁴ Under s. 435.04, F.S.

Annual Accountings and Audits

The bill expands the definition of the term "audit" in s. 744.102, F.S., to include, "various practices that meet professional standards such as verifications, reviews of substantiating papers and accounts, interviews, and hearings, inspections, and investigations."

The bill amends s. 744.368, F.S., to provide that the clerk may, if further review is deemed appropriate, in the context of an audit, "request and review records and documents that reasonably impact guardianship assets, including, but not limited to, the beginning inventory balance and any fees charged to the guardianship." The bill also amends s. 744.3685, F.S., to provide the court with means to compel a guardian to produce records for audit; and amends s. 744.474, F.S., to add that a guardian's bad faith failure to submit records during an audit is ground for removal.

The bill also provides that the clerk may, upon application to the court, supported by affidavit, issue and serve subpoenas on parties and nonparties to compel the production of books, papers, documents, and other evidence. A nonparty, guardian or ward may object to production from a nonparty. Upon objection, the nonparty is not required to comply with the subpoena until the court rules on the objection. A subpoena to a nonparty must give 10 days for objection unless the court, for cause, shortens the period.

Sealed or Expunged Criminal Records of Guardians

The bill provides that a proposed guardian may not deny or fail to acknowledge an offense which has been sealed or expunged pursuant to ss. 943.0585 or 943.059, F.S., respectively. Accordingly, a court appointing or investigating a guardian will have access to additional criminal records that the court may use as grounds to disqualify or remove a guardian.

The bill also includes grammatical and stylistic changes that do not affect the meaning of the statutes.

The bill has an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1 amends s. 744.102, F.S., relating to definitions.

Section 2 amends s. 744.3135, F.S., relating to credit and criminal investigation.

Section 3 amends s. 744.368, F.S., relating to responsibilities of the clerk of circuit court.

Section 4 amends s. 744.3685, F.S., relating to order requiring guardianship report; contempt.

Section 5 amends s. 744.474, F.S., relating to reasons for removal of a guardian.

Section 6 amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history.

Section 7 amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.

Section 8 gives an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government revenues.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. Lines 64 through 67 of the bill provide: "if appointed, a nonprofessional guardian may petition the court for reimbursement of the reasonable expenses of the credit history investigation and background screening." The bill does not specify if this is a guardianship expense or if it would be paid from another source.

2. Lines 48 through 51 of the bill provide: "744.3135 Credit and criminal investigation.— (1) The court shall require all guardians who are seeking appointment by the court, other than a corporate guardian as described in s. 744.309(4) may require a nonprofessional . . . "

However, s. 733.3135(2), F.S., already requires a nonprofessional guardian to submit fingerprints to FDLE for a state and national criminal background check. FDLE is then to return the results to the clerk who makes the results known to the court. Section 744.309, F.S., provides the requirements for a guardian, and disqualifies any person who has been convicted of a felony, and anyone who has been adjudicated or who has pled nolo contendere to any offense listed in s. 435.04, F.S., which is the Level 1 employment screening provision referenced in the bill's revisions.⁴⁵

3. Prospective guardians may not serve if they are felons, or have pleaded nolo contendere to a felony. Grounds for removal of a guardian include subsequent conviction of a felony⁴⁶ or pleading guilty of or nolo contendere to offenses in s. 453.04, F.S., the Level 1 employment screening statute.

4. An initial verified inventory as part of the initial guardianship plan is required of every guardian of the property within 60 days of appointment.⁴⁷ The inventory must include all assets and sources of income of the ward.⁴⁸ The initial inventory is audited by the clerk,⁴⁹ which receives a fee for the audit, according to the value of the assets.⁵⁰ "Unless otherwise ordered by the court, any initial, annual, or final guardianship report or amendment thereto is subject to inspection only by the court, the clerk or the clerk's representative, the guardian and the guardian's attorney, . . ." ⁵¹ Therefore, clerks currently have access to the initial inventory balance, thus perhaps making "the beginning inventory balance" change to s. 744.368, F.S. (line 85) unnecessary.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

⁴⁵ Section 744.309(3), F.S.

⁴⁶ Section 744.474(9), F.S.

⁴⁷ Section 744.362(1), F.S.

⁴⁸ Section 744.365, F.S.

⁴⁹ Section 744.368(f), F.S.

⁵⁰ Section 744.365(6), F.S.

⁵¹ Section 744.3701(1), F.S.

1 A bill to be entitled
 2 An act relating to guardianship; amending s. 744.102,
 3 F.S.; redefining the term "audit"; amending s.
 4 744.3135, F.S.; revising the requirements and
 5 authorizations of the court to require specified
 6 guardians to submit to a credit history investigation
 7 and background screening; authorizing a
 8 nonprofessional guardian to petition the court for
 9 reimbursement for the credit history investigation and
 10 background screening; amending s. 744.368, F.S.;
 11 authorizing a clerk of the court to obtain and review
 12 records impacting guardianship assets and to issue
 13 subpoenas to nonparties upon application to the court;
 14 providing requirements for affidavits, notice, and
 15 subpoenas; providing for objection to a subpoena;
 16 amending s. 744.3685, F.S.; authorizing the court to
 17 require the production of records and documents by a
 18 guardian who fails to submit them during an audit;
 19 amending s. 744.474, F.S.; providing for the removal
 20 of a guardian for a bad faith failure to submit
 21 records during an audit; amending ss. 943.0585 and
 22 943.059, F.S.; providing that a person seeking an
 23 appointment as guardian may not lawfully deny or fail
 24 to acknowledge the arrests covered by an expunged or
 25 sealed record; reenacting s. 943.0585(4)(c), F.S.,
 26 relating to court-ordered expunction of criminal

27 history records, to incorporate the amendments made to
 28 s. 943.0585, F.S., in a reference thereto; reenacting
 29 s. 943.059(4)(c), relating to court-ordered sealing of
 30 criminal history records, to incorporate the
 31 amendments made to s. 943.059, F.S., in a reference
 32 thereto; providing an effective date.

33

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

35

36 Section 1. Subsection (2) of section 744.102, Florida
 37 Statutes, is amended to read:

38 744.102 Definitions.—As used in this chapter, the term:

39 (2) "Audit" means a systematic review of financial and all
 40 other documents to ensure compliance with s. 744.368, rules of
 41 court, and local procedures using generally accepted accounting
 42 principles. The term includes various practices that meet
 43 professional standards, such as verifications, reviews of
 44 substantiating papers and accounts, interviews, inspections, and
 45 investigations.

46 Section 2. Subsection (1) of section 744.3135, Florida
 47 Statutes, is amended to read:

48 744.3135 Credit and criminal investigation.—

49 (1) The court shall require all guardians who are seeking
 50 appointment by the court, other than a corporate guardian as
 51 described in s. 744.309(4) ~~may require a nonprofessional~~
 52 ~~guardian and shall require a professional or public guardian,~~

53 | and all employees of a professional guardian, other than a
54 | corporate guardian as described in s. 744.309(4), who have a
55 | fiduciary responsibility to a ward, to submit, at their own
56 | expense, to a an investigation of the guardian's credit history
57 | investigation and to undergo level 2 background screening as
58 | required under s. 435.04. On petition by any interested person
59 | or on the court's own motion, the court may waive the
60 | requirement of a credit history investigation or a level 2
61 | background screening, or both. If appointed, a nonprofessional
62 | guardian may petition the court for reimbursement of the
63 | reasonable expenses of the credit history investigation and
64 | background screening. If a credit or criminal history record
65 | ~~check is required,~~ The court must consider the results of any
66 | investigation before appointing a guardian. At any time, the
67 | court may require a guardian or the guardian's employees to
68 | submit to an investigation of the person's credit history and
69 | complete a level 1 or 2 background screening pursuant to as set
70 | ~~forth in~~ s. 435.03. The court shall consider the results of any
71 | investigation in determining whether to reappoint when
72 | ~~reappointing~~ a guardian. The clerk of the court shall maintain a
73 | file on each guardian appointed by the court and retain in the
74 | file documentation of the result of any investigation conducted
75 | under this section. A professional guardian shall ~~must~~ pay the
76 | clerk of the court a fee of up to \$7.50 for handling and
77 | processing professional guardian files.

78 | Section 3. Subsections (5) through (7) are added to

79 section 744.368, Florida Statutes, to read:

80 744.368 Responsibilities of the clerk of the circuit
81 court.—

82 (5) If the clerk has reason to believe further review is
83 appropriate, the clerk may request and review records and
84 documents that reasonably impact guardianship assets, including,
85 but not limited to, the beginning inventory balance and any fees
86 charged to the guardianship.

87 (6) If a guardian fails to produce records and documents
88 to the clerk upon request, the clerk may request the court to
89 enter an order pursuant to s. 744.3685(2) by filing an affidavit
90 that identifies the records and documents requested and shows
91 good cause as to why the documents and records requested are
92 needed to complete the audit.

93 (7) Upon application to the court supported by an
94 affidavit pursuant to subsection (6), the clerk may issue
95 subpoenas to nonparties to compel production of books, papers,
96 and other documentary evidence. Before issuance of a subpoena by
97 affidavit, the clerk must serve notice on the guardian and the
98 ward, unless the ward is a minor or totally incapacitated, of
99 the intent to serve subpoenas to nonparties.

100 (a) The clerk must attach the affidavit and the proposed
101 subpoena to the notice to the guardian and, if appropriate, to
102 the ward, and must:

103 1. State the time, place, and method for production of the
104 documents or items, and the name and address of the person who

105 is to produce the documents or items, if known, or if not known,
106 a general description sufficient to identify the person or the
107 particular class or group to which the person belongs;

108 2. Include a designation of the items to be produced; and

109 3. State that the person who will be asked to produce the
110 documents or items has the right to object to the production
111 under this section and that the person is not required to
112 surrender the documents or items.

113 (b) A copy of the notice and proposed subpoena may not be
114 furnished to the person upon whom the subpoena is to be served.

115 (c) If the guardian or ward serves an objection to
116 production under this subsection within 10 days after service of
117 the notice, the documents or items may not be required to be
118 produced until resolution of the objection. If an objection is
119 not made within 10 days after service of the notice, the clerk
120 may issue the subpoena to the nonparty. The court may shorten
121 the period within which a guardian or ward is required to file
122 an objection upon a showing by the clerk by affidavit that the
123 ward's property is in imminent danger of being wasted,
124 misappropriated, or lost unless immediate action is taken.

125 Section 4. Section 744.3685, Florida Statutes, is amended
126 to read:

127 744.3685 Order requiring guardianship report; contempt.—

128 (1) If ~~When~~ a guardian fails to file the guardianship
129 report, the court shall order the guardian to file the report
130 within 15 days after the service of the order upon her or him or

131 show cause why she or he may ~~should~~ not be compelled to do so.

132 (2) If a guardian fails to comply with the submission of
 133 records and documents requested by the clerk during the audit,
 134 upon a showing of good cause by affidavit of the clerk which
 135 shows the reasons the records must be produced, the court may
 136 order the guardian to produce the records and documents within a
 137 period specified by the court unless the guardian shows good
 138 cause as to why the guardian may not be compelled to do so
 139 before the deadline specified by the court. The affidavit of the
 140 clerk shall be served with the order.

141 (3) A copy of an the order entered pursuant to subsection
 142 (1) or subsection (2) shall be served on the guardian or on the
 143 guardian's resident agent. If the guardian fails to comply with
 144 the order ~~file her or his report~~ within the time specified by
 145 the order without good cause, the court may cite the guardian
 146 for contempt of court and may fine her or him. The fine may not
 147 be paid out of the ward's property.

148 Section 5. Subsection (21) is added to section 744.474,
 149 Florida Statutes, to read:

150 744.474 Reasons for removal of guardian.—A guardian may be
 151 removed for any of the following reasons, and the removal shall
 152 be in addition to any other penalties prescribed by law:

153 (21) A bad faith failure to submit guardianship records
 154 during the audit pursuant to s. 744.368.

155 Section 6. Paragraph (a) of subsection (4) of section
 156 943.0585, Florida Statutes, is amended, and paragraph (c) of

157 that subsection is reenacted, to read:

158 943.0585 Court-ordered expunction of criminal history
 159 records.—The courts of this state have jurisdiction over their
 160 own procedures, including the maintenance, expunction, and
 161 correction of judicial records containing criminal history
 162 information to the extent such procedures are not inconsistent
 163 with the conditions, responsibilities, and duties established by
 164 this section. Any court of competent jurisdiction may order a
 165 criminal justice agency to expunge the criminal history record
 166 of a minor or an adult who complies with the requirements of
 167 this section. The court shall not order a criminal justice
 168 agency to expunge a criminal history record until the person
 169 seeking to expunge a criminal history record has applied for and
 170 received a certificate of eligibility for expunction pursuant to
 171 subsection (2). A criminal history record that relates to a
 172 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 173 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
 174 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
 175 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
 176 any violation specified as a predicate offense for registration
 177 as a sexual predator pursuant to s. 775.21, without regard to
 178 whether that offense alone is sufficient to require such
 179 registration, or for registration as a sexual offender pursuant
 180 to s. 943.0435, may not be expunged, without regard to whether
 181 adjudication was withheld, if the defendant was found guilty of
 182 or pled guilty or nolo contendere to the offense, or if the

183 defendant, as a minor, was found to have committed, or pled
 184 guilty or nolo contendere to committing, the offense as a
 185 delinquent act. The court may only order expunction of a
 186 criminal history record pertaining to one arrest or one incident
 187 of alleged criminal activity, except as provided in this
 188 section. The court may, at its sole discretion, order the
 189 expunction of a criminal history record pertaining to more than
 190 one arrest if the additional arrests directly relate to the
 191 original arrest. If the court intends to order the expunction of
 192 records pertaining to such additional arrests, such intent must
 193 be specified in the order. A criminal justice agency may not
 194 expunge any record pertaining to such additional arrests if the
 195 order to expunge does not articulate the intention of the court
 196 to expunge a record pertaining to more than one arrest. This
 197 section does not prevent the court from ordering the expunction
 198 of only a portion of a criminal history record pertaining to one
 199 arrest or one incident of alleged criminal activity.

200 Notwithstanding any law to the contrary, a criminal justice
 201 agency may comply with laws, court orders, and official requests
 202 of other jurisdictions relating to expunction, correction, or
 203 confidential handling of criminal history records or information
 204 derived therefrom. This section does not confer any right to the
 205 expunction of any criminal history record, and any request for
 206 expunction of a criminal history record may be denied at the
 207 sole discretion of the court.

208 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any

209 criminal history record of a minor or an adult which is ordered
 210 expunged by a court of competent jurisdiction pursuant to this
 211 section must be physically destroyed or obliterated by any
 212 criminal justice agency having custody of such record; except
 213 that any criminal history record in the custody of the
 214 department must be retained in all cases. A criminal history
 215 record ordered expunged that is retained by the department is
 216 confidential and exempt from the provisions of s. 119.07(1) and
 217 s. 24(a), Art. I of the State Constitution and not available to
 218 any person or entity except upon order of a court of competent
 219 jurisdiction. A criminal justice agency may retain a notation
 220 indicating compliance with an order to expunge.

221 (a) The person who is the subject of a criminal history
 222 record that is expunged under this section or under other
 223 provisions of law, including former s. 893.14, former s. 901.33,
 224 and former s. 943.058, may lawfully deny or fail to acknowledge
 225 the arrests covered by the expunged record, except when the
 226 subject of the record:

- 227 1. Is a candidate for employment with a criminal justice
 228 agency;
- 229 2. Is a defendant in a criminal prosecution;
- 230 3. Concurrently or subsequently petitions for relief under
 231 this section, s. 943.0583, or s. 943.059;
- 232 4. Is a candidate for admission to The Florida Bar;
- 233 5. Is seeking to be employed or licensed by or to contract
 234 with the Department of Children and Families, the Division of

235 Vocational Rehabilitation within the Department of Education,
 236 the Agency for Health Care Administration, the Agency for
 237 Persons with Disabilities, the Department of Health, the
 238 Department of Elderly Affairs, or the Department of Juvenile
 239 Justice or to be employed or used by such contractor or licensee
 240 in a sensitive position having direct contact with children, the
 241 disabled, or the elderly; ~~or~~

242 6. Is seeking to be employed or licensed by the Department
 243 of Education, any district school board, any university
 244 laboratory school, any charter school, any private or parochial
 245 school, or any local governmental entity that licenses child
 246 care facilities; or

247 7. Is seeking to be appointed as a guardian pursuant to s.
 248 744.3125.

249 (c) Information relating to the existence of an expunged
 250 criminal history record which is provided in accordance with
 251 paragraph (a) is confidential and exempt from the provisions of
 252 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 253 except that the department shall disclose the existence of a
 254 criminal history record ordered expunged to the entities set
 255 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
 256 respective licensing, access authorization, and employment
 257 purposes, and to criminal justice agencies for their respective
 258 criminal justice purposes. It is unlawful for any employee of an
 259 entity set forth in subparagraph (a)1., subparagraph (a)4.,
 260 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to

261 disclose information relating to the existence of an expunged
 262 criminal history record of a person seeking employment, access
 263 authorization, or licensure with such entity or contractor,
 264 except to the person to whom the criminal history record relates
 265 or to persons having direct responsibility for employment,
 266 access authorization, or licensure decisions. Any person who
 267 violates this paragraph commits a misdemeanor of the first
 268 degree, punishable as provided in s. 775.082 or s. 775.083.

269 Section 7. Paragraph (a) of subsection (4) of section
 270 943.059, Florida Statutes, is amended, and paragraph (c) of that
 271 subsection is reenacted, to read:

272 943.059 Court-ordered sealing of criminal history
 273 records.—The courts of this state shall continue to have
 274 jurisdiction over their own procedures, including the
 275 maintenance, sealing, and correction of judicial records
 276 containing criminal history information to the extent such
 277 procedures are not inconsistent with the conditions,
 278 responsibilities, and duties established by this section. Any
 279 court of competent jurisdiction may order a criminal justice
 280 agency to seal the criminal history record of a minor or an
 281 adult who complies with the requirements of this section. The
 282 court shall not order a criminal justice agency to seal a
 283 criminal history record until the person seeking to seal a
 284 criminal history record has applied for and received a
 285 certificate of eligibility for sealing pursuant to subsection
 286 (2). A criminal history record that relates to a violation of s.

287 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
 288 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
 289 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
 290 916.1075, a violation enumerated in s. 907.041, or any violation
 291 specified as a predicate offense for registration as a sexual
 292 predator pursuant to s. 775.21, without regard to whether that
 293 offense alone is sufficient to require such registration, or for
 294 registration as a sexual offender pursuant to s. 943.0435, may
 295 not be sealed, without regard to whether adjudication was
 296 withheld, if the defendant was found guilty of or pled guilty or
 297 nolo contendere to the offense, or if the defendant, as a minor,
 298 was found to have committed or pled guilty or nolo contendere to
 299 committing the offense as a delinquent act. The court may only
 300 order sealing of a criminal history record pertaining to one
 301 arrest or one incident of alleged criminal activity, except as
 302 provided in this section. The court may, at its sole discretion,
 303 order the sealing of a criminal history record pertaining to
 304 more than one arrest if the additional arrests directly relate
 305 to the original arrest. If the court intends to order the
 306 sealing of records pertaining to such additional arrests, such
 307 intent must be specified in the order. A criminal justice agency
 308 may not seal any record pertaining to such additional arrests if
 309 the order to seal does not articulate the intention of the court
 310 to seal records pertaining to more than one arrest. This section
 311 does not prevent the court from ordering the sealing of only a
 312 portion of a criminal history record pertaining to one arrest or

313 one incident of alleged criminal activity. Notwithstanding any
 314 law to the contrary, a criminal justice agency may comply with
 315 laws, court orders, and official requests of other jurisdictions
 316 relating to sealing, correction, or confidential handling of
 317 criminal history records or information derived therefrom. This
 318 section does not confer any right to the sealing of any criminal
 319 history record, and any request for sealing a criminal history
 320 record may be denied at the sole discretion of the court.

321 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
 322 history record of a minor or an adult which is ordered sealed by
 323 a court of competent jurisdiction pursuant to this section is
 324 confidential and exempt from the provisions of s. 119.07(1) and
 325 s. 24(a), Art. I of the State Constitution and is available only
 326 to the person who is the subject of the record, to the subject's
 327 attorney, to criminal justice agencies for their respective
 328 criminal justice purposes, which include conducting a criminal
 329 history background check for approval of firearms purchases or
 330 transfers as authorized by state or federal law, to judges in
 331 the state courts system for the purpose of assisting them in
 332 their case-related decisionmaking responsibilities, as set forth
 333 in s. 943.053(5), or to those entities set forth in
 334 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
 335 licensing, access authorization, and employment purposes.

336 (a) The subject of a criminal history record sealed under
 337 this section or under other provisions of law, including former
 338 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully

339 deny or fail to acknowledge the arrests covered by the sealed
 340 record, except when the subject of the record:

341 1. Is a candidate for employment with a criminal justice
 342 agency;

343 2. Is a defendant in a criminal prosecution;

344 3. Concurrently or subsequently petitions for relief under
 345 this section, s. 943.0583, or s. 943.0585;

346 4. Is a candidate for admission to The Florida Bar;

347 5. Is seeking to be employed or licensed by or to contract
 348 with the Department of Children and Families, the Division of
 349 Vocational Rehabilitation within the Department of Education,
 350 the Agency for Health Care Administration, the Agency for
 351 Persons with Disabilities, the Department of Health, the
 352 Department of Elderly Affairs, or the Department of Juvenile
 353 Justice or to be employed or used by such contractor or licensee
 354 in a sensitive position having direct contact with children, the
 355 disabled, or the elderly;

356 6. Is seeking to be employed or licensed by the Department
 357 of Education, any district school board, any university
 358 laboratory school, any charter school, any private or parochial
 359 school, or any local governmental entity that licenses child
 360 care facilities; ~~or~~

361 7. Is attempting to purchase a firearm from a licensed
 362 importer, licensed manufacturer, or licensed dealer and is
 363 subject to a criminal history check under state or federal law;
 364 or-

365 8. Is seeking to be appointed as a guardian pursuant to s.
366 744.3125.

367 (c) Information relating to the existence of a sealed
368 criminal record provided in accordance with the provisions of
369 paragraph (a) is confidential and exempt from the provisions of
370 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
371 except that the department shall disclose the sealed criminal
372 history record to the entities set forth in subparagraphs (a)1.,
373 4., 5., 6., and 8. for their respective licensing, access
374 authorization, and employment purposes. It is unlawful for any
375 employee of an entity set forth in subparagraph (a)1.,
376 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or
377 subparagraph (a)8. to disclose information relating to the
378 existence of a sealed criminal history record of a person
379 seeking employment, access authorization, or licensure with such
380 entity or contractor, except to the person to whom the criminal
381 history record relates or to persons having direct
382 responsibility for employment, access authorization, or
383 licensure decisions. Any person who violates the provisions of
384 this paragraph commits a misdemeanor of the first degree,
385 punishable as provided in s. 775.082 or s. 775.083.

386 Section 8. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 685 Business Organizations
SPONSOR(S): Rooney and Workman
TIED BILLS: None IDEN./SIM. BILLS: SB 654

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Civil Justice Subcommittee, Ward, Bond. Row 2: 2) Economic Development & Tourism Subcommittee. Row 3: 3) Transportation & Economic Development Appropriations Subcommittee. Row 4: 4) Judiciary Committee.

SUMMARY ANALYSIS

Florida corporations are regulated by the Florida Business Corporation Act and the Florida Not For Profit Corporation Act. These two acts define the basic terms employed by Florida law in regulating corporations. The directors of a corporation established for profit are duty-bound to manage corporate assets for profit. A not for profit corporation may not be organized for "pecuniary profit" but instead must have a charitable purpose.

There is no provision in the law for a profit making corporation which considers a social purpose or benefit along with profit while protecting its management from liability for setting such priorities. Historically, attempts at prioritizing social benefit over profit have created a cause of action in shareholders against officers and directors for breach of their fiduciary duty.

The bill creates two new types of corporations called the "social purpose corporation" and the "benefit corporation." Social purpose and benefit corporations protect management for considering use of corporate assets to pursue, in a significant manner, public benefit goals in addition to, or even as a priority over, the generally accepted corporate goal of profit maximization. Further, since there is a hybrid of goals in these new corporations, the profit-making ability distinguishes social purpose and benefit corporations from charities and from not-for-profit corporations. The new forms of corporation are similar, the primary difference being that a social purpose corporation has specified social purpose or purposes designated in advance, whereas a benefit corporation is to create a general public benefit in a manner selected by management.

The name of a limited liability company, profit corporation, nonprofit corporation, or limited partnership must be distinguishable from the names of all other entities or filings on file with the Department of State, with the exception of fictitious name registrations. However, the term "distinguishable" is not defined by any of these statutes. The bill specifies those differences which are not considered a distinguishing factor when determining if the name of a limited liability company, profit corporation, nonprofit corporation, or limited partnership is distinguishable from the names of all other entities or filings on the records of the Department of State.

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

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Corporations

Florida corporations are regulated by the Florida Business Corporation Act¹ and the Florida Not For Profit Corporation Act.² These two acts define the basic terms employed by Florida law in regulating corporations, their shareholders and officers."³

The term 'corporation' presumes a corporation established for profit for purposes of the Florida Business Corporation Act.⁴ However, a corporation may be established for any lawful purpose, including⁵ purposes other than profit, if the articles establish a not for profit corporation.⁶

In both types of corporations, bylaws establish guidelines for the management of the entity.⁷ A corporation established for profit appoints officers who then have a fiduciary duty to the shareholders of the corporation for use of the corporate assets.⁸ In a corporation for profit, the directors are duty bound to manage those assets for profit.⁹ A not-for-profit corporation may not be organized for "pecuniary profit" but instead must have a charitable purpose.¹⁰

There is no provision in the law for a profit making corporation which considers a social purpose or benefit as equal in importance with profit while protecting its management from liability for setting such priorities. Historically, attempts at prioritizing social benefit over profit have created a cause of action in shareholders against officers and directors for breach of their fiduciary duty.¹¹ This hurdle is overcome by the concept of the "social purpose" and the "benefit" corporation, each of which may focus on societal benefit over maximizing profit, with accountability to shareholders for both goals.

Social Purpose and Benefit Corporations

Social purpose and benefit corporations protect directors and officers who use corporate assets to pursue, in a significant manner, public benefit goals in addition to, or even as a priority over, the generally accepted corporate goal of profit maximization. Further, since there is a hybrid of goals in these new corporations, the profit-making ability distinguishes social purpose and benefit corporations from charities and from not-for-profit corporations. Florida does not recognize such corporations, but other states do.

¹ 8A Fla. Jur 2d Business Relationships §1, citing s. 607.0101, et seq., F.S.

² 8A Fla. Jur 2d Business Relationships §1, citing s. 617.01011, et seq., F.S.

³ 8A Fla. Jur 2d Business Relationships §1.

⁴ Section 607.01401(5), F.S.

⁵ Section 607.0301, F.S.

⁶ Section 617.0301, F.S.

⁷ 8A Fla. Jur 2d Business Relationships § 52.

⁸ 8A Fla. Jur 2d Business Relationships § 285.

⁹ Leo E. Stine, Our Continuing Struggle with the Idea that For-Profit Corporations Seek Profit, 47 Wake Forest L. Rev 135 (2012), April 2012.

¹⁰ Section 617.0301, F.S.

¹¹ In 1917, Henry Ford declared, "My ambition is to employ still more men; to spread the benefits of this industrial system to the greatest possible number, to help them build up their lives and their homes. To do this, we are putting the greatest share of our profits back into the business." After shareholders sued Mr. Ford, the court determined that the profits would be paid to shareholders. *Dodge v. Ford Motor Co.*, 170 N.W. 668 (MI 1919).

Names of Business Entities

Chapters 605,¹² 607,¹³ 617,¹⁴ and 620,¹⁵ require the name of a limited liability company, profit corporation, nonprofit corporation, or limited partnership to be distinguishable from the names of all other entities or filings on file with the Department of State, with the exception of fictitious name registrations. However, the term "distinguishable" is not defined by any of these statutes.

Effect of Proposed Changes

Corporations

The bill amends ch. 607, F.S., to provide for the creation of two new business entity types designated as "social purpose" and "benefit" corporations. The bill also divides ch. 607, F.S., into Parts, I, II, and III. Part I is entitled "Corporations," and addresses matters concerning all three types of for-profit corporations, including historic for-profit corporations, social purpose, and benefit corporations. Part II is entitled, "Social Purpose Corporations," and Part III is entitled, "Benefit Corporations." The bill provides that these new entities may be simultaneously subject to one or more chapters of the statutes, including ch. 621, F.S., the professional corporation statute. Where there is conflict between other provisions of the statutes governing corporations, the particular provisions applicable to these new entities will prevail.

Social Purpose Corporations

A social purpose corporation has the purpose of creating a public benefit. A "public benefit" is defined in the bill as a "positive effect, or the minimization of negative effects taken as a whole, on the environment or on one or more categories of persons or entities other than shareholders in their capacity as shareholders, of an artistic, charitable, economic, educational, cultural, literary, religious, social, ecological, or scientific nature, from the business and operations of a social purpose corporation." They may be created for the purpose of pursuing or creating one or more public benefits which may be specific in nature.

The bill provides that in order to qualify the articles of incorporation must provide that the corporation is a social purpose corporation under part II of ch. 607, F.S. The bill provides that the articles of incorporation of a social purpose corporation may identify one or more specific public benefits as its purpose. The social purpose corporation may amend or delete the purpose statement, as long as the amendment is adopted by the minimum status vote.

The bill provides that the creation of a public benefit is deemed to be in the best interest of the social purpose corporation. This language protects the directors and officers. Since the social purpose corporation has the purpose of creating a public benefit, the management does not breach its fiduciary duty by making the corporation's beneficial purpose a priority over maximizing profit.

An existing corporation may elect to change its status to a social purpose corporation by amending its articles of incorporation, by merger, or by share exchange. The change must be adopted by its shareholders. The amendment must be adopted by a "minimum status vote," defined in the statute.¹⁶ The value of shares held is taken into consideration by the provisions of s. 607.1302, F.S., which is amended by the bill to provide that a shareholder of a domestic corporation is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of conversion of

¹² Section 605.0112(b), F.S.

¹³ Section 607.0401(4), F.S.

¹⁴ Section 617.0401((1)(e)), F.S.

¹⁵ Section 620.1108(4), F.S.

¹⁶ •A "minimum status vote" is the approval vote of shareholders to convert to or from a social purpose corporation, adding the criteria which satisfy such a vote.

a corporation to a social purpose or benefit corporation. Likewise, a social purpose corporation may terminate its standing by the same means.

Definitions

The bill provides definitions for terms particular to the new entities. Most of these are more fully described in their context below but introduced here for background. The bill provides:

- A "benefit director" is a director who must not have an interest in the corporation, and who gives an annual report of his or her opinion on whether the organization is meeting its stated goals;
- A "benefit enforcement proceeding," analogous to a shareholder derivative action, is an action or claim wherein shareholders can hold a social purpose corporation accountable to its stated public benefit;
- The term "independent" is defined for purposes of the statute as "not having a material relationship" with the social purpose corporation or any subsidiary;
- A "minimum status vote" is the approval vote of shareholders to convert to or from a social purpose corporation, adding the criteria which satisfy such a vote;
- "Public benefit" means a positive effect, or the minimization of negative effects taken as a whole, on the environment, persons, or entities from the business and operations of a social purpose corporation;
- "Social purpose corporation" means a corporation that is formed or has elected to become subject to the statute, the status of which as a social purpose corporation has not been terminated;
- "Specific public benefit" means a benefit identified as a purpose of the social purpose corporation which is set forth in the articles of incorporation and is consistent with a public benefit;
- "Subsidiary" means, in relation to a person other than an individual, an entity in which the person owns beneficially or of record 50 percent or more of the outstanding equity interests; and
- "Third-party standard" means a recognized standard for defining, reporting, and assessing the societal and environmental performance of a business.

Directors of Social Purpose Corporations

The bill provides that in any action or inaction, directors must take into consideration both the shareholders and the ability of the social purpose corporation to accomplish its public benefit goal. The bill provides that in any action or inaction, directors may take into consideration:

- The employees and workforce of the corporation, its subsidiaries and suppliers;
- The interests of customers and suppliers as beneficiaries of the general public benefit;
- Community and societal factors where the social purpose corporation, its subsidiaries, or suppliers are located;
- The local and global environment;
- The short and long term interests of the corporation; and
- Other pertinent factors of the interests of any other group that they deem appropriate.

The bill also provides that:

- Directors are not required to give equal weight to the interests of any particular person or group listed above unless the social purpose corporation has stated in its articles of incorporation its intention to give such equal weight;
- A director is not personally liable for monetary damages for failure of the corporation to pursue or create a specific public benefit; and

- A director does not have a duty to a person who is a beneficiary of the public benefit purpose or any specific public benefit purpose of a social purpose corporation.

The bill provides for a new office entitled the "benefit director," which may be qualified and described in the articles of incorporation or bylaws. The bill provides that the benefit director has all the powers, duties, rights, and immunities of other directors, with additional ones as provided in the bill. The benefit director is elected, and may be removed as set out in the bill. The benefit director may also serve as the benefit officer, described below.

Unless the articles of incorporation or bylaws provide otherwise, the benefit director must prepare to include in the annual benefit report to shareholders his or her opinion on the following:

- Whether the social purpose corporation in all material respects acted in accordance with its public benefit purpose and any specific public benefit purpose during the period covered by the report;
- Whether the directors and officers met the standards of conduct as set forth in the bill;
- Whether the social purpose corporation or its directors or officers failed to comply with paragraph the standards of conduct toward the shareholders and the stated public benefit, including a written description of the ways in which the social purpose corporation or its directors or officers failed to comply.

The benefit director of a professional corporation¹⁷ is not required to be "independent."¹⁸

Officers of Social Purpose Corporations

The bill provides standards of conduct for officers of social purpose corporations that shield them from liability in balancing the social purpose of the corporation with the shareholders' interests:

- If an officer of a social purpose corporation reasonably believes that a matter may have a material effect on the ability of the corporation to create a public benefit or a specific public benefit identified in the articles of incorporation and the officer has discretion to act on the matter, the officer must consider the interests and factors provided in the statute on the same basis as the directors; and
- The officer's consideration of the above interests and factors is not a violation of s. 607.0841, F.S., which section provides that corporate officers have a duty to execute the purposes set out in the corporate bylaws as prescribed by the directors and authorized officers.
- Except as provided in the articles of incorporation, an officer is not personally liable for monetary damages to the corporation or any other person for the failure of the social purpose corporation to pursue or create a public benefit or a specific public benefit;
- Except as provided in the articles of incorporation, an officer does not have a duty to a person who is a beneficiary of the public benefit purpose or any specific public benefit purpose of a social purpose corporation arising from the status of the person as a beneficiary.

The bill provides that a social purpose corporation may designate an officer as the benefit officer. The benefit officer has the powers and duties set forth in the bylaws or determined by the board of directors, which may include, but are not limited to:

- Powers and duties relating to the public benefit purpose or a specific public benefit purpose of the corporation; and
- The duty to prepare the annual benefit report required by the bill.

¹⁷ A professional corporation formed under ch. 621, F.S. is a corporation designed to have as its only shareholders other corporations, each of which renders professional services.

¹⁸ The term, "independent" is defined in the bill as "not having a material relationship with the corporation."

Rights of Action Against a Social Purpose Corporation

The bill does not provide any special immunities for social purpose corporations, but does provide remedies for internal disputes as with other corporations.

The bill provides that a "benefit enforcement proceeding" is a claim or action for the failure of a social purpose corporation to pursue or create a public benefit or a specific public benefit established in its articles of incorporation or a violation of any obligation, duty, or standard of conduct under the statute.

The bill provides that a benefit enforcement proceeding may be commenced directly by the corporation, a shareholder, a director, a 5% interest holder, or by any other person specified in the articles of incorporation. No other person may bring an action or assert a claim against a social purpose corporation or its directors or officers for a failure to pursue or create a public benefit. Further, a social purpose corporation is not liable for monetary damages under the corporation statute for its failure to pursue or create a public benefit or a specific public benefit.

Annual Benefit Report of a Social Purpose Corporation

The bill provides that unless it is prepared by a benefit director or benefit officer, the board of directors must prepare an annual benefit report that includes the ways in which the social purpose was pursued, the benefit created, any hindrance to the pursuit of the benefit, and the process and rationale for changing to the third party standard, as applicable.

The bill provides the matters to be included and assessed if the articles of incorporation of the social purpose corporation require, or the board of directors determines, that the annual benefit report must be prepared in accordance with a third-party standard.

The bill provides that if, during the year covered by an annual benefit report, a benefit director resigned from or refused to stand for reelection to his or her position or was removed from his or her position and he or she furnished written correspondence to the social purpose corporation concerning the circumstances surrounding his or her departure, that correspondence must be included as an exhibit in the annual benefit report.

The bill provides that the annual benefit report and the assessment of the performance of the social purpose corporation in the annual benefit report are not required to be audited or certified by a third-party standards provider.

Availability of Annual Benefit Report

The bill provides that each social purpose corporation must send its annual benefit report to each shareholder:

- Within 120 days after the end of the fiscal year of the social purpose corporation; or
- At the same time that the social purpose corporation delivers any other annual report to its shareholders.

The bill provides that a social purpose corporation must post each annual benefit report on the public portion of its website, if any, and it must remain posted for at least 3 years. If a social purpose corporation does not have a website, the corporation must provide a copy of its most recent annual benefit report, without charge, to any person who requests a copy.

If a social purpose corporation does not comply with the annual benefit report delivery requirement, the circuit court in the county in which the principal office of the social purpose corporation is located or, if no office is located in this state, the county in which its registered office is located may, after a shareholder of the social purpose corporation requests a copy, summarily order the corporation to

furnish the report. If the court orders the report to be furnished, the court may also order the social purpose corporation to pay the shareholder's costs, including reasonable attorney fees, which were incurred in obtaining the order and otherwise enforcing his or her rights under this section.

Benefit Corporations

A "benefit" corporation is created for a broad purpose and it may pursue many societal and environmental factors simultaneously. The benefit corporation has all of the same provisions as the social purpose corporation with two major exceptions. First, a benefit corporation has the purpose of creating a "general public benefit." The bill defines a "general public benefit" as "a material, positive effect on society and the environment, taken as a whole, as assessed using a third-party standard which is attributable to the business and operations of a benefit corporation." Second, contained within the first, is the assessment using a third party standard for the annual benefit report, as defined in the bill.

Names of Business Entities

The bill specifies those differences which are not considered a distinguishing factor when determining if the name of a limited liability company, profit corporation, nonprofit corporation, or limited partnership is distinguishable from the names of all other entities or filings on the records of the Department of State. The bill provides that the following do not render a name distinguishable:

- A suffix;
- A definite or indefinite article;
- The word "and" or the symbol "&";
- The singular, plural or possessive form of a word;
- A recognized abbreviation of a root word; or
- A punctuation mark or symbol.

The bill amends chs. 605, 607, 617, and 620, F.S., to reflect the name of a limited liability company, profit corporation, nonprofit corporation, or limited partnership does not have to be distinguishable from the name of any general partnership registration or limited liability partnership statement registered with the Department of State, which, like fictitious name registrations, are merely registered with the Department of State for public notice purposes only.

The bill makes other conforming changes to the statutes.

The bill has an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1 amends s. 605.0112, F.S., relating to names of limited liability companies.

Section 2 designates s. 607.0101 through s. 607.193, F.S., as Part I of Chapter 607, F.S.

Section 3 amends s. 607.0101, F.S., relating to short title.

Section 4 amends s. 607.0104, F.S., relating to corporate names.

Section 5 amends s. 607.1302, F.S., relating to right of shareholders to appraisal.

Section 6 creates sections 607.501 through 607.513 as Part II of Chapter 607, F.S., relating to social purpose corporations.

Section 7 creates sections 607.601 through 607.613 as Part III of Chapter 607, F.S., relating to benefit corporations.

Section 8 amends s. 617.0401, F.S., relating to corporate names of not for profit corporations.

Section 9 amends s. 620.1108, F.S., relating to names of limited partnerships.

Section 10 amends s. 48.091, F.S., relating to corporations; designation of registered agent and registered office.

Section 11 amends s. 215.555, F.S., relating to Florida Hurricane Catastrophe Fund.

Section 12 amends s. 243.54, F.S., relating to powers of the authority.

Section 13 amends s. 310.171, F.S., relating to harbor pilots incorporating themselves.

Section 14 amends s. 310.181, F.S., relating to corporate powers of a harbor pilot's corporation.

Section 15 amends s. 329.10, F.S., relating to aircraft registration.

Section 16 amends s. 339.412, F.S., relating to powers of a corporation created under the Florida Transportation Corporation Act.

Section 17 amends s. 420.101, F.S., relating to Housing Development Corporation of Florida; creation, membership, and purposes.

Section 18 amends s. 420.111, F.S., relating to Housing Development Corporation of Florida; additional powers.

Section 19 amends s. 420.161, F.S., F.S., relating to Housing Development Corporation of Florida; period of existence; method of dissolution.

Section 20 amends s. 440.02, F.S., relating to definitions applicable to workers' compensation law.

Section 21 amends s. 440.386, F.S., relating to Individual self-insurers' insolvency; conservation; liquidation.

Section 22 amends s. 607.0141, F.S., relating to notice to shareholders.

Section 23 amends s. 607.0204, F.S., relating to liability for pre-incorporation transactions.

Section 24 amends s. 607.0501, F.S., relating to registered office and registered agent.

Section 25 amends s. 607.0624, F.S., relating to share options.

Section 26 amends s. 607.0707, F.S., relating to record date.

Section 27 amends s. 607.0732, F.S., relating to shareholder agreements.

Section 28 amends s. 607.1108, F.S., relating to merger of domestic corporation and other business entity.

Section 29 amends s. 607.1109, F.S., relating to articles of merger.

Section 30 amends s. 607.1112, F.S., relating to conversion of domestic corporation into another business entity.

Section 31 amends s. 607.1113, F.S., relating to certificate of conversion.

Section 32 amends s. 607.1114, F.S., relating to effect of conversion of domestic corporation into another business entity.

Section 33 amends s. 607.1115, F.S., relating to conversion of another business entity to a domestic corporation.

Section 34 amends s. 607.1320, F.S., relating to notice of appraisal rights.

Section 35 amends s. 607.1321, F.S., relating to notice of intent to demand payment.

Section 36 amends s. 607.1323, F.S., relating to perfection of rights; right to withdraw.

Section 37 amends s. 607.1331, F.S., relating to court costs and counsel fees.

Section 38 amends s. 607.1332, F.S., relating to disposition of acquired shares.

Section 39 amends s. 607.1407, F.S., relating to unknown claims against dissolved corporation.

Section 40 amends s. 607.1507, F.S., relating to registered office and registered agent of foreign corporation.

Section 41 amends s. 609.08, F.S., relating to merger of association into wholly owned subsidiary corporation; dissenters' rights of appraisal.

Section 42 amends s. 617.1908, F.S., relating to applicability of Florida Business Corporation Act.

Section 43 amends s. 618.221, F.S., relating to conversion into a corporation for profit from a nonprofit cooperative marketing association.

Section 44 amends s. 619.04, F.S., relating to articles of incorporation of a nonprofit cooperative association.

Section 45 amends s. 624.430, F.S., relating to withdrawal of insurer or discontinuance of writing certain kinds or lines of insurance.

Section 46 amends s. 624.462, F.S., relating to commercial self-insurance funds.

Section 47 amends s. 634.489, F.S., relating to liability of trustees of self-insurance trust fund and directors of self-insurance funds operating as corporations.

Section 48 amends s. 628.041, F.S., relating to applicability of general corporation statutes.

Section 49 amends s. 631.262, F.S., relating to transfers prior to petition.

Section 50 amends s. 636.204, F.S., relating to license required to act as a discount medical plan organization.

Section 51 amends s. 641.2015, F.S., relating to incorporation required to operate as a health maintenance organization.

Section 52 amends s. 655.0201, F.S., relating to service of process, notice, or demand on financial institutions.

Section 53 amends s. 658.23, F.S., relating to submission of articles of incorporation of a bank or trust company; contents; form; approval; filing; commencement of corporate existence; by laws.

Section 54 amends s. 658.2953, F.S., relating to interstate branching by state banks.

Section 55 amends s. 658.30, F.S., relating to application of the Florida Business Corporation Act to international corporations.

Section 56 amends s. 658.36, F.S., relating to changes in capital.

Section 57 amends s. 663.03, F.S., relating to applicability of the Florida Business Corporation Act..

Section 58 amends s. 663.04, F.S., relating to requirements for carrying on financial institution business.

Section 59 amends s. 663.301, F.S., relating to definitions regarding international development banks.

Section 60 amends s. 663.306, F.S., relating to decision by office of international development banks.

Section 61 amends s. 663.313, F.S., relating to ownership of stock of international development banks.

Section 62 amends s. 718.111, F.S., relating to condominium associations.

Section 63 amends s. 719.104, F.S., relating to cooperatives.

Section 64 amends s. 720.302, F.S., relating to homeowners' associations.

Section 65 amends s. 720.306, F.S., relating to meetings of members; voting and election procedures; amendments of a homeowners' association.

Section 66 amends s. 766.101, F.S., relating to medical review committee, immunity from liability.

Section 67 amends s. 865.09, F.S., relating to fictitious name registration.

Section 68 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.¹⁹

¹⁹ The Department of State, 2014 Agency Legislative Bill Analysis for the companion bill, SB 654, indicates that some computer programming changes may be necessary to implement this bill, but that the cost can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

II. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The rationale for this alternative form of corporate enterprise has been described by two leading experts as follows:

The sustainable business movement, impact investing and social enterprise sectors are developing rapidly but are constrained by an outdated legal framework that is not equipped to accommodate for-profit entities whose social benefit purpose is central to their existence. The Benefit Corporation is the most comprehensive yet flexible legal entity devised to address the needs of entrepreneurs and investors and, ultimately, the general public. Benefit Corporations offer clear market differentiation, broad legal protection to directors and officers, expanded shareholder rights, and greater access to capital than current alternative approaches.²⁰

As stated by another commentator:

Social enterprises are entities dedicated to a blended mission of earning profits for owners and promoting social good. They are neither typical businesses, concentrated on

²⁰ William H. Clark, Jr. and Larry Vranka, White Paper: The Need and Rationale for the Benefit Corporation (January 26, 2012), available at http://benefitcorp.net/storage/documents/The_Need_and_Rationale_for_Benefit_Corporations_April_2012.pdf [last visited February 15, 2014], and on file with the Florida House of Representatives Civil Justice Subcommittee.

the bottom line of profit, nor traditional charities....Their founders instead see value in blending both goals....Yet, these social entrepreneurs worry traditional organizational forms designed for either businesses or charities will constrain their ability to achieve the gains they see in blended mission enterprises.²¹

It is likely that the so called "green corporations" will receive the maximum benefit of this new type of entity.²² "Advocates of the benefit corporation recognize that there is a risk of 'green-washing,' i.e. that corporations will use the social purpose or benefit corporation mantle to wrap themselves in a cloak of social goodness while failing to pursue meaningfully any beneficial societal goals. 'Green-washing' is a potential risk because directors of such corporations are only mandated to consider benefit goals, not implement them, nor is there any personal monetary liability imposed upon directors or officers who fail to pursue or achieve such goals."²³ Shareholders and the transparent qualities required of these new corporations are designed to provide accountability as a balance to the risk of "green washing."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

²¹ Dana Brakman Reiser, *The Next Big Thing: Flexible-Purpose Corporations*, Brooklyn Law School Legal Studies Research Papers (Oct. 2012), available at <http://ssrn.com/abstract=2166474> [last visited February 15, 2014].

²² Stuart R. Cohn, Stuart D. Ames, Gary Teblum, and James Glover: *White Paper: Proposed Legislation To Amend Chapter 607, Florida Statutes to Provide for the Creation of Florida Social Purpose Corporation and a Florida Benefit Corporation*, Memorandum of the Business Law Section of the Florida Bar, January 15, 2014, on file with the Florida House of Representatives Civil Justice Subcommittee.

²³ *Id.*

1 A bill to be entitled
 2 An act relating to business organizations; amending s.
 3 605.0112, F.S.; providing additional exceptions to the
 4 requirement that limited liability company names be
 5 distinguishable from the names of other entities or
 6 filings; specifying differences in names which are not
 7 considered distinguishable; designating part I of
 8 chapter 607, F.S., entitled "Corporations"; amending
 9 s. 607.0101, F.S.; conforming a provision to changes
 10 made by the act; amending s. 607.0401, F.S.; providing
 11 additional exceptions to the requirement that
 12 corporate names be distinguishable from the names of
 13 other entities or filings; specifying differences in
 14 names which are not considered distinguishable;
 15 amending s. 607.1302, F.S.; providing that the
 16 amendment of articles of incorporation or the merger,
 17 conversion, or share exchange of a social purpose or
 18 benefit corporation entitles the shareholders to
 19 appraisal rights; creating parts II and III of chapter
 20 607, F.S., entitled "Social Purpose Corporations" and
 21 "Benefit Corporations," respectively; providing
 22 application and effect; providing definitions;
 23 establishing requirements for the incorporation of a
 24 social purpose corporation or benefit corporation;
 25 providing procedures for an existing corporation to
 26 become a social purpose corporation or benefit

27 corporation; providing procedures for the termination
 28 of a social purpose corporation or benefit corporation
 29 status; requiring that the corporate purpose be to
 30 create a public benefit; providing criteria; requiring
 31 the directors of a social purpose corporation or
 32 benefit corporation to meet specified standards of
 33 conduct; authorizing the articles of incorporation of
 34 a social purpose corporation or benefit corporation to
 35 provide for a benefit director; providing powers and
 36 duties of a benefit director; requiring the officers
 37 of a social purpose corporation or benefit corporation
 38 to meet specified standards of conduct; authorizing a
 39 social purpose corporation or benefit corporation to
 40 designate an officer as a benefit officer; providing
 41 powers and duties of a benefit officer; specifying
 42 legal actions that may be brought against a social
 43 purpose corporation or benefit corporation, its
 44 officers, or its directors; requiring the board of
 45 directors to prepare an annual benefit report;
 46 providing report criteria; establishing requirements
 47 for the availability and dissemination of the annual
 48 benefit report; authorizing a court to order
 49 dissemination of the report; amending ss. 617.0401 and
 50 620.1108, F.S; providing additional exceptions to the
 51 requirement that certain entities' names be
 52 distinguishable from the names of other entities or

53 filings; specifying differences in names which are not
 54 considered distinguishable; amending ss. 48.091,
 55 215.555, 243.54, 310.171, 310.181, 329.10, 339.412,
 56 420.101, 420.111, 420.161, 440.02, 440.386, 607.0141,
 57 607.0204, 607.0501, 607.0624, 607.0707, 607.0732,
 58 607.1108, 607.1109, 607.1112, 607.1113, 607.1114,
 59 607.1115, 607.1320, 607.1321, 607.1323, 607.1331,
 60 607.1332, 607.1407, 607.1507, 609.08, 617.1908,
 61 618.221, 619.04, 624.430, 624.462, 624.489, 628.041,
 62 631.262, 636.204, 641.2015, 655.0201, 658.23,
 63 658.2953, 658.30, 658.36, 663.03, 663.04, 663.301,
 64 663.306, 663.313, 718.111, 719.104, 720.302, 720.306,
 65 766.101, and 865.09, F.S.; conforming cross-
 66 references; providing an effective date.

67
 68 Be It Enacted by the Legislature of the State of Florida:

69
 70 Section 1. Subsection (1) of section 605.0112, Florida
 71 Statutes, is amended to read:

72 605.0112 Name.—

73 (1) The name of a limited liability company:

74 (a) Must contain the words "limited liability company" or
 75 the abbreviation "L.L.C." or "LLC."~~†~~

76 (b) Must be distinguishable in the records of the Division
 77 of Corporations of the department from the names of all other
 78 entities or filings that are on file with the division, except

79 fictitious name registrations pursuant to s. 865.09, general
 80 partnership registrations pursuant to s. 620.8105, and limited
 81 liability partnership statements pursuant to s. 620.9001 which
 82 are organized, registered, or reserved under the laws of this
 83 state, which names are on file with the division; however, a
 84 limited liability company may register under a name that is not
 85 otherwise distinguishable on the records of the division with
 86 the written consent of the owner entity if, ~~provided~~ the consent
 87 is filed with the division at the time of registration of such
 88 name. A name that is different from the name of another entity
 89 or filing due to any of the following is not considered
 90 distinguishable:

- 91 1. A suffix.
- 92 2. A definite or indefinite article.
- 93 3. The word "and" and the symbol "&."
- 94 4. The singular, plural, or possessive form of a word.
- 95 5. A recognized abbreviation of a root word.
- 96 6. A punctuation mark or a symbol.

97 (c) May not contain language stating or implying that the
 98 limited liability company is organized for a purpose other than
 99 a purpose authorized in this chapter and its articles of
 100 organization. ~~and~~

101 (d) May not contain language stating or implying that the
 102 limited liability company is connected with a state or federal
 103 government agency or a corporation or other entity chartered
 104 under the laws of the United States.

105 Section 2. Sections 607.0101 through 607.193, Florida
 106 Statutes, are designated as part I of chapter 607, Florida
 107 Statutes, and entitled "CORPORATIONS."

108 Section 3. Section 607.0101, Florida Statutes, is amended
 109 to read:

110 607.0101 Short title.—This part act ~~shall be known and~~ may
 111 be cited as the "Florida Business Corporation Act."

112 Section 4. Section 607.0401, Florida Statutes, is amended
 113 to read:

114 607.0401 Corporate name.—A corporate name:

115 (1) Must contain the word "corporation," "company," or
 116 "incorporated" or the abbreviation "Corp.," "Inc.," or "Co.," or
 117 the designation "Corp," "Inc," or "Co," as will clearly indicate
 118 that it is a corporation instead of a natural person,
 119 partnership, or other business entity.†

120 (2) May not contain language stating or implying that the
 121 corporation is organized for a purpose other than that permitted
 122 in this part act and its articles of incorporation.†

123 (3) May not contain language stating or implying that the
 124 corporation is connected with a state or federal government
 125 agency or a corporation chartered under the laws of the United
 126 States.† ~~and~~

127 (4) Must be distinguishable from the names of all other
 128 entities or filings that are on file with the Division of
 129 Corporations, except fictitious name registrations pursuant to
 130 s. 865.09, general partnership registrations pursuant to s.

131 620.8105, and limited liability partnership statements pursuant
 132 to s. 620.9001 which are organized, registered, or reserved
 133 under the laws of this state, ~~which names are on file with the~~
 134 ~~Division of Corporations.~~ A name that is different from the name
 135 of another entity or filing due to any of the following is not
 136 considered distinguishable:

- 137 (a) A suffix.
- 138 (b) A definite or indefinite article.
- 139 (c) The word "and" and the symbol "&."
- 140 (d) The singular, plural, or possessive form of a word.
- 141 (e) A recognized abbreviation of a root word.
- 142 (f) A punctuation mark or a symbol.
- 143 ~~(5) The name of the corporation~~ As filed with the
 144 Department of State, is ~~shall be~~ for public notice only and does
 145 ~~shall~~ not alone create any presumption of ownership beyond that
 146 which is created under the common law.

147 Section 5. Subsections (1) and (4) of section 607.1302,
 148 Florida Statutes, are amended to read:

149 607.1302 Right of shareholders to appraisal.-

150 (1) A shareholder of a domestic corporation is entitled to
 151 appraisal rights, and to obtain payment of the fair value of
 152 that shareholder's shares, in the event of any of the following
 153 corporate actions:

- 154 (a) Consummation of a conversion of such corporation
 155 pursuant to s. 607.1112 if shareholder approval is required for
 156 the conversion and the shareholder is entitled to vote on the

157 conversion under ss. 607.1103 and 607.1112(6), or the
 158 consummation of a merger to which such corporation is a party if
 159 shareholder approval is required for the merger under s.
 160 607.1103 and the shareholder is entitled to vote on the merger
 161 or if such corporation is a subsidiary and the merger is
 162 governed by s. 607.1104;

163 (b) Consummation of a share exchange to which the
 164 corporation is a party as the corporation whose shares will be
 165 acquired if the shareholder is entitled to vote on the exchange,
 166 except that appraisal rights are ~~shall~~ not be available to any
 167 shareholder of the corporation with respect to any class or
 168 series of shares of the corporation that is not exchanged;

169 (c) Consummation of a disposition of assets pursuant to s.
 170 607.1202 if the shareholder is entitled to vote on the
 171 disposition, including a sale in dissolution but not including a
 172 sale pursuant to court order or a sale for cash pursuant to a
 173 plan by which all or substantially all of the net proceeds of
 174 the sale will be distributed to the shareholders within 1 year
 175 after the date of sale;

176 (d) An amendment of the articles of incorporation with
 177 respect to the class or series of shares which reduces the
 178 number of shares of a class or series owned by the shareholder
 179 to a fraction of a share if the corporation has the obligation
 180 or right to repurchase the fractional share so created;

181 (e) Any other amendment to the articles of incorporation,
 182 merger, share exchange, or disposition of assets to the extent

183 provided by the articles of incorporation, bylaws, or a
 184 resolution of the board of directors, except that no bylaw or
 185 board resolution providing for appraisal rights may be amended
 186 or otherwise altered except by shareholder approval; ~~or~~

187 (f) With regard to a class of shares prescribed in the
 188 articles of incorporation before ~~prior to~~ October 1, 2003,
 189 including any shares within that class subsequently authorized
 190 by amendment, any amendment of the articles of incorporation if
 191 the shareholder is entitled to vote on the amendment and if such
 192 amendment would adversely affect such shareholder by:

193 1. Altering or abolishing any preemptive rights attached
 194 to any of his or her shares;

195 2. Altering or abolishing the voting rights pertaining to
 196 any of his or her shares, except as such rights may be affected
 197 by the voting rights of new shares then being authorized of any
 198 existing or new class or series of shares;

199 3. Effecting an exchange, cancellation, or
 200 reclassification of any of his or her shares, when such
 201 exchange, cancellation, or reclassification would alter or
 202 abolish the shareholder's voting rights or alter his or her
 203 percentage of equity in the corporation, or effecting a
 204 reduction or cancellation of accrued dividends or other
 205 arrearages in respect to such shares;

206 4. Reducing the stated redemption price of any of the
 207 shareholder's redeemable shares, altering or abolishing any
 208 provision relating to any sinking fund for the redemption or

209 purchase of any of his or her shares, or making any of his or
 210 her shares subject to redemption when they are not otherwise
 211 redeemable;

212 5. Making noncumulative, in whole or in part, dividends of
 213 any of the shareholder's preferred shares which had theretofore
 214 been cumulative;

215 6. Reducing the stated dividend preference of any of the
 216 shareholder's preferred shares; or

217 7. Reducing any stated preferential amount payable on any
 218 of the shareholder's preferred shares upon voluntary or
 219 involuntary liquidation; ~~-~~

220 (g) An amendment of the articles of incorporation of a
 221 social purpose corporation to which s. 607.504 or s. 607.505
 222 applies;

223 (h) An amendment of the articles of incorporation of a
 224 benefit corporation to which s. 607.604 or s. 607.605 applies;

225 (i) A merger, conversion, or share exchange of a social
 226 purpose corporation to which s. 607.504 applies; or

227 (j) A merger, conversion, or share exchange of a benefit
 228 corporation to which s. 607.604 applies.

229 (4) A shareholder entitled to appraisal rights under this
 230 ~~part chapter~~ may not challenge a completed corporate action for
 231 which appraisal rights are available unless such corporate
 232 action:

233 (a) Was not effectuated in accordance with the applicable
 234 provisions of this section or the corporation's articles of

235 incorporation, bylaws, or board of directors' resolution
 236 authorizing the corporate action; or

237 (b) Was procured as a result of fraud or material
 238 misrepresentation.

239 Section 6. Part II of chapter 607, Florida Statutes,
 240 consisting of sections 607.501 through 607.513, Florida
 241 Statutes, is created to read:

242 PART II

243 SOCIAL PURPOSE CORPORATIONS

244 607.501 Application and effect of part.-

245 (1) This part applies to a social purpose corporation and
 246 does not affect a corporation that is not a social purpose
 247 corporation.

248 (2) Except as otherwise provided in this part, this
 249 chapter applies generally to all social purpose corporations.

250 (3) A social purpose corporation may be simultaneously
 251 subject to this part and to one or more chapters, including
 252 chapter 621. In such event, this part takes precedence with
 253 respect to a social purpose corporation.

254 (4) Except as authorized by this part, a provision of the
 255 articles of incorporation or bylaws of a social purpose
 256 corporation, or a shareholders' agreement among shareholders of
 257 a social purpose corporation, may not limit, be inconsistent
 258 with, or supersede a provision of this part.

259 607.502 Definitions.-As used in this part, the term:

260 (1) "Benefit director" means:

261 (a) The director designated as the benefit director of a
 262 social purpose corporation under s. 607.508; or

263 (b) A person with one or more of the powers, duties, or
 264 rights of a benefit director to the extent provided in the
 265 articles of incorporation or bylaws under s. 607.508.

266 (2) "Benefit enforcement proceeding" means a claim or
 267 action for:

268 (a) The failure of a social purpose corporation to pursue
 269 or create a public benefit or a specific public benefit
 270 established in its articles of incorporation; or

271 (b) A violation of any obligation, duty, or standard of
 272 conduct under this part.

273 (3) "Benefit officer" means the individual designated as
 274 the benefit officer of a social purpose corporation under s.
 275 607.510.

276 (4) "Independent" means not having a material relationship
 277 with the social purpose corporation or a subsidiary of the
 278 social purpose corporation. A person does not have a material
 279 relationship solely by virtue of serving as the benefit director
 280 or benefit officer of the social purpose corporation or a
 281 subsidiary of the social purpose corporation. In determining
 282 whether a director or officer is independent, a material
 283 relationship between an individual and a social purpose
 284 corporation or any of its subsidiaries shall be conclusively
 285 presumed to exist, at the time independence is to be determined,
 286 if:

287 (a) The individual is or has been within the preceding 3
 288 years an employee, other than a benefit officer, of the social
 289 purpose corporation or a subsidiary;

290 (b) An immediate family member of the individual is or has
 291 been within the preceding 3 years an executive officer, other
 292 than a benefit officer, of the social purpose corporation or a
 293 subsidiary; or

294 (c) When ownership is calculated as if all outstanding
 295 rights to acquire equity interests in the social purpose
 296 corporation had been exercised, there is beneficial or record
 297 ownership of 5 percent or more of the outstanding shares of the
 298 social purpose corporation by:

299 1. The individual; or

300 2. An entity:

301 a. Of which the individual is a director, an officer, or a
 302 manager; or

303 b. In which, when ownership is calculated as if all
 304 outstanding rights to acquire equity interests in the entity had
 305 been exercised, the individual owns beneficially or of record 5
 306 percent or more of the outstanding equity interests.

307 (5) "Minimum status vote" means:

308 (a) In the case of a corporation that is to become a
 309 social purpose corporation, whether by amendment of the articles
 310 of incorporation or pursuant to a merger, conversion, or share
 311 exchange; a social purpose corporation whose articles of
 312 incorporation are to be amended pursuant to s. 607.506(2); or a

313 social purpose corporation that is to cease being a social
 314 purpose corporation, in addition to any other required approval
 315 or vote, the satisfaction of the following conditions:

316 1. The holders of each class or series of shares are
 317 entitled to vote as a separate voting group on the corporate
 318 action regardless of any limitation on the voting rights of any
 319 class or series stated in the articles of incorporation or
 320 bylaws.

321 2. The corporate action is approved by vote of each class
 322 or series of shares entitled to vote by at least two-thirds of
 323 the total votes of the class or series.

324 (b) In the case of a domestic entity, other than a
 325 corporation, which is to be simultaneously converted to a social
 326 purpose corporation or merged into a social purpose corporation,
 327 in addition to any other required approval, vote, or consent,
 328 the satisfaction of the following conditions:

329 1. The holders of each class or series of equity interest
 330 in the entity who are entitled to receive a distribution of any
 331 kind are entitled, as a separate voting group, to vote on or
 332 consent to the action regardless of any applicable limitation on
 333 the voting or consent rights of any class or series.

334 2. The action is approved by vote or consent of each class
 335 or series of equity interest described in subparagraph 1. who
 336 are entitled to vote by at least two-thirds of the votes or
 337 consent of the class or series.

338 (6) "Public benefit" means a positive effect, or the

339 minimization of negative effects taken as a whole, on the
 340 environment or on one or more categories of persons or entities
 341 other than shareholders in their capacity as shareholders, of an
 342 artistic, charitable, economic, educational, cultural, literary,
 343 religious, social, ecological, or scientific nature, from the
 344 business and operations of a social purpose corporation. The
 345 term includes, but is not limited to:

346 (a) Providing low-income or underserved individuals or
 347 communities with beneficial products or services.

348 (b) Promoting economic opportunity for individuals or
 349 communities beyond the creation of jobs in the normal course of
 350 business.

351 (c) Protecting or restoring the environment.

352 (d) Improving human health.

353 (e) Promoting the arts, sciences, or advancement of
 354 knowledge.

355 (f) Increasing the flow of capital to entities that have
 356 as their stated purpose the provision of a benefit to society or
 357 the environment.

358 (7) "Social purpose corporation" means a corporation that
 359 is formed or has elected to become subject to this part, the
 360 status of which as a social purpose corporation has not been
 361 terminated.

362 (8) "Specific public benefit" means a benefit identified
 363 as a purpose of the social purpose corporation which is set
 364 forth in the articles of incorporation and is consistent with a

365 public benefit.

366 (9) "Subsidiary" means, in relation to a person other than
 367 an individual, an entity in which the person owns beneficially
 368 or of record 50 percent or more of the outstanding equity
 369 interests.

370 (10) "Third-party standard" means a recognized standard
 371 for defining, reporting, and assessing the societal and
 372 environmental performance of a business which is:

373 (a) Comprehensive because it assesses the effect of the
 374 business and its operations upon the interests listed in s.
 375 607.507(1)(a).

376 (b) Developed by an entity that is not controlled by the
 377 social purpose corporation.

378 (c) Credible because it is developed by an entity that has
 379 access to necessary expertise to assess the overall effect of
 380 the business and uses a balanced, collaborative approach to
 381 develop the standard, including a period for public comment.

382 (d) Transparent because the following information is
 383 publicly available:

384 1. The criteria considered under the standard when
 385 measuring the overall effect of the business and its operations
 386 upon the interests provided in s. 607.507(1)(a) and the relative
 387 weights, if any, of those criteria.

388 2. The process used in the development and revision of the
 389 third-party standard regarding the identity of the directors,
 390 officers, material owners, and governing body of the entity that

391 developed and controls revisions to the standard; the process by
 392 which revisions to the standard and changes to the membership of
 393 the governing body are made; and an accounting of the revenue
 394 and sources of financial support for the entity, with sufficient
 395 detail to disclose any relationships that could reasonably be
 396 considered to present a potential conflict of interest.

397 607.503 Incorporation.—To incorporate as a social purpose
 398 corporation, an incorporator must satisfy the requirements of
 399 this chapter, and the articles of incorporation must state that
 400 the corporation is a social purpose corporation under this part.

401 607.504 Election of social purpose corporation status.—

402 (1) An existing corporation may become a social purpose
 403 corporation under this part by amending its articles of
 404 incorporation to include a statement that the corporation is a
 405 social purpose corporation under this part. The amendment must
 406 be adopted by the minimum status vote.

407 (2) A plan of merger, conversion, or share exchange must
 408 be adopted by the minimum status vote if an entity that is not a
 409 social purpose corporation is a party to the merger or
 410 conversion or if the exchanging entity in a share exchange and
 411 the surviving, new, or resulting entity is, or will be, a social
 412 purpose corporation.

413 (3) If an entity elects to become a social purpose
 414 corporation by amendment of the articles of incorporation or by
 415 a merger, conversion, or share exchange, the shareholders of the
 416 entity are entitled to appraisal rights under and pursuant to

417 ss. 607.1301-607.1333.

418 607.505 Termination of social purpose corporation status.-

419 (1) A social purpose corporation may terminate its status
 420 as such and cease to be subject to this part by amending its
 421 articles of incorporation to delete the provision required under
 422 s. 607.503 or s. 607.504. The amendment must be adopted by the
 423 minimum status vote.

424 (2) A plan of merger, conversion, or share exchange which
 425 has the effect of terminating the status of a corporation as a
 426 social purpose corporation must be adopted by the minimum status
 427 vote. A sale, lease, exchange, or other disposition of the
 428 assets of all or substantially all of a social purpose
 429 corporation is not effective unless the transaction is approved
 430 by the minimum status vote. However, the minimum status vote is
 431 not required if the transaction is in the usual and regular
 432 course of business, is pursuant to court order, or is a sale
 433 pursuant to which all or a substantial portion of the net
 434 proceeds of the sale will be distributed to the shareholders
 435 within 1 year after the date of the sale.

436 (3) If a corporation's status as a social purpose
 437 corporation is terminated pursuant to subsection (1) or
 438 subsection (2), shareholders of the corporation are entitled to
 439 appraisal rights under and pursuant to ss. 607.1301-607.1333.

440 607.506 Corporate purpose.-

441 (1) A social purpose corporation has the purpose of
 442 creating a public benefit. This purpose is in addition to its

443 purpose under s. 607.0301.

444 (2) The articles of incorporation of a social purpose
 445 corporation may identify one or more specific public benefits as
 446 its purpose in addition to its purposes under s. 607.0301 and
 447 subsection (1). A social purpose corporation may amend its
 448 articles of incorporation to add, amend, or delete the
 449 identification of a specific public benefit purpose; however,
 450 the amendment must be adopted by the minimum status vote.

451 (3) The creation of a public benefit and a specific public
 452 benefit under subsections (1) and (2) is deemed to be in the
 453 best interest of the social purpose corporation.

454 (4) A professional corporation that is a social purpose
 455 corporation does not violate s. 621.08 by having as its purpose
 456 the creation of a public benefit or a specific public benefit.

457 607.507 Standards of conduct for directors.-

458 (1) In discharging their duties and in considering the
 459 best interests of the social purpose corporation, the directors:

460 (a) Shall consider the effects of any action or inaction
 461 upon:

462 1. The shareholders of the social purpose corporation; and

463 2. The ability of the social purpose corporation to
 464 accomplish its public benefit and any specific public benefit
 465 purpose;

466 (b) May consider the effects of any action or inaction
 467 upon any of the following:

468 1. The employees and workforce of the social purpose

469 corporation, its subsidiaries, and its suppliers;
 470 2. The interests of customers and suppliers as
 471 beneficiaries of the general public benefit or any specific
 472 public benefit of the social purpose corporation;
 473 3. Community and societal factors, including those of each
 474 community in which offices or facilities of the social purpose
 475 corporation, its subsidiaries, or its suppliers are located;
 476 4. The local and global environment; and
 477 5. The short-term and long-term interests of the social
 478 purpose corporation, including benefits that may accrue to the
 479 social purpose corporation from its long-term plans and the
 480 possibility that these interests may be best served by the
 481 continued independence of the social purpose corporation;
 482 (c) May consider other pertinent factors or the interests
 483 of any other group that they deem appropriate;
 484 (d) Are not required to give priority to the interests of
 485 a particular person or group referred to in paragraph (a),
 486 paragraph (b), or paragraph (c) unless the social purpose
 487 corporation has stated in its articles of incorporation its
 488 intention to give such priority; and
 489 (e) Are not required to give equal weight to the interests
 490 of any particular person or group referred to in paragraph (a),
 491 paragraph (b), or paragraph (c) unless the social purpose
 492 corporation has stated in its articles of incorporation its
 493 intention to give such equal weight.
 494 (2) Except as provided in the articles of incorporation, a

495 director is not personally liable for monetary damages to the
 496 corporation or any other person for the failure of the social
 497 purpose corporation to pursue or create a public benefit or a
 498 specific public benefit. A director is subject to the duties
 499 specified in s. 607.0830.

500 (3) Except as provided in the articles of incorporation, a
 501 director does not have a duty to a person who is a beneficiary
 502 of the public benefit purpose or any specific public benefit
 503 purpose of a social purpose corporation.

504 607.508 Benefit director.-

505 (1) If the articles of incorporation so provide, the board
 506 of directors of a social purpose corporation may include a
 507 director who is designated as the benefit director and, in
 508 addition to the powers, duties, rights, and immunities of the
 509 other directors of the social purpose corporation, has the
 510 powers, duties, rights, and immunities provided in this part.

511 (2) The benefit director shall be elected, and may be
 512 removed, in the manner provided by this chapter. Except as
 513 provided under subsection (5), the benefit director shall be
 514 independent and may serve as a benefit officer. The articles of
 515 incorporation or bylaws may prescribe additional qualifications
 516 of the benefit director.

517 (3) Unless the articles of incorporation or bylaws provide
 518 otherwise, the benefit director shall prepare, and the social
 519 purpose corporation shall include in the annual benefit report
 520 to shareholders required under s. 607.512, the opinion of the

521 benefit director on the following:

522 (a) Whether the social purpose corporation in all material
 523 respects acted in accordance with its public benefit purpose and
 524 any specific public benefit purpose during the period covered by
 525 the report.

526 (b) Whether the directors and officers complied with ss.
 527 607.507(1) and 607.509(1).

528 (c) Whether the social purpose corporation or its
 529 directors or officers failed to comply with paragraph (a) or s.
 530 607.507(1) or s. 607.509(1), including a written description of
 531 the ways in which the social purpose corporation or its
 532 directors or officers failed to comply.

533 (4) The action or inaction of an individual in his or her
 534 capacity as a benefit director shall constitute for all purposes
 535 an action or inaction of that individual in his or her capacity
 536 as a director of the social purpose corporation.

537 (5) The benefit director of a corporation formed under
 538 chapter 621 is not required to be independent.

539 607.509 Standards of conduct for officers.—

540 (1) If an officer of a social purpose corporation
 541 reasonably believes that a matter may have a material effect on
 542 the ability of the corporation to create a public benefit or a
 543 specific public benefit identified in the articles of
 544 incorporation and the officer has discretion to act on the
 545 matter, the officer shall consider the interests and factors
 546 provided in s. 607.507(1).

547 (2) The officer's consideration of interests and factors
 548 under subsection (1) does not constitute a violation of s.
 549 607.0841.

550 (3) Except as provided in the articles of incorporation,
 551 an officer is not personally liable for monetary damages to the
 552 corporation or any other person for the failure of the social
 553 purpose corporation to pursue or create a public benefit or a
 554 specific public benefit; however, he or she is subject to s.
 555 607.0841.

556 (4) Except as provided in the articles of incorporation,
 557 an officer does not have a duty to a person who is a beneficiary
 558 of the public benefit purpose or any specific public benefit
 559 purpose of a social purpose corporation arising from the status
 560 of the person as a beneficiary.

561 607.510 Benefit officer.—

562 (1) A social purpose corporation may designate an officer
 563 as the benefit officer.

564 (2) The benefit officer has the powers and duties set
 565 forth in the bylaws or determined by the board of directors,
 566 which may include, but are not limited to:

567 (a) Powers and duties relating to the public benefit
 568 purpose or a specific public benefit purpose of the corporation;
 569 and

570 (b) The duty to prepare the annual benefit report required
 571 under s. 607.512.

572 607.511 Right of action.—

573 (1) (a) Except in a benefit enforcement proceeding, a
 574 person may not bring an action or assert a claim against a
 575 social purpose corporation or its directors or officers for:

576 1. A failure to pursue or create a public benefit or a
 577 specific public benefit set forth in its articles of
 578 incorporation; or

579 2. A violation of an obligation, duty, or standard of
 580 conduct under this part.

581 (b) A social purpose corporation is not liable for
 582 monetary damages under this part for the failure of the social
 583 purpose corporation to pursue or create a public benefit or a
 584 specific public benefit.

585 (2) A benefit enforcement proceeding may be commenced or
 586 maintained only:

587 (a) Directly by the social purpose corporation; or

588 (b) Derivatively by:

589 1. A shareholder of record on the date of the action or
 590 inaction complained of in the benefit enforcement proceeding;

591 2. A director;

592 3. A person or group of persons that owns beneficially or
 593 of record 5 percent or more of the outstanding equity interests
 594 in an entity of which the social purpose corporation is a
 595 subsidiary on the date of the action or inaction complained of
 596 in the benefit enforcement proceeding; or

597 4. Any other person who is specified in the articles of
 598 incorporation or bylaws of the social purpose corporation.

599 607.512 Preparation of annual benefit report.-
 600 (1) Unless it is prepared by a benefit director or benefit
 601 officer, the board of directors shall prepare an annual benefit
 602 report that includes all of the following:
 603 (a) A narrative description of:
 604 1. The ways in which the social purpose corporation
 605 pursued a public benefit during the year and the extent to which
 606 the public benefit was created.
 607 2. Any circumstance that has hindered the pursuit or
 608 creation of a public benefit or specific public benefit by the
 609 social purpose corporation.
 610 3. The process and rationale for selecting or changing the
 611 third-party standard used to prepare the benefit report if the
 612 articles of incorporation of the social purpose corporation
 613 require, or the board of directors determines, that the annual
 614 benefit report must be prepared in accordance with a third-party
 615 standard.
 616 (b) If the articles of incorporation of the social purpose
 617 corporation require, or the board of directors determines, that
 618 the annual benefit report must be prepared in accordance with a
 619 third-party standard, an assessment of the overall societal and
 620 environmental performance of the social purpose corporation
 621 using a third-party standard that is:
 622 1. Applied consistently with any previous application in
 623 prior annual benefit reports; or
 624 2. Accompanied by an explanation of the reasons for any

625 inconsistent application or any change in the standard from the
 626 immediately preceding report.

627 (c) The name of the benefit director and the benefit
 628 officer, if those positions exist, and the respective addresses
 629 to which correspondence may be directed.

630 (d) If the corporation has a benefit director, his or her
 631 opinion as provided in s. 607.508(3).

632 (e) If the articles of incorporation of the social purpose
 633 corporation require, or the board of directors determines, that
 634 the annual benefit report must be prepared in accordance with a
 635 third-party standard, a statement of any connection between the
 636 organization that established the third-party standard, or its
 637 directors, officers, or any holder of 5 percent or more of the
 638 governance interests in the organization, and the social purpose
 639 corporation or its directors, officers, or any holder of 5
 640 percent or more of the outstanding shares of the social purpose
 641 corporation, including any financial or governance relationship
 642 that might materially affect the credibility of the use of the
 643 third-party standard.

644 (2) If, during the year covered by an annual benefit
 645 report, a benefit director resigned from or refused to stand for
 646 reelection to his or her position or was removed from his or her
 647 position and he or she furnished written correspondence to the
 648 social purpose corporation concerning the circumstances
 649 surrounding his or her departure, that correspondence must be
 650 included as an exhibit in the annual benefit report.

651 (3) The annual benefit report and the assessment of the
 652 performance of the social purpose corporation in the annual
 653 benefit report required under paragraph (1)(b) are not required
 654 to be audited or certified by a third-party standards provider.

655 607.513 Availability of annual benefit report.—

656 (1) Each social purpose corporation shall send its annual
 657 benefit report to each shareholder:

658 (a) Within 120 days after the end of the fiscal year of
 659 the social purpose corporation; or

660 (b) At the same time that the social purpose corporation
 661 delivers any other annual report to its shareholders.

662 (2) A social purpose corporation shall post each annual
 663 benefit report on the public portion of its website, if any, and
 664 it shall remain posted for at least 3 years.

665 (3) If a social purpose corporation does not have a
 666 website, the corporation shall provide a copy of its most recent
 667 annual benefit report, without charge, to any person who
 668 requests a copy.

669 (4) If a social purpose corporation does not comply with
 670 the annual benefit report delivery requirement, the circuit
 671 court in the county in which the principal office of the social
 672 purpose corporation is located or, if no office is located in
 673 this state, the county in which its registered office is located
 674 may, after a shareholder of the social purpose corporation
 675 requests a copy, summarily order the corporation to furnish the
 676 report. If the court orders the report to be furnished, the

677 court may also order the social purpose corporation to pay the
 678 shareholder's costs, including reasonable attorney fees, which
 679 were incurred in obtaining the order and otherwise enforce his
 680 or her rights under this section.

681 Section 7. Part III of chapter 607, Florida Statutes,
 682 consisting of sections 607.601 through 607.613, Florida
 683 Statutes, is created to read:

684 PART III

685 BENEFIT CORPORATIONS

686 607.601 Application and effect of part.-

687 (1) This part applies to a benefit corporation and does
 688 not affect a corporation that is not a benefit corporation.

689 (2) Except as provided in this part, this chapter applies
 690 generally to all benefit corporations.

691 (3) A benefit corporation may be simultaneously subject to
 692 this part and to one or more chapters, including chapter 621. In
 693 such event, this part takes precedence with respect to a benefit
 694 corporation.

695 (4) Except as authorized by this part, a provision of the
 696 articles of incorporation or bylaws of a benefit corporation, or
 697 a shareholders' agreement among shareholders of a benefit
 698 corporation, may not limit, be inconsistent with, or supersede a
 699 provision of this part.

700 607.602 Definitions.-As used in this part, the term:

701 (1) "Benefit corporation" means a corporation that is
 702 formed or has elected to become subject to this part, the status

703 of which as a benefit corporation has not been terminated.

704 (2) "Benefit director" means:

705 (a) The director designated as the benefit director of a
 706 benefit corporation under s. 607.608; or

707 (b) A person with one or more of the powers, duties, or
 708 rights of a benefit director to the extent provided in the
 709 articles of incorporation or bylaws under s. 607.608.

710 (3) "Benefit enforcement proceeding" means any claim or
 711 action for:

712 (a) The failure of a benefit corporation to pursue or
 713 create a general public benefit or a specific public benefit set
 714 forth in its articles of incorporation; or

715 (b) A violation of any obligation, duty, or standard of
 716 conduct under this part.

717 (4) "Benefit officer" means the individual designated as
 718 the benefit officer of a benefit corporation under s. 607.610.

719 (5) "General public benefit" means a material, positive
 720 effect on society and the environment, taken as a whole, as
 721 assessed using a third-party standard which is attributable to
 722 the business and operations of a benefit corporation.

723 (6) "Independent" means not having a material relationship
 724 with the benefit corporation or a subsidiary of the benefit
 725 corporation. A person does not have a material relationship
 726 solely by virtue of serving as the benefit director or benefit
 727 officer of the benefit corporation or a subsidiary of the
 728 benefit corporation. In determining whether a director or

729 officer is independent, a material relationship between an
 730 individual and a benefit corporation or any of its subsidiaries
 731 shall be conclusively presumed to exist, at the time
 732 independence is to be determined, if:

733 (a) The individual is or has been within the preceding 3
 734 years an employee, other than a benefit officer, of the benefit
 735 corporation or a subsidiary;

736 (b) An immediate family member of the individual is or has
 737 been within the preceding 3 years an executive officer, other
 738 than a benefit officer, of the benefit corporation or a
 739 subsidiary; or

740 (c) When ownership is calculated as if all outstanding
 741 rights to acquire equity interests in the benefit corporation
 742 had been exercised, there is beneficial or record ownership of 5
 743 percent or more of the outstanding shares of the benefit
 744 corporation by:

745 1. The individual; or

746 2. An entity:

747 a. Of which the individual is a director, an officer, or a
 748 manager; or

749 b. In which, when ownership is calculated as if all
 750 outstanding rights to acquire equity interests in the entity had
 751 been exercised, the individual owns beneficially or of record 5
 752 percent or more of the outstanding equity interests.

753 (7) "Minimum status vote" means:

754 (a) In the case of a corporation that is to become a

755 benefit corporation, whether by amendment of the articles of
 756 incorporation or pursuant to a merger, conversion, or share
 757 exchange; a benefit corporation whose articles of incorporation
 758 are to be amended pursuant to s. 607.606(2); or a benefit
 759 corporation that is to cease being a benefit corporation, in
 760 addition to any other required approval or vote, the
 761 satisfaction of the following conditions:

762 1. The holders of each class or series of shares are
 763 entitled to vote as a separate voting group on the corporate
 764 action regardless of any limitation on the voting rights of any
 765 class or series stated in the articles of incorporation or
 766 bylaws.

767 2. The corporate action is approved by vote of each class
 768 or series of shares entitled to vote by at least two-thirds of
 769 the total votes of the class or series.

770 (b) In the case of a domestic entity, other than a
 771 corporation, which is to be simultaneously converted to a
 772 benefit corporation or merged into a benefit corporation, in
 773 addition to any other required approval, vote, or consent, the
 774 satisfaction of the following conditions:

775 1. The holders of each class or series of equity interest
 776 in the entity who are entitled to receive a distribution of any
 777 kind are entitled, as a separate voting group, to vote on or
 778 consent to the action regardless of any applicable limitation on
 779 the voting or consent rights of any class or series.

780 2. The action is approved by vote or consent of each class

781 or series of equity interest described in subparagraph 1. who
 782 are entitled to vote by at least two-thirds of the votes or
 783 consent of the class or series.

784 (8) "Specific public benefit" includes, but is not limited
 785 to:

786 (a) Providing low-income or underserved individuals or
 787 communities with beneficial products or services.

788 (b) Promoting economic opportunity for individuals or
 789 communities beyond the creation of jobs in the normal course of
 790 business.

791 (c) Protecting or restoring the environment.

792 (d) Improving human health.

793 (e) Promoting the arts, sciences, or advancement of
 794 knowledge.

795 (f) Increasing the flow of capital to entities that have
 796 as their stated purpose the provision of a benefit to society or
 797 the environment.

798 (g) Any other public benefit consistent with the purposes
 799 of the benefit corporation.

800 (9) "Subsidiary" means, in relation to a person other than
 801 an individual, an entity in which the person owns beneficially
 802 or of record 50 percent or more of the outstanding equity
 803 interests.

804 (10) "Third-party standard" means a recognized standard
 805 for defining, reporting, and assessing the societal and
 806 environmental performance of a business which is:

807 (a) Comprehensive because it assesses the effect of the
 808 business and its operations upon the interests listed in s.
 809 607.607(1)(a)2.-5.

810 (b) Developed by an entity that is not controlled by the
 811 benefit corporation.

812 (c) Credible because it is developed by an entity that has
 813 access to necessary expertise to assess the overall societal and
 814 environmental performance of the business and uses a balanced,
 815 collaborative approach to develop the standard, including a
 816 period for public comment.

817 (d) Transparent because the following information is
 818 publicly available:

819 1. The criteria considered under the standard when
 820 measuring the overall societal and environmental performance of
 821 the business and the relative weights, if any, of those
 822 criteria.

823 2. The identity of the directors, officers, material
 824 owners, and governing body of the entity that developed and
 825 controlled revisions; the process by which revisions to the
 826 standard and changes to the membership of the governing body are
 827 made; and an accounting of the revenue and sources of financial
 828 support for the entity, with sufficient detail to disclose any
 829 relationships that could reasonably be considered to present a
 830 potential conflict of interest.

831 607.603 Incorporation.—To incorporate as a benefit
 832 corporation, an incorporator must satisfy the requirements of

833 this chapter, and the articles of incorporation must state that
 834 the corporation is a benefit corporation under this part.

835 607.604 Election of benefit corporation status.-

836 (1) An existing corporation may become a benefit
 837 corporation under this part by amending its articles of
 838 incorporation to include a statement that the corporation is a
 839 benefit corporation under this part. The amendment must be
 840 adopted by the minimum status vote.

841 (2) A plan of merger, conversion, or share exchange must
 842 be adopted by the minimum status vote if an entity that is not a
 843 benefit corporation is a party to a merger or conversion or if
 844 the exchanging entity in a share exchange and the surviving,
 845 new, or resulting entity is, or will be, a benefit corporation.

846 (3) If an entity elects to become a benefit corporation by
 847 amendment of the articles of incorporation or by a merger,
 848 conversion, or share exchange, the shareholders of the entity
 849 are entitled to appraisal rights under and pursuant to ss.
 850 607.1301-607.1333.

851 607.605 Termination of benefit corporation status.-

852 (1) A benefit corporation may terminate its status as such
 853 and cease to be subject to this part by amending its articles of
 854 incorporation to delete the provision required under s. 607.603
 855 or s. 607.604. The amendment must be adopted by the minimum
 856 status vote.

857 (2) A plan of merger, conversion, or share exchange which
 858 has the effect of terminating the status of a corporation as a

859 benefit corporation must be adopted by the minimum status vote.
 860 A sale, lease, exchange, or other disposition of the assets of
 861 all or substantially all of a benefit corporation is not
 862 effective unless the transaction is approved by the minimum
 863 status vote. However, the minimum status vote is not required if
 864 the transaction is in the usual and regular course of business,
 865 is pursuant to court order, or is a sale pursuant to which all
 866 or a substantial portion of the net proceeds of the sale will be
 867 distributed to the shareholders within 1 year after the date of
 868 the sale.

869 (3) If a corporation's status as a benefit corporation is
 870 terminated pursuant to subsection (1) or subsection (2),
 871 shareholders of the corporation are entitled to appraisal rights
 872 under and pursuant to ss. 607.1301-607.1333.

873 607.606 Corporate purpose.-

874 (1) A benefit corporation has the purpose of creating a
 875 general public benefit. This purpose is in addition to its
 876 purpose under s. 607.0301.

877 (2) The articles of incorporation of a benefit corporation
 878 may identify one or more specific public benefits as its purpose
 879 in addition to its purposes under s. 607.0301 and subsection
 880 (1). A benefit corporation may amend its articles of
 881 incorporation to add, amend, or delete the identification of a
 882 specific public benefit purpose; however, the amendment must be
 883 adopted by the minimum status vote. The identification of a
 884 specific public benefit under this subsection does not limit the

885 obligation of a benefit corporation under subsection (1).

886 (3) The creation of a general public benefit and a
 887 specific public benefit under subsections (1) and (2) is deemed
 888 to be in the best interest of the benefit corporation.

889 (4) A professional corporation that is a benefit
 890 corporation does not violate s. 621.08 by having as its purpose
 891 the creation of a general public benefit or a specific public
 892 benefit.

893 607.607 Standards of conduct for directors.-

894 (1) In discharging their duties and in considering the
 895 best interests of the benefit corporation, the directors:

896 (a) Shall consider the effects of any action or inaction
 897 upon:

- 898 1. The shareholders of the benefit corporation;
- 899 2. The employees and workforce of the benefit corporation,
 900 its subsidiaries, and its suppliers;
- 901 3. The interests of customers and suppliers as
 902 beneficiaries of the general public benefit or any specific
 903 public benefit purpose of the benefit corporation;
- 904 4. Community and societal factors, including those of each
 905 community in which offices or facilities of the benefit
 906 corporation, its subsidiaries, or its suppliers are located;
- 907 5. The local and global environment;
- 908 6. The short-term and long-term interests of the benefit
 909 corporation, including benefits that may accrue to the benefit
 910 corporation from its long-term plans and the possibility that

911 these interests may be best served by the continued independence
 912 of the benefit corporation; and

913 7. The ability of the benefit corporation to accomplish
 914 its general public benefit purpose and any specific public
 915 benefit purpose;

916 (b) May consider other pertinent factors or the interests
 917 of any other group that they deem appropriate;

918 (c) Are not required to give priority to the interests of
 919 a particular person or group referred to in paragraph (a) or
 920 paragraph (b) unless the benefit corporation has stated in its
 921 articles of incorporation its intention to give such priority;
 922 and

923 (d) Are not required to give equal weight to the interests
 924 of a particular person or group referred to in paragraph (a) or
 925 paragraph (b) unless the benefit corporation has stated in its
 926 articles of incorporation its intention to give such equal
 927 weight.

928 (2) Except as provided in the articles of incorporation, a
 929 director is not personally liable for monetary damages to the
 930 corporation or any other person for the failure of the benefit
 931 corporation to pursue or create a public benefit or a specific
 932 public benefit. A director is subject to the duties established
 933 in s. 607.0830.

934 (3) Except as provided in the articles of incorporation, a
 935 director does not have a duty to a person who is a beneficiary
 936 of the general public benefit purpose or any specific public

937 benefit purpose of the benefit corporation.

938 607.608 Benefit director.-

939 (1) If the articles of incorporation so provide, the board
 940 of directors of a benefit corporation may include a director who
 941 is designated as the benefit director and, in addition to the
 942 powers, duties, rights, and immunities of the other directors of
 943 the benefit corporation, has the powers, duties, rights, and
 944 immunities provided in this part.

945 (2) The benefit director shall be elected, and may be
 946 removed, in the manner provided by this chapter. Except as
 947 provided under subsection (5), the benefit director shall be
 948 independent and may serve as a benefit officer. The articles of
 949 incorporation or bylaws may prescribe additional qualifications
 950 of the benefit director.

951 (3) Unless the articles of incorporation or bylaws provide
 952 otherwise, the benefit director shall prepare, and the benefit
 953 corporation shall include in the annual benefit report to
 954 shareholders required under s. 607.612, the opinion of the
 955 benefit director on the following:

956 (a) Whether the benefit corporation in all material
 957 respects acted in accordance with its general public benefit
 958 purpose and any specific public benefit purpose during the
 959 period covered by the report.

960 (b) Whether the directors and officers complied with ss.
 961 607.607(1) and 607.609(1).

962 (c) Whether the benefit corporation or its directors or

963 officers failed to comply with paragraph (a) or s. 607.607(1) or
 964 s. 607.609(1), including a written description of the ways in
 965 which the benefit corporation or its directors or officers
 966 failed to comply.

967 (4) The action or inaction of an individual in his or her
 968 capacity as a benefit director shall constitute for all purposes
 969 an action or inaction of that individual in his or her capacity
 970 as a director of the benefit corporation.

971 (5) The benefit director of a corporation formed under
 972 chapter 621 is not required to be independent.

973 607.609 Standards of conduct for officers.-

974 (1) If an officer of a benefit corporation reasonably
 975 believes that a matter may have a material effect on the ability
 976 of the corporation to create a general public benefit or a
 977 specific public benefit identified in the articles of
 978 incorporation and the officer has discretion to act on the
 979 matter, the officer shall consider the interests and factors
 980 provided in s. 607.607(1).

981 (2) The officer's consideration of interests and factors
 982 under subsection (1) does not constitute a violation of s.
 983 607.0841.

984 (3) Except as provided in the articles of incorporation,
 985 an officer is not personally liable for monetary damages to the
 986 corporation or any other person for the failure of the benefit
 987 corporation to pursue or create a general public benefit or a
 988 specific public benefit; however, he or she is subject to s.

989 607.0841.

990 (4) Except as provided in the articles of incorporation,
 991 an officer does not have a duty to a person who is a beneficiary
 992 of the general public benefit purpose or any specific public
 993 benefit purpose of the benefit corporation arising from the
 994 status of the person as a beneficiary.

995 607.610 Benefit officer.—

996 (1) A benefit corporation may designate an officer as the
 997 benefit officer.

998 (2) The benefit officer has the powers and duties set
 999 forth in the bylaws or determined by the board of directors,
 1000 which may include, but are not limited to:

1001 (a) Powers and duties relating to the general public
 1002 benefit purpose or a specific public benefit purpose of the
 1003 corporation; and

1004 (b) The duty to prepare the annual benefit report required
 1005 under s. 607.612.

1006 607.611 Right of action.—

1007 (1)(a) Except in a benefit enforcement proceeding, a
 1008 person may not bring an action or assert a claim against a
 1009 benefit corporation or its directors or officers for:

1010 1. A failure to pursue or create a general public benefit
 1011 or a specific public benefit set forth in its articles of
 1012 incorporation; or

1013 2. A violation of an obligation, duty, or standard of
 1014 conduct under this part.

1015 (b) A benefit corporation is not liable for monetary
 1016 damages under this part for the failure of the benefit
 1017 corporation to pursue or create a general public benefit or a
 1018 specific public benefit.

1019 (2) A benefit enforcement proceeding may be commenced or
 1020 maintained only:

1021 (a) Directly by the benefit corporation; or

1022 (b) Derivatively by:

1023 1. A shareholder of record on the date of the action or
 1024 inaction complained of in the benefit enforcement proceeding;

1025 2. A director;

1026 3. A person or group of persons that owns beneficially or
 1027 of record 5 percent or more of the outstanding equity interests
 1028 in an entity of which the benefit corporation is a subsidiary on
 1029 the date of the action or inaction complained of in the benefit
 1030 enforcement proceeding; or

1031 4. Any other person who is specified in the articles of
 1032 incorporation or bylaws of the benefit corporation.

1033 607.612 Preparation of annual benefit report.-

1034 (1) Unless it is prepared by a benefit director or benefit
 1035 officer, the board of directors shall prepare an annual benefit
 1036 report that includes all of the following:

1037 (a) A narrative description of:

1038 1. The ways in which the benefit corporation pursued a
 1039 general public benefit during the year and the extent to which
 1040 the general public benefit was created.

1041 2. Any circumstance that has hindered the pursuit or
 1042 creation of a public benefit or specific public benefit by the
 1043 benefit corporation.

1044 3. The process and rationale for selecting or changing the
 1045 third-party standard used to prepare the benefit report.

1046 (b) The name of the benefit director and the benefit
 1047 officer, if those positions exist, and the respective business
 1048 addresses to which correspondence may be directed.

1049 (c) If the corporation has a benefit director, his or her
 1050 opinion as provided in s. 607.608(3).

1051 (d) A statement of any connection between the organization
 1052 that established the third-party standard, or its directors,
 1053 officers, or any holder of 5 percent or more of the governance
 1054 interests in the organization, and the benefit corporation or
 1055 its directors, officers, or any holder of 5 percent or more of
 1056 the outstanding shares of the benefit corporation, including any
 1057 financial or governance relationship that might materially
 1058 affect the credibility of the use of the third-party standard.

1059 (2) The annual benefit report must be prepared in
 1060 accordance with a third-party standard that is:

1061 1. Applied consistently with any previous application in
 1062 prior annual benefit reports; or

1063 2. Accompanied by an explanation of the reasons for any
 1064 inconsistent application or any change in the standard from the
 1065 immediately preceding report.

1066 (3) If, during the year covered by an annual benefit

1067 report, a benefit director resigned from or refused to stand for
 1068 reelection to his or her position or was removed from his or her
 1069 position and he or she furnished written correspondence to the
 1070 benefit corporation concerning the circumstances surrounding his
 1071 or her departure, that correspondence must be included as an
 1072 exhibit in the annual benefit report.

1073 (4) The annual benefit report and the assessment of the
 1074 performance of the benefit corporation in the annual benefit
 1075 report required under subsection (2) are not required to be
 1076 audited or certified by a third-party standards provider.

1077 607.613 Availability of annual benefit report.-

1078 (1) Each benefit corporation shall send its annual benefit
 1079 report to each shareholder:

1080 (a) Within 120 days after the end of the fiscal year of
 1081 the benefit corporation; or

1082 (b) At the same time that the benefit corporation delivers
 1083 any other annual report to its shareholders.

1084 (2) A benefit corporation shall post each annual benefit
 1085 report on the public portion of its website, if any, and it
 1086 shall remain posted for at least 3 years.

1087 (3) If a benefit corporation does not have a website, the
 1088 benefit corporation shall provide a copy of its most recent
 1089 annual benefit report, without charge, to any person who
 1090 requests a copy.

1091 (4) If a benefit corporation does not comply with the
 1092 annual benefit report delivery requirement, the circuit court in

1093 the county in which the principal office of the benefit
 1094 corporation is located or, if no office is located in this
 1095 state, the county in which its registered office is located may,
 1096 after a shareholder of the benefit corporation requests a copy,
 1097 summarily order the corporation to furnish the report. If the
 1098 court orders the report to be furnished, the court may also
 1099 order the benefit corporation to pay the shareholder's costs,
 1100 including reasonable attorney fees, which were incurred in
 1101 obtaining the order and otherwise enforce his or her rights
 1102 under this section.

1103 Section 8. Subsection (1) of section 617.0401, Florida
 1104 Statutes, is amended to read:

1105 617.0401 Corporate name.—

1106 (1) A corporate name:

1107 (a) Must contain the word "corporation" or "incorporated,"
 1108 ~~or~~ the abbreviation "Corp." or "Inc.," or words or abbreviations
 1109 of like import in language, as will clearly indicate that it is
 1110 a corporation instead of a natural person, unincorporated
 1111 association, or partnership. The name of the corporation may not
 1112 contain the word "company" or its abbreviation "Co." ~~"co."~~

1113 (b) May contain the word "cooperative" or "co-op" only if
 1114 the resulting name is distinguishable from the name of any
 1115 corporation, agricultural cooperative marketing association, or
 1116 nonprofit cooperative association existing or doing business in
 1117 this state under part I of chapter 607, chapter 618, or chapter
 1118 619.

1119 (c) May not contain language stating or implying that the
 1120 corporation is organized for a purpose other than that permitted
 1121 in this act and its articles of incorporation.~~+~~

1122 (d) May not contain language stating or implying that the
 1123 corporation is connected with a state or federal government
 1124 agency or a corporation chartered under the laws of the United
 1125 States.~~+~~~~and~~

1126 (e) Must be distinguishable from the names of all other
 1127 entities or filings that are on file with the Division of
 1128 Corporations, except fictitious name registrations pursuant to
 1129 s. 865.09, general partnership registrations pursuant to s.
 1130 620.8105, and limited liability partnership statements pursuant
 1131 to s. 620.9001 which are organized, registered, or reserved
 1132 under the laws of this state, that are on file with the Division
 1133 of Corporations. A name that is different from a name of another
 1134 entity or filing due to any of the following is not considered
 1135 distinguishable:

- 1136 1. A suffix.
- 1137 2. A definite or indefinite article.
- 1138 3. The word "and" and the symbol "&."
- 1139 4. The singular, plural, or possessive form of a word.
- 1140 5. A recognized abbreviation of a root word.
- 1141 6. A punctuation mark or a symbol.

1142 Section 9. Subsection (4) of section 620.1108, Florida
 1143 Statutes, is amended to read:

1144 620.1108 Name.—

1145 (4) The name of a limited partnership must be
 1146 distinguishable in the records of the Department of State from
 1147 the names of all other entities or filings that are on file with
 1148 the Department of State, except fictitious name registrations
 1149 pursuant to s. 865.09, general partnership registrations
 1150 pursuant to s. 620.8105, and limited liability partnership
 1151 statements pursuant to s. 620.9001 which are organized,
 1152 registered, or reserved under the laws of this state, ~~the names~~
 1153 ~~of which are on file with the Department of State.~~ A name that
 1154 is different from the name of another entity or filing due to
 1155 any of the following is not considered distinguishable:

- 1156 (a) A suffix.
- 1157 (b) A definite or indefinite article.
- 1158 (c) The word "and" and the symbol "&."
- 1159 (d) The singular, plural, or possessive form of a word.
- 1160 (e) A recognized abbreviation of a root word.
- 1161 (f) A punctuation mark or a symbol.

1162 Section 10. Subsection (1) of section 48.091, Florida
 1163 Statutes, is amended to read:

1164 48.091 Corporations; designation of registered agent and
 1165 registered office.-

1166 (1) Every Florida corporation and every foreign
 1167 corporation now qualified or hereafter qualifying to transact
 1168 business in this state shall designate a registered agent and
 1169 registered office in accordance with part I of chapter 607.

1170 Section 11. Paragraph (d) of subsection (6) of section

1171 | 215.555, Florida Statutes, is amended to read:

1172 | 215.555 Florida Hurricane Catastrophe Fund.—

1173 | (6) REVENUE BONDS.—

1174 | (d) *State Board of Administration Finance Corporation.*—

1175 | 1. In addition to the findings and declarations in
1176 | subsection (1), the Legislature also finds and declares that:

1177 | a. The public benefits corporation created under this
1178 | paragraph will provide a mechanism necessary for the cost-
1179 | effective and efficient issuance of bonds. This mechanism will
1180 | eliminate unnecessary costs in the bond issuance process,
1181 | thereby increasing the amounts available to pay reimbursement
1182 | for losses to property sustained as a result of hurricane
1183 | damage.

1184 | b. The purpose of such bonds is to fund reimbursements
1185 | through the Florida Hurricane Catastrophe Fund to pay for the
1186 | costs of construction, reconstruction, repair, restoration, and
1187 | other costs associated with damage to properties of
1188 | policyholders of covered policies due to the occurrence of a
1189 | hurricane.

1190 | c. The efficacy of the financing mechanism will be
1191 | enhanced by the corporation's ownership of the assessments, by
1192 | the insulation of the assessments from possible bankruptcy
1193 | proceedings, and by covenants of the state with the
1194 | corporation's bondholders.

1195 | 2.a. There is created a public benefits corporation, which
1196 | is an instrumentality of the state, to be known as the State

1197 Board of Administration Finance Corporation.

1198 b. The corporation shall operate under a five-member board
 1199 of directors consisting of the Governor or a designee, the Chief
 1200 Financial Officer or a designee, the Attorney General or a
 1201 designee, the director of the Division of Bond Finance of the
 1202 State Board of Administration, and the Chief Operating Officer
 1203 of the Florida Hurricane Catastrophe Fund.

1204 c. The corporation has all of the powers of corporations
 1205 under part I of chapter 607 and under chapter 617, subject only
 1206 to ~~the provisions of~~ this subsection.

1207 d. The corporation may issue bonds and engage in such
 1208 other financial transactions as are necessary to provide
 1209 sufficient funds to achieve the purposes of this section.

1210 e. The corporation may invest in any of the investments
 1211 authorized under s. 215.47.

1212 f. There shall be no liability on the part of, and no
 1213 cause of action shall arise against, any board members or
 1214 employees of the corporation for any actions taken by them in
 1215 the performance of their duties under this paragraph.

1216 3.a. In actions under chapter 75 to validate any bonds
 1217 issued by the corporation, the notice required under ~~by~~ s. 75.06
 1218 shall be published in two newspapers of general circulation in
 1219 the state, and the complaint and order of the court shall be
 1220 served only on the State Attorney of the Second Judicial
 1221 Circuit.

1222 b. The state hereby covenants with holders of bonds of the

1223 corporation that the state will not repeal or abrogate the power
 1224 of the board to direct the Office of Insurance Regulation to
 1225 levy the assessments and to collect the proceeds of the revenues
 1226 pledged to the payment of such bonds as long as any such bonds
 1227 remain outstanding unless adequate provision has been made for
 1228 the payment of such bonds pursuant to the documents authorizing
 1229 the issuance of such bonds.

1230 4. The bonds of the corporation are not a debt of the
 1231 state or of any political subdivision, and neither the state nor
 1232 any political subdivision is liable on such bonds. The
 1233 corporation does not have the power to pledge the credit, the
 1234 revenues, or the taxing power of the state or of any political
 1235 subdivision. The credit, revenues, or taxing power of the state
 1236 or of any political subdivision shall not be deemed to be
 1237 pledged to the payment of any bonds of the corporation.

1238 5.a. The property, revenues, and other assets of the
 1239 corporation; the transactions and operations of the corporation
 1240 and the income from such transactions and operations; and all
 1241 bonds issued under this paragraph and interest on such bonds are
 1242 exempt from taxation by the state and any political subdivision,
 1243 including the intangibles tax under chapter 199 and the income
 1244 tax under chapter 220. This exemption does not apply to any tax
 1245 imposed by chapter 220 on interest, income, or profits on debt
 1246 obligations owned by corporations other than the State Board of
 1247 Administration Finance Corporation.

1248 b. All bonds of the corporation shall be and constitute

1249 | legal investments without limitation for all public bodies of
 1250 | this state; for all banks, trust companies, savings banks,
 1251 | savings associations, savings and loan associations, and
 1252 | investment companies; for all administrators, executors,
 1253 | trustees, and other fiduciaries; for all insurance companies and
 1254 | associations and other persons carrying on an insurance
 1255 | business; and for all other persons who are now or may hereafter
 1256 | be authorized to invest in bonds or other obligations of the
 1257 | state and shall be and constitute eligible securities to be
 1258 | deposited as collateral for the security of any state, county,
 1259 | municipal, or other public funds. This sub-subparagraph is ~~shall~~
 1260 | ~~be considered as~~ additional and supplemental authority and may
 1261 | ~~shall~~ not be limited without specific reference to this sub-
 1262 | subparagraph.

1263 | 6. The corporation and its corporate existence shall
 1264 | continue until terminated by law; however, ~~no~~ such law may not
 1265 | ~~shall~~ take effect as long as the corporation has bonds
 1266 | outstanding unless adequate provision has been made for the
 1267 | payment of such bonds pursuant to the documents authorizing the
 1268 | issuance of such bonds. Upon termination of the existence of the
 1269 | corporation, all of its rights and properties in excess of its
 1270 | obligations shall pass to and be vested in the state.

1271 | 7. The State Board of Administration Finance Corporation
 1272 | is for all purposes the successor to the Florida Hurricane
 1273 | Catastrophe Fund Finance Corporation.

1274 | Section 12. Subsection (1) of section 243.54, Florida

1275 Statutes, is amended to read:

1276 243.54 Powers of the authority.—The purpose of the
1277 authority is to assist institutions of higher education in
1278 constructing, financing, and refinancing projects throughout the
1279 state and, for this purpose, the authority may:

1280 (1) Exercise all powers granted to corporations under part
1281 I of the Florida Business Corporation Act, chapter 607.

1282 Section 13. Section 310.171, Florida Statutes, is amended
1283 to read:

1284 310.171 Pilots may incorporate themselves.—Any one or more
1285 licensed state pilots may incorporate in the manner provided
1286 under part I of chapter 607 or chapter 621.

1287 Section 14. Section 310.181, Florida Statutes, is amended
1288 to read:

1289 310.181 Corporate powers.—All the rights, powers, and
1290 liabilities conferred or imposed by the laws of Florida relating
1291 to corporations for profit organized under part I of chapter 607
1292 or under chapter 608 before January 1, 1976, or to corporations
1293 organized under chapter 621 ~~shall~~ apply to corporations
1294 organized pursuant to s. 310.171.

1295 Section 15. Paragraph (c) of subsection (4) of section
1296 329.10, Florida Statutes, is amended to read:

1297 329.10 Aircraft registration.—

1298 (4) It is a violation of this section for any person or
1299 corporate entity to knowingly supply false information to any
1300 governmental entity in regard to ownership by it or another

1301 firm, business, or corporation of an aircraft in or operated in
 1302 this state if it is determined that such corporate entity or
 1303 other firm, business, or corporation:

1304 (c) Has lapsed into a state of no longer being a legal
 1305 entity in this state as defined in part I of chapter 607 or s.
 1306 865.09, and no documented attempt has been made to correct such
 1307 information with the governmental entity for a period of 90 days
 1308 after the date on which such lapse took effect with the
 1309 Secretary of State.

1310 Section 16. Paragraph (g) of subsection (1) of section
 1311 339.412, Florida Statutes, is amended to read:

1312 339.412 Powers of corporation.—As to designated projects
 1313 and in addition to other powers prescribed by law, a corporation
 1314 may exercise the following powers with respect to the promotion
 1315 and development of transportation facilities, pursuant to a
 1316 written contract for the same, together with all powers
 1317 incidental thereto or necessary for the performance of those
 1318 hereinafter stated:

1319 (1) The corporation may exercise all the powers as granted
 1320 by the department to work directly with landowners, local and
 1321 state governmental agencies, elected officials, and any other
 1322 person to support those activities required to promote and
 1323 develop the projects. These activities shall include:

1324 (g) Borrowing money to meet any expenses or needs
 1325 associated with the regular operations of the corporation or a
 1326 particular project; provided, however, that no corporation shall

1327 have the power to issue bonds, the provisions of part I of
 1328 chapter ~~chapters~~ 607 and chapter 617 notwithstanding;

1329
 1330 Nothing in this act empowers the corporation to enter into any
 1331 contracts for construction or to undertake any construction, on
 1332 behalf of the department.

1333 Section 17. Subsection (4) of section 420.101, Florida
 1334 Statutes, is amended to read:

1335 420.101 Housing Development Corporation of Florida;
 1336 creation, membership, and purposes.—

1337 (4) Whenever the articles of incorporation have been filed
 1338 in the Department of State and approved by it and all filing
 1339 fees and taxes prescribed by part I of chapter 607 have been
 1340 paid, the subscribers and their successors and assigns shall
 1341 constitute a corporation, and the corporation shall then be
 1342 authorized to commence business, and stock thereof to the extent
 1343 herein or hereafter duly authorized may from time to time be
 1344 issued.

1345 Section 18. Section 420.111, Florida Statutes, is amended
 1346 to read:

1347 420.111 Housing Development Corporation of Florida;
 1348 additional powers.—In furtherance of its purposes and in
 1349 addition to the powers now or hereafter conferred on business
 1350 corporations by part I of chapter 607, the corporation shall,
 1351 subject to the restrictions and limitations ~~herein~~ contained in
 1352 this section, have the following powers:

1353 (1) To elect, appoint, and employ officers, agents and
 1354 employees and to make contracts and incur liabilities for any of
 1355 the purposes of the corporation, except that the corporation may
 1356 ~~shall~~ not incur any secondary liability by way of guaranty or
 1357 endorsement of the obligations of any person, firm, corporation,
 1358 joint-stock company, association, or trust, or in any other
 1359 manner.

1360 (2) To borrow money from its stockholders, other financial
 1361 institutions, and state and federal agencies for any of the
 1362 purposes of the corporation; to issue therefor its bonds,
 1363 debentures, notes, or other evidences of indebtedness, whether
 1364 secured or unsecured, and to secure the same by mortgage,
 1365 pledge, deed of trust, or other lien on its property,
 1366 franchises, rights, and privileges of every kind and nature, or
 1367 any part thereof or interest therein, without securing
 1368 stockholder approval.

1369 (3) To make loans to any person, firm, corporation, joint-
 1370 stock company, association, or trust and to regulate the terms
 1371 and conditions with respect to any such loans and the charges
 1372 for interest and service connected therewith, provided subsidies
 1373 may be in the form of below market interest rates or such other
 1374 assistance as determined by the board with the concurrence of
 1375 the applicable regulatory agencies governing the several
 1376 stockholder industries.

1377 (4) To purchase, receive, hold, lease, or otherwise
 1378 acquire, and to sell, convey, transfer, lease, or otherwise

1379 dispose of, real and personal property, together with such
 1380 rights and privileges as may be incidental and appurtenant
 1381 thereto and the use thereof, including, but not restricted to,
 1382 any real or personal property acquired by the corporation from
 1383 time to time in the satisfaction of debts or enforcement of
 1384 obligations.

1385 (5) For the purposes of foreclosure, to acquire the good
 1386 will, business, rights, real and personal property, and other
 1387 assets, or any part thereof, or interest therein, of any
 1388 persons, firms, corporations, joint-stock companies,
 1389 associations or trusts, and to assume, undertake, or pay the
 1390 obligations, debts and liabilities of any such person, firm,
 1391 corporation, joint-stock company, association or trust; to
 1392 acquire improved or unimproved real estate for the purpose of
 1393 constructing new housing or rehabilitation thereof; for the
 1394 purposes of disposing of such real estate to others for the
 1395 construction of housing or rehabilitation thereof; and to
 1396 acquire, construct or reconstruct, alter, repair, maintain,
 1397 operate, sell, convey, transfer, lease, or otherwise dispose of
 1398 such housing, provided, however that nothing herein contained
 1399 shall authorize the acquisition, construction, reconstruction,
 1400 or operation of any public lodging establishment as defined in
 1401 chapter 509.

1402 (6) To acquire, subscribe for, own, hold, sell, assign,
 1403 transfer, mortgage, pledge, or otherwise dispose of the stock,
 1404 shares, bonds, debentures, notes, or other securities and

1405 evidences of interest in, or indebtedness of, any person, firm,
 1406 corporation, joint-stock company, association, or trust, and,
 1407 while the owner or holder thereof, to exercise all the rights,
 1408 powers, and privileges of ownership, including the right to vote
 1409 thereon.

1410 (7) To mortgage, pledge, or otherwise encumber any
 1411 property, right, or thing of value, acquired pursuant to the
 1412 powers contained in subsection (4), subsection (5), or
 1413 subsection (6), as security for the payment of any part of the
 1414 purchase price thereof.

1415 (8) To cooperate with, and avail itself of the facilities
 1416 of, the United States Department of Housing and Urban
 1417 Development, the Department of Economic Opportunity, and any
 1418 other similar local, state, or Federal Government agency; and to
 1419 cooperate with and assist, and otherwise encourage,
 1420 organizations in the various communities of the state on the
 1421 promotion, assistance, and development of the housing and
 1422 economic welfare of such communities or of this state or any
 1423 part thereof.

1424 (9) To do all acts and things necessary or convenient to
 1425 carry out the powers expressly granted in this part.

1426 Section 19. Subsection (2) of section 420.161, Florida
 1427 Statutes, is amended to read:

1428 420.161 Housing Development Corporation of Florida; period
 1429 of existence; method of dissolution.-

1430 (2) The corporation may, upon the affirmative vote of two-

1431 thirds of the votes to which the stockholders are ~~shall be~~
 1432 entitled, dissolve the said corporation as provided under part I
 1433 of ~~by~~ chapter 607, as long as that part does ~~insofar as chapter~~
 1434 ~~607 is~~ not in conflict with ~~the provisions of~~ this act. Upon any
 1435 dissolution of the corporation, ~~none of~~ the corporation's assets
 1436 may not ~~shall~~ be distributed to the stockholders until all sums
 1437 due the members of the corporation as creditors thereof have
 1438 been paid in full.

1439 Section 20. Subsection (9) of section 440.02, Florida
 1440 Statutes, is amended to read:

1441 440.02 Definitions.—When used in this chapter, unless the
 1442 context clearly requires otherwise, the following terms shall
 1443 have the following meanings:

1444 (9) "Corporate officer" or "officer of a corporation"
 1445 means any person who fills an office provided for in the
 1446 corporate charter or articles of incorporation filed with the
 1447 Division of Corporations of the Department of State or as
 1448 authorized ~~permitted~~ or required under part I of ~~by~~ chapter 607.
 1449 The term "officer of a corporation" includes a member owning at
 1450 least 10 percent of a limited liability company created and
 1451 approved under chapter 608.

1452 Section 21. Paragraph (d) of subsection (10) of section
 1453 440.386, Florida Statutes, is amended to read:

1454 440.386 Individual self-insurers' insolvency;
 1455 conservation; liquidation.—

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1457 (d) The personal liability of the officers or directors of
 1458 an insolvent individual self-insurer is ~~shall be~~ subject to part
 1459 I ~~the provisions~~ of chapter 607 and the penalties provided
 1460 therein.

1461 Section 22. Paragraph (b) of subsection (3) of section
 1462 607.0141, Florida Statutes, is amended to read:

1463 607.0141 Notice.—

1464 (3)

1465 (b) Unless otherwise provided in the articles of
 1466 incorporation or bylaws, and without limiting the manner by
 1467 which notice otherwise may be given effectively to shareholders,
 1468 any notice to shareholders given by the corporation under any
 1469 provision of this part ~~chapter~~, the articles of incorporation,
 1470 or the bylaws shall be effective if given by a single written
 1471 notice to shareholders who share an address if consented to by
 1472 the shareholders at that address to whom such notice is given.
 1473 Any such consent shall be revocable by a shareholder by written
 1474 notice to the corporation.

1475 Section 23. Section 607.0204, Florida Statutes, is amended
 1476 to read:

1477 607.0204 Liability for preincorporation transactions.—All
 1478 persons purporting to act as or on behalf of a corporation,
 1479 having actual knowledge that there was no incorporation under
 1480 this part ~~chapter~~, are jointly and severally liable for all
 1481 liabilities created while so acting except for any liability to
 1482 any person who also had actual knowledge that there was no

1483 incorporation.

1484 Section 24. Paragraph (b) of subsection (1) of section
1485 607.0501, Florida Statutes, is amended to read:

1486 607.0501 Registered office and registered agent.—

1487 (1) Each corporation shall have and continuously maintain
1488 in this state:

1489 (b) A registered agent, who may be either:

1490 1. An individual who resides in this state whose business
1491 office is identical with such registered office;

1492 2. Another corporation or not-for-profit corporation as
1493 defined in chapter 617, authorized to transact business or
1494 conduct its affairs in this state, having a business office
1495 identical with the registered office; or

1496 3. A foreign corporation or not-for-profit foreign
1497 corporation authorized pursuant to this part ~~chapter~~ or chapter
1498 617 to transact business or conduct its affairs in this state,
1499 having a business office identical with the registered office.

1500 Section 25. Subsection (2) of section 607.0624, Florida
1501 Statutes, is amended to read:

1502 607.0624 Share options.—

1503 (2) The terms and conditions of stock rights and options
1504 which are created and issued by a corporation formed under this
1505 part ~~chapter~~, or its successor, and which entitle the holders
1506 thereof to purchase from the corporation shares of any class or
1507 classes, whether authorized but unissued shares, treasury
1508 shares, or shares to be purchased or acquired by the

1509 corporation, may include, without limitation, restrictions, or
 1510 conditions that preclude or limit the exercise, transfer,
 1511 receipt, or holding of such rights or options by any person or
 1512 persons, including any person or persons owning or offering to
 1513 acquire a specified number or percentage of the outstanding
 1514 common shares or other securities of the corporation, or any
 1515 transferee or transferees of any such person or persons, or that
 1516 invalidate or void such rights or options held by any such
 1517 person or persons or any such transferee or transferees.

1518 Section 26. Subsection (3) of section 607.0707, Florida
 1519 Statutes, is amended to read:

1520 607.0707 Record date.—

1521 (3) If not otherwise provided by or pursuant to the bylaws
 1522 and no prior action is required by the board of directors
 1523 pursuant to this part act, the record date for determining
 1524 shareholders entitled to take action without a meeting is the
 1525 date the first signed written consent is delivered to the
 1526 corporation under s. 607.0704. If not otherwise fixed, and prior
 1527 action is required by the board of directors pursuant to this
 1528 part chapter, the record date for determining shareholders
 1529 entitled to take action without a meeting is at the close of
 1530 business on the day on which the board of directors adopts the
 1531 resolution taking such prior action.

1532 Section 27. Subsection (1) of section 607.0732, Florida
 1533 Statutes, is amended to read:

1534 607.0732 Shareholder agreements.—

1535 (1) An agreement among the shareholders of a corporation
 1536 with 100 or fewer shareholders at the time of the agreement,
 1537 that complies with this section, is effective among the
 1538 shareholders and the corporation, even though it is inconsistent
 1539 with one or more other provisions of this part ~~chapter~~, if it:

1540 (a) Eliminates the board of directors or restricts the
 1541 discretion or powers of the board of directors;

1542 (b) Governs the authorization or making of distributions
 1543 whether or not in proportion to ownership of shares, subject to
 1544 the limitations in s. 607.06401;

1545 (c) Establishes who shall be directors or officers of the
 1546 corporation, or their terms of office or manner of selection or
 1547 removal;

1548 (d) Governs, in general or in regard to specific matters,
 1549 the exercise or division of voting power by the shareholders and
 1550 directors, including use of weighted voting rights or director
 1551 proxies;

1552 (e) Establishes the terms and conditions of any agreement
 1553 for the transfer or use of property or the provision of services
 1554 between the corporation and any shareholder, director, officer,
 1555 or employee of the corporation;

1556 (f) Transfers to any shareholder or other person any
 1557 authority to exercise the corporate powers or to manage the
 1558 business and affairs of the corporation, including the
 1559 resolution of any issue about which there exists a deadlock
 1560 among directors or shareholders; ~~or~~

1561 (g) Requires dissolution of the corporation at the request
 1562 of one or more of the shareholders or upon the occurrence of a
 1563 specified event or contingency; or-

1564 (h) Otherwise governs the exercise of the corporate powers
 1565 or the management of the business and affairs of the corporation
 1566 or the relationship between the shareholders, the directors, or
 1567 the corporation, and is not contrary to public policy. For
 1568 purposes of this paragraph, agreements contrary to public policy
 1569 include, but are not limited to, agreements that reduce the
 1570 duties of care and loyalty to the corporation as required by ss.
 1571 607.0830 and 607.0832, exculpate directors from liability that
 1572 may be imposed under s. 607.0831, adversely affect shareholders'
 1573 rights to bring derivative actions under s. 607.07401, or
 1574 abrogate dissenters' rights under ss. 607.1301-607.1320.

1575 Section 28. Paragraph (a) of subsection (2) of section
 1576 607.1108, Florida Statutes, is amended to read:

1577 607.1108 Merger of domestic corporation and other business
 1578 entity.-

1579 (2) Pursuant to a plan of merger complying and approved in
 1580 accordance with this section, one or more domestic corporations
 1581 may merge with or into one or more other business entities
 1582 formed, organized, or incorporated under the laws of this state
 1583 or any other state, the United States, foreign country, or other
 1584 foreign jurisdiction, if:

1585 (a) Each domestic corporation which is a party to the
 1586 merger complies with the applicable provisions of this part

1587 ~~chapter.~~

1588 Section 29. Paragraph (b) of subsection (1) of section
1589 607.1109, Florida Statutes, is amended to read:

1590 607.1109 Articles of merger.—

1591 (1) After a plan of merger is approved by each domestic
1592 corporation and other business entity that is a party to the
1593 merger, the surviving entity shall deliver to the Department of
1594 State for filing articles of merger, which shall be executed by
1595 each domestic corporation as required by s. 607.0120 and by each
1596 other business entity as required by applicable law, and which
1597 shall set forth:

1598 (b) A statement that the plan of merger was approved by
1599 each domestic corporation that is a party to the merger in
1600 accordance with the applicable provisions of this part ~~chapter~~,
1601 and, if applicable, a statement that the written consent of each
1602 shareholder of such domestic corporation who, as a result of the
1603 merger, becomes a general partner of the surviving entity has
1604 been obtained pursuant to s. 607.1108(5).

1605 Section 30. Paragraph (a) of subsection (2) and subsection
1606 (7) of section 607.1112, Florida Statutes, are amended to read:

1607 607.1112 Conversion of domestic corporation into another
1608 business entity.—

1609 (2) Pursuant to a plan of conversion complying with and
1610 approved in accordance with this section, a domestic corporation
1611 may convert to another business entity organized under the laws
1612 of this state or any other state, the United States, a foreign

1613 country, or other foreign jurisdiction, if:

1614 (a) The domestic corporation converting to the other
 1615 business entity complies with the applicable provisions of this
 1616 part ~~chapter~~.

1617 (7) Section 607.1103 and ss. 607.1301-607.1333 shall,
 1618 insofar as they are applicable, apply to a conversion of a
 1619 domestic corporation into another business entity in accordance
 1620 with this part ~~chapter~~.

1621 Section 31. Paragraphs (a) and (b) of subsection (1) and
 1622 subsection (3) of section 607.1113, Florida Statutes, are
 1623 amended to read:

1624 607.1113 Certificate of conversion.-

1625 (1) After a plan of conversion is approved by the board of
 1626 directors and shareholders of a converting domestic corporation,
 1627 such corporation shall deliver to the Department of State for
 1628 filing a certificate of conversion which shall be executed by
 1629 the domestic corporation as required by s. 607.0120 and shall
 1630 set forth:

1631 (a) A statement that the domestic corporation has been
 1632 converted into another business entity in compliance with this
 1633 part ~~chapter~~ and that the conversion complies with the
 1634 applicable laws governing the other business entity.

1635 (b) A statement that the plan of conversion was approved
 1636 by the converting domestic corporation in accordance with this
 1637 part ~~chapter~~ and, if applicable, a statement that the written
 1638 consent of each shareholder of such domestic corporation who, as

1639 a result of the conversion, becomes a general partner of the
 1640 surviving entity has been obtained pursuant to s. 607.1112(6).

1641 (3) A converting domestic corporation is not required to
 1642 file a certificate of conversion pursuant to subsection (1) if
 1643 the converting domestic corporation files articles of conversion
 1644 or a certificate of conversion that substantially complies with
 1645 the requirements of this section pursuant to s. 605.1045, s.
 1646 608.439, s. 620.2104(1)(b), or s. 620.8914(1)(b) and contains
 1647 the signatures required by this part ~~chapter~~. In such a case,
 1648 the other certificate of conversion may also be used for
 1649 purposes of subsection (2).

1650 Section 32. Subsections (1), (2), and (5) of section
 1651 607.1114, Florida Statutes, are amended to read:

1652 607.1114 Effect of conversion of domestic corporation into
 1653 another business entity.—When a conversion becomes effective:

1654 (1) A domestic corporation that has been converted into
 1655 another business entity pursuant to this part ~~chapter~~ is for all
 1656 purposes the same entity that existed before the conversion.

1657 (2) The title to all real property and other property, or
 1658 any interest therein, owned by the domestic corporation at the
 1659 time of its conversion into the other business entity remains
 1660 vested in the converted entity without reversion or impairment
 1661 by operation of this part ~~chapter~~.

1662 (5) Neither the rights of creditors nor any liens upon the
 1663 property of a domestic corporation that is converted into
 1664 another business entity under this part ~~chapter~~ shall be

1665 | impaired by such conversion.

1666 | Section 33. Subsections (4) and (6) of section 607.1115,
1667 | Florida Statutes, are amended to read:

1668 | 607.1115 Conversion of another business entity to a
1669 | domestic corporation.—

1670 | (4) Upon the filing with the Department of State of the
1671 | certificate of conversion and the articles of incorporation, or
1672 | upon the delayed effective date or time of the certificate of
1673 | conversion and the articles of incorporation, the other business
1674 | entity shall be converted into a domestic corporation and the
1675 | corporation shall thereafter be subject to all of the provisions
1676 | of this part ~~chapter~~, except notwithstanding s. 607.0123, the
1677 | existence of the corporation shall be deemed to have commenced
1678 | when the other business entity commenced its existence in the
1679 | jurisdiction in which the other business entity was first
1680 | organized.

1681 | (6) When any conversion becomes effective under this
1682 | section, for all purposes of the laws of this state, all of the
1683 | rights, privileges, and powers of the other business entity that
1684 | has been converted, and all property, real, personal, and mixed,
1685 | and all debts due to such other business entity, as well as all
1686 | other things and causes of action belonging to such other
1687 | business entity, shall be vested in the domestic corporation
1688 | into which it was converted and shall thereafter be the property
1689 | of the domestic corporation as they were of the other business
1690 | entity. Without limiting this provision, title to any real

1691 property, or any interest therein, vested by deed or otherwise
 1692 in such other business entity at the time of conversion shall
 1693 remain vested in the converted entity without reversion or
 1694 impairment by operation of this part ~~chapter~~. All rights of
 1695 creditors and all liens upon any property of such other business
 1696 entity shall be preserved unimpaired, and all debts,
 1697 liabilities, and duties of such other business entity shall
 1698 thenceforth attach to the domestic corporation into which it was
 1699 converted and may be enforced against the domestic corporation
 1700 to the same extent as if said debts, liabilities, and duties had
 1701 been incurred or contracted by the domestic corporation.

1702 Section 34. Subsection (1) of section 607.1320, Florida
 1703 Statutes, is amended to read:

1704 607.1320 Notice of appraisal rights.—

1705 (1) If proposed corporate action described in s.
 1706 607.1302(1) is to be submitted to a vote at a shareholders'
 1707 meeting, the meeting notice must state that the corporation has
 1708 concluded that shareholders are, are not, or may be entitled to
 1709 assert appraisal rights under this part ~~chapter~~. If the
 1710 corporation concludes that appraisal rights are or may be
 1711 available, a copy of ss. 607.1301-607.1333 must accompany the
 1712 meeting notice sent to those record shareholders entitled to
 1713 exercise appraisal rights.

1714 Section 35. Subsection (2) of section 607.1321, Florida
 1715 Statutes, is amended to read:

1716 607.1321 Notice of intent to demand payment.—

1717 (2) A shareholder who does not satisfy the requirements of
 1718 subsection (1) is not entitled to payment under this part
 1719 ~~chapter~~.

1720 Section 36. Subsection (3) of section 607.1323, Florida
 1721 Statutes, is amended to read:

1722 607.1323 Perfection of rights; right to withdraw.—

1723 (3) A shareholder who does not execute and return the form
 1724 and, in the case of certificated shares, deposit that
 1725 shareholder's share certificates if required, each by the date
 1726 set forth in the notice described in subsection (2), shall not
 1727 be entitled to payment under this part ~~chapter~~.

1728 Section 37. Subsection (1) and paragraph (b) of subsection
 1729 (2) of section 607.1331, Florida Statutes, are amended to read:

1730 607.1331 Court costs and counsel fees.—

1731 (1) The court in an appraisal proceeding shall determine
 1732 all costs of the proceeding, including the reasonable
 1733 compensation and expenses of appraisers appointed by the court.
 1734 The court shall assess the costs against the corporation, except
 1735 that the court may assess costs against all or some of the
 1736 shareholders demanding appraisal, in amounts the court finds
 1737 equitable, to the extent the court finds such shareholders acted
 1738 arbitrarily, vexatiously, or not in good faith with respect to
 1739 the rights provided by this part ~~chapter~~.

1740 (2) The court in an appraisal proceeding may also assess
 1741 the fees and expenses of counsel and experts for the respective
 1742 parties, in amounts the court finds equitable:

1743 (b) Against either the corporation or a shareholder
 1744 demanding appraisal, in favor of any other party, if the court
 1745 finds that the party against whom the fees and expenses are
 1746 assessed acted arbitrarily, vexatiously, or not in good faith
 1747 with respect to the rights provided by this part ~~chapter~~.

1748 Section 38. Section 607.1332, Florida Statutes, is amended
 1749 to read:

1750 607.1332 Disposition of acquired shares.—Shares acquired
 1751 by a corporation pursuant to payment of the agreed value thereof
 1752 or pursuant to payment of the judgment entered therefor, as
 1753 provided in this part ~~chapter~~, may be held and disposed of by
 1754 such corporation as authorized but unissued shares of the
 1755 corporation, except that, in the case of a merger or share
 1756 exchange, they may be held and disposed of as the plan of merger
 1757 or share exchange otherwise provides. The shares of the
 1758 surviving corporation into which the shares of such shareholders
 1759 demanding appraisal rights would have been converted had they
 1760 assented to the merger shall have the status of authorized but
 1761 unissued shares of the surviving corporation.

1762 Section 39. Section 607.1407, Florida Statutes, is amended
 1763 to read:

1764 607.1407 Unknown claims against dissolved corporation.—A
 1765 dissolved corporation or successor entity, as defined in s.
 1766 607.1406(15), may choose to execute one of the following
 1767 procedures to resolve payment of unknown claims.

1768 (1) A dissolved corporation or successor entity may file

1769 notice of its dissolution with the Department of State on the
 1770 form prescribed by the Department of State and request that
 1771 persons with claims against the corporation which are not known
 1772 to the corporation or successor entity present them in
 1773 accordance with the notice. The notice shall:

1774 (a) State the name of the corporation and the date of
 1775 dissolution;

1776 (b) Describe the information that must be included in a
 1777 claim and provide a mailing address to which the claim may be
 1778 sent; and

1779 (c) State that a claim against the corporation under this
 1780 subsection will be barred unless a proceeding to enforce the
 1781 claim is commenced within 4 years after the filing of the
 1782 notice.

1783 (2) A dissolved corporation or successor entity may,
 1784 within 10 days after filing articles of dissolution with the
 1785 Department of State, publish a "Notice of Corporate
 1786 Dissolution." The notice shall appear once a week for 2
 1787 consecutive weeks in a newspaper of general circulation in a
 1788 county in the state in which the corporation has its principal
 1789 office, if any, or, if none, in a county in the state in which
 1790 the corporation owns real or personal property. Such newspaper
 1791 shall meet the requirements as are prescribed by law for such
 1792 purposes. The notice shall:

1793 (a) State the name of the corporation and the date of
 1794 dissolution;

1795 (b) Describe the information that must be included in a
 1796 claim and provide a mailing address to which the claim may be
 1797 sent; and

1798 (c) State that a claim against the corporation under this
 1799 subsection will be barred unless a proceeding to enforce the
 1800 claim is commenced within 4 years after the date of the second
 1801 consecutive weekly publication of the notice authorized by this
 1802 section.

1803 (3) If the dissolved corporation or successor entity
 1804 complies with subsection (1) or subsection (2), the claim of
 1805 each of the following claimants is barred unless the claimant
 1806 commences a proceeding to enforce the claim against the
 1807 dissolved corporation within 4 years after the date of filing
 1808 the notice with the Department of State or the date of the
 1809 second consecutive weekly publication, as applicable:

1810 (a) A claimant who did not receive written notice under s.
 1811 607.1406(9), or whose claim was not provided for under s.
 1812 607.1406(10), whether such claim is based on an event occurring
 1813 before or after the effective date of dissolution.

1814 (b) A claimant whose claim was timely sent to the
 1815 dissolved corporation but on which no action was taken.

1816 (4) A claim may be entered under this section:

1817 (a) Against the dissolved corporation, to the extent of
 1818 its undistributed assets; or

1819 (b) If the assets have been distributed in liquidation,
 1820 against a shareholder of the dissolved corporation to the extent

1821 of such shareholder's pro rata share of the claim or the
 1822 corporate assets distributed to such shareholder in liquidation,
 1823 whichever is less, provided that the aggregate liability of any
 1824 shareholder of a dissolved corporation arising under this
 1825 section, s. 607.1406, or otherwise may not exceed the amount
 1826 distributed to the shareholder in dissolution.

1827
 1828 Nothing in this section shall preclude or relieve the
 1829 corporation from its notification to claimants otherwise set
 1830 forth in this part ~~chapter~~.

1831 Section 40. Paragraph (b) of subsection (1) of section
 1832 607.1507, Florida Statutes, is amended to read:

1833 607.1507 Registered office and registered agent of foreign
 1834 corporation.-

1835 (1) Each foreign corporation authorized to transact
 1836 business in this state must continuously maintain in this state:

1837 (b) A registered agent, who may be:

1838 1. An individual who resides in this state and whose
 1839 business office is identical with the registered office;

1840 2. A corporation or not-for-profit corporation as defined
 1841 in chapter 617, the business office of which is identical with
 1842 the registered office; or

1843 3. Another foreign corporation or foreign not-for-profit
 1844 corporation authorized pursuant to this part ~~chapter~~ or chapter
 1845 617, to transact business or conduct its affairs in this state
 1846 the business office of which is identical with the registered

1847 office.

1848 Section 41. Subsection (3) of section 609.08, Florida
1849 Statutes, is amended to read:

1850 609.08 Merger of association into wholly owned subsidiary
1851 corporation; dissenters' rights of appraisal.-

1852 (3) If the surviving corporation is to be governed by the
1853 laws of any jurisdiction other than this state, it shall comply
1854 with part I ~~the provisions~~ of chapter 607 with respect to
1855 foreign corporations if it is to transact business in this
1856 state, and in every case it shall file with the Department of
1857 State of this state:

1858 (a) An agreement that it may be served with process in
1859 this state in any proceeding for the enforcement of any
1860 obligation of the association and in any proceeding for the
1861 enforcement of any rights under the declaration of trust of the
1862 association of a dissenting shareholder of the association
1863 against the surviving corporation.

1864 (b) An irrevocable appointment of the Secretary of State
1865 as its agent to accept service of process in any such
1866 proceeding.

1867 (c) An agreement that it will promptly pay to the
1868 dissenting shareholders of the association the amount, if any,
1869 to which they are ~~shall be~~ entitled under ~~the provisions~~ of its
1870 declaration of trust with respect to the rights of dissenting
1871 shareholders.

1872 Section 42. Section 617.1908, Florida Statutes, is amended

1873 to read:

1874 617.1908 Applicability of Florida Business Corporation
 1875 Act.—Except as ~~otherwise~~ made applicable by specific reference
 1876 in any other section of this chapter, part I ~~the provisions~~ of
 1877 chapter 607, the Florida Business Corporation Act, does ~~shall~~
 1878 not apply to any corporations not for profit.

1879 Section 43. Section 618.221, Florida Statutes, is amended
 1880 to read:

1881 618.221 Conversion into a corporation for profit.—Any
 1882 association incorporated under or that has adopted the
 1883 provisions of this chapter~~7~~ may, by a majority vote of its
 1884 stockholders or members, be brought under part I ~~the provisions~~
 1885 of chapter 607~~7~~ as a corporation for profit by surrendering all
 1886 right to carry on its business under this chapter~~7~~ and the
 1887 privileges and immunities incident thereto. It shall make out in
 1888 duplicate a statement signed and sworn to by its directors to
 1889 the effect that the association has, by a majority vote of its
 1890 stockholders or members, decided to surrender all rights,
 1891 powers, and privileges as a nonprofit cooperative marketing
 1892 association under this chapter and to do business under and be
 1893 bound by part I ~~the provisions~~ of said chapter 607~~7~~ as a
 1894 corporation for profit and has authorized all changes
 1895 accordingly. Articles of incorporation shall be delivered to the
 1896 Department of State for filing as required under part I of
 1897 chapter 607 ~~in and by s. 607.164~~, except that they shall be
 1898 signed by the members of the then board of directors. The filing

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1899 fees and taxes shall be as provided under part I of ~~in~~ chapter
 1900 607. Such articles of incorporation shall adequately protect and
 1901 preserve the relative rights of the stockholders or members of
 1902 the association so converting into a corporation for profit;
 1903 provided that no rights or obligations due any stockholder or
 1904 member of such association or any other person, firm, or
 1905 corporation which has not been waived or satisfied shall be
 1906 impaired by such conversion into a corporation for profit as
 1907 ~~herein~~ authorized in this section.

1908 Section 44. Section 619.04, Florida Statutes, is amended
 1909 to read:

1910 619.04 Articles of incorporation.—Each association formed
 1911 under this chapter must prepare and file articles of
 1912 incorporation in the same manner and under the same regulations
 1913 as required under part I of chapter 607, and therein shall set
 1914 forth:

- 1915 (1) The name of the association.
- 1916 (2) The purpose for which it is formed.
- 1917 (3) The place where its principal business will be
 1918 transacted.
- 1919 (4) The term for which it is to exist, not exceeding 50
 1920 years.
- 1921 (5) The number of directors thereof, which must not be
 1922 less than three and which may be any number in excess thereof,
 1923 and the names and residences of those selected for the first
 1924 year and until their successors shall have been elected and

1925 shall have accepted office.

1926 (6) Whether the voting power and the property rights and
 1927 interest of each member shall be equal, or unequal, and if
 1928 unequal these articles shall set forth a general rule applicable
 1929 to all members by which the voting power and the property rights
 1930 and interests, respectively, of each member may and shall be
 1931 determined and fixed, but the association shall have power to
 1932 admit new members, who shall be entitled to vote and to share in
 1933 the property of the association with the old members, in
 1934 accordance with such general rule. This provision of the
 1935 articles of incorporation may ~~shall~~ not be altered, amended, or
 1936 repealed except by the unanimous written consent or the vote of
 1937 all the members.

1938 (7) Said articles must be subscribed by the original
 1939 members and acknowledged by one of them before an officer
 1940 authorized by the law of this state to take and certify
 1941 acknowledgments of deeds of conveyance, and shall be filed in
 1942 accordance with the provisions of law, and when so filed the
 1943 said articles of incorporation or certified copies thereof shall
 1944 be received in all the courts of this state and other places as
 1945 prima facie evidence of the facts contained therein.

1946 Section 45. Subsection (3) of section 624.430, Florida
 1947 Statutes, is amended to read:

1948 624.430 Withdrawal of insurer or discontinuance of writing
 1949 certain kinds or lines of insurance.-

1950 (3) Upon office approval of the surrender of the

1951 certificate of authority of a domestic property and casualty
 1952 insurer that is a corporation, the insurer may initiate the
 1953 dissolution of the corporation in accordance with the applicable
 1954 provisions of part I of chapter 607.

1955 Section 46. Subsection (1) of section 624.462, Florida
 1956 Statutes, is amended to read:

1957 624.462 Commercial self-insurance funds.—

1958 (1) Any group of persons may form a commercial self-
 1959 insurance fund for the purpose of pooling and spreading
 1960 liabilities of its group members in any commercial property or
 1961 casualty risk or surety insurance. Any fund established pursuant
 1962 to subparagraph (2)(a)1. may be organized as a corporation under
 1963 part I of chapter 607.

1964 Section 47. Subsection (3) of section 624.489, Florida
 1965 Statutes, is amended to read:

1966 624.489 Liability of trustees of self-insurance trust fund
 1967 and directors of self-insurance funds operating as
 1968 corporations.—

1969 (3) The immunities from liability provided in this section
 1970 with respect to trustees also apply to members of the board of
 1971 directors of a commercial self-insurance fund organized as a
 1972 corporation under part I of chapter 607 if the board of
 1973 directors has contracted with an administrator authorized under
 1974 s. 626.88 to administer the day-to-day affairs of the fund.

1975 Section 48. Section 628.041, Florida Statutes, is amended
 1976 to read:

1977 628.041 Applicability of general corporation statutes.—The
 1978 applicable statutes of this state relating to the powers and
 1979 procedures of domestic private corporations formed for profit
 1980 shall apply to domestic stock insurers and to domestic mutual
 1981 insurers, except:

- 1982 (1) As to any domestic mutual insurers incorporated
 1983 pursuant to chapter 617, which chapter shall govern such
 1984 insurers when in conflict with part I of chapter 607; and
 1985 (2) When in conflict with the express provisions of this
 1986 code.

1987 Section 49. Subsection (4) of section 631.262, Florida
 1988 Statutes, is amended to read:

1989 631.262 Transfers prior to petition.—

1990 (4) The personal liability of the officers or directors of
 1991 an insolvent insurer is ~~shall be~~ subject to part I ~~the~~
 1992 ~~provisions~~ of chapter 607 and the penalties provided therein.

1993 Section 50. Subsection (1) of section 636.204, Florida
 1994 Statutes, is amended to read:

1995 636.204 License required.—

1996 (1) Before doing business in this state as a discount
 1997 medical plan organization, an entity must be a corporation, a
 1998 limited liability company, or a limited partnership,
 1999 incorporated, organized, formed, or registered under the laws of
 2000 this state or authorized to transact business in this state in
 2001 accordance with part I of chapter 607, chapter 608, chapter 617,
 2002 chapter 620, or chapter 865, and must be licensed by the office

2003 as a discount medical plan organization or be licensed by the
 2004 office pursuant to chapter 624, part I of this chapter, or
 2005 chapter 641.

2006 Section 51. Section 641.2015, Florida Statutes, is amended
 2007 to read:

2008 641.2015 Incorporation required.—On or after October 1,
 2009 1985, any entity that has not yet obtained a certificate of
 2010 authority to operate a health maintenance organization in this
 2011 state shall be incorporated or shall be a division of a
 2012 corporation formed under part I ~~the provisions of either~~ chapter
 2013 607 or chapter 617 or shall be a public entity that is organized
 2014 as a political subdivision. In the case of a division of a
 2015 corporation, the financial requirements of this part shall apply
 2016 to the entire corporation. Incorporation shall not be required
 2017 of any entity which has already been issued an initial
 2018 certificate of authority prior to this date and which is not a
 2019 corporation on October 1, 1985, or which is incorporated in any
 2020 other state on October 1, 1985; nor shall incorporation be
 2021 required on renewal of any certificate of authority by such an
 2022 organization or be required of a public entity that is organized
 2023 as a political subdivision.

2024 Section 52. Subsection (1) of section 655.0201, Florida
 2025 Statutes, is amended to read:

2026 655.0201 Service of process, notice, or demand on
 2027 financial institutions.—

2028 (1) Process against any financial institution authorized

2029 by federal or state law to transact business in this state may
 2030 be served in accordance with chapter 48, chapter 49, part I of
 2031 chapter 607, or chapter 608, as appropriate.

2032 Section 53. Subsection (2) of section 658.23, Florida
 2033 Statutes, is amended to read:

2034 658.23 Submission of articles of incorporation; contents;
 2035 form; approval; filing; commencement of corporate existence;
 2036 bylaws.—

2037 (2) The articles of incorporation shall contain:

2038 (a) The name of the proposed bank or trust company.

2039 (b) The general nature of the business to be transacted or
 2040 a statement that the corporation may engage in any activity or
 2041 business permitted by law. Such statement shall authorize all
 2042 such activities and business by the corporation.

2043 (c) The amount of capital stock authorized, showing the
 2044 maximum number of shares of par value common stock and of
 2045 preferred stock, and of every kind, class, or series of each,
 2046 together with the distinguishing characteristics and the par
 2047 value of all shares.

2048 (d) The amount of capital with which the corporation will
 2049 begin business, which may ~~shall~~ not be less than the amount
 2050 required by the office pursuant to s. 658.21.

2051 (e) A provision that the corporation is to have perpetual
 2052 existence unless existence is terminated pursuant to the
 2053 financial institutions codes.

2054 (f) The initial street address of the main office of the

2055 corporation, which shall be in this state.

2056 (g) The number of directors, which shall be five or more,
 2057 and the names and street addresses of the members of the initial
 2058 board of directors.

2059 (h) A provision for preemptive rights, if applicable.

2060 (i) A provision authorizing the board of directors to
 2061 appoint additional directors, pursuant to s. 658.33, if
 2062 applicable.

2063

2064 The office shall provide to the proposed directors form articles
 2065 of incorporation which must ~~shall~~ include only those provisions
 2066 required under ~~by~~ this section or under part I of ~~by~~ chapter
 2067 607. The form articles shall be acknowledged by the proposed
 2068 directors and returned to the office for filing with the
 2069 Department of State.

2070 Section 54. Paragraph (c) of subsection (11) of section
 2071 658.2953, Florida Statutes, is amended to read:

2072 658.2953 Interstate branching.—

2073 (11) DE NOVO INTERSTATE BRANCHING BY STATE BANKS.—

2074 (c) An out-of-state bank may establish and maintain a de
 2075 novo branch or acquire a branch in this state upon compliance
 2076 with part I of chapter 607 or chapter 608 relating to doing
 2077 business in this state as a foreign business entity, including
 2078 maintaining a registered agent for service of process and other
 2079 legal notice pursuant to s. 655.0201.

2080 Section 55. Section 658.30, Florida Statutes, is amended

2081 to read:

2082 658.30 Application of the Florida Business Corporation
2083 Act.—

2084 (1) When not in direct conflict with or superseded by
2085 specific provisions of the financial institutions codes, the
2086 provisions of the Florida Business Corporation Act, part I of
2087 chapter 607, ~~shall~~ extend to state banks and trust companies
2088 formed under the financial institutions codes. This section
2089 shall be liberally construed to accomplish the purposes stated
2090 herein.

2091 (2) Without limiting the generality of subsection (1),
2092 stockholders, directors, and committees of state banks and trust
2093 companies may hold meetings in any manner authorized ~~permitted~~
2094 by part I of chapter 607, and any action by stockholders,
2095 directors, or committees required or authorized ~~permitted~~ to be
2096 taken at a meeting may be taken without a meeting in any manner
2097 authorized ~~provided or permitted~~ by part I of chapter 607.

2098 Section 56. Subsection (3) of section 658.36, Florida
2099 Statutes, is amended to read:

2100 658.36 Changes in capital.—

2101 (3) If a bank or trust company's capital accounts have
2102 been diminished by losses to less than the minimum required
2103 pursuant to the financial institutions codes, the market value
2104 of its shares of capital stock is less than the present par
2105 value, and the bank or trust company cannot reasonably issue and
2106 sell new shares of stock to restore its capital accounts at a

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

2107 | share price of par value or greater of the previously issued
 2108 | capital stock, the office, notwithstanding any other provisions
 2109 | of part I of chapter 607 or the financial institutions codes,
 2110 | may approve special stock offering plans.

2111 | (a) Such plans may include, but are not limited to,
 2112 | mechanisms for stock splits including reverse splits;
 2113 | revaluations of par value of outstanding stock; changes in
 2114 | voting rights, dividends, or other preferences; and creation of
 2115 | new classes of stock.

2116 | (b) The plan must be approved by majority vote of the bank
 2117 | or trust company's entire board of directors and by holders of
 2118 | two-thirds of the outstanding shares of stock.

2119 | (c) The office shall disapprove a plan that provides
 2120 | unfair or disproportionate benefits to existing shareholders,
 2121 | directors, executive officers, or their related interests. The
 2122 | office shall also disapprove any plan that is not likely to
 2123 | restore the capital accounts to sufficient levels to achieve a
 2124 | sustainable, safe, and sound financial institution.

2125 | (d) For any bank or trust company that the office
 2126 | determines to be a failing financial institution pursuant to s.
 2127 | 655.4185, the office may approve special stock offering plans
 2128 | without a vote of the shareholders.

2129 | Section 57. Section 663.03, Florida Statutes, is amended
 2130 | to read:

2131 | 663.03 Applicability of the Florida Business Corporation
 2132 | Act chapter 607.—Notwithstanding s. 607.01401(12) ~~the definition~~

2133 ~~of the term "foreign corporation" appearing in s. 607.01401, all~~
 2134 ~~of the provisions of part I of chapter 607 not in conflict with~~
 2135 the financial institutions codes which relate to foreign
 2136 corporations ~~shall~~ apply to all international banking
 2137 corporations and their offices doing business in this state.

2138 Section 58. Subsection (3) of section 663.04, Florida
 2139 Statutes, is amended to read:

2140 663.04 Requirements for carrying on financial institution
 2141 business.—An international banking corporation or trust company,
 2142 or any affiliate, subsidiary, or other person or business entity
 2143 acting as an agent for, on behalf of, or for the benefit of such
 2144 international banking corporation or trust company who engages
 2145 in such activities from an office located in this state, may not
 2146 transact a banking or trust business, or maintain in this state
 2147 any office for carrying on such business, or any part thereof,
 2148 unless such corporation, trust company, affiliate, subsidiary,
 2149 person, or business entity:

2150 (3) Has filed with the office a certified copy of that
 2151 information required to be supplied to the Department of State
 2152 by those provisions of part I of chapter 607 which are
 2153 applicable to foreign corporations.

2154 Section 59. Paragraph (a) of subsection (1) of section
 2155 663.301, Florida Statutes, is amended to read:

2156 663.301 Definitions.—

2157 (1) As used in this part:

2158 (a) "International development bank" means a corporation

2159 established for the purpose of promoting development in foreign
 2160 countries by directly or indirectly making funding available to
 2161 foreign business enterprises or foreign governments or by
 2162 providing financing in connection with import-export
 2163 transactions. Subject to the limitations contained in s.
 2164 663.313, an international development bank may be organized
 2165 ~~either~~ under chapter 617 as a corporation not for profit or
 2166 under part I of chapter 607 as a corporation for profit.

2167 Section 60. Paragraph (b) of subsection (2) of section
 2168 663.306, Florida Statutes, is amended to read:

2169 663.306 Decision by office.—The office may, in its
 2170 discretion, approve or disapprove the application, but it shall
 2171 not approve the application unless it finds that:

2172 (2) The proposed capital structure is adequate, but in no
 2173 case may the paid-in capital stock be:

2174 (b) The amount required for a state bank in the case of an
 2175 international development bank organized under part I of chapter
 2176 607 as a corporation for profit.

2177

2178 The office may disallow any illegally obtained currency,
 2179 monetary instruments, funds, or other financial resources from
 2180 the capitalization requirements of this section.

2181 Section 61. Subsection (4) of section 663.313, Florida
 2182 Statutes, is amended to read:

2183 663.313 Ownership of stock.—

2184 (4) All of the shares of voting stock of an international

2185 development bank organized under part I of chapter 607 as a
 2186 corporation for profit shall be owned by a regional development
 2187 bank or by one or more wholly owned subsidiaries of a regional
 2188 development bank.

2189 Section 62. Subsection (2) of section 718.111, Florida
 2190 Statutes, is amended to read:

2191 718.111 The association.—

2192 (2) POWERS AND DUTIES.—The powers and duties of the
 2193 association include those set forth in this section and, except
 2194 as expressly limited or restricted in this chapter, those set
 2195 forth in the declaration and bylaws and part I of chapter
 2196 ~~chapter~~ 607 and chapter 617, as applicable.

2197 Section 63. Subsection (10) of section 719.104, Florida
 2198 Statutes, is amended to read:

2199 719.104 Cooperatives; access to units; records; financial
 2200 reports; assessments; purchase of leases.—

2201 (10) POWERS AND DUTIES.—The powers and duties of the
 2202 association include those set forth in this section and, except
 2203 as expressly limited or restricted in this chapter, those set
 2204 forth in the articles of incorporation and bylaws and part I of
 2205 chapter ~~chapter~~ 607 and chapter 617, as applicable.

2206 Section 64. Subsection (5) of section 720.302, Florida
 2207 Statutes, is amended to read:

2208 720.302 Purposes, scope, and application.—

2209 (5) Unless expressly stated to the contrary, corporations
 2210 that operate residential homeowners' associations in this state

2211 shall be governed by and subject to part I of chapter 607, if
 2212 the association was incorporated under that part ~~chapter~~, or to
 2213 chapter 617, if the association was incorporated under that
 2214 chapter, and this chapter. This subsection is intended to
 2215 clarify existing law.

2216 Section 65. Paragraph (c) of subsection (1) of section
 2217 720.306, Florida Statutes, is amended to read:

2218 720.306 Meetings of members; voting and election
 2219 procedures; amendments.—

2220 (1) QUORUM; AMENDMENTS.—

2221 (c) Unless otherwise provided in the governing documents
 2222 as originally recorded or permitted by this chapter or chapter
 2223 617, an amendment may not materially and adversely alter the
 2224 proportionate voting interest appurtenant to a parcel or
 2225 increase the proportion or percentage by which a parcel shares
 2226 in the common expenses of the association unless the record
 2227 parcel owner and all record owners of liens on the parcels join
 2228 in the execution of the amendment. For purposes of this section,
 2229 a change in quorum requirements is not an alteration of voting
 2230 interests. The merger or consolidation of one or more
 2231 associations under a plan of merger or consolidation under part
 2232 I of chapter 607 or chapter 617 is ~~shall not be considered~~ a
 2233 material or adverse alteration of the proportionate voting
 2234 interest appurtenant to a parcel.

2235 Section 66. Paragraph (a) of subsection (1) of section
 2236 766.101, Florida Statutes, is amended to read:

2237 766.101 Medical review committee, immunity from
 2238 liability.-
 2239 (1) As used in this section:
 2240 (a) The term "medical review committee" or "committee"
 2241 means:
 2242 1.a. A committee of a hospital or ambulatory surgical
 2243 center licensed under chapter 395 or a health maintenance
 2244 organization certificated under part I of chapter 641;τ
 2245 b. A committee of a physician-hospital organization, a
 2246 provider-sponsored organization, or an integrated delivery
 2247 system;τ
 2248 c. A committee of a state or local professional society of
 2249 health care providers;τ
 2250 d. A committee of a medical staff of a licensed hospital
 2251 or nursing home, provided the medical staff operates pursuant to
 2252 written bylaws that have been approved by the governing board of
 2253 the hospital or nursing home;τ
 2254 e. A committee of the Department of Corrections or the
 2255 Correctional Medical Authority as created under s. 945.602, or
 2256 employees, agents, or consultants of either the department or
 2257 the authority or both;τ
 2258 f. A committee of a professional service corporation
 2259 formed under chapter 621 or a corporation organized under part I
 2260 of chapter 607 or chapter 617, which is formed and operated for
 2261 the practice of medicine as defined in s. 458.305(3), and which
 2262 has at least 25 health care providers who routinely provide

2263 health care services directly to patients;τ

2264 g. A committee of the Department of Children and Families
 2265 ~~Family Services~~ which includes employees, agents, or consultants
 2266 to the department as deemed necessary to provide peer review,
 2267 utilization review, and mortality review of treatment services
 2268 provided pursuant to chapters 394, 397, and 916;τ

2269 h. A committee of a mental health treatment facility
 2270 licensed under chapter 394 or a community mental health center
 2271 as defined in s. 394.907, provided the quality assurance program
 2272 operates pursuant to the guidelines that ~~which~~ have been
 2273 approved by the governing board of the agency;τ

2274 i. A committee of a substance abuse treatment and
 2275 education prevention program licensed under chapter 397 provided
 2276 the quality assurance program operates pursuant to the
 2277 guidelines that ~~which~~ have been approved by the governing board
 2278 of the agency;τ

2279 j. A peer review or utilization review committee organized
 2280 under chapter 440;τ

2281 k. A committee of the Department of Health, a county
 2282 health department, healthy start coalition, or certified rural
 2283 health network, when reviewing quality of care, or employees of
 2284 these entities when reviewing mortality records;τ or

2285 l. A continuous quality improvement committee of a
 2286 pharmacy licensed pursuant to chapter 465,
 2287
 2288 which committee is formed to evaluate and improve the quality of

2289 health care rendered by providers of health service, to
 2290 determine that health services rendered were professionally
 2291 indicated or were performed in compliance with the applicable
 2292 standard of care, or that the cost of health care rendered was
 2293 considered reasonable by the providers of professional health
 2294 services in the area; or

2295 2. A committee of an insurer, self-insurer, or joint
 2296 underwriting association of medical malpractice insurance, or
 2297 other persons conducting review under s. 766.106.

2298 Section 67. Subsection (14) of section 865.09, Florida
 2299 Statutes, is amended to read:

2300 865.09 Fictitious name registration.—

2301 (14) PROHIBITION.—A fictitious name registered as provided
 2302 in this section may not contain the words "Corporation" or
 2303 "Incorporated," or the abbreviations "Corp." or "Inc.," unless
 2304 the person or business for which the name is registered is
 2305 incorporated or has obtained a certificate of authority to
 2306 transact business in this state pursuant to part I of chapter
 2307 607 or chapter 617.

2308 Section 68. This act shall take effect July 1, 2014.



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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: Civil Justice Subcommittee
 2 Representative Rooney offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (1) of section 605.0112, Florida Statutes, is amended to read:

605.0112. Name.—

(1) The name of a limited liability company:

(a) Must contain the words "limited liability company" or the abbreviation "L.L.C." or "LLC."

(b) Must be distinguishable in the records of the Division of Corporations of the department from the names of all other entities or filings that are on file with the division, except fictitious name registrations pursuant to s. 865.09, general partnership registrations pursuant to s. 620.8105, and limited liability partnership statements pursuant to s. 620.9001 which



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18 are organized, registered, or reserved under the laws of this
19 state, which names are on file with the division; however, a
20 limited liability company may register under a name that is not
21 otherwise distinguishable on the records of the division with
22 the written consent of the owner entity ~~if, provided~~ the consent
23 is filed with the division at the time of registration of such
24 name. A name that is different from the name of another entity
25 or filing due to any of the following is not considered
26 distinguishable:

- 27 1. A suffix.
- 28 2. A definite or indefinite article.
- 29 3. The word "and" and the symbol "&."
- 30 4. The singular, plural, or possessive form of a word.
- 31 5. A recognized abbreviation of a root word.
- 32 6. A punctuation mark or a symbol.

33 (c) May not contain language stating or implying that the
34 limited liability company is organized for a purpose other than
35 a purpose authorized in this chapter and its articles of
36 organization. ~~;~~ and

37 (d) May not contain language stating or implying that the
38 limited liability company is connected with a state or federal
39 government agency or a corporation or other entity chartered
40 under the laws of the United States.

41 Section 2. Sections 607.0101 through 607.193, Florida
42 Statutes, are designated as part I of chapter 607, Florida
43 Statutes, and entitled "CORPORATIONS."



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44 Section 3. Section 607.0101, Florida Statutes, is amended
45 to read:

46 607.0101 Short title.—This part ~~act shall be known and~~ may
47 be cited as the "Florida Business Corporation Act."

48 Section 4. Section 607.0401, Florida Statutes, is amended
49 to read:

50 607.0401 Corporate name.—A corporate name:

51 (1) Must contain the word "corporation," "company," or
52 "incorporated" or the abbreviation "Corp.," "Inc.," or "Co.," or
53 the designation "Corp," "Inc," or "Co," as will clearly indicate
54 that it is a corporation instead of a natural person,
55 partnership, or other business entity.†

56 (2) May not contain language stating or implying that the
57 corporation is organized for a purpose other than that permitted
58 in this act and its articles of incorporation.†

59 (3) May not contain language stating or implying that the
60 corporation is connected with a state or federal government
61 agency or a corporation chartered under the laws of the United
62 States.†~~and~~

63 (4) Must be distinguishable from the names of all other
64 entities or filings that are on file with the Division of
65 Corporations, except fictitious name registrations pursuant to
66 s. 865.09, general partnership registrations pursuant to s.
67 620.8105, and limited liability partnership statements pursuant
68 to s. 620.9001 which are organized, registered, or reserved
69 under the laws of this state, ~~which names are on file with the~~



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70 ~~Division of Corporations. A name that is different from the name~~
71 ~~of another entity or filing due to any of the following is not~~
72 ~~considered distinguishable:~~

73 (a) A suffix.

74 (b) A definite or indefinite article.

75 (c) The word "and" and the symbol "&."

76 (d) The singular, plural, or possessive form of a word.

77 (e) A recognized abbreviation of a root word.

78 (f) A punctuation mark or a symbol.

79 ~~(5) The name of the corporation~~ As filed with the
80 Department of State, ~~is shall be~~ for public notice only and ~~does~~
81 ~~shall~~ not alone create any presumption of ownership beyond that
82 which is created under the common law.

83 Section 5. Subsection (1) of section 607.1302, Florida
84 Statutes, is amended to read:

85 607.1302 Right of shareholders to appraisal.—

86 (1) A shareholder of a domestic corporation is entitled to
87 appraisal rights, and to obtain payment of the fair value of
88 that shareholder's shares, in the event of any of the following
89 corporate actions:

90 (a) Consummation of a conversion of such corporation
91 pursuant to s. 607.1112 if shareholder approval is required for
92 the conversion and the shareholder is entitled to vote on the
93 conversion under ss. 607.1103 and 607.1112(6), or the
94 consummation of a merger to which such corporation is a party if
95 shareholder approval is required for the merger under s.



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96 607.1103 and the shareholder is entitled to vote on the merger
97 or if such corporation is a subsidiary and the merger is
98 governed by s. 607.1104;

99 (b) Consummation of a share exchange to which the
100 corporation is a party as the corporation whose shares will be
101 acquired if the shareholder is entitled to vote on the exchange,
102 except that appraisal rights are ~~shall~~ not be available to any
103 shareholder of the corporation with respect to any class or
104 series of shares of the corporation that is not exchanged;

105 (c) Consummation of a disposition of assets pursuant to s.
106 607.1202 if the shareholder is entitled to vote on the
107 disposition, including a sale in dissolution but not including a
108 sale pursuant to court order or a sale for cash pursuant to a
109 plan by which all or substantially all of the net proceeds of
110 the sale will be distributed to the shareholders within 1 year
111 after the date of sale;

112 (d) An amendment of the articles of incorporation with
113 respect to the class or series of shares which reduces the
114 number of shares of a class or series owned by the shareholder
115 to a fraction of a share if the corporation has the obligation
116 or right to repurchase the fractional share so created;

117 (e) Any other amendment to the articles of incorporation,
118 merger, share exchange, or disposition of assets to the extent
119 provided by the articles of incorporation, bylaws, or a
120 resolution of the board of directors, except that no bylaw or



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121 board resolution providing for appraisal rights may be amended
122 or otherwise altered except by shareholder approval; ~~or~~

123 (f) With regard to a class of shares prescribed in the
124 articles of incorporation prior to October 1, 2003, including
125 any shares within that class subsequently authorized by
126 amendment, any amendment of the articles of incorporation if the
127 shareholder is entitled to vote on the amendment and if such
128 amendment would adversely affect such shareholder by:

129 1. Altering or abolishing any preemptive rights attached
130 to any of his or her shares;

131 2. Altering or abolishing the voting rights pertaining to
132 any of his or her shares, except as such rights may be affected
133 by the voting rights of new shares then being authorized of any
134 existing or new class or series of shares;

135 3. Effecting an exchange, cancellation, or
136 reclassification of any of his or her shares, when such
137 exchange, cancellation, or reclassification would alter or
138 abolish the shareholder's voting rights or alter his or her
139 percentage of equity in the corporation, or effecting a
140 reduction or cancellation of accrued dividends or other
141 arrearages in respect to such shares;

142 4. Reducing the stated redemption price of any of the
143 shareholder's redeemable shares, altering or abolishing any
144 provision relating to any sinking fund for the redemption or
145 purchase of any of his or her shares, or making any of his or



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146 her shares subject to redemption when they are not otherwise
147 redeemable;

148 5. Making noncumulative, in whole or in part, dividends of
149 any of the shareholder's preferred shares which had theretofore
150 been cumulative;

151 6. Reducing the stated dividend preference of any of the
152 shareholder's preferred shares; or

153 7. Reducing any stated preferential amount payable on any
154 of the shareholder's preferred shares upon voluntary or
155 involuntary liquidation;-

156 (g) An amendment of the articles of incorporation of a
157 social purpose corporation to which s. 607.504 or s. 607.505
158 applies;

159 (h) An amendment of the articles of incorporation of a
160 benefit corporation to which s. 607.604 or s. 607.605 applies;

161 (i) A merger, conversion, or share exchange of a social
162 purpose corporation to which s. 607.504 applies; or

163 (j) A merger, conversion, or share exchange of a benefit
164 corporation to which s. 607.604 applies.

165 Section 6. Sections 607.501 through 607.513, Florida
166 Statutes, are designated as part II of chapter 607, Florida
167 Statutes, and entitled "SOCIAL PURPOSE CORPORATIONS."

168 Section 7. Section 607.501, Florida Statutes, is created
169 to read:

170 607.501 Application and effect of part.-



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171 (1) This part applies to a social purpose corporation and
172 does not affect a corporation that is not a social purpose
173 corporation.

174 (2) Except as otherwise provided in this part, this
175 chapter applies generally to all social purpose corporations.

176 (3) A social purpose corporation may be simultaneously
177 subject to this part and to one or more chapters, including
178 chapter 621. In such event, this part takes precedence with
179 respect to a social purpose corporation.

180 (4) Except as authorized by this part, a provision of the
181 articles of incorporation or bylaws of a social purpose
182 corporation, or a shareholders agreement among shareholders of a
183 social purpose corporation, may not limit, be inconsistent with,
184 or supersede a provision of this part.

185 Section 8. Section 607.502, Florida Statutes, is created
186 to read:

187 607.502 Definitions.—As used in this part, unless the
188 context otherwise requires, the term:

189 (1) "Benefit director" means:

190 (a) The director designated as the benefit director of a
191 social purpose corporation under s. 607.508; or

192 (b) A person with one or more of the powers, duties, or
193 rights of a benefit director to the extent provided in the
194 articles of incorporation or bylaws under s. 607.508.

195 (2) "Benefit enforcement proceeding" means a claim or
196 action for:



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197 (a) The failure of a social purpose corporation to pursue
198 or create a public benefit or a specific public benefit
199 established in its articles of incorporation; or

200 (b) A violation of any obligation, duty, or standard of
201 conduct under this part.

202 (3) "Benefit officer" means the individual designated as
203 the benefit officer of a social purpose corporation under s.
204 607.510.

205 (4) "Independent" means not having a material relationship
206 with the social purpose corporation or a subsidiary of the
207 social purpose corporation. A person does not have a material
208 relationship solely by virtue of serving as the benefit director
209 or benefit officer of the social purpose corporation or a
210 subsidiary of the social purpose corporation. In determining
211 whether a director or officer is independent, a material
212 relationship between an individual and a social purpose
213 corporation or any of its subsidiaries will be conclusively
214 presumed to exist, at the time independence is to be determined,
215 if any of the following apply:

216 (a) The individual is or was within the prior 3 years an
217 employee, other than a benefit officer, of the social purpose
218 corporation or a subsidiary.

219 (b) An immediate family member of the individual is or was
220 within the prior 3 years an executive officer, other than a
221 benefit officer, of the social purpose corporation or a
222 subsidiary.



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223 (c) When ownership is calculated as if all outstanding
224 rights to acquire equity interests in the social purpose
225 corporation had been exercised, there is beneficial or record
226 ownership of 5 percent or more of the outstanding shares of the
227 social purpose corporation by:

228 1. The individual; or

229 2. An entity:

230 a. Of which the individual is a director, an officer, or a
231 manager; or

232 b. In which, when ownership is calculated as if all
233 outstanding rights to acquire equity interests in the entity had
234 been exercised, the individual owns beneficially or of record 5
235 percent or more of the outstanding equity interests.

236 (5) "Minimum status vote" means:

237 (a) In the case of a corporation that is to become a
238 social purpose corporation, whether by amendment of the articles
239 of incorporation or by way of or pursuant to a merger,
240 conversion, or share exchange; a social purpose corporation
241 whose articles of incorporation are to be amended pursuant to s.
242 607.506(2); or a social purpose corporation that is to cease
243 being a social purpose corporation, in addition to any other
244 required approval or vote, the satisfaction of the following
245 conditions:

246 1. The holders of each class or series of shares shall be
247 entitled to vote as a separate voting group on the corporate
248 action regardless of any limitation on the voting rights of any



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249 class or series stated in the articles of incorporation or
250 bylaws.

251 2. The corporate action is approved by vote of each class
252 or series of shares entitled to vote by at least two-thirds of
253 the total votes of the class or series.

254 (b) In the case of a domestic entity, other than a
255 corporation, which is to be simultaneously converted to a social
256 purpose corporation or merged into a social purpose corporation,
257 in addition to any other required approval, vote, or consent,
258 the satisfaction of the following conditions:

259 1. The holders of each class or series of equity interest
260 in the entity who are entitled to receive a distribution of any
261 kind are entitled, as a separate voting group, to vote on or
262 consent to the action regardless of any applicable limitation on
263 the voting or consent rights of any class or series.

264 2. The action is approved by vote or consent of each class
265 or series of equity interest described in subparagraph 1. who
266 are entitled to vote by at least two-thirds of the votes or
267 consent of the class or series.

268 (6) "Public benefit" means a positive effect, or the
269 minimization of negative effects taken as a whole, on the
270 environment or on one or more categories of persons or entities
271 other than shareholders in their capacity as shareholders, of an
272 artistic, charitable, economic, educational, cultural, literary,
273 religious, social, ecological, or scientific nature, from the



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274 business and operations of a social purpose corporation. The
275 term includes, but is not limited to, the following:

276 (a) Providing low-income or underserved individuals or
277 communities with beneficial products or services.

278 (b) Promoting economic opportunity for individuals or
279 communities beyond the creation of jobs in the normal course of
280 business.

281 (c) Protecting or restoring the environment.

282 (d) Improving human health.

283 (e) Promoting the arts, sciences, or advancement of
284 knowledge.

285 (f) Increasing the flow of capital to entities that have
286 as their stated purpose the provision of a benefit to society or
287 the environment.

288 (7) "Social purpose corporation" means a corporation that
289 is formed, or has elected to become, subject to this part, the
290 status of which as a social purpose corporation has not been
291 terminated.

292 (8) "Specific public benefit" means a benefit identified
293 as a purpose of the social purpose corporation which is set
294 forth in the articles of incorporation and is consistent with a
295 public benefit.

296 (9) "Subsidiary" means, in relation to a person other than
297 an individual, an entity in which the person owns beneficially
298 or of record 50 percent or more of the outstanding equity
299 interests.

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300 (10) "Third-party standard" means a recognized standard
301 for defining, reporting, and assessing the societal and
302 environmental performance of a business which is:

303 (a) Comprehensive, because it assesses the effect of the
304 business and its operations upon the interests listed in s.
305 607.507(1) (a).

306 (b) Developed by an entity that is not controlled by the
307 social purpose corporation.

308 (c) Credible, because it is developed by an entity that
309 has access to necessary expertise to assess the overall effect
310 of the business and uses a balanced, collaborative approach to
311 develop the standard, including a period for public comment.

312 (d) Transparent, because the following information is
313 publicly available:

314 1. The criteria considered under the standard when
315 measuring the overall effect of the business and its operations
316 upon the interests provided in s. 607.507(1) (a) and the relative
317 weights, if any, of those criteria; and

318 2. The process used in the development and revision of the
319 third-party standard regarding the identity of the directors,
320 officers, material owners, and governing body of the entity that
321 developed and controls revisions to the standard; the process by
322 which revisions to the standard and changes to the membership of
323 the governing body are made; and an accounting of the revenue
324 and sources of financial support for the entity with sufficient



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325 detail to disclose any relationships that could reasonably be
326 considered to present a potential conflict of interest.

327 Section 9. Section 607.503, Florida Statutes, is created
328 to read:

329 607.503 Incorporation.—To incorporate as a social purpose
330 corporation, an incorporator must satisfy the requirements of
331 this chapter, and the articles of incorporation must state that
332 the corporation is a social purpose corporation under this part.

333 Section 10. Section 607.504, Florida Statutes, is created
334 to read:

335 607.504 Election of social purpose corporation status.—

336 (1) An existing corporation may become a social purpose
337 corporation under this part by amending its articles of
338 incorporation to include a statement that the corporation is a
339 social purpose corporation under this part. The amendment must
340 be adopted by the minimum status vote.

341 (2) A plan of merger, conversion, or share exchange must
342 be adopted by the minimum status vote if an entity that is not a
343 social purpose corporation is a party to the merger or
344 conversion or if the exchanging entity in a share exchange and
345 the surviving, new, or resulting entity is, or will be, a social
346 purpose corporation.

347 (3) If an entity elects to become a social purpose
348 corporation by amendment of the articles of incorporation or by
349 a merger, conversion, or share exchange, the shareholders of the



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350 entity are entitled to appraisal rights under and pursuant to
351 ss. 607.1301-607.1333.

352 Section 11. Section 607.505, Florida Statutes, is created
353 to read:

354 607.505 Termination of social purpose corporation status.-

355 (1) A social purpose corporation may terminate its status
356 as such and cease to be subject to this part by amending its
357 articles of incorporation to delete the provision required under
358 s. 607.503 or s. 607.504. The amendment must be adopted by the
359 minimum status vote.

360 (2) A plan of merger, conversion, or share exchange which
361 has the effect of terminating the status of a corporation as a
362 social purpose corporation must be adopted by the minimum status
363 vote. A sale, lease, exchange, or other disposition of all or
364 substantially all of the assets of a social purpose corporation
365 is not effective unless the transaction is approved by the
366 minimum status vote. However, a minimum status vote is not
367 required if the transaction is in the usual and regular course
368 of business, is pursuant to court order, or is a sale pursuant
369 to which all or a substantial portion of the net proceeds of the
370 sale will be distributed to the shareholders within 1 year after
371 the date of the sale.

372 (3) If a corporation's status as a social purpose
373 corporation is terminated pursuant to subsection (1) or
374 subsection (2), shareholders of the corporation are entitled to
375 appraisal rights under and pursuant to ss. 607.1301-607.1333.

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376 Section 12. Section 607.506, Florida Statutes, is created
377 to read:

378 607.506 Corporate purpose.-

379 (1) A social purpose corporation has the purpose of
380 creating a public benefit. This purpose is in addition to its
381 purpose under s. 607.0301.

382 (2) The articles of incorporation of a social purpose
383 corporation may identify one or more specific public benefits as
384 its purpose in addition to its purposes under s. 607.0301 and
385 subsection (1). A social purpose corporation may amend its
386 articles of incorporation to add, amend, or delete the
387 identification of a specific public benefit purpose; however,
388 the amendment must be adopted by the minimum status vote.

389 (3) The creation of a public benefit and a specific public
390 benefit under subsections (1) and (2) is deemed to be in the
391 best interest of the social purpose corporation.

392 (4) A professional corporation that is a social purpose
393 corporation does not violate s. 621.08 by having as its purpose
394 the creation of a public benefit or a specific public benefit.

395 Section 13. Section 607.507, Florida Statutes, is created
396 to read:

397 607.507 Standard of conduct for directors.-

398 (1) In discharging their duties and in considering the
399 best interests of the social purpose corporation, the directors:

400 (a) Shall consider the effects of any action or inaction
401 upon:



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402 1. The shareholders of the social purpose corporation; and
403 2. The ability of the social purpose corporation to
404 accomplish its public benefit or any specific public benefit
405 purpose.

406 (b) May consider the effects of any action or inaction
407 upon any of the following:

408 1. The employees and work force of the social purpose
409 corporation, its subsidiaries, and its suppliers.

410 2. The interests of customers and suppliers as
411 beneficiaries of the public benefit or specific public benefits
412 of the social purpose corporation.

413 3. Community and societal factors, including those of each
414 community in which offices or facilities of the social purpose
415 corporation, its subsidiaries, or its suppliers are located.

416 4. The local and global environment.

417 5. The short-term and long-term interests of the social
418 purpose corporation, including benefits that may accrue to the
419 social purpose corporation from its long-term plans and the
420 possibility that these interests may be best served by the
421 continued independence of the social purpose corporation.

422 (c) May consider other pertinent factors or the interests
423 of any other group that they deem appropriate.

424 (d) Are not required to give priority to the interests of
425 a particular person or group referred to in paragraph (a),
426 paragraph (b), or paragraph (c) unless the social purpose



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427 corporation states in its articles of incorporation its
428 intention to give such priority.

429 (e) Are not required to give equal weight to the interests
430 of any particular person or group referred to in paragraph (a),
431 paragraph (b), or paragraph (c) unless the social purpose
432 corporation has stated in its articles of incorporation its
433 intention to give such equal weight.

434 (2) Except as provided in the articles of incorporation, a
435 director is not personally liable for monetary damages to the
436 corporation, or to any other person, for the failure of the
437 social purpose corporation to pursue or create a public benefit
438 or a specific public benefit. A director is subject to the
439 duties specified in s. 607.0830.

440 (3) Except as provided in the articles of incorporation, a
441 director does not have a duty to a person who is a beneficiary
442 of the public benefit purpose or any one or more specific public
443 benefit purposes of a social purpose corporation.

444 Section 14. Section 607.508, Florida Statutes, is created
445 to read:

446 607.508 Benefit director.-

447 (1) If the articles of incorporation so provide, the board
448 of directors of a social purpose corporation may include a
449 director who is designated as the benefit director and, in
450 addition to the powers, duties, rights, and immunities of the
451 other directors of the social purpose corporation, has the
452 powers, duties, rights, and immunities provided in this part.

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453 (2) The benefit director shall be elected, and may be
454 removed, in the manner provided by this chapter. Except as
455 provided under subsection (5), the benefit director shall be
456 independent and may serve as a benefit officer. The articles of
457 incorporation or bylaws may prescribe additional qualifications
458 of the benefit director.

459 (3) Unless the articles of incorporation or bylaws provide
460 otherwise, the benefit director shall prepare, and the social
461 purpose corporation shall include in the annual benefit report
462 to shareholders required under s. 607.512, the opinion of the
463 benefit director on the following:

464 (a) Whether the social purpose corporation in all material
465 respects acted in accordance with its public benefit purpose and
466 any specific public benefit purpose during the period covered by
467 the report.

468 (b) Whether the directors and officers complied with ss.
469 607.507(1) and 607.509(1).

470 (c) Whether the social purpose corporation or its
471 directors or officers failed to comply with paragraph (a) or s.
472 607.507(1) or s. 607.509(1), including a description of the ways
473 in which the social purpose corporation or its directors or
474 officers failed to comply.

475 (4) The action or inaction of an individual in his or her
476 capacity as a benefit director shall constitute for all purposes
477 an action or inaction of that individual in his or her capacity
478 as a director of the social purpose corporation.

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479 (5) The benefit director of a corporation formed under
480 chapter 621 is not required to be independent.

481 Section 15. Section 607.509, Florida Statutes, is created
482 to read:

483 607.509 Standard of conduct for officers.-

484 (1) If an officer of a social purpose corporation
485 reasonably believes that a matter may have a material effect on
486 the ability of the corporation to create a public benefit or a
487 specific public benefit identified in the articles of
488 incorporation and the officer has discretion to act on the
489 matter, the officer shall consider the interests and factors
490 provided in s. 607.507(1).

491 (2) The officer's consideration of interests and factors
492 under subsection (1) does not constitute a violation of s.
493 607.0841.

494 (3) Except as provided in the articles of incorporation,
495 an officer is not personally liable for monetary damages to the
496 corporation or any other person for the failure of the social
497 purpose corporation to pursue or create a public benefit or a
498 specific public benefit; however, he or she is subject to s.
499 607.0841.

500 (4) Except as provided in the articles of incorporation,
501 an officer does not have any duty to a person who is a
502 beneficiary of the public benefit purpose or any specific public
503 benefit purpose of a social purpose corporation arising from the
504 status of the person as a beneficiary.

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505 Section 16. Section 607.510, Florida Statutes, is created
506 to read:

507 607.510 Benefit officer.—

508 (1) A social purpose corporation may designate an officer
509 as the benefit officer.

510 (2) The benefit officer has the powers and duties set
511 forth in the bylaws or determined by the board of directors,
512 which may include, but are not limited to:

513 (a) Powers and duties relating to the public benefit or a
514 specific public benefit purpose of the corporation; and

515 (b) The duty to prepare the annual benefit report required
516 under s. 607.512.

517 Section 17. Section 607.511, Florida Statutes, is created
518 to read:

519 607.511 Right of action.—

520 (1) (a) Except in a benefit enforcement proceeding, a
521 person may not bring an action or assert a claim against a
522 social purpose corporation or its directors or officers with
523 respect to:

524 1. A failure to pursue or create a public benefit or a
525 specific public benefit set forth in its articles of
526 incorporation; or

527 2. A violation of an obligation, duty, or standard of
528 conduct under this part.

529 (b) A social purpose corporation is not liable for
530 monetary damages under this part for the failure of the social



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531 purpose corporation to pursue or create a public benefit or a
532 specific public benefit.

533 (2) A benefit enforcement proceeding may be commenced or
534 maintained only:

535 (a) Directly by the social purpose corporation; or

536 (b) Derivatively by:

537 1. A shareholder of record on the date of the action or
538 inaction complained of in the benefit enforcement proceeding;

539 2. A director;

540 3. A person or group of persons that owns beneficially or
541 of record 5 percent or more of the outstanding equity interests
542 in an entity of which the social purpose corporation is a
543 subsidiary on the date of the action or inaction complained of
544 in the benefit enforcement proceeding; or

545 4. Any other person who is specified in the articles of
546 incorporation or bylaws of the social purpose corporation.

547 Section 18. Section 607.512, Florida Statutes, is created
548 to read:

549 607.512 Preparation of annual benefit report.-

550 (1) Unless it is prepared by a benefit director or benefit
551 officer, the board of directors shall prepare an annual benefit
552 report. The annual benefit report must include all of the
553 following:

554 (a) A narrative description of:



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555 1. The ways in which the social purpose corporation
556 pursued a public benefit during the year and the extent to which
557 a public benefit was created.

558 2. Any circumstance that has hindered the pursuit or
559 creation of a public benefit by the social purpose corporation.

560 3. The process and rationale for selecting or changing the
561 third-party standard used to prepare the benefit report, if the
562 articles of incorporation of the social purpose corporation
563 require, or the board of directors determines, that the annual
564 benefit report must be prepared in accordance with a third-party
565 standard.

566 (b) If the articles of incorporation of the social purpose
567 corporation require, or the board of directors determines, that
568 the annual benefit report must be prepared in accordance with a
569 third-party standard, the third-party standard must be:

570 1. Applied consistently with any previous application in
571 prior annual benefit reports; or

572 2. Accompanied by an explanation of the reasons for
573 inconsistent application or any change in the standard from the
574 immediate prior report.

575 (c) The name of the benefit director and the benefit
576 officer, if those positions exist, and the respective addresses
577 to which correspondence may be directed.

578 (d) If the corporation has a benefit director, his or her
579 statement as provided in s. 607.508(3).



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580 (e) If the articles of incorporation of the social purpose
581 corporation require, or the board of directors determines, that
582 the annual benefit report must be prepared in accordance with a
583 third-party standard, a statement of any connection between the
584 organization that established the third-party standard, or its
585 directors, officers, or any holder of 5 percent or more of the
586 governance interests in the organization, and the social purpose
587 corporation or its directors, officers, or any holder of 5
588 percent or more of the outstanding shares of the social purpose
589 corporation, including any financial or governance relationship
590 that might materially affect the credibility of the use of the
591 third-party standard.

592 (2) If, during the year covered by an annual benefit
593 report, a benefit director resigned from, or refused to stand
594 for reelection to, his or her position, or was removed from his
595 or her position, and he or she furnished written correspondence
596 to the social purpose corporation concerning the circumstances
597 surrounding his or her departure, that correspondence must be
598 included as an exhibit in the annual benefit report.

599 (3) The annual benefit report and the assessment of the
600 performance of the social purpose corporation in the annual
601 benefit report required under paragraph (1)(b) are not required
602 to be audited or certified by a third-party standards provider.

603 Section 19. Section 607.513, Florida Statutes, is created
604 to read:

605 607.513 Availability of annual benefit report.-



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606 (1) Each social purpose corporation shall send its annual
607 benefit report to each shareholder:

608 (a) Within 120 days after the end of the fiscal year of
609 the social purpose corporation; or

610 (b) At the same time that the social purpose corporation
611 delivers any other annual report to its shareholders.

612 (2) A social purpose corporation shall post each annual
613 benefit report on the public portion of its website, if any, and
614 it shall remain posted for at least 3 years.

615 (3) If a social purpose corporation does not have a
616 website, the corporation shall provide a copy of its most recent
617 annual benefit report, without charge, to any person who
618 requests a copy.

619 (4) If a social purpose corporation does not comply with
620 the annual benefit report delivery requirement, the circuit
621 court in the county in which the principal office of the social
622 purpose corporation is located or, if no office is located in
623 this state, the county in which its registered office is
624 located, may, after a shareholder of the social purpose
625 corporation requests a copy, summarily order the corporation to
626 furnish the annual benefit report. If the court orders the
627 annual benefit report to be furnished, the court may also order
628 the social purpose corporation to pay the shareholder's costs,
629 including reasonable attorney fees, which were incurred in
630 obtaining the order and otherwise enforce his or her rights
631 under this section.

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632 Section 20. Sections 607.601 through 607.613, Florida
633 Statutes, are designated as part III of chapter 607, Florida
634 Statutes, entitled "BENEFIT CORPORATIONS."

635 Section 21. Section 607.601, Florida Statutes, is created
636 to read:

637 607.601 Application and effect of part.-

638 (1) This part applies to a benefit corporation and does
639 not affect a corporation that is not a benefit corporation.

640 (2) Except as provided in this part, this chapter applies
641 generally to all benefit corporations.

642 (3) A benefit corporation may be simultaneously subject to
643 this part and to one or more chapters, including chapter 621. In
644 such event, this part takes precedence with respect to a benefit
645 corporation.

646 (4) Except as authorized by this part, a provision of the
647 articles of incorporation or bylaws of a benefit corporation, or
648 a shareholders agreement among shareholders of a benefit
649 corporation, may not limit, be inconsistent with, or supersede a
650 provision of this part.

651 Section 22. Section 607.602, Florida Statutes, is created
652 to read:

653 607.602 Definitions.-As used in this part, unless the
654 context otherwise requires, the term:

655 (1) "Benefit corporation" means a corporation that is
656 formed, or has elected to become, subject to this part, the



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657 status of which as a benefit corporation has not been
658 terminated.

659 (2) "Benefit director" means:

660 (a) The director designated as the benefit director of a
661 benefit corporation under s. 607.608; or

662 (b) A person with one or more of the powers, duties, or
663 rights of a benefit director to the extent provided in the
664 articles of incorporation or bylaws under s. 607.608.

665 (3) "Benefit enforcement proceeding" means any claim or
666 action for:

667 (a) The failure of a benefit corporation to pursue or
668 create general public benefit or a specific public benefit
669 purpose set forth in its articles of incorporation; or

670 (b) A violation of any obligation, duty, or standard of
671 conduct under this part.

672 (4) "Benefit officer" means the individual designated as
673 the benefit officer of a benefit corporation under s. 607.610.

674 (5) "General public benefit" means a material, positive
675 effect on society and the environment, taken as a whole, as
676 assessed using a third-party standard which is attributable to
677 the business and operations of a benefit corporation.

678 (6) "Independent" means not having a material relationship
679 with the benefit corporation or a subsidiary of the benefit
680 corporation. A person does not have a material relationship
681 solely by virtue of serving as the benefit director or benefit
682 officer of the benefit corporation or a subsidiary of the

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683 benefit corporation. In determining whether a director or
684 officer is independent, a material relationship between an
685 individual and a benefit corporation or any of its subsidiaries
686 will be conclusively presumed to exist, at the time independence
687 is to be determined, if any of the following apply:

688 (a) The individual is or has been within the prior 3 years
689 an employee, other than a benefit officer, of the benefit
690 corporation or a subsidiary.

691 (b) An immediate family member of the individual is or has
692 been within the prior 3 years an executive officer, other than a
693 benefit officer, of the benefit corporation or a subsidiary.

694 (c) When ownership is calculated as if all outstanding
695 rights to acquire equity interests in the benefit corporation
696 had been exercised, there is beneficial or record ownership of 5
697 percent or more of the outstanding shares of the benefit
698 corporation by:

699 1. The individual; or

700 2. An entity:

701 a. Of which the individual is a director, an officer, or a
702 manager; or

703 b. In which, when ownership is calculated as if all
704 outstanding rights to acquire equity interests in the entity had
705 been exercised, the individual owns beneficially or of record 5
706 percent or more of the outstanding equity interests.

707 (7) "Minimum status vote" means:



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708 (a) In the case of a corporation that is to become a
709 benefit corporation, whether by amendment of the articles of
710 incorporation or by way of or pursuant to a merger, conversion,
711 or share exchange; a benefit corporation whose articles of
712 incorporation are to be amended pursuant to s. 607.606(2); or a
713 benefit corporation that is to cease being a benefit
714 corporation, in addition to any other required approval or vote,
715 the satisfaction of the following conditions:

716 1. The holders of each class or series of shares shall be
717 entitled to vote as a separate voting group on the corporate
718 action regardless of any limitation on the voting rights of any
719 class or series stated in the articles of incorporation or
720 bylaws.

721 2. The corporate action is approved by vote of each class
722 or series of shares entitled to vote by at least two-thirds of
723 the total votes of the class or series.

724 (b) In the case of a domestic entity, other than a
725 corporation, which is to be simultaneously converted to a
726 benefit corporation or merged into a benefit corporation, in
727 addition to any other required approval, vote, or consent, the
728 satisfaction of the following conditions:

729 1. The holders of each class or series of equity interest
730 in the entity who are entitled to receive a distribution of any
731 kind are entitled, as a separate voting group, to vote on or
732 consent to the action regardless of any applicable limitation on
733 the voting or consent rights of any class or series.

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734 2. The action is approved by vote or consent of each class
735 or series of equity interest described in subparagraph 1. who
736 are entitled to vote by at least two-thirds of the votes or
737 consent of the class or series.

738 (8) "Specific public benefit" includes, but is not limited
739 to:

740 (a) Providing low-income or underserved individuals or
741 communities with beneficial products or services;

742 (b) Promoting economic opportunity for individuals or
743 communities beyond the creation of jobs in the normal course of
744 business;

745 (c) Protecting or restoring the environment;

746 (d) Improving human health;

747 (e) Promoting the arts, sciences, or advancement of
748 knowledge;

749 (f) Increasing the flow of capital to entities that have
750 as their stated purpose the provision of a benefit to society or
751 the environment; and

752 (g) Any other public benefit consistent with the purposes
753 of the benefit corporation.

754 (9) "Subsidiary" means, in relation to a person other than
755 an individual, an entity in which a person owns beneficially or
756 of record 50 percent or more of the outstanding equity
757 interests.



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758 (10) "Third-party standard" means a recognized standard
759 for defining, reporting, and assessing the societal and
760 environmental performance of a business which is:

761 (a) Comprehensive, because it assesses the effect of the
762 business and its operations upon the interests provided in s.
763 607.607(1)(a)2.-5.

764 (b) Developed by an entity that is not controlled by the
765 benefit corporation.

766 (c) Credible, because it is developed by an entity that
767 has access to necessary expertise to assess the overall societal
768 and environmental performance of a business and uses a balanced,
769 collaborative approach to develop the standard, including a
770 period for public comment.

771 (d) Transparent, because the following information is
772 publicly available:

773 1. The criteria considered under the standard when
774 measuring the overall societal and environmental performance of
775 a business and the relative weights, if any, of those criteria.

776 2. The identity of the directors, officers, material
777 owners, and the governing body of the entity that developed and
778 controlled revisions; the process by which revisions to the
779 standard and changes to the membership of the governing body are
780 made; and an accounting of the revenue and sources of financial
781 support for the entity, with sufficient detail to disclose any
782 relationships that could reasonably be considered to present a
783 potential conflict of interest.



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784 Section 23. Section 607.603, Florida Statutes, is created
785 to read:

786 607.603 Incorporation.—To incorporate as a benefit
787 corporation, an incorporator must satisfy the requirements of
788 this chapter, and the articles of incorporation must state that
789 the corporation is a benefit corporation under this part.

790 Section 24. Section 607.604, Florida Statutes, is created
791 to read:

792 607.604 Election of benefit corporation status.—

793 (1) An existing corporation may become a benefit
794 corporation under this part by amending its articles of
795 incorporation to include a statement that the corporation is a
796 benefit corporation under this part. The amendment must be
797 adopted by the minimum status vote.

798 (2) A plan of merger, conversion, or share exchange must
799 be adopted by the minimum status vote if an entity that is not a
800 benefit corporation is a party to a merger or conversion or if
801 the exchanging entity in a share exchange and the surviving,
802 new, or resulting entity is, or will be, a benefit corporation.

803 (3) If an entity elects to become a benefit corporation by
804 amendment of the articles of incorporation or by a merger,
805 conversion, or share exchange, the shareholders of the entity
806 are entitled to appraisal rights under and pursuant to ss.
807 607.1301-607.1333.

808 Section 25. Section 607.605, Florida Statutes, is created
809 to read:

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810 607.605 Termination of benefit corporation status.-

811 (1) A benefit corporation may terminate its status as such
812 and cease to be subject to this part by amending its articles of
813 incorporation to delete the provision required under s. 607.603
814 or s. 607.604. The amendment must be adopted by the minimum
815 status vote.

816 (2) A plan of merger, conversion, or share exchange which
817 has the effect of terminating the status of a corporation as a
818 benefit corporation must be adopted by the minimum status vote.
819 A sale, lease, exchange, or other disposition of all or
820 substantially all of the assets of a benefit corporation is not
821 effective unless the transaction is approved by the minimum
822 status vote. However, a minimum status vote is not required if
823 the transaction is in the usual and regular course of business,
824 is pursuant to court order, or is a sale pursuant to which all
825 or a substantial portion of the net proceeds of the sale will be
826 distributed to the shareholders within 1 year after the date of
827 the sale.

828 (3) If a corporation's status as a benefit corporation is
829 terminated pursuant to subsection (1) or subsection (2),
830 shareholders of the corporation are entitled to appraisal rights
831 under and pursuant to ss. 607.1301-607.1333.

832 Section 26. Section 607.606, Florida Statutes, is created
833 to read:

834 607.606 Corporate purpose.-



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835 (1) A benefit corporation has the purpose of creating
836 general public benefit. This purpose is in addition to its
837 purpose under s. 607.0301.

838 (2) The articles of incorporation of a benefit corporation
839 may identify one or more specific public benefits as its purpose
840 in addition to its purposes under s. 607.0301 and subsection
841 (1). A benefit corporation may amend its articles of
842 incorporation to add, amend, or delete the identification of a
843 specific public benefit purpose; however, the amendment must be
844 adopted by the minimum status vote. The identification of a
845 specific public benefit under this subsection does not limit the
846 obligation of a benefit corporation under subsection (1).

847 (3) The creation of general public benefit and a specific
848 public benefit under subsections (1) and (2) is deemed to be in
849 the best interest of the benefit corporation.

850 (4) A professional corporation that is a benefit
851 corporation does not violate s. 621.08 by having as its purpose
852 the creation of general public benefit or a specific public
853 benefit.

854 Section 27. Section 607.607, Florida Statutes, is created
855 to read:

856 607.607 Standard of conduct for directors.-

857 (1) In discharging their duties and in considering the
858 best interests of the benefit corporation, the directors:

859 (a) Shall consider the effects of any action or inaction
860 upon:

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- 861 1. The shareholders of the benefit corporation;
862 2. The employees and workforce of the benefit corporation,
863 its subsidiaries, and its suppliers;
864 3. The interests of customers and suppliers as
865 beneficiaries of the general public benefit and any specific
866 public benefit purposes of the benefit corporation;
867 4. Community and societal factors, including those of each
868 community in which offices or facilities of the benefit
869 corporation, its subsidiaries, or its suppliers are located;
870 5. The local and global environment;
871 6. The short-term and long-term interests of the benefit
872 corporation, including benefits that may accrue to the benefit
873 corporation from its long-term plans and the possibility that
874 these interests may be best served by the continued independence
875 of the benefit corporation; and
876 7. The ability of the benefit corporation to accomplish
877 its general public benefit purpose and each of its specific
878 public benefit purposes, if any.
- 879 (b) May consider other pertinent factors or the interests
880 of any other group that they deem appropriate.
- 881 (c) Are not required to give priority to the interests of
882 a particular person or group referred to in paragraph (a) or
883 paragraph (b) over the interests of any other person or group,
884 unless the benefit corporation has stated in its articles of
885 incorporation its intention to give priority to certain
886 interests.



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887 (d) Are not required to give equal weight to the interests
888 of a particular person or group referred to in paragraph (a) or
889 paragraph (b) unless the benefit corporation has stated in its
890 articles of incorporation its intention to give such equal
891 weight.

892 (2) Except as provided in the articles of incorporation, a
893 director is not personally liable for monetary damages to the
894 corporation, or to any other person, for the failure of the
895 benefit corporation to pursue or create general public benefit
896 or a specific public benefit. A director is subject to the
897 duties established in s. 607.0830.

898 (3) Except as provided in the articles of incorporation, a
899 director does not have a duty to a person who is a beneficiary
900 of the general public benefit purpose or any one or more
901 specific public benefit purposes of the benefit corporation.

902 Section 28. Section 607.608, Florida Statutes, is created
903 to read:

904 607.608 Benefit director.—

905 (1) If the articles of incorporation so provide, the board
906 of directors of a benefit corporation may include a director who
907 is designated as the benefit director and, in addition to the
908 powers, duties, rights, and immunities of the other directors of
909 the benefit corporation, has the powers, duties, rights, and
910 immunities provided in this part.

911 (2) The benefit director shall be elected, and may be
912 removed, in the manner provided by this chapter. Except as



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913 provided under subsection (5), the benefit director shall be
914 independent and may serve as a benefit officer. The articles of
915 incorporation or bylaws may prescribe additional qualifications
916 of the benefit director.

917 (3) Unless the articles of incorporation or bylaws provide
918 otherwise, the benefit director shall prepare, and the benefit
919 corporation shall include in the annual benefit report to
920 shareholders required under s. 607.612, the opinion of the
921 benefit director on the following:

922 (a) Whether the benefit corporation in all material
923 respects acted in accordance with its general public benefit
924 purpose and any specific public benefit purpose during the
925 period covered by the report.

926 (b) Whether the directors and officers complied with ss.
927 607.607(1) and 607.609(1).

928 (c) Whether the benefit corporation or its directors or
929 officers failed to comply with paragraph (a) or s. 607.607(1) or
930 s. 607.609(1), including a description of the ways in which the
931 benefit corporation or its directors or officers failed to
932 comply.

933 (4) The action or inaction of an individual in his or her
934 capacity as a benefit director shall constitute for all purposes
935 an action or inaction of that individual in his or her capacity
936 as a director of the benefit corporation.

937 (5) The benefit director of a corporation formed under
938 chapter 621 is not required to be independent.

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939 Section 29. Section 607.609, Florida Statutes, is created
940 to read:

941 607.609 Standard of conduct for officers.-

942 (1) If an officer of a benefit corporation reasonably
943 believes that a matter may have a material effect on the ability
944 of the corporation to create, or the creation by the corporation
945 of, general public benefit or a specific public benefit
946 identified in the articles of incorporation and the officer has
947 discretion to act on the matter, the officer shall consider the
948 interests and factors provided in s. 607.607(1).

949 (2) The officer's consideration of interests and factors
950 under subsection (1) does not constitute a violation of s.
951 607.0841.

952 (3) Except as provided in the articles of incorporation,
953 an officer is not personally liable for monetary damages to the
954 corporation or to any other person for the failure of the
955 benefit corporation to pursue or create general public benefit
956 or a specific public benefit; however, he or she is subject to
957 s. 607.0841.

958 (4) Except as provided in the articles of incorporation,
959 an officer does not have a duty to a person who is a beneficiary
960 of the general public benefit purpose or any specific public
961 benefit purpose of the benefit corporation arising from the
962 status of the person as a beneficiary.

963 Section 30. Section 607.610, Florida Statutes, is created
964 to read:



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965 607.610 Benefit officer.—

966 (1) A benefit corporation may designate an officer as the
967 benefit officer.

968 (2) The benefit officer has the powers and duties set
969 forth in the bylaws or determined by the board of directors,
970 which may include, but are not limited to:

971 (a) Powers and duties relating to the general public
972 benefit or a specific public benefit purpose of the corporation;
973 and

974 (b) The duty to prepare the annual benefit report required
975 under s. 607.612.

976 Section 31. Section 607.611, Florida Statutes, is created
977 to read:

978 607.611 Right of action.—

979 (1)(a) Except in a benefit enforcement proceeding, no
980 person may bring an action or assert a claim against a benefit
981 corporation or its directors or officers with respect to:

982 1. A failure to pursue or create a general public benefit
983 or a specific public benefit set forth in its articles of
984 incorporation; or

985 2. A violation of an obligation, duty, or standard of
986 conduct under this part.

987 (b) A benefit corporation is not liable for monetary
988 damages under this part for the failure of the benefit
989 corporation to pursue or create general public benefit or a
990 specific public benefit.

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991 (2) A benefit enforcement proceeding may be commenced or
992 maintained only:

993 (a) Directly by the benefit corporation; or

994 (b) Derivatively by:

995 1. A shareholder of record on the date of the action or
996 inaction complained of in the benefit enforcement proceeding;

997 2. A director;

998 3. A person or group of persons that owns beneficially or
999 of record 5 percent or more of the outstanding equity interests
1000 in an entity of which the benefit corporation is a subsidiary on
1001 the date of the action or inaction complained of in the
1002 proceeding; or

1003 4. Any other person who is specified in the articles of
1004 incorporation or bylaws of the benefit corporation.

1005 Section 32. Section 607.612, Florida Statutes, is created
1006 to read:

1007 607.612 Preparation of annual benefit report.-

1008 (1) Unless it is prepared by a benefit director or a
1009 benefit officer, the board of directors shall prepare an annual
1010 benefit report. The annual benefit report must include all of
1011 the following:

1012 (a) A narrative description of:

1013 1. The ways in which the benefit corporation pursued
1014 general public benefit during the year and the extent to which
1015 the general public benefit was created.



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1016 2. Any circumstance that has hindered the pursuit or
1017 creation of general public benefit or a specific public benefit
1018 by the benefit corporation.

1019 3. The process and rationale for selecting or changing the
1020 third-party standard used to prepare the benefit report.

1021 (b) The name of the benefit director and the benefit
1022 officer, if those positions exist, and the respective business
1023 addresses to which correspondence may be directed.

1024 (c) If the corporation has a benefit director, the
1025 statement as provided in s. 607.608(3).

1026 (d) A statement of any connection between the organization
1027 that established the third-party standard, or its directors,
1028 officers, or any holder of 5 percent or more of the governance
1029 interests in the organization, and the benefit corporation or
1030 its directors, officers, or any holder of 5 percent or more of
1031 the outstanding shares of the benefit corporation, including any
1032 financial or governance relationship that might materially
1033 affect the credibility of the use of the third-party standard.

1034 (2) The annual benefit report must be prepared in
1035 accordance with a third-party standard that is:

1036 1. Applied consistently with any previous application in
1037 prior annual benefit reports; or

1038 2. Accompanied by an explanation of the reasons for any
1039 inconsistent application or any change in the standard from the
1040 immediate prior report.



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1041 (3) If, during the year covered by an annual benefit
1042 report, a benefit director resigned from, or refused to stand
1043 for reelection to, his or her position, or was removed from his
1044 or her position, and he or she furnished written correspondence
1045 to the benefit corporation concerning the circumstances
1046 surrounding his or her departure, that correspondence must be
1047 included as an exhibit in the annual benefit report.

1048 (4) The annual benefit report and the assessment of the
1049 performance of the benefit corporation in the annual benefit
1050 report required under subsection (2) are not required to be
1051 audited or certified by a third-party standards provider.

1052 Section 33. Section 607.613, Florida Statutes, is created
1053 to read:

1054 607.613 Availability of annual benefit report.-

1055 (1) Each benefit corporation shall send its annual benefit
1056 report to each shareholder:

1057 (a) Within 120 days after the end of the fiscal year of
1058 the benefit corporation; or

1059 (b) At the same time that the benefit corporation delivers
1060 any other annual report to its shareholders.

1061 (2) A benefit corporation shall post each annual benefit
1062 report on the public portion of its website, if any, and it
1063 shall remain posted for at least 3 years.

1064 (3) If a benefit corporation does not have a website, the
1065 benefit corporation shall provide a copy of its most recent



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1066 annual benefit report, without charge, to any person who
1067 requests a copy.

1068 (4) If a benefit corporation does not comply with the
1069 annual benefit report delivery requirement, the circuit court in
1070 the county in which the principal office of the benefit
1071 corporation is located or, if no office is located in this
1072 state, the county in which its registered office is located,
1073 may, after a shareholder of the benefit corporation requests a
1074 copy, summarily order the corporation to furnish the report. If
1075 the court orders the report to be furnished, the court may also
1076 order the benefit corporation to pay the shareholder's costs,
1077 including reasonable attorney fees, which were incurred in
1078 obtaining the order and otherwise enforce his or her rights
1079 under this section.

1080 Section 34. Subsection (1) of section 617.0401, Florida
1081 Statutes, is amended to read:

1082 617.0401 Corporate name.—

1083 (1) A corporate name:

1084 (a) Must contain the word "corporation" or "incorporated"
1085 or the abbreviation "Corp." "corp." or "Inc." "inc." or words or
1086 abbreviations of like import in language, as will clearly
1087 indicate that it is a corporation instead of a natural person,
1088 unincorporated association, or partnership. The name of the
1089 corporation may not contain the word "company" or its
1090 abbreviation "Co." "co.";



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1091 (b) May contain the word "cooperative" or "co-op" only if
1092 the resulting name is distinguishable from the name of any
1093 corporation, agricultural cooperative marketing association, or
1094 nonprofit cooperative association existing or doing business in
1095 this state under part I of chapter 607, chapter 618, or chapter
1096 619.

1097 (c) May not contain language stating or implying that the
1098 corporation is organized for a purpose other than that permitted
1099 in this act and its articles of incorporation.

1100 (d) May not contain language stating or implying that the
1101 corporation is connected with a state or federal government
1102 agency or a corporation chartered under the laws of the United
1103 States.

1104 (e) Must be distinguishable from the names of all other
1105 entities or filings that are on file with the Division of
1106 Corporations, except fictitious name registrations pursuant to
1107 s. 865.09, general partnership registrations pursuant to s.
1108 620.8105, and limited liability partnership statements pursuant
1109 to s. 620.9001 which are organized, registered, or reserved
1110 under the laws of this state, that are on file with the Division
1111 of Corporations. A name that is different from a name of another
1112 entity or filing due to any of the following is not considered
1113 distinguishable:

- 1114 1. A suffix.
1115 2. A definite or indefinite article.
1116 3. The word "and" and the symbol "&."



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1117 4. The singular, plural, or possessive form of a word.

1118 5. A recognized abbreviation of a root word.

1119 6. A punctuation mark or a symbol.

1120 Section 35. Subsection (4) of section 620.1108, Florida
1121 Statutes, is amended to read:

1122 620.1108 Name.—

1123 (4) The name of a limited partnership must be
1124 distinguishable in the records of the Department of State from
1125 the names of all other entities or filings that are on file with
1126 the Department of State, except fictitious name registrations
1127 pursuant to s. 865.09, general partnership registrations
1128 pursuant to s. 620.8105, and limited liability partnership
1129 statements pursuant to s. 620.9001 which are organized,
1130 registered, or reserved under the laws of this state, ~~the names~~
1131 ~~of which are on file with the Department of State.~~ A name that
1132 is different from the name of another entity or filing due to
1133 any of the following is not considered distinguishable:

1134 (a) A suffix.

1135 (b) A definite or indefinite article.

1136 (c) The word "and" and the symbol "&."

1137 (d) The singular, plural, or possessive form of a word.

1138 (e) A recognized abbreviation of a root word.

1139 (f) A punctuation mark or a symbol.

1140 Section 36. Subsection (1) of section 48.091, Florida
1141 Statutes, is amended to read:



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1142 48.091 Corporations; designation of registered agent and
1143 registered office.-

1144 (1) Every Florida corporation and every foreign
1145 corporation now qualified or hereafter qualifying to transact
1146 business in this state shall designate a registered agent and
1147 registered office in accordance with part I of chapter 607.

1148 Section 37. Paragraph (d) of subsection (6) of section
1149 215.555, Florida Statutes, is amended to read:

1150 215.555 Florida Hurricane Catastrophe Fund.-

1151 (6) REVENUE BONDS.-

1152 (d) *State Board of Administration Finance Corporation.-*

1153 1. In addition to the findings and declarations in
1154 subsection (1), the Legislature also finds and declares that:

1155 a. The public benefits corporation created under this
1156 paragraph will provide a mechanism necessary for the cost-
1157 effective and efficient issuance of bonds. This mechanism will
1158 eliminate unnecessary costs in the bond issuance process,
1159 thereby increasing the amounts available to pay reimbursement
1160 for losses to property sustained as a result of hurricane
1161 damage.

1162 b. The purpose of such bonds is to fund reimbursements
1163 through the Florida Hurricane Catastrophe Fund to pay for the
1164 costs of construction, reconstruction, repair, restoration, and
1165 other costs associated with damage to properties of
1166 policyholders of covered policies due to the occurrence of a
1167 hurricane.

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1168 c. The efficacy of the financing mechanism will be
1169 enhanced by the corporation's ownership of the assessments, by
1170 the insulation of the assessments from possible bankruptcy
1171 proceedings, and by covenants of the state with the
1172 corporation's bondholders.

1173 2.a. There is created a public benefits corporation, which
1174 is an instrumentality of the state, to be known as the State
1175 Board of Administration Finance Corporation.

1176 b. The corporation shall operate under a five-member board
1177 of directors consisting of the Governor or a designee, the Chief
1178 Financial Officer or a designee, the Attorney General or a
1179 designee, the director of the Division of Bond Finance of the
1180 State Board of Administration, and the Chief Operating Officer
1181 of the Florida Hurricane Catastrophe Fund.

1182 c. The corporation has all of the powers of corporations
1183 under part I of chapter 607 and under chapter 617, subject only
1184 to ~~the provisions of~~ this subsection.

1185 d. The corporation may issue bonds and engage in such
1186 other financial transactions as are necessary to provide
1187 sufficient funds to achieve the purposes of this section.

1188 e. The corporation may invest in any of the investments
1189 authorized under s. 215.47.

1190 f. There shall be no liability on the part of, and no
1191 cause of action shall arise against, any board members or
1192 employees of the corporation for any actions taken by them in
1193 the performance of their duties under this paragraph.



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1194 3.a. In actions under chapter 75 to validate any bonds
1195 issued by the corporation, the notice required under ~~by~~ s. 75.06
1196 shall be published in two newspapers of general circulation in
1197 the state, and the complaint and order of the court shall be
1198 served only on the State Attorney of the Second Judicial
1199 Circuit.

1200 b. The state hereby covenants with holders of bonds of the
1201 corporation that the state will not repeal or abrogate the power
1202 of the board to direct the Office of Insurance Regulation to
1203 levy the assessments and to collect the proceeds of the revenues
1204 pledged to the payment of such bonds as long as any such bonds
1205 remain outstanding unless adequate provision has been made for
1206 the payment of such bonds pursuant to the documents authorizing
1207 the issuance of such bonds.

1208 4. The bonds of the corporation are not a debt of the
1209 state or of any political subdivision, and neither the state nor
1210 any political subdivision is liable on such bonds. The
1211 corporation does not have the power to pledge the credit, the
1212 revenues, or the taxing power of the state or of any political
1213 subdivision. The credit, revenues, or taxing power of the state
1214 or of any political subdivision shall not be deemed to be
1215 pledged to the payment of any bonds of the corporation.

1216 5.a. The property, revenues, and other assets of the
1217 corporation; the transactions and operations of the corporation
1218 and the income from such transactions and operations; and all
1219 bonds issued under this paragraph and interest on such bonds are



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1220 exempt from taxation by the state and any political subdivision,
1221 including the intangibles tax under chapter 199 and the income
1222 tax under chapter 220. This exemption does not apply to any tax
1223 imposed by chapter 220 on interest, income, or profits on debt
1224 obligations owned by corporations other than the State Board of
1225 Administration Finance Corporation.

1226 b. All bonds of the corporation shall be and constitute
1227 legal investments without limitation for all public bodies of
1228 this state; for all banks, trust companies, savings banks,
1229 savings associations, savings and loan associations, and
1230 investment companies; for all administrators, executors,
1231 trustees, and other fiduciaries; for all insurance companies and
1232 associations and other persons carrying on an insurance
1233 business; and for all other persons who are now or may hereafter
1234 be authorized to invest in bonds or other obligations of the
1235 state and shall be and constitute eligible securities to be
1236 deposited as collateral for the security of any state, county,
1237 municipal, or other public funds. This sub-subparagraph is ~~shall~~
1238 ~~be considered as~~ additional and supplemental authority and may
1239 ~~shall~~ not be limited without specific reference to this sub-
1240 subparagraph.

1241 6. The corporation and its corporate existence continues
1242 ~~shall continue~~ until terminated by law; however, ~~no~~ such law may
1243 not ~~shall~~ take effect as long as the corporation has bonds
1244 outstanding unless adequate provision has been made for the
1245 payment of such bonds pursuant to the documents authorizing the



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1246 issuance of such bonds. Upon termination of the existence of the
1247 corporation, all of its rights and properties in excess of its
1248 obligations shall pass to and be vested in the state.

1249 7. The State Board of Administration Finance Corporation
1250 is for all purposes the successor to the Florida Hurricane
1251 Catastrophe Fund Finance Corporation.

1252 Section 38. Subsection (1) of section 243.54, Florida
1253 Statutes, is amended to read:

1254 243.54 Powers of the authority.—The purpose of the
1255 authority is to assist institutions of higher education in
1256 constructing, financing, and refinancing projects throughout the
1257 state and, for this purpose, the authority may:

1258 (1) Exercise all powers granted to corporations under part
1259 I of the Florida Business Corporation Act, chapter 607.

1260 Section 39. Section 310.171, Florida Statutes, is amended
1261 to read:

1262 310.171 Pilots may incorporate themselves.—Any one or more
1263 licensed state pilots may incorporate in the manner provided
1264 under part I of chapter 607 or chapter 621.

1265 Section 40. Section 310.181, Florida Statutes, is amended
1266 to read:

1267 310.181 Corporate powers.—All the rights, powers, and
1268 liabilities conferred or imposed by the laws of Florida relating
1269 to corporations for profit organized under part I of chapter 607
1270 or under chapter 608 before January 1, 1976, or to corporations

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1271 organized under chapter 621 shall apply to corporations
1272 organized pursuant to s. 310.171.

1273 Section 41. Paragraph (c) of subsection (4) of section
1274 329.10, Florida Statutes, is amended to read:

1275 329.10 Aircraft registration.—

1276 (4) It is a violation of this section for any person or
1277 corporate entity to knowingly supply false information to any
1278 governmental entity in regard to ownership by it or another
1279 firm, business, or corporation of an aircraft in or operated in
1280 this state if it is determined that such corporate entity or
1281 other firm, business, or corporation:

1282 (c) Has lapsed into a state of no longer being a legal
1283 entity in this state as defined in part I of chapter 607 or s.
1284 865.09, and no documented attempt has been made to correct such
1285 information with the governmental entity for a period of 90 days
1286 after the date on which such lapse took effect with the
1287 Secretary of State.

1288 Section 42. Subsection (1) of section 339.412, Florida
1289 Statutes, is amended to read:

1290 339.412 Powers of corporation.—As to designated projects
1291 and in addition to other powers prescribed by law, a corporation
1292 may exercise the following powers with respect to the promotion
1293 and development of transportation facilities, pursuant to a
1294 written contract for the same, together with all powers
1295 incidental thereto or necessary for the performance of those
1296 hereinafter stated:

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1297 (1) The corporation may exercise all the powers as granted
1298 by the department to work directly with landowners, local and
1299 state governmental agencies, elected officials, and any other
1300 person to support those activities required to promote and
1301 develop the projects. These activities shall include:

1302 (a) Acquiring, holding, investing, and administering
1303 property and transferring title of such property to the
1304 department for development of projects on behalf of the
1305 department;

1306 (b) Performing preliminary and final alignment studies in
1307 a manner consistent with state and federal laws;

1308 (c) Receiving contributions of land for rights-of-way and
1309 cash donations to be applied to the purchase of rights-of-way
1310 not donated or to be applied to the design or construction of
1311 the projects;

1312 (d) Reviewing candidates for advisory directorships and
1313 adding or removing such advisory directors as may be
1314 appropriate;

1315 (e) Retaining such administrative staff and legal, public
1316 relations, and engineering services as may be required for the
1317 development of the projects and paying such employees and
1318 consultants from funds donated for this purpose;

1319 (f) Preparing such exhibits, right-of-way documents,
1320 environmental reports, schematics, and preliminary and final
1321 engineering plans as are necessary for the development of the
1322 projects;



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1323 (g) Borrowing money to meet any expenses or needs
1324 associated with the regular operations of the corporation or a
1325 particular project; provided, however, that no corporation shall
1326 have the power to issue bonds, the provisions of part I of
1327 chapter ~~chapters~~ 607 and chapter 617 notwithstanding;

1328 (h) Making official presentations to the state and other
1329 affected agencies or groups concerning the development of the
1330 projects;

1331 (i) Issuing press releases and other material to promote
1332 the activities of the projects; and

1333 (j) Performing any other functions requested by the
1334 department in order to promote and develop the projects.

1335

1336 Nothing in this act empowers the corporation to enter into any
1337 contracts for construction or to undertake any construction, on
1338 behalf of the department.

1339 Section 43. Subsection (4) of section 420.101, Florida
1340 Statutes, is amended to read:

1341 420.101 Housing Development Corporation of Florida;
1342 creation, membership, and purposes.—

1343 (4) Whenever the articles of incorporation have been filed
1344 in the Department of State and approved by it and all filing
1345 fees and taxes prescribed by part I of chapter 607 have been
1346 paid, the subscribers and their successors and assigns shall
1347 constitute a corporation, and the corporation shall then be
1348 authorized to commence business, and stock thereof to the extent

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1349 herein or hereafter duly authorized may from time to time be
1350 issued.

1351 Section 44. Section 420.111, Florida Statutes, is amended
1352 to read:

1353 420.111 Housing Development Corporation of Florida;
1354 additional powers.—In furtherance of its purposes and in
1355 addition to the powers now or hereafter conferred on business
1356 corporations by part I of chapter 607, the corporation shall,
1357 subject to the restrictions and limitations ~~herein~~ contained in
1358 this section, have the following powers:

1359 (1) To elect, appoint, and employ officers, agents and
1360 employees and to make contracts and incur liabilities for any of
1361 the purposes of the corporation, except that the corporation may
1362 ~~shall~~ not incur any secondary liability by way of guaranty or
1363 endorsement of the obligations of any person, firm, corporation,
1364 joint-stock company, association, or trust, or in any other
1365 manner.

1366 (2) To borrow money from its stockholders, other financial
1367 institutions, and state and federal agencies for any of the
1368 purposes of the corporation; to issue therefor its bonds,
1369 debentures, notes, or other evidences of indebtedness, whether
1370 secured or unsecured, and to secure the same by mortgage,
1371 pledge, deed of trust, or other lien on its property,
1372 franchises, rights, and privileges of every kind and nature, or
1373 any part thereof or interest therein, without securing
1374 stockholder approval.

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1375 (3) To make loans to any person, firm, corporation, joint-
1376 stock company, association, or trust and to regulate the terms
1377 and conditions with respect to any such loans and the charges
1378 for interest and service connected therewith, provided subsidies
1379 may be in the form of below market interest rates or such other
1380 assistance as determined by the board with the concurrence of
1381 the applicable regulatory agencies governing the several
1382 stockholder industries.

1383 (4) To purchase, receive, hold, lease, or otherwise
1384 acquire, and to sell, convey, transfer, lease, or otherwise
1385 dispose of, real and personal property, together with such
1386 rights and privileges as may be incidental and appurtenant
1387 thereto and the use thereof, including, but not restricted to,
1388 any real or personal property acquired by the corporation from
1389 time to time in the satisfaction of debts or enforcement of
1390 obligations.

1391 (5) For the purposes of foreclosure, to acquire the good
1392 will, business, rights, real and personal property, and other
1393 assets, or any part thereof, or interest therein, of any
1394 persons, firms, corporations, joint-stock companies,
1395 associations or trusts, and to assume, undertake, or pay the
1396 obligations, debts and liabilities of any such person, firm,
1397 corporation, joint-stock company, association or trust; to
1398 acquire improved or unimproved real estate for the purpose of
1399 constructing new housing or rehabilitation thereof; for the
1400 purposes of disposing of such real estate to others for the

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1401 construction of housing or rehabilitation thereof; and to
1402 acquire, construct or reconstruct, alter, repair, maintain,
1403 operate, sell, convey, transfer, lease, or otherwise dispose of
1404 such housing, provided, however that nothing herein contained
1405 shall authorize the acquisition, construction, reconstruction,
1406 or operation of any public lodging establishment as defined in
1407 chapter 509.

1408 (6) To acquire, subscribe for, own, hold, sell, assign,
1409 transfer, mortgage, pledge, or otherwise dispose of the stock,
1410 shares, bonds, debentures, notes, or other securities and
1411 evidences of interest in, or indebtedness of, any person, firm,
1412 corporation, joint-stock company, association, or trust, and,
1413 while the owner or holder thereof, to exercise all the rights,
1414 powers, and privileges of ownership, including the right to vote
1415 thereon.

1416 (7) To mortgage, pledge, or otherwise encumber any
1417 property, right, or thing of value, acquired pursuant to the
1418 powers contained in subsection (4), subsection (5), or
1419 subsection (6), as security for the payment of any part of the
1420 purchase price thereof.

1421 (8) To cooperate with, and avail itself of the facilities
1422 of, the United States Department of Housing and Urban
1423 Development, the Department of Economic Opportunity, and any
1424 other similar local, state, or Federal Government agency; and to
1425 cooperate with and assist, and otherwise encourage,
1426 organizations in the various communities of the state on the

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1427 promotion, assistance, and development of the housing and
1428 economic welfare of such communities or of this state or any
1429 part thereof.

1430 (9) To do all acts and things necessary or convenient to
1431 carry out the powers expressly granted in this part.

1432 Section 45. Subsection (2) of section 420.161, Florida
1433 Statutes, is amended to read:

1434 420.161 Housing Development Corporation of Florida; period
1435 of existence; method of dissolution.-

1436 (2) The corporation may, upon the affirmative vote of two-
1437 thirds of the votes to which the stockholders are ~~shall be~~
1438 entitled, dissolve the said corporation as provided under part I
1439 of by chapter 607, as long as that part does insofar as chapter
1440 607 is not in conflict with the provisions of this act. Upon any
1441 dissolution of the corporation, ~~none of~~ the corporation's assets
1442 may not shall be distributed to the stockholders until all sums
1443 due the members of the corporation as creditors thereof have
1444 been paid in full.

1445 Section 46. Subsection (9) of section 440.02, Florida
1446 Statutes, is amended to read:

1447 440.02 Definitions.-When used in this chapter, unless the
1448 context clearly requires otherwise, the following terms shall
1449 have the following meanings:

1450 (9) "Corporate officer" or "officer of a corporation"
1451 means any person who fills an office provided for in the
1452 corporate charter or articles of incorporation filed with the



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1453 Division of Corporations of the Department of State or as
1454 authorized permitted or required under part I of ~~by~~ chapter 607.
1455 The term "officer of a corporation" includes a member owning at
1456 least 10 percent of a limited liability company created and
1457 approved under chapter 608.

1458 Section 47. Paragraph (d) of subsection (10) of section
1459 440.386, Florida Statutes, is amended to read:

1460 440.386 Individual self-insurers' insolvency;
1461 conservation; liquidation.-

1462 (10) TRANSFERS PRIOR TO PETITION.-

1463 (d) The personal liability of the officers or directors of
1464 an insolvent individual self-insurer is ~~shall be~~ subject to part
1465 I of the provisions of chapter 607 and the penalties provided
1466 therein.

1467 Section 48. Subsection (3) of section 609.08, Florida
1468 Statutes, is amended to read:

1469 609.08 Merger of association into wholly owned subsidiary
1470 corporation; dissenters' rights of appraisal.-

1471 (3) If the surviving corporation is to be governed by the
1472 laws of any jurisdiction other than this state, it shall comply
1473 with part I of the provisions of chapter 607 with respect to
1474 foreign corporations if it is to transact business in this
1475 state, and in every case it shall file with the Department of
1476 State of this state:

1477 (a) An agreement that it may be served with process in
1478 this state in any proceeding for the enforcement of any



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1479 obligation of the association and in any proceeding for the
1480 enforcement of any rights under the declaration of trust of the
1481 association of a dissenting shareholder of the association
1482 against the surviving corporation.

1483 (b) An irrevocable appointment of the Secretary of State
1484 as its agent to accept service of process in any such
1485 proceeding.

1486 (c) An agreement that it will promptly pay to the
1487 dissenting shareholders of the association the amount, if any,
1488 to which they are ~~shall~~ be entitled under ~~the provisions of~~ its
1489 declaration of trust with respect to the rights of dissenting
1490 shareholders.

1491 Section 49. Section 617.1908, Florida Statutes, is amended
1492 to read:

1493 617.1908 Applicability of Florida Business Corporation
1494 Act.—Except as ~~otherwise~~ made applicable by specific reference
1495 in any other section of this chapter, part I ~~the provisions~~ of
1496 chapter 607, the Florida Business Corporation Act, does ~~shall~~
1497 not apply to any corporations not for profit.

1498 Section 50. Section 618.221, Florida Statutes, is amended
1499 to read:

1500 618.221 Conversion into a corporation for profit.—Any
1501 association incorporated under or that has adopted the
1502 provisions of this chapter, may, by a majority vote of its
1503 stockholders or members be brought under part I of the
1504 ~~provisions of~~ chapter 607, as a corporation for profit by

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1505 surrendering all right to carry on its business under this
1506 chapter, and the privileges and immunities incident thereto. It
1507 shall make out in duplicate a statement signed and sworn to by
1508 its directors to the effect that the association has, by a
1509 majority vote of its stockholders or members, decided to
1510 surrender all rights, powers, and privileges as a nonprofit
1511 cooperative marketing association under this chapter and to do
1512 business under and be bound by part I of ~~the provisions of said~~
1513 ~~chapter 607~~, as a corporation for profit and has authorized all
1514 changes accordingly. Articles of incorporation shall be
1515 delivered to the Department of State for filing as required
1516 under part I of chapter 607 ~~in and by s. 607.164~~, except that
1517 they shall be signed by the members of the then board of
1518 directors. The filing fees and taxes shall be as provided under
1519 part I of ~~in~~ chapter 607. Such articles of incorporation shall
1520 adequately protect and preserve the relative rights of the
1521 stockholders or members of the association so converting into a
1522 corporation for profit; provided that no rights or obligations
1523 due any stockholder or member of such association or any other
1524 person, firm, or corporation which has not been waived or
1525 satisfied shall be impaired by such conversion into a
1526 corporation for profit as herein authorized.

1527 Section 51. Section 619.04, Florida Statutes, is amended
1528 to read:

1529 619.04 Articles of incorporation.—Each association formed
1530 under this chapter must prepare and file articles of



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1531 incorporation in the same manner and under the same regulations
1532 as required under part I of chapter 607, and therein shall set
1533 forth:

1534 (1) The name of the association.

1535 (2) The purpose for which it is formed.

1536 (3) The place where its principal business will be
1537 transacted.

1538 (4) The term for which it is to exist, not exceeding 50
1539 years.

1540 (5) The number of directors thereof, which must not be
1541 less than three and which may be any number in excess thereof,
1542 and the names and residences of those selected for the first
1543 year and until their successors shall have been elected and
1544 shall have accepted office.

1545 (6) Whether the voting power and the property rights and
1546 interest of each member shall be equal, or unequal, and if
1547 unequal these articles shall set forth a general rule applicable
1548 to all members by which the voting power and the property rights
1549 and interests, respectively, of each member may and shall be
1550 determined and fixed, but the association shall have power to
1551 admit new members, who shall be entitled to vote and to share in
1552 the property of the association with the old members, in
1553 accordance with such general rule. This provision of the
1554 articles of incorporation may ~~shall~~ not be altered, amended, or
1555 repealed except by the unanimous written consent or the vote of
1556 all the members.



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1557 (7) Said articles must be subscribed by the original
1558 members and acknowledged by one of them before an officer
1559 authorized by the law of this state to take and certify
1560 acknowledgments of deeds of conveyance, and shall be filed in
1561 accordance with the provisions of law, and when so filed the
1562 said articles of incorporation or certified copies thereof shall
1563 be received in all the courts of this state and other places as
1564 prima facie evidence of the facts contained therein.

1565 Section 52. Subsection (3) of section 624.430, Florida
1566 Statutes, is amended to read:

1567 624.430 Withdrawal of insurer or discontinuance of writing
1568 certain kinds or lines of insurance.-

1569 (3) Upon office approval of the surrender of the
1570 certificate of authority of a domestic property and casualty
1571 insurer that is a corporation, the insurer may initiate the
1572 dissolution of the corporation in accordance with the applicable
1573 provisions of part I of chapter 607.

1574 Section 53. Subsection (1) of section 624.462, Florida
1575 Statutes, is amended to read:

1576 624.462 Commercial self-insurance funds.-

1577 (1) Any group of persons may form a commercial self-
1578 insurance fund for the purpose of pooling and spreading
1579 liabilities of its group members in any commercial property or
1580 casualty risk or surety insurance. Any fund established pursuant
1581 to subparagraph (2)(a)1. may be organized as a corporation under
1582 part I of chapter 607.

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1583 Section 54. Subsection (3) of section 624.489, Florida
1584 Statutes, is amended to read:

1585 624.489 Liability of trustees of self-insurance trust fund
1586 and directors of self-insurance funds operating as
1587 corporations.—

1588 (3) The immunities from liability provided in this section
1589 with respect to trustees also apply to members of the board of
1590 directors of a commercial self-insurance fund organized as a
1591 corporation under part I of chapter 607 if the board of
1592 directors has contracted with an administrator authorized under
1593 s. 626.88 to administer the day-to-day affairs of the fund.

1594 Section 55. Section 628.041, Florida Statutes, is amended
1595 to read:

1596 628.041 Applicability of general corporation statutes.—The
1597 applicable statutes of this state relating to the powers and
1598 procedures of domestic private corporations formed for profit
1599 shall apply to domestic stock insurers and to domestic mutual
1600 insurers, except:

1601 (1) As to any domestic mutual insurers incorporated
1602 pursuant to chapter 617, which chapter shall govern such
1603 insurers when in conflict with part I of chapter 607; and

1604 (2) When in conflict with the express provisions of this
1605 code.

1606 Section 56. Subsection (4) of section 631.262, Florida
1607 Statutes, is amended to read:

1608 631.262 Transfers prior to petition.—



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1609 (4) The personal liability of the officers or directors of
1610 an insolvent insurer ~~is shall be~~ subject to part I of the
1611 ~~provisions of~~ chapter 607 and the penalties provided therein.

1612 Section 57. Subsection (1) of section 636.204, Florida
1613 Statutes, is amended to read:

1614 636.204 License required.—

1615 (1) Before doing business in this state as a discount
1616 medical plan organization, an entity must be a corporation, a
1617 limited liability company, or a limited partnership,
1618 incorporated, organized, formed, or registered under the laws of
1619 this state or authorized to transact business in this state in
1620 accordance with part I of chapter 607, chapter 608, chapter 617,
1621 chapter 620, or chapter 865, and must be licensed by the office
1622 as a discount medical plan organization or be licensed by the
1623 office pursuant to chapter 624, part I of this chapter, or
1624 chapter 641.

1625 Section 58. Section 641.2015, Florida Statutes, is amended
1626 to read:

1627 641.2015 Incorporation required.—On or after October 1,
1628 1985, any entity that has not yet obtained a certificate of
1629 authority to operate a health maintenance organization in this
1630 state shall be incorporated or shall be a division of a
1631 corporation formed under the provisions of either part I of
1632 chapter 607 or chapter 617 or shall be a public entity that is
1633 organized as a political subdivision. In the case of a division
1634 of a corporation, the financial requirements of this part shall



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1635 apply to the entire corporation. Incorporation shall not be
1636 required of any entity which has already been issued an initial
1637 certificate of authority prior to this date and which is not a
1638 corporation on October 1, 1985, or which is incorporated in any
1639 other state on October 1, 1985; nor shall incorporation be
1640 required on renewal of any certificate of authority by such an
1641 organization or be required of a public entity that is organized
1642 as a political subdivision.

1643 Section 59. Subsection (1) of section 655.0201, Florida
1644 Statutes, is amended to read:

1645 655.0201 Service of process, notice, or demand on
1646 financial institutions.—

1647 (1) Process against any financial institution authorized
1648 by federal or state law to transact business in this state may
1649 be served in accordance with chapter 48, chapter 49, part I of
1650 chapter 607, or chapter 608, as appropriate.

1651 Section 60. Subsection (2) of section 658.23, Florida
1652 Statutes, is amended to read:

1653 658.23 Submission of articles of incorporation; contents;
1654 form; approval; filing; commencement of corporate existence;
1655 bylaws.—

1656 (2) The articles of incorporation shall contain:

1657 (a) The name of the proposed bank or trust company.

1658 (b) The general nature of the business to be transacted or
1659 a statement that the corporation may engage in any activity or



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1660 business permitted by law. Such statement shall authorize all
1661 such activities and business by the corporation.

1662 (c) The amount of capital stock authorized, showing the
1663 maximum number of shares of par value common stock and of
1664 preferred stock, and of every kind, class, or series of each,
1665 together with the distinguishing characteristics and the par
1666 value of all shares.

1667 (d) The amount of capital with which the corporation will
1668 begin business, which may ~~shall~~ not be less than the amount
1669 required by the office pursuant to s. 658.21.

1670 (e) A provision that the corporation is to have perpetual
1671 existence unless existence is terminated pursuant to the
1672 financial institutions codes.

1673 (f) The initial street address of the main office of the
1674 corporation, which shall be in this state.

1675 (g) The number of directors, which shall be five or more,
1676 and the names and street addresses of the members of the initial
1677 board of directors.

1678 (h) A provision for preemptive rights, if applicable.

1679 (i) A provision authorizing the board of directors to
1680 appoint additional directors, pursuant to s. 658.33, if
1681 applicable.

1682
1683 The office shall provide to the proposed directors form articles
1684 of incorporation which must ~~shall~~ include only those provisions
1685 required under ~~by~~ this section or under part I of ~~by~~ chapter



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1686 607. The form articles shall be acknowledged by the proposed
1687 directors and returned to the office for filing with the
1688 Department of State.

1689 Section 61. Paragraph (c) of subsection (11) of section
1690 658.2953, Florida Statutes, is amended to read:

1691 658.2953 Interstate branching.—

1692 (11) DE NOVO INTERSTATE BRANCHING BY STATE BANKS.—

1693 (c) An out-of-state bank may establish and maintain a de
1694 novo branch or acquire a branch in this state upon compliance
1695 with part I of chapter 607 or chapter 608 relating to doing
1696 business in this state as a foreign business entity, including
1697 maintaining a registered agent for service of process and other
1698 legal notice pursuant to s. 655.0201.

1699 Section 62. Section 658.30, Florida Statutes, is amended
1700 to read:

1701 658.30 Application of the Florida Business Corporation
1702 Act.—

1703 (1) When not in direct conflict with or superseded by
1704 specific provisions of the financial institutions codes, the
1705 provisions of the Florida Business Corporation Act, part I of
1706 chapter 607, ~~shall~~ extend to state banks and trust companies
1707 formed under the financial institutions codes. This section
1708 shall be liberally construed to accomplish the purposes stated
1709 herein.

1710 (2) Without limiting the generality of subsection (1),
1711 stockholders, directors, and committees of state banks and trust

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1712 companies may hold meetings in any manner authorized ~~permitted~~
1713 by part I of chapter 607, and any action by stockholders,
1714 directors, or committees required or authorized ~~permitted~~ to be
1715 taken at a meeting may be taken without a meeting in any manner
1716 authorized ~~provided or permitted~~ by part I of chapter 607.

1717 Section 63. Subsection (3) of section 658.36, Florida
1718 Statutes, is amended to read:

1719 658.36 Changes in capital.—

1720 (3) If a bank or trust company's capital accounts have
1721 been diminished by losses to less than the minimum required
1722 pursuant to the financial institutions codes, the market value
1723 of its shares of capital stock is less than the present par
1724 value, and the bank or trust company cannot reasonably issue and
1725 sell new shares of stock to restore its capital accounts at a
1726 share price of par value or greater of the previously issued
1727 capital stock, the office, notwithstanding any other provisions
1728 of part I of chapter 607 or the financial institutions codes,
1729 may approve special stock offering plans.

1730 (a) Such plans may include, but are not limited to,
1731 mechanisms for stock splits including reverse splits;
1732 revaluations of par value of outstanding stock; changes in
1733 voting rights, dividends, or other preferences; and creation of
1734 new classes of stock.

1735 (b) The plan must be approved by majority vote of the bank
1736 or trust company's entire board of directors and by holders of
1737 two-thirds of the outstanding shares of stock.

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1738 (c) The office shall disapprove a plan that provides
1739 unfair or disproportionate benefits to existing shareholders,
1740 directors, executive officers, or their related interests. The
1741 office shall also disapprove any plan that is not likely to
1742 restore the capital accounts to sufficient levels to achieve a
1743 sustainable, safe, and sound financial institution.

1744 (d) For any bank or trust company that the office
1745 determines to be a failing financial institution pursuant to s.
1746 655.4185, the office may approve special stock offering plans
1747 without a vote of the shareholders.

1748 Section 64. Section 663.03, Florida Statutes, is amended
1749 to read:

1750 663.03 Applicability of the Florida Business Corporation
1751 Act chapter 607.—Notwithstanding s. 607.01401(12) ~~the definition~~
1752 ~~of the term "foreign corporation" appearing in s. 607.01401,~~ all
1753 ~~of~~ the provisions of part I of chapter 607 not in conflict with
1754 the financial institutions codes which relate to foreign
1755 corporations shall apply to all international banking
1756 corporations and their offices doing business in this state.

1757 Section 65. Subsection (3) of section 663.04, Florida
1758 Statutes, is amended to read:

1759 663.04 Requirements for carrying on financial institution
1760 business.—An international banking corporation or trust company,
1761 or any affiliate, subsidiary, or other person or business entity
1762 acting as an agent for, on behalf of, or for the benefit of such
1763 international banking corporation or trust company who engages

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1764 in such activities from an office located in this state, may not
1765 transact a banking or trust business, or maintain in this state
1766 any office for carrying on such business, or any part thereof,
1767 unless such corporation, trust company, affiliate, subsidiary,
1768 person, or business entity:

1769 (3) Has filed with the office a certified copy of that
1770 information required to be supplied to the Department of State
1771 by those provisions of part I of chapter 607 which are
1772 applicable to foreign corporations.

1773 Section 66. Paragraph (a) of subsection (1) of section
1774 663.301, Florida Statutes, is amended to read:

1775 663.301 Definitions.—

1776 (1) As used in this part:

1777 (a) "International development bank" means a corporation
1778 established for the purpose of promoting development in foreign
1779 countries by directly or indirectly making funding available to
1780 foreign business enterprises or foreign governments or by
1781 providing financing in connection with import-export
1782 transactions. Subject to the limitations contained in s.
1783 663.313, an international development bank may be organized
1784 ~~either~~ under chapter 617 as a corporation not for profit or
1785 under part I of chapter 607 as a corporation for profit.

1786 Section 67. Subsection (2) of section 663.306, Florida
1787 Statutes, is amended to read:



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1788 663.306 Decision by office.—The office may, in its
1789 discretion, approve or disapprove the application, but it shall
1790 not approve the application unless it finds that:

1791 (2) The proposed capital structure is adequate, but in no
1792 case may the paid-in capital stock be:

1793 (a) Less than \$400,000 in the case of an international
1794 development bank organized under chapter 617 as a corporation
1795 not for profit; or

1796 (b) The amount required for a state bank in the case of an
1797 international development bank organized under part I of chapter
1798 607 as a corporation for profit.

1799
1800 The office may disallow any illegally obtained currency,
1801 monetary instruments, funds, or other financial resources from
1802 the capitalization requirements of this section.

1803 Section 68. Subsection (4) of section 663.313, Florida
1804 Statutes, is amended to read:

1805 663.313 Ownership of stock.—

1806 (4) All of the shares of voting stock of an international
1807 development bank organized under part I of chapter 607 as a
1808 corporation for profit shall be owned by a regional development
1809 bank or by one or more wholly owned subsidiaries of a regional
1810 development bank.

1811 Section 69. Subsection (2) of section 718.111, Florida
1812 Statutes, is amended to read:

1813 718.111 The association.—



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1814 (2) POWERS AND DUTIES.—The powers and duties of the
1815 association include those set forth in this section and, except
1816 as expressly limited or restricted in this chapter, those set
1817 forth in the declaration and bylaws and part I of chapter
1818 ~~chapters~~ 607 and chapter 617, as applicable.

1819 Section 70. Subsection (10) of section 719.104, Florida
1820 Statutes, is amended to read:

1821 719.104 Cooperatives; access to units; records; financial
1822 reports; assessments; purchase of leases.—

1823 (10) POWERS AND DUTIES.—The powers and duties of the
1824 association include those set forth in this section and, except
1825 as expressly limited or restricted in this chapter, those set
1826 forth in the articles of incorporation and bylaws and part I of
1827 chapter ~~chapters~~ 607 and chapter 617, as applicable.

1828 Section 71. Subsection (5) of section 720.302, Florida
1829 Statutes, is amended to read:

1830 720.302 Purposes, scope, and application.—

1831 (5) Unless expressly stated to the contrary, corporations
1832 that operate residential homeowners' associations in this state
1833 shall be governed by and subject to part I of chapter 607, if
1834 the association was incorporated under that part ~~chapter~~, or to
1835 chapter 617, if the association was incorporated under that
1836 chapter, and this chapter. This subsection is intended to
1837 clarify existing law.

1838 Section 72. Paragraph (c) of subsection (1) of section
1839 720.306, Florida Statutes, is amended to read:

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1840 720.306 Meetings of members; voting and election
1841 procedures; amendments.—
1842 (1) QUORUM; AMENDMENTS.—
1843 (c) Unless otherwise provided in the governing documents
1844 as originally recorded or permitted by this chapter or chapter
1845 617, an amendment may not materially and adversely alter the
1846 proportionate voting interest appurtenant to a parcel or
1847 increase the proportion or percentage by which a parcel shares
1848 in the common expenses of the association unless the record
1849 parcel owner and all record owners of liens on the parcels join
1850 in the execution of the amendment. For purposes of this section,
1851 a change in quorum requirements is not an alteration of voting
1852 interests. The merger or consolidation of one or more
1853 associations under a plan of merger or consolidation under part
1854 I of chapter 607 or chapter 617 is shall not be considered a
1855 material or adverse alteration of the proportionate voting
1856 interest appurtenant to a parcel.

1857 Section 73. Paragraph (a) of subsection (1) of section
1858 766.101, Florida Statutes, is amended to read:

1859 766.101 Medical review committee, immunity from
1860 liability.—

1861 (1) As used in this section:

1862 (a) The term "medical review committee" or "committee"
1863 means:



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- 1864 1.a. A committee of a hospital or ambulatory surgical
1865 center licensed under chapter 395 or a health maintenance
1866 organization certificated under part I of chapter 641;7
- 1867 b. A committee of a physician-hospital organization, a
1868 provider-sponsored organization, or an integrated delivery
1869 system;7
- 1870 c. A committee of a state or local professional society of
1871 health care providers;7
- 1872 d. A committee of a medical staff of a licensed hospital
1873 or nursing home, provided the medical staff operates pursuant to
1874 written bylaws that have been approved by the governing board of
1875 the hospital or nursing home;7
- 1876 e. A committee of the Department of Corrections or the
1877 Correctional Medical Authority as created under s. 945.602, or
1878 employees, agents, or consultants of either the department or
1879 the authority or both;7
- 1880 f. A committee of a professional service corporation
1881 formed under chapter 621 or a corporation organized under part I
1882 of chapter 607 or chapter 617, which is formed and operated for
1883 the practice of medicine as defined in s. 458.305(3), and which
1884 has at least 25 health care providers who routinely provide
1885 health care services directly to patients;7
- 1886 g. A committee of the Department of Children and Families
1887 ~~Family Services~~ which includes employees, agents, or consultants
1888 to the department as deemed necessary to provide peer review,



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1889 utilization review, and mortality review of treatment services
1890 provided pursuant to chapters 394, 397, and 916;~~;~~

1891 h. A committee of a mental health treatment facility
1892 licensed under chapter 394 or a community mental health center
1893 as defined in s. 394.907, provided the quality assurance program
1894 operates pursuant to the guidelines that ~~which~~ have been
1895 approved by the governing board of the agency;~~;~~

1896 i. A committee of a substance abuse treatment and
1897 education prevention program licensed under chapter 397 provided
1898 the quality assurance program operates pursuant to the
1899 guidelines that ~~which~~ have been approved by the governing board
1900 of the agency;~~;~~

1901 j. A peer review or utilization review committee organized
1902 under chapter 440;~~;~~

1903 k. A committee of the Department of Health, a county
1904 health department, healthy start coalition, or certified rural
1905 health network, when reviewing quality of care, or employees of
1906 these entities when reviewing mortality records;~~;~~ or

1907 l. A continuous quality improvement committee of a
1908 pharmacy licensed pursuant to chapter 465,

1909
1910 which committee is formed to evaluate and improve the quality of
1911 health care rendered by providers of health service, to
1912 determine that health services rendered were professionally
1913 indicated or were performed in compliance with the applicable
1914 standard of care, or that the cost of health care rendered was



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1915 considered reasonable by the providers of professional health
1916 services in the area; or

1917 2. A committee of an insurer, self-insurer, or joint
1918 underwriting association of medical malpractice insurance, or
1919 other persons conducting review under s. 766.106.

1920 Section 74. Subsection (14) of section 865.09, Florida
1921 Statutes, is amended to read:

1922 865.09 Fictitious name registration.-

1923 (14) PROHIBITION.-A fictitious name registered as provided
1924 in this section may not contain the words "Corporation" or
1925 "Incorporated," or the abbreviations "Corp." or "Inc.," unless
1926 the person or business for which the name is registered is
1927 incorporated or has obtained a certificate of authority to
1928 transact business in this state pursuant to part I of chapter
1929 607 or chapter 617.

1930 Section 75. This act shall take effect July 1, 2014.

1931

1932

1933 -----

1934

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

1935

Remove everything before the enacting clause and insert:

1936

An act relating to business organizations; amending s. 605.0112,
1937 F.S.; providing additional exceptions regarding the requirement
1938 that limited liability company names be distinguishable from the
1939 names of other entities or filings; specifying differences in
1940 names which are not considered distinguishable; designating part



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1941 I of ch. 607, F.S., entitled "Corporations"; amending s.
1942 607.0101, F.S.; revising a provision to conform to changes made
1943 by the act; amending s. 607.0401, F.S.; providing additional
1944 exceptions regarding the requirement that corporate names be
1945 distinguishable; specifying differences in corporate names which
1946 are not considered distinguishable; amending s. 607.1302, F.S.;
1947 providing that the amendment of articles of incorporation or the
1948 merger, conversion, or share exchange of a social purpose or
1949 benefit corporation entitles the shareholders to appraisal
1950 rights; creating part II of ch. 607, F.S., entitled "Social
1951 Purpose Corporations"; creating s. 607.501, F.S.; providing
1952 application and effect; creating s. 607.502, F.S.; providing
1953 definitions; creating s. 607.503, F.S.; establishing
1954 requirements for the formation of a social purpose corporation;
1955 creating s. 607.504, F.S.; providing procedures for an existing
1956 corporation to become a social purpose corporation; creating s.
1957 607.505, F.S.; providing procedures for the termination of a
1958 social purpose corporation status; creating s. 607.506, F.S.;
1959 requiring that the corporate purpose must be to create a public
1960 benefit; providing criteria; creating s. 607.507, F.S.;
1961 requiring that the directors of a social purpose corporation
1962 meet a standard of conduct; providing criteria for the
1963 standards; creating s. 607.508, F.S.; authorizing the articles
1964 of incorporation of a social purpose corporation to provide for
1965 a benefit director; providing powers and duties of a benefit
1966 director; creating s. 607.509, F.S.; requiring that the officers

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Amendment No. 1

1967 of a social purpose corporation meet a standard of conduct;
1968 providing criteria for the standards of conduct; creating s.
1969 607.510, F.S.; authorizing a social purpose corporation to
1970 designate an officer as a benefit officer; providing for the
1971 powers and duties of a benefit officer; creating s. 607.511,
1972 F.S.; authorizing certain legal actions to be brought against a
1973 social purpose corporation, its officers, or its directors;
1974 creating s. 607.512, F.S.; requiring the board of directors to
1975 prepare an annual benefit report; providing criteria for the
1976 preparation of the report; creating s. 607.513, F.S.;

1977 establishing requirements for the availability and dissemination
1978 of the annual report; authorizing a court to order dissemination
1979 of the report; providing criteria; creating part III of ch. 607,
1980 F.S., entitled "Benefit Corporations"; creating s. 607.601,
1981 F.S.; providing for application and effect; creating s. 607.602,
1982 F.S.; providing definitions; creating s. 607.603, F.S.;

1983 establishing requirements for the formation of a benefit
1984 corporation; creating s. 607.604, F.S.; providing procedures for
1985 an existing corporation to become a benefit corporation;
1986 creating s. 607.605, F.S.; providing procedures for the
1987 termination of a benefit corporation status; creating s.
1988 607.606, F.S.; requiring that the corporate purpose be to create
1989 a public benefit; providing criteria; creating s. 607.607, F.S.;

1990 requiring the directors of a benefit corporation to meet a
1991 standard of conduct; providing criteria for the standards;
1992 creating s. 607.608, F.S.; authorizing the articles of

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Amendment No. 1

1993 incorporation of a benefit corporation to provide for a benefit
1994 director; providing powers and duties of the benefit director;
1995 creating s. 607.609, F.S.; requiring the officers of a benefit
1996 corporation to meet a standard of conduct; providing criteria
1997 for the standards of conduct; creating s. 607.610, F.S.;

1998 authorizing a benefit corporation to designate an officer as a
1999 benefit officer; providing for the powers and duties of the
2000 benefit officer; creating s. 607.611, F.S.; authorizing certain
2001 legal actions to be brought against a benefit corporation, its
2002 officers, or its directors; creating s. 607.612, F.S.; requiring
2003 the board of directors to prepare an annual benefit report;
2004 providing criteria for the preparation of the report; creating
2005 s. 607.613, F.S.; establishing requirements for the availability
2006 and dissemination of the annual report; authorizing a court to
2007 order dissemination of the report; amending ss. 617.0401 and
2008 620.1108, F.S.; providing additional exceptions regarding the
2009 requirement that the names of entities be distinguishable;
2010 specifying differences in names which are not considered
2011 distinguishable; amending ss. 48.091, 215.555, 243.54, 310.171,
2012 310.181, 329.10, 339.412, 420.101, 420.111, 420.161, 440.02,
2013 440.386, 609.08, 617.1908, 618.221, 619.04, 624.430, 624.462,
2014 624.489, 628.041, 631.262, 636.204, 641.2015, 655.0201, 658.23,
2015 658.2953, 658.30, 658.36, 663.03, 663.04, 663.301, 663.306,
2016 663.313, 718.111, 719.104, 720.302, 720.306, 766.101, and
2017 865.09, F.S.; conforming cross-references to changes made by the
2018 act; providing an effective date.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CJS 14-04 Security of Confidential Personal Information

SPONSOR(S): Civil Justice Subcommittee

TIED BILLS: PCB CJS 14-05 **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Cary JMC	Bond MB

SUMMARY ANALYSIS

Current law requires that a person who conducts business in Florida and maintains personal information in a computerized data system must disclose a breach in the security of the data to affected residents no later than forty-five days following a determination that unencrypted personal information was acquired, or reasonably believed to have been acquired, by an unauthorized person if the acquired information materially compromises the security, confidentiality, or integrity of personal information.

This Proposed Committee Bill (PCB) repeals the current law and creates the Florida Information Protection Act of 2014 (Act). The Act requires notice of a breach be given to the Department of Legal Affairs (DLA) in addition to being given to affected residents, shortens the time limit for notice to 30 days, allows delay of notifications if a law enforcement agency requests that notice be delayed for investigation purposes, and provides the DLA with enforcement authority to civilly prosecute a violator of the terms of the Act under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). The Act provides for penalties in addition to FDUTPA of \$1000 for each day, up to 30 days, that the required notice of the breach is not given, and a penalty of \$50,000 for each 30-day period thereafter that notice is not given, for up to 180 days, with an overall cap of \$500,000.

The PCB also requires covered entities to take all reasonable measures to dispose of personal information.

State government entities also must report a breach to the DLA, but are not liable for civil penalties and are not required to properly dispose of personal information by this PCB. Counties and municipalities appear to be exempt from the Act.

The fiscal impacts of this PCB on state government and the private sector are unknown. The PCB does not appear to have a fiscal impact on local government revenues or expenditures.

The PCB has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Current law requires that a person who conducts business in Florida and maintains personal information in a computerized data system must disclose a breach in the security of the data to any resident of this state subject to certain exceptions. When a disclosure is required, it must be made without unreasonable delay, and no later than forty-five days following the determination that unencrypted personal information was acquired, or reasonably believed to have been acquired, by an unauthorized person and the acquired information materially compromises the security, confidentiality, or integrity of personal information.¹

Current law provides that any person who fails to make the required disclosure within forty-five days is liable for the an administrative fine in the amount of \$1,000 for each day the breach goes undisclosed for up to 30 days. The person is liable for up to \$50,000 for each 30 day period the breach goes undisclosed up to 180 days.² If disclosure is not made within 180 days, the person is subject to an administrative fine of up to \$500,000.³

The disclosure required must be made by all persons in the state in possession of computerized data, but the administrative sanctions described above do not apply in the case of computerized information in the custody of any governmental agency or subdivision. However, if the governmental agency or subdivision has entered into a contract with a contractor of third party administrator to provide governmental services, the contractor or third party administrator is a person to whom the administrative sanctions would apply, although that contractor or third party administrator found in violation of the non-disclosure restrictions would not have an action for contribution or set-off available against the employing agency or subdivision.⁴

Further, current law provides that any person who, on behalf of another business entity, maintains computerized data that includes personal information, must notify the business entity for whom the information is maintained of any breach of the security of the data within 10 days of the determination that a breach has occurred, if the personal information is reasonably believed to have been acquired by an unauthorized person. The administrative fines described above apply to a person who fails to disclose a security breach under this provision. The PCB defines the terms "breach," "breach of the security of the system", "personal information," "unauthorized person," and "person." The PCB specifies what type of notice must be provided.⁵

Finally, current law provides that in the event that notification is required of more than 1,000 persons at one time, the person must also notify all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis⁶ of the timing, distribution and content of the notices.⁶

Effect of the PCB

The Proposed Committee Bill (PCB) repeals current law regarding data breaches at s. 817.5681, F.S., and creates s. 501.170, F.S., known as the "Florida Information Protection Act of 2014" (Act).

¹ Section 817.5681(1)(a), F.S.

² Section 817.5681(1)(b)1., F.S.

³ Section 817.5681(1)(b)2., F.S.

⁴ Section 817.5681(1)(d), F.S.

⁵ Section 817.5681(2)(a), F.S.

⁶ Section 817.5681(12), F.S.

The PCB creates s. 501.170(1), F.S., to provide definitions.

The PCB creates s. 501.170(2), F.S., to require a “covered entity” to provide notice of any breach of security once it is discovered. A covered entity is defined as a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information, including a governmental entity.⁷ A breach of security is an unauthorized access of data in electronic form containing personal information. Personal information includes either a user name or e-mail address, in combination with a password or security question and answer that would permit access to an online account, or an individual's first initial or name and last name in combination with any one or more of the following:

- Social security number;
- Driver license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;
- Financial account number or credit or debit card number, in combination with any required security code, access, code, or password that is necessary to permit access to an individual's financial account;
- Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional;
- An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual; or
- Any other information from or about an individual that could be used to personally identify that person.

The PCB creates s. 501.170(3), F.S., to require that a covered entity provide notice to the Department of Legal Affairs (DLA), and also to each individual in Florida whose personal information was accessed, or the covered entity reasonably believes was accessed, as a result of the breach. If a third-party agent maintains the system that was breached, the third-party agent must notify the covered entity, who is responsible for the notification to the DLA and individuals.

The PCB creates s. 501.170(4), F.S., to require that such notification be made as expeditiously as practicable and without unreasonable delay. Notification to affected individuals must be made within 30 days unless, after an appropriate investigation and written consultation with relevant federal and state law enforcement agencies, the covered entity reasonably determines that the breach has not and likely will not result in identity theft or any other financial harm to the individuals. Such a determination must be documented in writing and maintained for at least 5 years, and must be provided to the DLA.

If notification to individuals must be made due to the breach likely resulting in identity theft or other financial harm, the covered entity must provide written notice to the DLA as promptly as possible, but in any event, within 30 days after determining that a breach occurred. Written notice to the DLA must include:

- A synopsis of the events surrounding the breach;
- A police report, incident report, or computer forensics report;
- The number of individuals in this state who were or potentially have been affected by the breach;
- A copy of the policies in place regarding breaches;
- Any steps that have been taken to rectify the breach;
- Any services being offered by the covered entity to individuals, without charge, and how to use such services;

⁷ A governmental entity is not subject to the enforcement provisions of the Act or the requirements for disposal of individual records. Furthermore, counties and municipalities do not appear to be “governmental entities” for the purposes of the Act.

- A copy of the notice sent to the individuals affected; and
- The name, address, telephone number, and e-mail address of an employee of the covered entity from whom additional information may be obtained about the breach and the steps taken to rectify the breach and prevent similar breaches.

If the covered entity is the judicial branch, the Executive Office of the Governor, the Department of Financial Services, or the Department of Agriculture and Consumer Services, the agency may post the information on their agency-maintained websites rather than providing written notice to the DLA.

If a federal or state law enforcement agency determines that such notices would interfere with a criminal investigation and provides a written request to that effect, the notification to affected individuals must be delayed for any period that the law enforcement agency determines is reasonably necessary.

The PCB creates s. 501.170(5), F.S., to require written notice to an individual to be by either a written notification sent to the postal address of the individual or an e-mail notification sent to the e-mail address of the individual and must include:

- The date, estimated date, or estimated date range of the breach of security;
- A description of the personal information that was accessed or reasonably believed to have been accessed as a part of the breach of security; and
- Information that the individual can use to contact the covered entity to inquire about the breach and the personal information that the covered entity maintained about the individual.

If the cost of such notification would exceed \$250,000, or if there are more than 500,000 affected individuals, or if the covered entity does not have an e-mail address or mailing address for the effective individuals, the covered entity may provide substitute notification. The substitute notification must include a conspicuous notice on the Internet website of the covered entity if the covered entity maintains a website, and notification in print and broadcast media, including major media in urban and rural areas where the affected individuals reside.

If a covered entity is in compliance with a federal law that requires the covered entity to provide notification to individuals following a breach of security, the covered entity is deemed to comply with the requirements of s. 501.170(5), F.S., as long as it provides notification to the DLA.

The PCB creates s. 501.170(6), F.S., to require a covered entity to notify consumer credit reporting agencies if the covered entity must provide notification to more than 1000 individuals at a single time.

The PCB creates s. 501.170(7), F.S., to require the DLA to provide an annual report, by February 1, to the President of the Senate and the Speaker of the House describing the nature of any reported breaches of security by governmental entities or third-party agents of governmental entities in the preceding year, along with recommendations for security improvements.

The PCB creates s. 501.170(8), F.S., to require each covered entity or third-party agent to take all reasonable measures to dispose, or arrange for the disposal, of personal information within its custody or control when the records are no longer retained. Such disposal must involve shredding, erasing, or otherwise modifying the personal information in the records to make it unreadable or undecipherable through any means.

The PCB creates s. 501.170(9), F.S., to provide the DLA with a means to enforce the Act. Specifically, if a covered entity violates any requirement of the Act, it will be treated as an unfair or deceptive act or practice⁸ in any action brought by DLA. An unfair or deceptive act or practice is punishable by a civil

⁸ Section 501.207, F.S., allows the DLA to bring (1) an action to obtain a declaratory judgment that an act or practice violates the Florida Deceptive and Unfair Trade Practices Act (FDUTPA); (2) an action to enjoin any person who has

penalty of not more than \$10,000 for each violation.⁹ A civil penalty is “strictly construed and is not to be extended by construction.”¹⁰ Therefore, a single breach event would likely be considered a single violation under FDUTPA.¹¹ However, the Act provides additional penalties beyond a typical unfair or deceptive act or practice claim. In addition to the \$10,000 per violation penalty under FDUTPA, the Act provides for a civil penalty of \$1000 for each day the breach goes undisclosed for up to 30 days and, thereafter, \$50,000 for each 30-day period or portion thereof for up to 180 days, not to exceed \$500,000. If notification is not made within 180 days, any person required to make notification but fails to do so is subject to a civil penalty of up to \$500,000. All penalties will be deposited into the General Revenue Fund.

The PCB creates s. 501.170(10), F.S., to explicitly state that the PCB does not create a private cause of action.

The PCB amends ss. 282.0041 and 282.318, F.S., to update cross references in accordance with the Act.

The PCB provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1 provides a name for the Act.

Section 2 repeals s. 817.5681, F.S., relating to breach of security concerning confidential personal information in third-party possession and administrative penalties.

Section 3 creates s. 501.170, F.S., relating to security of confidential personal information.

Section 4 amends s. 282.0041, F.S., relating to definitions.

Section 5 amends s. 282.318, F.S., relating to enterprise security of data and information technology.

Section 6 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The PCB may have an unknown, positive impact on state revenues to the extent that DLA enforces civil penalties against violators of the Act.

2. Expenditures:

The PCB appears to create an unknown increase in state government expenditures for the DLA, however the DLA indicates that any additional duties required of consumer protection staff can be absorbed within existing appropriations for the next fiscal year.

violated, is violating, or is likely to violate FDUTPA; and/or (3) an action on behalf of one or more consumers or governmental entities for the actual damages caused by an act or practice in violation of FDUTPA.

⁹ Section 501.2075, F.S.

¹⁰ *3B TV, Inc. v. State, Office of Atty. Gen.*, 794 So.2d 744, 749 (Fla. 1st DCA 2001).

¹¹ *See id.* *See also* s. 501.170(9)(b) of the PCB, which provides that a civil penalty must be applied per breach, and not per individual affected.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The PCB does not appear to have any impact on local government revenues.

2. Expenditures:

The PCB does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCB creates a requirement to notify affected individuals of a breach. Because the reporting requirement is similar to that in current law, this requirement is not anticipated to have a fiscal impact on the private sector.

The PCB creates a requirement to notify the state in the event of a breach. The requirement is new, but is expected to have a minimal impact on the private sector.

The PCB contains civil penalties that may be assessed against individuals and entities in the private sector. The penalty can be as high as \$500,000 for violations of the Act. It is unknown how often these penalties would be assessed and their impact on the private sector is thus unknown.

The PCB mandates that businesses properly dispose of individual records in order to avoid having those records fall into the wrong hands. The fiscal impact of this requirement on the private sector is unknown. Many companies are already required by current state and federal law to take reasonable measures to properly dispose of certain personal information, and thus will not be impacted by this requirement in the PCB. For example, the Fair Credit Reporting Act and the Federal Trade Commission require that businesses properly dispose of consumer information; and the Health Insurance Portability and Accountability Act and the Gramm-Leach-Bliley Act require health care providers to properly dispose of certain health information.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The PCB does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to security of confidential personal
 3 information; providing a short title; repealing s.
 4 817.5681, F.S., relating to breach of security
 5 concerning confidential personal information in third-
 6 party possession; creating s. 501.170, F.S.; providing
 7 definitions; requiring specified entities to take
 8 reasonable measures to protect and secure data in
 9 electronic form containing personal information;
 10 requiring specified entities to notify the Department
 11 of Legal Affairs of data security breaches; requiring
 12 notice to individuals of data security breaches in
 13 certain circumstances; providing exceptions to notice
 14 requirements in certain circumstances; specifying
 15 contents of notice; requiring notice to credit
 16 reporting agencies in certain circumstances; requiring
 17 the department to report annually to the Legislature;
 18 providing requirements for disposal of customer
 19 records; providing for enforcement actions by the
 20 department; providing civil penalties; specifying that
 21 no private cause of action is created; amending ss.
 22 282.0041 and 282.318, F.S.; conforming cross-
 23 references; providing an effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:
 26

27 Section 1. This act may be cited as the "Florida
 28 Information Protection Act of 2014."

29 Section 2. Section 817.5681, Florida Statutes, is
 30 repealed.

31 Section 3. Section 501.170, Florida Statutes, is created
 32 to read:

33 501.170 Security of confidential personal information.—

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

35 (a) "Breach of security" means unauthorized access of data
 36 in electronic form containing personal information.

37 (b) "Covered entity" means a sole proprietorship,
 38 partnership, corporation, trust, estate, cooperative,
 39 association, or other commercial entity that acquires,
 40 maintains, stores, or uses personal information. For purposes of
 41 the notification requirements of subsections (3)-(6), the term
 42 includes a governmental entity.

43 (c) "Data in electronic form" means any data stored
 44 electronically or digitally on any computer system or other
 45 database and includes recordable tapes and other mass storage
 46 devices.

47 (e) "Department" means the Department of Legal Affairs.

48 (e) "Governmental entity" means any department, division,
 49 bureau, commission, regional planning agency, board, district,
 50 authority, agency, or other instrumentality of this state that
 51 acquires, maintains, stores, or uses data in electronic form
 52 containing personal information.

53 (f)1. "Personal information" means either of the
 54 following:

55 a. An individual's first name or first initial and last
 56 name in combination with any one or more of the following data
 57 elements for that individual:

58 (I) Social security number.

59 (II) Driver license or identification card number,
 60 passport number, military identification number, or other
 61 similar number issued on a government document used to verify
 62 identity.

63 (III) Financial account number or credit or debit card
 64 number, in combination with any required security code, access
 65 code, or password that is necessary to permit access to an
 66 individual's financial account.

67 (IV) Any information regarding an individual's medical
 68 history, mental or physical condition, or medical treatment or
 69 diagnosis by a health care professional.

70 (V) An individual's health insurance policy number or
 71 subscriber identification number and any unique identifier used
 72 by a health insurer to identify the individual.

73 (VI) Any other information from or about an individual
 74 that could be used to personally identify that person; or

75 b. A user name or e-mail address, in combination with a
 76 password or security question and answer that would permit
 77 access to an online account.

78 2. "Personal information" does not include information

79 about an individual that has been made publicly available by a
 80 federal, state, or local governmental entity or information that
 81 is encrypted, secured, or modified by any other method or
 82 technology that removes elements that personally identify an
 83 individual or that otherwise renders the information unusable.

84 (g) "Customer records" means any material, regardless of
 85 the physical form, on which information is recorded or preserved
 86 by any means, including, but not limited to, written or spoken
 87 words, graphically depicted, printed, or electromagnetically
 88 transmitted that are provided by an individual in this state to
 89 a covered entity for the purpose of purchasing or leasing a
 90 product or obtaining a service.

91 (h) "Third-party agent" means an entity that has been
 92 contracted to maintain, store, or process personal information
 93 on behalf of a covered entity or governmental entity.

94 (2) REQUIREMENTS FOR DATA SECURITY.—Each covered entity,
 95 governmental entity, or third-party agent shall take reasonable
 96 measures to protect and secure data in electronic form
 97 containing personal information.

98 (3) NOTICE OF SECURITY BREACH.—

99 (a) A covered entity shall give notice of any breach of
 100 security following discovery by the covered entity. Notice of
 101 the breach of security shall be provided to the department and
 102 to each individual in this state whose personal information was,
 103 or the covered entity reasonably believes to have been, accessed
 104 as a result of the breach.

105 (b) In the event of a breach of security of a system
 106 maintained by a third-party agent, such third-party agent shall
 107 promptly notify the covered entity of the breach of security.
 108 Upon receiving notification from a third-party agent, a covered
 109 entity shall provide notification as required under subsection
 110 (3).

111 (4) NOTIFICATION REQUIREMENTS.—

112 (a) A notification required under subsection (3) with
 113 respect to a breach of security shall be made as expeditiously
 114 as practicable and without unreasonable delay, taking into
 115 account the time necessary to allow the covered entity to
 116 determine the scope of the breach of security, to identify
 117 individuals affected by the breach, and to restore the
 118 reasonable integrity of the data system that was breached.
 119 Notification to the affected individuals must be made within 30
 120 days after the determination of the breach or reason to believe
 121 a breach had occurred, unless subject to a delay authorized
 122 under paragraph (d).

123 (b) Upon determining that a breach occurred, a covered
 124 entity must provide written notice to the department as promptly
 125 as possible, but within 30 days after the determination. Such
 126 notice must be given to the department even for breaches
 127 involving paragraph (c) or paragraph (d). Written notice must
 128 include:

- 129 1. A synopsis of the events surrounding the breach.
- 130 2. A police report, incident report, or computer forensics

131 report.

132 3. The number of individuals in this state who were or
 133 potentially have been affected by the breach.

134 4. A copy of the policies in place regarding breaches.

135 5. Any steps that have been taken to rectify the breach.

136 6. Any services being offered by the covered entity to
 137 individuals, without charge, and instructions as to how to use
 138 such services.

139 7. A copy of the notice sent to the individual.

140 8. The name, address, telephone number, and e-mail address
 141 of the employee of the covered entity from whom additional
 142 information may be obtained about the breach and the steps taken
 143 to rectify the breach and prevent similar breaches.

144
 145 In lieu of providing the written notice to the department, the
 146 judicial branch, the Executive Office of the Governor, the
 147 Department of Financial Services, and the Department of
 148 Agriculture and Consumer Services may post the information
 149 described in subparagraphs 1.-7. on their agency-managed
 150 websites.

151 (c) If a federal or state law enforcement agency
 152 determines that the notification required under this subsection
 153 would interfere with a criminal investigation, the notification
 154 shall be delayed upon the written request of the law enforcement
 155 agency for any period that the law enforcement agency determines
 156 is reasonably necessary. A law enforcement agency may, by a

157 subsequent written request, revoke such delay or extend the
 158 period set forth in the original request made under this
 159 paragraph by a subsequent request if further delay is necessary.

160 (d) Notwithstanding paragraph (a), notification to the
 161 affected individuals is not required if, after an appropriate
 162 investigation and written consultation with relevant federal and
 163 state law enforcement agencies, the covered entity reasonably
 164 determines that the breach has not and will not likely result in
 165 identity theft or any other financial harm to the individuals
 166 whose personal information has been accessed. Such a
 167 determination must be documented in writing and maintained for
 168 at least 5 years. The covered entity shall provide the written
 169 determination to the department within 30 days after the
 170 determination.

171 (5) METHOD AND CONTENT OF NOTIFICATION.—

172 (a) A covered entity required to provide notification to
 173 an individual under subsection (3) shall be in compliance with
 174 such requirement if the covered entity provides such notice by
 175 one of the following methods:

176 1. Written notification sent to the postal address of the
 177 individual in the records of the covered entity.

178 2. E-mail notification sent to the e-mail address of the
 179 individual in the records of the covered entity.

180 (b) Regardless of the method by which notification is
 181 provided to an individual under paragraph (a) with respect to a
 182 breach of security, such notification shall include:

183 1. The date, estimated date, or estimated date range of
 184 the breach of security.

185 2. A description of the personal information that was
 186 accessed or reasonably believed to have been accessed as a part
 187 of the breach of security.

188 3. Information that the individual can use to contact the
 189 covered entity to inquire about:

190 a. The breach of security.

191 b. The personal information that the covered entity
 192 maintained about the individual.

193 (c) A covered entity required to provide notification to
 194 an individual under subsection (3) may provide substitute
 195 notification in lieu of the direct notification required by
 196 paragraph (a) if such direct notification is not feasible
 197 because the cost of providing notice would exceed \$250,000, the
 198 affected individuals exceed 500,000 persons, or the covered
 199 entity does not have an e-mail address or mailing address for
 200 the affected individuals. Such substitute notification shall
 201 include the following:

202 1. A conspicuous notice on the Internet website of the
 203 covered entity, if such covered entity maintains a website.

204 2. Notification in print and to broadcast media, including
 205 major media in urban and rural areas where the affected
 206 individuals reside.

207 (d) A covered entity that is in compliance with any
 208 federal law that requires such covered entity to provide

209 notification to individuals following a breach of security is
 210 deemed to comply with this section as long as it promptly
 211 provides the information required by paragraph (4) (b) to the
 212 department.

213 (6) CREDIT REPORTING AGENCIES.—If a covered entity
 214 discovers circumstances requiring notification pursuant to this
 215 section of more than 1,000 persons at a single time, the covered
 216 entity shall also notify, without unreasonable delay, all
 217 consumer reporting agencies that compile and maintain files on
 218 consumers on a nationwide basis, as defined in 15 U.S.C. s.
 219 1681a(p), of the timing, distribution, and content of the
 220 notices.

221 (7) ANNUAL REPORT.—By February 1 of each year, the
 222 department shall submit a report to the President of the Senate
 223 and the Speaker of the House of Representatives describing the
 224 nature of any reported breaches of security by governmental
 225 entities or third-party agents of governmental entities in the
 226 preceding calendar year along with recommendations for security
 227 improvements. The report shall identify any governmental entity
 228 that has violated subsection (2), subsection (3), subsection
 229 (4), or subsection (5) in the preceding calendar year.

230 (8) REQUIREMENTS FOR DISPOSAL OF INDIVIDUAL RECORDS.—
 231 Each covered entity or third-party agent shall take all
 232 reasonable measures to dispose, or arrange for the disposal, of
 233 personal information within its custody or control when the
 234 records are no longer to be retained. Such disposal shall

235 involve shredding, erasing, or otherwise modifying the personal
 236 information in the records to make it unreadable or
 237 undecipherable through any means.

238 (9) ENFORCEMENT.—

239 (a) A violation of this section shall be treated as an
 240 unfair or deceptive act or practice in any action brought by the
 241 department under s. 501.207 against a covered entity or third-
 242 party agent.

243 (b) In addition to the civil penalties provided for in
 244 paragraph (a), a covered entity that violates this section shall
 245 be liable for a civil penalty not to exceed \$500,000, as
 246 follows:

247 1. In the amount of \$1,000 for each day the breach goes
 248 undisclosed for up to 30 days and, thereafter, \$50,000 for each
 249 30-day period or portion thereof for up to 180 days.

250 2. If notification is not made within 180 days, any person
 251 required to make notification under subsection (3) who fails to
 252 do so is subject to a civil penalty of up to \$500,000.

253
 254 The civil penalties for failure to notify provided in this
 255 paragraph shall apply per breach and not per individual affected
 256 by the breach.

257 (c) All penalties collected pursuant to this subsection
 258 shall be deposited into the General Revenue Fund.

259 (10) NO PRIVATE CAUSE OF ACTION.—This section does not
 260 establish a private cause of action.

261 Section 4. Subsection (5) of section 282.0041, Florida
 262 Statutes, is amended to read:

263 282.0041 Definitions.—As used in this chapter, the term:

264 (5) "Breach" has the same meaning as the term "breach of
 265 security" as provided in s. 501.170 ~~in s. 817.5681(4)~~.

266 Section 5. Paragraph (i) of subsection (4) of section
 267 282.318, Florida Statutes, is amended to read:

268 282.318 Enterprise security of data and information
 269 technology.—

270 (4) To assist the Agency for Enterprise Information
 271 Technology in carrying out its responsibilities, each agency
 272 head shall, at a minimum:

273 (i) Develop a process for detecting, reporting, and
 274 responding to suspected or confirmed security incidents,
 275 including suspected or confirmed breaches consistent with the
 276 security rules and guidelines established by the Agency for
 277 Enterprise Information Technology.

278 1. Suspected or confirmed information security incidents
 279 and breaches must be immediately reported to the Agency for
 280 Enterprise Information Technology.

281 2. For incidents involving breaches, agencies shall
 282 provide notice in accordance with s. 501.170 ~~817.5681~~ and to the
 283 Agency for Enterprise Information Technology in accordance with
 284 this subsection.

285 Section 6. This act shall take effect July 1, 2014.



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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 PCB: Civil Justice Subcommittee
 2 Representative Metz offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

6 Section 1. This act may be cited as the "Florida
 7 Information Protection Act of 2014."

8 Section 2. Section 817.5681, Florida Statutes, is repealed.

9 Section 3. Section 501.170, Florida Statutes, is created to
 10 read:

11 501.170 Security of confidential personal information.-

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

13 (a) "Breach of security" or "breach" means unauthorized
 14 access of data in electronic form containing personal
 15 information.

16 (b) "Covered entity" means a sole proprietorship,
 17 partnership, corporation, trust, estate, cooperative,

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18 association, or other commercial entity that acquires,
19 maintains, stores, or uses personal information. For purposes of
20 the notice requirements of subsections (3)-(6), the term
21 includes a governmental entity.

22 (c) "Data in electronic form" means any data stored
23 electronically or digitally on any computer system or other
24 database and includes recordable tapes and other mass storage
25 devices.

26 (d) "Department" means the Department of Legal Affairs.

27 (e) "Governmental entity" means any department, division,
28 bureau, commission, regional planning agency, board, district,
29 authority, agency, or other instrumentality of this state that
30 acquires, maintains, stores, or uses data in electronic form
31 containing personal information.

32 (f)1. "Personal information" means either of the following:

33 a. An individual's first name or first initial and last
34 name in combination with any one or more of the following data
35 elements for that individual:

36 (I) Social security number.

37 (II) Driver license or identification card number, passport
38 number, military identification number, or other similar number
39 issued on a government document used to verify identity.

40 (III) Financial account number or credit or debit card
41 number, in combination with any required security code, access
42 code, or password that is necessary to permit access to an
43 individual's financial account.

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44 (IV) Any information regarding an individual's medical
45 history, mental or physical condition, or medical treatment or
46 diagnosis by a health care professional.

47 (V) An individual's health insurance policy number or
48 subscriber identification number and any unique identifier used
49 by a health insurer to identify the individual.

50 (VI) Any other information from or about an individual that
51 could be used to personally identify that person; or

52 b. A user name or e-mail address, in combination with a
53 password or security question and answer that would permit
54 access to an online account.

55 2. "Personal information" does not include information
56 about an individual that has been made publicly available by a
57 federal, state, or local governmental entity or information that
58 is encrypted, secured, or modified by any other method or
59 technology that removes elements that personally identify an
60 individual or that otherwise renders the information unusable.

61 (g) "Customer records" means any material, regardless of
62 the physical form, on which personal information is recorded or
63 preserved by any means, including, but not limited to, written
64 or spoken words, graphically depicted, printed, or
65 electromagnetically transmitted that are provided by an
66 individual in this state to a covered entity for the purpose of
67 purchasing or leasing a product or obtaining a service.

68 (h) "Third-party agent" means an entity that has been
69 contracted to maintain, store, or process personal information



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70 on behalf of a covered entity or governmental entity.

71 (2) REQUIREMENTS FOR DATA SECURITY.—Each covered entity,
72 governmental entity, or third-party agent shall take reasonable
73 measures to protect and secure data in electronic form
74 containing personal information. Each covered entity,
75 governmental entity, or third-party agent shall take reasonable
76 measures to prevent a breach of security.

77 (3) NOTICE TO DEPARTMENT OF SECURITY BREACH.—

78 (a) A covered entity shall give notice to the department of
79 any breach of security following discovery by the covered
80 entity. Notice to the department must be made within 30 days
81 after the determination of the breach or reason to believe a
82 breach had occurred.

83 (b) The written notice to the department must include:

- 84 1. A synopsis of the events surrounding the breach.
- 85 2. A police report, incident report, or computer forensics
86 report.
- 87 3. The number of individuals in this state who were or
88 potentially have been affected by the breach.
- 89 4. A copy of the policies in place regarding breaches.
- 90 5. Any steps that have been taken to rectify the breach.
- 91 6. Any services being offered by the covered entity to
92 individuals, without charge, and instructions as to how to use
93 such services.
- 94 7. A copy of the notice sent to the individuals.
- 95 8. The name, address, telephone number, and e-mail address

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96 of the employee of the covered entity from whom additional
97 information may be obtained about the breach and the steps taken
98 to rectify the breach and prevent similar breaches.

99 9. Whether notice to individuals is being made pursuant to
100 federal law or pursuant to the requirements of subsection (4).

101 (c) For a covered entity that is the judicial branch, the
102 Executive Office of the Governor, the Department of Financial
103 Services, and the Department of Agriculture and Consumer
104 Services, in lieu of providing the written notice to the
105 department, the covered entity may post the information
106 described in subparagraphs (b)1.-7. on an agency-managed
107 website.

108 (4) NOTICE TO INDIVIDUALS OF SECURITY BREACH.—

109 (a) A covered entity shall give notice to each individual
110 in this state whose personal information was, or the covered
111 entity reasonably believes to have been, accessed as a result of
112 the breach. Notice to individuals shall be made as expeditiously
113 as practicable and without unreasonable delay, taking into
114 account the time necessary to allow the covered entity to
115 determine the scope of the breach of security, to identify
116 individuals affected by the breach, and to restore the
117 reasonable integrity of the data system that was breached, but
118 no later than 30 days after the determination of a breach unless
119 subject to a delay authorized under paragraph (b) or waiver
120 under paragraph (c).

121 (b) If a federal or state law enforcement agency determines

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122 that notice to individuals required under this subsection would
123 interfere with a criminal investigation, the notice shall be
124 delayed upon the written request of the law enforcement agency
125 for any period that the law enforcement agency determines is
126 reasonably necessary. A law enforcement agency may, by a
127 subsequent written request, revoke such delay or extend the
128 period set forth in the original request made under this
129 paragraph by a subsequent request if further delay is necessary.

130 (c) Notwithstanding paragraph (a), notice to the affected
131 individuals is not required if, after an appropriate
132 investigation and written consultation with relevant federal and
133 state law enforcement agencies, the covered entity reasonably
134 determines that the breach has not and will not likely result in
135 identity theft or any other financial harm to the individuals
136 whose personal information has been accessed. Such a
137 determination must be documented in writing and maintained for
138 at least 5 years. The covered entity shall provide the written
139 determination to the department within 30 days after the
140 determination.

141 (d) The notice to an affected individual shall be by one of
142 the following methods:

143 1. Written notice sent to the postal address of the
144 individual in the records of the covered entity; or

145 2. E-mail notice sent to the e-mail address of the
146 individual in the records of the covered entity.

147 (e) The notice to an individual with respect to a breach of

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148 security shall include, at a minimum:

149 1. The date, estimated date, or estimated date range of the
150 breach of security.

151 2. A description of the personal information that was
152 accessed or reasonably believed to have been accessed as a part
153 of the breach of security.

154 3. Information that the individual can use to contact the
155 covered entity to inquire about the breach of security and the
156 personal information that the covered entity maintained about
157 the individual.

158 (e) A covered entity required to provide notice to an
159 individual may provide substitute notice in lieu of direct
160 notice if such direct notice is not feasible because the cost of
161 providing notice would exceed \$250,000, the affected individuals
162 exceed 500,000 persons, or the covered entity does not have an
163 e-mail address or mailing address for the affected individuals.
164 Such substitute notice shall include the following:

165 1. A conspicuous notice on the Internet website of the
166 covered entity, if such covered entity maintains a website; and

167 2. Notice in print and to broadcast media, including major
168 media in urban and rural areas where the affected individuals
169 reside.

170 (f) A covered entity that is in compliance with any federal
171 law that requires such covered entity to provide notice to
172 individuals following a breach of security is deemed to comply
173 with the notice requirements of this subsection if the covered

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174 entity has promptly provided the notice to the department under
175 subsection (3).

176 (5) NOTICE TO CREDIT REPORTING AGENCIES.—If a covered
177 entity discovers circumstances requiring notice pursuant to this
178 section of more than 1,000 individuals at a single time, the
179 covered entity shall also notify, without unreasonable delay,
180 all consumer reporting agencies that compile and maintain files
181 on consumers on a nationwide basis, as defined in 15 U.S.C. s.
182 1681a(p), of the timing, distribution, and content of the
183 notices.

184 (6) NOTICE BY THIRD-PARTY AGENTS; DUTIES OF THIRD-PARTY
185 AGENTS.—In the event of a breach of security of a system
186 maintained by a third-party agent, such third-party agent shall
187 promptly notify the covered entity of the breach of security.
188 Upon receiving notice from a third-party agent, a covered entity
189 shall provide notices required under subsections (3) and (4). A
190 third-party agent shall provide a covered entity with all
191 information that the covered entity needs to comply with its
192 notice requirements.

193 (7) ANNUAL REPORT.—By February 1 of each year, the
194 department shall submit a report to the President of the Senate
195 and the Speaker of the House of Representatives describing the
196 nature of any reported breaches of security by governmental
197 entities or third-party agents of governmental entities in the
198 preceding calendar year along with recommendations for security
199 improvements. The report shall identify any governmental entity

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200 that has violated any of the applicable requirements in
201 subsections (2)-(6) in the preceding calendar year.

202 (8) REQUIREMENTS FOR DISPOSAL OF CUSTOMER RECORDS.-

203 Each covered entity or third-party agent shall take all
204 reasonable measures to dispose, or arrange for the disposal, of
205 customer records containing personal information within its
206 custody or control when the records are no longer to be
207 retained. Such disposal shall involve shredding, erasing, or
208 otherwise modifying the personal information in the records to
209 make it unreadable or undecipherable through any means.

210 (9) ENFORCEMENT.-

211 (a) A violation of this section shall be treated as an
212 unfair or deceptive act or practice in any action brought by the
213 department under s. 501.207 against a covered entity or third-
214 party agent.

215 (b) In addition to the remedies provided for in paragraph
216 (a), a covered entity that violates subsection (3) or (4) shall
217 be liable for a civil penalty not to exceed \$500,000, as
218 follows:

219 1. In the amount of \$1,000 for each day the breach goes
220 undisclosed for up to 30 days and, thereafter, \$50,000 for each
221 30-day period or portion thereof for up to 180 days.

222 2. If notice is not made within 180 days, in an amount not
223 to exceed \$500,000.

224
225 The civil penalties for failure to notify provided in this



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226 paragraph shall apply per breach and not per individual affected
227 by the breach.

228 (c) All penalties collected pursuant to this subsection
229 shall be deposited into the General Revenue Fund.

230 (10) NO PRIVATE CAUSE OF ACTION.—This section does not
231 establish a private cause of action.

232 Section 4. Subsection (5) of section 282.0041, Florida
233 Statutes, is amended to read:

234 282.0041 Definitions.—As used in this chapter, the term:

235 (5) "Breach" has the same meaning as the term "breach of
236 security" as provided in s. 501.170 ~~in s. 817.5681(4).~~

237 Section 5. Paragraph (i) of subsection (4) of section
238 282.318, Florida Statutes, is amended to read:

239 282.318 Enterprise security of data and information
240 technology.—

241 (4) To assist the Agency for Enterprise Information
242 Technology in carrying out its responsibilities, each agency
243 head shall, at a minimum:

244 (i) Develop a process for detecting, reporting, and
245 responding to suspected or confirmed security incidents,
246 including suspected or confirmed breaches consistent with the
247 security rules and guidelines established by the Agency for
248 Enterprise Information Technology.

249 1. Suspected or confirmed information security incidents
250 and breaches must be immediately reported to the Agency for
251 Enterprise Information Technology.

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252 2. For incidents involving breaches, agencies shall provide
 253 notice in accordance with s. 501.170 ~~817.5681~~ and to the Agency
 254 for Enterprise Information Technology in accordance with this
 255 subsection.

256 Section 6. This act shall take effect July 1, 2014.
 257
 258
 259

260 -----

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

262 Remove everything before the enacting clause and insert:
 263 An act relating to security of confidential personal
 264 information; providing a short title; repealing s. 817.5681,
 265 F.S., relating to breach of security concerning confidential
 266 personal information in third-party possession; creating s.
 267 501.170, F.S.; providing definitions; requiring specified
 268 entities to take reasonable measures to protect and secure data
 269 in electronic form containing personal information; requiring
 270 specified entities to notify the Department of Legal Affairs of
 271 data security breaches; requiring notice to individuals of data
 272 security breaches in certain circumstances; providing exceptions
 273 to notice requirements in certain circumstances; specifying
 274 contents of notice; requiring notice to credit reporting
 275 agencies in certain circumstances; requiring the department to
 276 report annually to the Legislature; providing requirements for
 277 disposal of customer records; providing for enforcement actions



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278 by the department; providing civil penalties; specifying that no
279 private cause of action is created; amending ss. 282.0041 and
280 282.318, F.S.; conforming cross-references; providing an
281 effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CJS 14-05 Pub. Rec./Security of Confidential Personal Information

SPONSOR(S): Civil Justice Subcommittee

TIED BILLS: PCB CJS 14-04 **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Cary JMC	Bond YB

SUMMARY ANALYSIS

The Proposed Committee Bill (PCB) creates a public records exemption relating to the Florida Information Protection Act of 2014 (Act). The notice and information held by the Department of Legal Affairs (DLA) pursuant to an investigation of a violation of the Act is generally confidential and exempt from a public records request.

The PCB also contains a Legislative finding that it is a public necessity that the notice and information held by the DLA is confidential and exempt because notices may contain proprietary information about the security of breached systems, the release of which could result in the identification of vulnerabilities and further data breaches; and because notices provided to the DLA may contain personal information.

The PCB contains a sunset provision and will be repealed on October 2, 2019 unless it is reenacted.

The PCB provides a statement of public necessity as required by the State Constitution.

The PCB provides that the exemption will take effect on the same date as PCB CJS 14-04 or similar legislation if such legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The PCB creates a public record exemption for certain information related to the investigation of a violation of the Florida Information and Protection Act of 2014; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. An exemption may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.

Confidential versus Confidential and Exempt

There is a difference between records the Legislature has determined to be exempt and those which have been determined to be confidential and exempt.² If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.³ Also, if the information is deemed to be confidential it may only be released to those person and entities designated in the statute.⁴ However, the agency is not prohibited from disclosing the records in all circumstances where the records are only exempt.⁵

Effect of the PCB

The Proposed Committee Bill (PCB) creates s. 501.170(11), F.S., to provide a public records exemption relating to the Florida Information Protection Act of 2014 (Act).⁶ The Act requires commercial entities and certain government agencies to provide notice to the Department of Legal Affairs (DLA) in the event of a security breach. The information in the notice may contain protected information, such as:

¹ Art I., s. 24(c), Fla.Const.

² *WFTV, Inc. v. School Board of Seminole County*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004).

³ *Id.*

⁴ *Id.*

⁵ See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So.2d 289 (Fla. 1991).

⁶ The Act is created by the tied bill, PCB CJS 14-04.

- Social security number;
- Driver license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;
- Financial account number or credit or debit card number, in combination with any required security code, access, code, or password that is necessary to permit access to an individual's financial account;
- Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional;
- An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual; and
- Any other information from or about an individual that could be used to personally identify that person.

The report also may contain information about system vulnerabilities that led to the security breach.

The PCB provides that the notice and information held by the DLA pursuant to an investigation of a violation of the Act is generally confidential and exempt from a public records request. However, confidential and exempt information may be disclosed by the DLA in the performance of its official duties and responsibilities to a court or tribunal, a law enforcement agency, or another state or federal agency. Unless otherwise protected by law, confidential and exempt information is no longer confidential and exempt 5 years after the DLA either files its own action or closes its investigation.

The PCB also contains a Legislative finding that it is a public necessity that the notice and information held by the DLA is confidential and exempt because (1) notices may contain proprietary information about the security of breached systems, the release of which could result in the identification of vulnerabilities and further data breaches; and (2) notices provided to the DLA may contain personal information.

The PBC contains a sunset provision and will be repealed on October 2, 2019 unless it is reenacted.

B. SECTION DIRECTORY:

Section 1 amends s. 744.3701, F.S., regarding confidentiality.

Section 2 provides a public necessity statement.

Section 3 provides for an effective date to coincide with passage of Proposed Committee Bill CJS 14-04, if adopted in the same legislative session.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The PCB does not appear to have any impact on state revenues.

2. Expenditures:

The PCB does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The PCB does not appear to have any impact on local government revenues.

2. Expenditures:

The PCB does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCB does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

Like any other public records exemption, the PCB may lead to a minimal fiscal impact on the affected portions of the government, in this case, the Department of Legal Affairs (DLA). Staff responsible for complying with public record requests could require training related to expansion of the public record exemption, and the DLA may incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the DLA.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The PCB does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The PCB expands a public record exemption related to the investigation of a violation of the Florida Information and Protection Act of 2014; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The PCB expands a public record exemption related to the investigation of a violation of the Florida Information and Protection Act of 2014; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The PCB creates a public record exemption related to the investigation of a violation of the Florida Information and Protection Act of 2014. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The PCB does not appear to create a need for executive branch rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 501.170, F.S.; providing exemptions from public
 4 records requirements for the notice of a data breach
 5 and information held by the Department of Legal
 6 Affairs pursuant to certain investigations; providing
 7 for disclosure under certain circumstances; limiting
 8 the period of confidentiality and exemption; providing
 9 for future legislative review and repeal of the
 10 exemption; providing a statement of public necessity;
 11 providing a contingent effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Subsection (11) is added to section 501.170,
 16 Florida Statutes, as created by HB _____, 2014 Regular Session,
 17 to read:

18 501.170 Security of confidential personal information.—

19 (11) (a) PUBLIC RECORDS EXEMPTION.—Except as otherwise
 20 provided in this subsection, the notice and information held by
 21 the department pursuant to an investigation of a violation of
 22 this section is confidential and exempt from s. 119.07(1) and s.
 23 24(a), Art. I of the State Constitution.

24 (b) Information made confidential and exempt under
 25 paragraph (a) may be disclosed by the department in the
 26 performance of its official duties and responsibilities to a

27 court or tribunal, a law enforcement agency, or another state or
 28 federal agency.

29 (c) Information made confidential and exempt under
 30 paragraph (a) is no longer considered confidential and exempt 5
 31 years after the department either files its own action or closes
 32 its investigation without filing an action, unless the
 33 information is otherwise protected by law.

34 (d) This subsection is subject to the Open Government
 35 Sunset Review Act in accordance with s. 119.15 and shall stand
 36 repealed on October 2, 2019, unless reviewed and saved from
 37 repeal through reenactment by the Legislature.

38 Section 2. The Legislature finds that it is a public
 39 necessity that the notice and information held by the Department
 40 of Legal Affairs pursuant to an investigation of a violation of
 41 s. 501.170, Florida Statutes, relating to information security,
 42 be confidential and exempt from public records requirements for
 43 the following reasons:

44 (1) Notices provided to the Department of Legal Affairs
 45 and materials obtained during investigations of a violation of
 46 s. 501.975, Florida Statutes, may contain proprietary
 47 information about the security of the breached system. The
 48 release of the proprietary information could result in the
 49 identification of vulnerabilities and further data breaches of
 50 that system. This exemption protects the security of the
 51 breached systems, thus protecting the personal information of
 52 Floridians stored within the systems.

53 (2) Notices provided to the Department of Legal Affairs
 54 and materials obtained during investigations of a violation of
 55 s. 501.975, Florida Statutes, may contain the personal
 56 information. The release of this information by the department
 57 in response to a public records request could be just as
 58 problematic as the data breach or improper disposal of customer
 59 records. This exemption protects the security of the personal
 60 information by excluding it from the public record laws.

61 Section 3. This act shall take effect on the same date
 62 that HB ____ or similar legislation takes effect, if such
 63 legislation is adopted in the same legislative session or an
 64 extension thereof and becomes a law.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing PCB: Civil Justice Subcommittee
 2 Representative Rodríguez, J. offered the following:

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Amendment

Remove line 46 and insert:

s. 501.170, Florida Statutes, may contain proprietary

Remove line 55 and insert:

s. 501.170, Florida Statutes, may contain the personal



Amendment No. 2

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 PCB: Civil Justice Subcommittee
 2 Representative(s) Civil Justice Subcommittee offered the
 3 following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

7 Section 1. Subsection (11) is added to section 501.170,
 8 Florida Statutes, as created by HB _____, 2014 Regular Session,
 9 to read:

10 501.170 Security of confidential personal information.—

11 (11) PUBLIC RECORDS EXEMPTION.—

12 (a) All information received by the department pursuant to
 13 notifications required by this section, or received pursuant to
 14 a subsequent investigation by the department or another federal
 15 or state law enforcement agency, is confidential and exempt from
 16 s. 119.07(1) and s. 24(a), Art. I of the State Constitution, so
 17 long as the investigation is considered an active investigation.

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Amendment No. 2

18 This exemption shall be construed in conformity with s.
19 119.071(2)(c). However, during an active investigation, such
20 information may be disclosed by the department in the
21 furtherance of its official duties and responsibilities; for
22 print, publication, or broadcast if the department determines
23 that such release would assist in notifying the public or
24 locating or identifying a person that the department believes to
25 have been a victim of the data breach; or to another
26 governmental agency in the furtherance of its official duties
27 and responsibilities.

28 (b) Notwithstanding subsection (a), the following
29 information received by the department shall remain confidential
30 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
31 Constitution after the completion of investigations:

32 1. All information to which another public records
33 exemption applies.

34 2. Personal information as such term is defined in this
35 section.

36 3. A computer forensic report.

37 4. Information that would otherwise reveal weaknesses in a
38 covered entity's data security.

39 5. Information that would disclose a covered entity's
40 trade secrets or proprietary information.

41 Section 2. The Legislature finds that it is a public
42 necessity that information held by the Department of Legal
43 Affairs pursuant to an investigation of a violation of s.



Amendment No. 2

44 501.170, Florida Statutes, relating to information security, be
45 confidential and exempt from public records requirements for the
46 following reasons:

47 (1) A data breach is likely the result of criminal activity
48 that likely will lead to further criminal activity. Notices
49 provided to the department and materials obtained during
50 investigations of a violation of s. 501.975, Florida Statutes,
51 are likely to contain proprietary information about the security
52 of the breached system. The release of the proprietary
53 information could result in the identification of
54 vulnerabilities and further data breaches of that system. This
55 exemption protects the security of the breached systems, thus
56 protecting the personal information of Floridians stored within
57 the systems.

58 (2) Notices provided to the Department of Legal Affairs
59 and materials obtained during investigations of a violation of
60 s. 501.975, Florida Statutes, may contain personal information
61 that could be used for the purpose of identity theft or some
62 other financial harm. The release of this information by the
63 department in response to a public records request could be just
64 as problematic as the data breach or improper disposal of
65 customer records. This exemption protects the security of the
66 personal information by excluding it from the public record
67 laws.

68 Section 3. This act shall take effect on the same date
69 that HB ____ or similar legislation takes effect, if such

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Amendment No. 2

70 | legislation is adopted in the same legislative session or an
71 | extension thereof and becomes a law.

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

76 |

Remove everything before the enacting clause and insert:

77 |

An act relating to public records; amending s. 501.170, F.S.;

78 |

providing exemptions from public records requirements for the

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notice of a data breach and information held by the Department

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of Legal Affairs pursuant to certain investigations; providing

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for disclosure under certain circumstances; providing for future

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legislative review and repeal of the exemption; providing a

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statement of public necessity; providing a contingent effective

84 |

date.