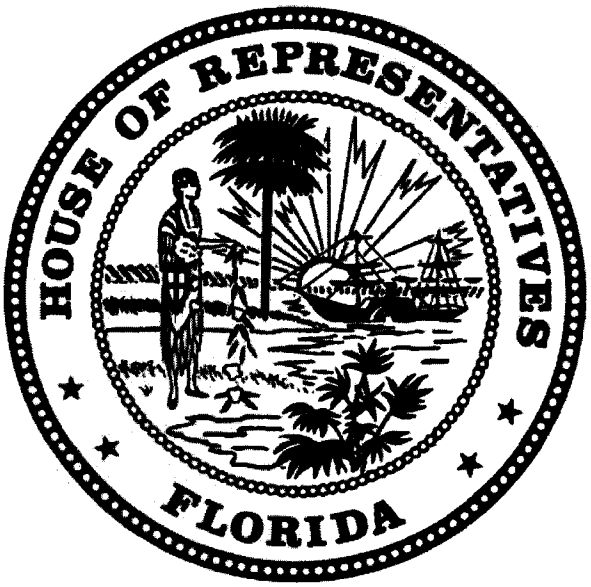

Commerce Committee

Thursday, March 9, 2017
8:30 AM
Webster Hall (212 Knott)

MEETING PACKET

Richard Corcoran
Speaker

Jose Diaz
Chair

The Florida House of Representatives

Commerce Committee

Richard Corcoran
Speaker

Jose Diaz
Chair

AGENDA

March 9, 2017
8:30 AM – 10:30 AM
Webster Hall (212 Knott)

I. Call to Order and Roll Call

II. Consideration of the following bill(s):

a. CS/HJR 21 Limitations on Property Tax Assessments by Ways & Means Committee, Burton

b. CS/HB 169 Fictitious Name Registration by Careers & Competition Subcommittee, White

c. CS/HB 227 Electrical and Alarm System Contracting by Careers & Competition Subcommittee, Killebrew

d. CS/HB 307 Florida Life and Health Insurance Guaranty Association by Insurance & Banking Subcommittee, Drake

e. CS/HB 327 Household Movers by Careers & Competition Subcommittee, Yarborough

f. CS/HB 339 Motor Vehicle Service Agreement Companies by Insurance & Banking Subcommittee, White

g. HB 379 Underground Facilities by Leek

III. Adjournment

303 House Office Building, 402 South Monroe Street , Tallahassee, FL 32399-1300
(850) 717-4870

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Commerce Committee

Start Date and Time:	Thursday, March 09, 2017 08:30 am
End Date and Time:	Thursday, March 09, 2017 10:30 am
Location:	Webster Hall (212 Knott)
Duration:	2.00 hrs

Consideration of the following bill(s):

CS/HJR 21 Limitations on Property Tax Assessments by Ways & Means Committee, Burton
CS/HB 169 Fictitious Name Registration by Careers & Competition Subcommittee, White
CS/HB 227 Electrical and Alarm System Contracting by Careers & Competition Subcommittee, Killebrew
CS/HB 307 Florida Life and Health Insurance Guaranty Association by Insurance & Banking Subcommittee, Drake
CS/HB 327 Household Movers by Careers & Competition Subcommittee, Yarborough
CS/HB 339 Motor Vehicle Service Agreement Companies by Insurance & Banking Subcommittee, White
HB 379 Underground Facilities by Leek

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Wednesday, March 8, 2017.

By request of Chair Diaz, J., all Commerce Committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Wednesday, March 8, 2017.

NOTICE FINALIZED on 03/07/2017 4:35PM by McCloskey.Michele

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HJR 21 Limitations on Property Tax Assessments
SPONSOR(S): Burton
TIED BILLS: **IDEN./SIM. BILLS:** SJR 76

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ways & Means Committee	16 Y, 1 N, As CS	Dobson	Langston
2) Commerce Committee		Thompson JHT	Hamon K.W.H.

SUMMARY ANALYSIS

The Florida Constitution requires all property to be assessed at just value (i.e., market value) on January 1 of each year for purposes of ad valorem taxation, subject to assessment limitations and exemptions in certain circumstances. Such assessments are used to calculate property taxes that fund counties, municipalities, district school boards and special districts. In 2008, Florida voters approved a constitutional amendment limiting annual assessment increases for most nonhomestead parcels to 10 percent of prior year assessed value. This limitation does not apply to district school board assessments or in years when a property undergoes certain changes, including changes in ownership. Unless renewed, the 2008 amendment is set to expire on January 1, 2019. Existing constitutional language directs the legislature to propose a constitutional amendment, for the 2018 general election, that would retain the cap beyond its scheduled expiration date.

This joint resolution proposes a constitutional amendment to permanently retain the 10 percent cap on annual nonhomestead parcel assessment increases.

Subject to approval by 60 percent of the voters in the 2018 general election, the joint resolution provides that the proposed amendment will take effect on January 1, 2019. The joint resolution is not subject to the governor's veto powers.

The Revenue Estimating Conference has not reviewed the joint resolution. Because the proposed amendment requires voter approval, the revenue impact will be either zero, if voters disapprove, or negative indeterminate to local governments if approved. Should voters approve the proposed amendment, staff estimates that beginning in FY 2019-20, non-school property tax bases will be lower than otherwise, implying foregone annual tax revenue of approximately $430 million, **assuming current tax rates**.

Based on 2016 advertising costs, the estimated publication costs for advertising the proposed constitutional amendment is approximately $38,916. This sum would be paid from non-recurring General Revenue funds.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

Present Situation

Calculating Ad Valorem Taxes

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.[1] Ad Valorem taxes are annual taxes levied by counties, cities, school districts and certain special districts. These taxes are based on the "just" or fair market value of real and tangible property determined by county property appraisers as of January 1st of each year.[2] Fair market value of a parcel, is further adjusted by any applicable exceptions to the just value requirement. Examples of such exceptions are the annual "save our homes" limitation on homestead property assessment increases, the special classification of agricultural property, and the 10 percent non-homestead assessment cap.[3] The figure arrived at after accounting for just value exceptions is known as the assessed value. Property Appraisers then reduce the assessed value by an amount equal to any applicable exemption(s), which produces the taxable value.[4] Each year local government governing boards levy millage rates (i.e., tax rates) on taxable value to generate the property tax revenue contemplated in their annual budgets.

Nonhomestead Assessment Growth Limitation

Pursuant to a constitutional amendment approved by the voters in 2008, Article VII, sections 4(g) and (h) of the Florida Constitution, provide an assessment limitation for non-homestead residential real property containing nine or fewer units, and for all real property not subject to other specified assessment limitations, respectively. For all levies, with the exception of school levies, the assessed value of parcels in each of these two categories may not be increased annually by more than 10 percent of the assessment in the prior year. However, the assessment increase limitation does not apply in any year following a qualified improvement or change in ownership or control.[5] "Qualified improvements" are those substantially completed improvements that increase a property's just value by 25% or more.[6]

Per the terms of the 2008 constitutional amendment, the nonhomestead assessment cap is repealed on January 1, 2019. Additionally, the constitution directs the Legislature to propose a constitutional amendment for the 2018 general election abrogating the repeal, effective January 1, 2019.

A. EFFECT OF PROPOSED CHANGES:

This joint resolution proposes an amendment to the Florida Constitution that would retain the 10 percent nonhomestead assessment increase cap currently scheduled for repeal on January 1, 2019. Approving the joint resolution will place the amendment on the 2018 general election ballot. If approved by the voters, the amendment will take effect on January 1, 2019.

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[1] Fla. Const. art. VII, s. 1(a).

[2] *See* Fla. Const. art. VII, s. 4.

[3] *See s.* 193.1555(3), F.S.

[4] *See generally,* s. 196.031, F.S.

[5] s. 193.1555(5), F.S. For non-homestead properties other than those containing 9 units or fewer, "Change in Ownership or Control" means any sale, foreclosure, transfer of legal or beneficial title in equity to any person. The term also refers to cumulative transfer of more than 50 percent ownership of a legal entity holding title to a property. There is no change in ownership when title is transferred to correct an error or the transfer is between legal and equitable title. Title to land owned by a publicly traded company does not change ownership if ownership of the company changes due to stock market trading or merger or acquisition. *Id.* at (b).

[6] *Id.* at (a).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Article XI, section 5(d) of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State provides that the cost to advertise constitutional amendments for the 2016 general election was $117.56 per word.[7] Using 2016 election cycle rates, the Division estimates that the cost to advertise this amendment for the 2018 general election will be at least $38,915.64.[8]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the proposed amendment is approved by electors, annual increases in the assessed value of nonhomestead parcels owned by private businesses and other organizations will be capped at 10 percent of the prior year's assessed value.

D. FISCAL COMMENTS:

The Revenue Estimating Conference has not provided an official estimate of the joint resolution's impact. However, because the proposed amendment requires voter approval, the revenue impact will be either zero, if voters disapprove, or negative indeterminate to local governments if approved.

If the proposed amendment is approved by the voters, then tax base increases and potential revenue gains expected under current law will not occur. Staff estimates that under current law, beginning in FY 2019-20, non-school local government property tax bases will increase approximately 2 percent, beyond that which would otherwise occur, as a result of the scheduled repeal of the nonhomestead assessment limitation. ***At current millage rates***, the tax revenues from that tax base increase would be approximately $430 million annually. These tax base increases and potential revenue impacts are expected to diminish over time.

[7] Florida Department of State, Agency Analysis of 2017 HJR 21, p. 3 (Feb. 17, 2017).
[8] Id.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

House Joint Resolution

A joint resolution proposing an amendment to Section 27 of Article XII of the State Constitution to remove a future repeal of provisions in Section 4 of Article VII that limit the amount of annual increases in assessments, except for school district levies, of specified nonhomestead real property.

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

That the following amendment to Section 27 of Article XII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election:

ARTICLE XII

SCHEDULE

SECTION 27. Property tax exemptions and limitations on property tax assessments.—

(a) The amendments to Sections 3, 4, and 6 of Article VII, providing a $25,000 exemption for tangible personal property, providing an additional $25,000 homestead exemption, authorizing transfer of the accrued benefit from the limitations on the assessment of homestead property, and this section, if submitted to the electors of this state for approval or rejection at a special election authorized by law to be held on January 29,

2008, shall take effect upon approval by the electors and shall operate retroactively to January 1, 2008, or, if submitted to the electors of this state for approval or rejection at the next general election, shall take effect January 1 of the year following such general election. The amendments to Section 4 of Article VII creating subsections (g) ~~(f)~~ and (h) ~~(g)~~ of that section, creating a limitation on annual assessment increases for specified real property, shall take effect upon approval of the electors and shall first limit assessments beginning January 1, 2009, if approved at a special election held on January 29, 2008, or shall first limit assessments beginning January 1, 2010, if approved at the general election held in November of 2008. ~~Subsections (f) and (g) of Section 4 of Article VII are repealed effective January 1, 2019; however, the legislature shall by joint resolution propose an amendment abrogating the repeal of subsections (f) and (g), which shall be submitted to the electors of this state for approval or rejection at the general election of 2018 and, if approved, shall take effect January 1, 2019.~~

(b) The amendment to subsection (a) abrogating the scheduled repeal of subsections (g) and (h) of Section 4 of Article VII of the State Constitution as it existed in 2017, shall take effect January 1, 2019.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE XII, SECTION 27

LIMITATIONS ON PROPERTY TAX ASSESSMENTS.—Proposing an amendment to the State Constitution to retain provisions adopted in 2008 that limit increases in assessments, except for school district levies, of specified nonhomestead real property, to 10 percent each year. If approved, the amendment removes the scheduled repeal of such provisions in 2019 and shall take effect January 1, 2019.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 169 Fictitious Name Registration
SPONSOR(S): Careers & Competition Subcommittee, White
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 346

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

SUMMARY ANALYSIS

The "Fictitious Name Act," s. 865.09, F.S., requires anyone doing business in Florida under a name other than the person's legal name to register the alternate name, or "fictitious name," with the Division of Corporations (Division) of the Department of State (Department).

The bill:

- negates the need for a sworn statement when registering a fictitious name;
- clarifies what documentation and information is needed from a registrant when registering a fictitious name;
- clarifies the process for cancellation of the registration;
- clarifies the time period for which a registration is valid;
- bars the renewal of a registration under certain conditions;
- adds an exemption from registration for limited liability companies if the company conducts business in a name that is licensed or registered;
- changes the penalty for failing to comply from a misdemeanor to a noncriminal violation;
- prohibits the use of certain words, abbreviations, and designations relating to limited partnerships, limited liability limited partnerships, limited liability partnerships, and limited liability companies in a fictitious name unless the registrant actually qualifies as that particular type of entity.

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

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The "Fictitious Name Act," s. 865.09, F.S., requires anyone doing business in the state of Florida under a name other than the person's legal name to register the alternate name, or "fictitious name," with the Division.[1] This provides notice to anyone dealing with that business and identifies the real party in interest.[2]

Prior to 1990, fictitious names were registered with the clerk of the circuit court where the principal place of business was located. To preserve the name throughout the state, a user had to register in every county in the state. The registration now takes place with the Division, and thus provides statewide notice.[3]

Section 865.09(2)(a), F.S. defines "fictitious name" as any name under which a person transacts business in this state, other than the person's legal name. "Business" means any enterprise or venture in which a person sells, buys, exchanges, barters, deals, or represents the dealing in any thing or article of value, or renders services for compensation.

Current Situation

In order to operate a business in the state under a fictitious name, a sworn statement must be filed with the Division listing:

- the name to be registered;
- the mailing address of the business;
- the name and address of each owner;
- if a corporation, its federal employer's identification number (FEIN) and Florida incorporation or registration number;
- certification that the applicant has advertised an intent to register the fictitious name in a newspaper located in the county of primary business;
- and any other information deemed necessary.[4]

The Division charges a $50 fee for registration of a fictitious name, a $50 fee for cancellation and reregistration of a fictitious name, a $50 fee for renewal of a fictitious name, and a $30 fee for furnishing a certified copy of a fictitious name document.[5] All funds collected by the Department are deposited into the General Revenue Fund.[6]

A fictitious name registered with the Division is valid for 5 years, expiring on December 31 of the 5th year. A fictitious name must be renewed on or after January 1 and on or before December 31 of the expiration year and, upon timely renewal, is in effect for another 5 years. If the registrant fails to timely renew the fictitious name, it expires and the Division removes the fictitious name from the Division's records. The Division must notify the owner of the expiration of the registered name during the last year of the registration, but failure to receive the notification does not constitute grounds to appeal the expiration or removal.[7]

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[1] s. 865.09(3)(a), F.S.
[2] *Jackson v. Jones*, 423 So. 2d 972, 973 (Fla. 4th DCA 1982).
[3] Michael W. Gordon, *Florida Corporations Manual,* Ch. 6 § 19.1 (2016).
[4] s. 865.09(3), F.S.
[5] s. 865.09(12), F.S.
[6] s. 865.09(13), F.S.
[7] s. 865.09(5), F.S.

A business formed by an active Florida-licensed attorney, by an active licensee of either the Department of Business and Professional Regulation or the Department of Health, or by any corporation, partnership, or other commercial entity that is actively organized or registered with the Department is not required to register a fictitious name, unless business is being conducted under a different name than is licensed or registered.[8]

If there is a change of ownership of a registered business, the owner of record must file a cancellation and any applicable reregistration within 30 days.[9]

A fictitious name registered with this section is for public notice only. There is no presumption of the registrant's rights to own or use the name registered, nor does it affect trademark, service mark, trade name, or corporate name rights previously acquired by others in the same or a similar name. Registration under this section does not reserve a fictitious name against future use.[10]

A business and its members may not pursue any action, suit, or proceeding concerning such business until properly registered. A party harmed by a noncomplying business may be awarded attorney fees and court costs. Any person who fails to comply with this section commits a second-degree misdemeanor.[11]

A registered fictitious name may not contain the words "corporation," "incorporated," "Corp," or "Inc." unless the registered person or business is incorporated or has obtained a certificate of authority pursuant to part I of chapter 607 or chapter 617, F.S. [12] Currently, there is no similar prohibition on words associated with limited partnerships, limited liability limited partnerships, limited liability partnerships, or limited liability companies.

Effect of Proposed Changes

The bill adds a definition for "registrant," which means a person who registers a fictitious name with the Division. Throughout the bill, this term generally replaces "applicant," "owner," and ""person" to provide consistency in terminology and clarify that information needed relates to a registrant of a fictitious name.

The bill replaces "sworn statement" with "registration," negating the need for a notarized document for registration and provides that any additional registration information required by the Division must be reasonable.

The bill clarifies what is needed of a business entity to apply for a fictitious name. If the entity was required to file incorporation or similar documents upon organization, the entity must be registered with the Division, have an active status with the Division, and provide its FEIN, if applicable.

The bill clarifies the identity of the registrant if the registrant is a general partnership. If the general partnership is one that is not registered with the Division, the registrant is its partners. If the general partnership is registered with the Division, the registrant is the general partnership.

The bill clarifies the time periods for which fictitious name registrations are valid. Instead of stating a blanket 5 year term of validation for all registrations, the amendment bifurcates the terms for initial registration and renewal of registration. An initial registration will be valid from the date of registration to December 31 on the 5th calendar year. A renewal of registration will be valid for a period of 5 years,

[8] s. 865.09(7), F.S.
[9] s. 865.09(4), F.S.
[10] s. 865.09(8), F.S.
[11] s. 865.09(9), F.S.
[12] s. 865.09(14), F.S.

beginning January 1 of the year following the prior registration expiration date to December 31 of the 5th calendar year. The bill gives a date by which the Division must notify a registrant of an upcoming expiration. The bill adds a subsection which bars the renewal of a registered fictitious name if the name contains certain words, abbreviations, or designations relating to certain types of business entities unless the registrant is the particular entity at the time of renewal.

The bill adds an exemption for active status limited liability companies. Like corporations, limited liability companies will not be required to register with the Division if they conduct business in the name that is licensed or registered. In addition, the bill prohibits certain words, abbreviations, or designations related to limited partnerships, limited liability limited partnerships, limited liability partnerships, limited liability companies, professional associations, and professional limited liability companies unless the person or business for which the name is registered is actually that particular type of entity.

The bill clarifies what documentation a registrant who ceases to engage in business under the registered fictitious name must file with the Division and that a cancelation must be filed within 30 days of cessation of use. If the cessation is in connection with a transfer of the fictitious name, the transferee may reregister the name at the same time the cancelation is filed. The bill clarifies that cancellation is a separate fee from cancelation paired with reregistration of the fictitious name. Both options are the same fee amount.

The bill clarifies who is subject to any penalties for failing to comply with this section. It specifies that unless this section is complied with, neither the business nor the person(s) engaging in the business may maintain any action, suit, or proceeding in any court of this state with respect to or on behalf of such business.

The bill also removes language that deems a violation of this section to be a misdemeanor of the second degree. Instead, failure to comply with this section will be a noncriminal violation as defined by s. 775.08, F.S.

The bill has an effective date of July 1, 2017.

B. SECTION DIRECTORY:

Section 1 amends s. 865.09, F.S., relating to definitions, registration requirements, expiration, prohibitions, renewal, and penalties.

Section 2 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

II. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 8, 2017, the Careers and Competition Subcommittee adopted a strike-all amendment and reported the bill favorably as a subcommittee substitute. The amendment adds the following elements to the original bill:

- Provides that any additional registration information required by the Division must be reasonable.
- Gives a date by which the Division must notify a registrant of an upcoming expiration.
- Prohibits the use of certain words, abbreviations, and designations relating to professional associations and professional limited liability companies in a fictitious name unless the registrant actually qualifies as that particular type of entity.

This analysis is drafted to the committee substitute as passed by the Careers and Competition Subcommittee.

A bill to be entitled

An act relating to fictitious name registration; amending s. 865.09, F.S.; defining the term "registrant"; revising the information required to register a fictitious name; revising requirements for a change in registration; revising provisions concerning the expiration of a registration; prohibiting a renewal of a registration if the registered fictitious name is prohibited by specified provisions; specifying additional forms of business organization that may not be required to register under certain circumstances; revising provisions concerning penalties for violations; specifying additional terms that may not be included in a fictitious name; providing an effective date.

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

Section 1. Section 865.09, Florida Statutes, is amended to read:

865.09 Fictitious name registration.—

(1) SHORT TITLE.—This section may be cited as the "Fictitious Name Act."

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

(a) ~~(b)~~ "Business" means any enterprise or venture in which

a person sells, buys, exchanges, barters, deals, or represents the dealing in any thing or article of value, or renders services for compensation.

(b) ~~(c)~~ "Division" means the Division of Corporations of the Department of State.

(c) ~~(a)~~ "Fictitious name" means any name under which a person transacts business in this state, other than the person's legal name.

(d) "Registrant" means a person who registers a fictitious name with the division.

(3) REGISTRATION.—

(a) A person may not engage in business under a fictitious name unless the person first registers the name with the division by filing a registration ~~sworn statement~~ listing:

1. ~~(a)~~ The name to be registered.

2. ~~(b)~~ The mailing address of the business.

3. ~~(c)~~ The name and address of each registrant ~~owner and, if a corporation, its federal employer's identification number and Florida incorporation or registration number~~.

4. If the registrant is a business entity that was required to file incorporation or similar documents with its state of organization when it was organized, such entity must be registered with the division and in active status with the division; provide its Florida document registration number; and provide its federal employer identification number if the entity

has such a number.

5.~~(d)~~ Certification by at least one registrant ~~the applicant~~ that the intention to register such fictitious name has been advertised at least once in a newspaper as defined in chapter 50 in the county in which ~~where~~ the principal place of business of the registrant is or ~~applicant~~ will be located.

6.~~(e)~~ Any other information the division may reasonably deem necessary to adequately inform other governmental agencies and the public as to the registrant ~~persons~~ so conducting business.

(b) Such registration ~~statement~~ shall be accompanied by the applicable processing fees and any other taxes or penalties owed to the state.

(c) If the registrant is a general partnership that is not registered with the division, its partners are the registrants and not the partnership entity. If the registrant is a general partnership that is registered with the division, the partnership is the registrant and it must be in active status with the division.

(4) CANCELLATION AND REREGISTRATION ~~CHANGE OF OWNERSHIP~~.~~—~~ If ~~the ownership of a business registered under this section changes, the owner of record with the division~~ a registrant ceases to engage in business under a registered fictitious name, such registrant shall file a cancellation with the division ~~and reregistration that meets the requirements set forth in~~

~~subsection (3)~~ within 30 days after the cessation occurs ~~the occurrence of such change~~. If such cessation is in connection with a transfer of the business and, as a result, a new person will engage in business under the registered fictitious name, such new person may reregister the name pursuant to subsection (3) at the same time as the cancellation is filed.

(5) TERM.—

(a) A fictitious name registered under this section shall be valid for a period beginning on the date of registration and expiring on December 31 of the 5th calendar year thereafter, counting the period from registration through December 31 of the year of registration as the first calendar year.

(b) Each renewal under subsection (6) is valid for a period of 5 years beginning on January 1 of the year following the prior registration expiration date and expiring ~~of 5 years and expires~~ on December 31 of the 5th calendar year.

(6) RENEWAL.—

(a) Renewal of a fictitious name registration shall occur on or after January 1 and on or before December 31 of the expiration year. Upon timely filing of a renewal statement, the effectiveness of the name registration is continued for 5 years as provided in subsection (5).

(b) In the ~~last~~ year that a ~~of the~~ registration is to expire, the division shall notify the ~~owner or~~ registrant of the fictitious name registration of the upcoming expiration of the

fictitious name no later than September 1. If the ~~owner or~~ registrant of the fictitious name has provided the division ~~department~~ with an electronic mail address, such notice shall be by electronic transmission.

(c) If a registrant ~~the owner~~ of the fictitious name registration fails to timely file a renewal and pay the appropriate processing fees prior to December 31 of the year of expiration, the fictitious name registration expires. The division shall remove any expired or canceled fictitious name registration from its records and may purge such registrations. Failure to receive the notice ~~statement~~ of expiration ~~renewal~~ required by paragraph (b) shall not constitute grounds for appeal of a registration's expiration or removal from the division's records.

(d) If a registered fictitious name is prohibited by subsection (14) at the time of renewal, the fictitious name may not be renewed.

(7) EXEMPTIONS.—A business formed by an attorney actively licensed to practice law in this state, by a person actively licensed by the Department of Business and Professional Regulation or the Department of Health for the purpose of practicing his or her licensed profession, or by any corporation, limited liability company, partnership, or other business ~~commercial~~ entity that is ~~actively~~ organized or registered and in active status with the division ~~Department of~~

~~State~~ is not required to register its name pursuant to this section, unless the name under which business is to be conducted differs from the name as licensed or registered.

(8) EFFECT OF REGISTRATION.—Notwithstanding ~~the provisions of~~ any other law, registration under this section is for public notice only, and does not give ~~gives~~ rise to a ~~no~~ presumption of the registrant's rights to own or use the name registered, nor does it affect trademark, service mark, trade name, or corporate or other business entity name rights previously acquired by others in the same or a similar name. Registration under this section does not reserve a fictitious name against future use.

(9) PENALTIES.—

(a) If a business fails to comply with this section, neither the business nor the person or persons engaging in the~~, its members, and those interested in doing such~~ business may ~~not~~ maintain any action, suit, or proceeding in any court of this state with respect to or on behalf of such business until this section is complied with. An action, suit, or proceeding may not be maintained in any court of this state by any successor or assignee of such business on any right, claim, or demand arising out of the transaction of business by such business in this state until this section has been complied with.

(b) The failure of a business to comply with this section does not impair the validity of any contract, deed, mortgage, security interest, lien, or act of such business and does not

prevent such business from defending any action, suit, or proceeding in any court of this state. However, a party aggrieved by a noncomplying business may be awarded reasonable attorney ~~attorney's~~ fees and court costs necessitated by the noncomplying business.

(c) Any person who fails to comply with this section commits a noncriminal violation as defined in s. 775.08 ~~misdemeanor of the second degree~~, punishable as provided in ~~s. 775.082 or~~ s. 775.083.

(10) POWERS OF DIVISION ~~DEPARTMENT~~.—The division ~~Department of State~~ is granted the power reasonably necessary to enable it to administer this section efficiently and~~,~~ to perform the duties herein imposed upon it.

(11) FORMS.—Registration, cancellation, and renewal shall be made on forms prescribed by the division ~~Department of State~~, which may include the uniform business report, pursuant to s. 606.06, as a means of satisfying the requirement of this section.

(12) PROCESSING FEES.—The division ~~Department of State~~ shall charge and collect nonrefundable processing fees as follows:

(a) For registration of a fictitious name, $50.

(b) For cancellation or cancellation and reregistration of a fictitious name, $50.

(c) For renewal of a fictitious name registration, $50.

(d) For furnishing a certified copy of a fictitious name registration document, $30.

(e) For furnishing a certificate of status, $10.

(13) DEPOSIT OF FUNDS.—All funds required to be paid to the division ~~Department of State~~ pursuant to this section shall be collected and deposited into the General Revenue Fund.

(14) PROHIBITION.—A fictitious name registered as provided in this section may not contain the following words, abbreviations, or designations:

(a) "Corporation," ~~or~~ "incorporated," ~~or the abbreviations~~ "Corp.," or "Inc.," unless the person or business for which the name is registered is incorporated or has obtained a certificate of authority to transact business in this state pursuant to ~~part I of~~ chapter 607 or chapter 617.

(b) "Limited partnership," "limited liability limited partnership," "LP," "L.P.," "LLLP," or "L.L.L.P.," unless the person or business for which the name is registered is organized as a limited partnership or has obtained a certificate of authority to transact business in this state pursuant to ss. 620.1101-620.2205.

(c) "Limited liability partnership," "LLP," or "L.L.P.," unless the person or business for which the name is registered is registered as a limited liability partnership or has obtained a certificate of authority to transact business in this state pursuant to s. 620.9102.

(d) "Limited liability company," "LLC," or "L.L.C.," unless the person or business for which the name is registered is organized as a limited liability company or has obtained a certificate of authority to transact business in this state pursuant to chapter 605.

(e) "Professional association," "P.A.," or "chartered," unless the person or business for which the name is registered is organized as a professional corporation pursuant to chapter 621, or is organized as a professional corporation pursuant to a similar law of another jurisdiction and has obtained a certificate of authority to transact business in this state pursuant to chapter 607.

(f) "Professional limited liability company," "PLLC," "P.L.L.C.," "PL," or "P.L.," unless the person or business for which the name is registered is organized as a professional limited liability company pursuant to chapter 621, or is organized as a professional limited liability company pursuant to a similar law of another jurisdiction and has obtained a certificate of authority to transact business in this state pursuant to chapter 605.

(15) LEGAL DESIGNATION OF ENTITY.—Notwithstanding any other ~~provision of~~ law to the contrary, a fictitious name registered as provided in this section for a corporation, limited liability company, limited liability partnership, or limited partnership is not required to contain the designation

of the type of legal entity in which the person or business is organized, including the terms "corporation," "limited liability company," "limited liability partnership," "limited partnership," or any abbreviation or derivative thereof.

Section 2. This act shall take effect July 1, 2017.

COMMERCE COMMITTEE

HB 169 by Rep. White
Fictitious Name Registration

AMENDMENT SUMMARY
March 9, 2017

Amendment 1 by Rep. White (Strike-All): The amendment adds the following:

- Clarifies that when a general partnership which is not registered with the Division of Corporations (division) registers for a fictitious name, its partners are the registrants and not the partnership entity. When a general partnership that is registered with the division registers for a fictitious name, the partnership is the registrant; the general partnership must be in active status with the division at the time the registration is filed.
- In the event of a general partner transferring a partnership interest, the transferee is permitted to reregister the name at the same time the transferer's cancellation is filed.
- Requires the division to only notify one of the registrants of a general partnership where the partners are the registrants.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment

Remove everything after the enacting clause and insert:

Section 1. Section 865.09, Florida Statutes, is amended to read:

865.09 Fictitious name registration.—

(1) SHORT TITLE.—This section may be cited as the "Fictitious Name Act."

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

(a) ~~(b)~~ "Business" means any enterprise or venture in which a person sells, buys, exchanges, barters, deals, or represents the dealing in any thing or article of value, or renders services for compensation.

(b) ~~(c)~~ "Division" means the Division of Corporations of the Department of State.

(c) ~~(a)~~ "Fictitious name" means any name under which a person transacts business in this state, other than the person's legal name.

(d) "Registrant" means a person who registers a fictitious name with the division.

(3) REGISTRATION.—

(a) A person may not engage in business under a fictitious name unless the person first registers the name with the division by filing a registration ~~sworn statement~~ listing:

1. ~~(a)~~ The name to be registered.

2. ~~(b)~~ The mailing address of the business.

3. ~~(c)~~ The name and address of each registrant ~~owner and, if a corporation, its federal employer's identification number and Florida incorporation or registration number~~.

4. If the registrant is a business entity that was required to file incorporation or similar documents with its state of organization when it was organized, such entity must be registered with the division and in active status with the division; provide its Florida document registration number; and provide its federal employer identification number if the entity has such a number.

5. ~~(d)~~ Certification by at least one registrant ~~the applicant~~ that the intention to register such fictitious name

has been advertised at least once in a newspaper as defined in chapter 50 in the county in which ~~where~~ the principal place of business of the registrant is or ~~applicant~~ will be located.

6.~~(c)~~ Any other information the division may reasonably deem necessary to adequately inform other governmental agencies and the public as to the registrant ~~persons~~ so conducting business.

(b) Such registration ~~statement~~ shall be accompanied by the applicable processing fees and any other taxes or penalties owed to the state.

(c) With respect to a general partnership that is not registered with the division, its partners are the registrants and not the partnership entity. With respect to a general partnership that is registered with the division, the partnership is the registrant and it must be in active status with the division at the time the registration is filed.

(4) CANCELLATION AND REREGISTRATION ~~CHANGE OF OWNERSHIP~~.~~—~~ If ~~the ownership of a business registered under this section changes, the owner of record with the division~~ a registrant ceases to engage in business under a registered fictitious name, such registrant shall file a cancellation with the division ~~and reregistration that meets the requirements set forth in subsection (3)~~ within 30 days after the cessation occurs ~~the occurrence of such change~~. If such cessation is in connection with a transfer of the business or, with respect to a general

partnership that is not registered with the division, in connection with a transfer by a general partner of all or any part of the general partner's partnership interest and, as a result, a new person will engage in business under the registered fictitious name, such new person may reregister the name pursuant to subsection (3) at the same time as the cancellation is filed.

(5) TERM.—

(a) A fictitious name registered under this section shall be valid for a period beginning on the date of registration or reregistration and expiring on December 31 of the 5th calendar year thereafter, counting the period from registration or reregistration through December 31 of the year of registration or reregistration as the first calendar year.

(b) Each renewal under subsection (6) is valid for a period of 5 years beginning on January 1 of the year following the prior registration expiration date and expiring ~~of 5 years and expires~~ on December 31 of the 5th calendar year.

(6) RENEWAL.—

(a) Renewal of a fictitious name registration shall occur on or after January 1 and on or before December 31 of the expiration year. Upon timely filing of a renewal statement, the effectiveness of the name registration is continued for 5 years as provided in subsection (5).

(b) In the ~~last~~ year that a ~~of the~~ registration is to expire, the division shall notify the ~~owner or~~ registrant of the fictitious name registration of the upcoming expiration of the fictitious name no later than September 1. If the ~~owner or~~ registrant of the fictitious name has provided the division ~~department~~ with an electronic mail address, such notice shall be by electronic transmission. If the business is a general partnership that is not registered with the division and thus there is more than one registrant for the fictitious name, the division need only notify one of the registrants.

(c) If a registrant ~~the owner~~ of the fictitious name registration fails to timely file a renewal and pay the appropriate processing fees on or before December 31 of the year of expiration, the fictitious name registration expires. The division shall remove any expired or canceled fictitious name registration from its records and may purge such registrations. Failure to receive the notice ~~statement~~ of expiration ~~renewal~~ required by paragraph (b) shall not constitute grounds for appeal of a registration's expiration or removal from the division's records.

(d) If a registered fictitious name is prohibited by subsection (14) at the time of renewal, the fictitious name may not be renewed.

(7) EXEMPTIONS.—A business formed by an attorney actively licensed to practice law in this state, by a person actively

licensed by the Department of Business and Professional Regulation or the Department of Health for the purpose of practicing his or her licensed profession, or by any corporation, limited liability company, partnership, or other business ~~commercial~~ entity that is ~~actively~~ organized or registered and in active status with the division ~~Department of State~~ is not required to register its name pursuant to this section, unless the name under which business is to be conducted differs from the name as licensed or registered.

(8) EFFECT OF REGISTRATION.—Notwithstanding ~~the provisions of~~ any other law, registration under this section is for public notice only, and does not give ~~gives~~ rise to a ~~no~~ presumption of the registrant's rights to own or use the name registered, nor does it affect trademark, service mark, trade name, or corporate or other business entity name rights previously acquired by others in the same or a similar name. Registration under this section does not reserve a fictitious name against future use.

(9) PENALTIES.—

(a) If a business fails to comply with this section, neither the business nor the person or persons engaging in the~~, its members, and those interested in doing such~~ business may ~~not~~ maintain any action, suit, or proceeding in any court of this state with respect to or on behalf of such business until this section is complied with. An action, suit, or proceeding may not be maintained in any court of this state by any successor or

assignee of such business on any right, claim, or demand arising out of the transaction of business by such business in this state until this section has been complied with.

(b) The failure of a business to comply with this section does not impair the validity of any contract, deed, mortgage, security interest, lien, or act of such business and does not prevent such business from defending any action, suit, or proceeding in any court of this state. However, a party aggrieved by a noncomplying business may be awarded reasonable attorney ~~attorney's~~ fees and court costs necessitated by the noncomplying business.

(c) Any person who fails to comply with this section commits a noncriminal violation as defined in s. 775.08 ~~misdemeanor of the second degree~~, punishable as provided in ~~s. 775.082 or~~ s. 775.083.

(10) POWERS OF DIVISION ~~DEPARTMENT~~.—The division ~~Department of State~~ is granted the power reasonably necessary to enable it to administer this section efficiently and~~,~~ to perform the duties herein imposed upon it.

(11) FORMS.—Registration, cancellation, and renewal shall be made on forms prescribed by the division ~~Department of State~~, which may include the uniform business report, pursuant to s. 606.06, as a means of satisfying the requirement of this section.

(12) PROCESSING FEES.—The division ~~Department of State~~ shall charge and collect nonrefundable processing fees as follows:

(a) For registration of a fictitious name, $50.

(b) For cancellation or cancellation and reregistration of a fictitious name, $50.

(c) For renewal of a fictitious name registration, $50.

(d) For furnishing a certified copy of a fictitious name registration document, $30.

(e) For furnishing a certificate of status, $10.

(13) DEPOSIT OF FUNDS.—All funds required to be paid to the division ~~Department of State~~ pursuant to this section shall be collected and deposited into the General Revenue Fund.

(14) PROHIBITION.—A fictitious name registered as provided in this section may not contain the following words, abbreviations, or designations:

(a) "Corporation," ~~or~~ "incorporated," ~~or the abbreviations~~ "Corp.," or "Inc.," unless the person or business for which the name is registered is incorporated or has obtained a certificate of authority to transact business in this state pursuant to ~~part I of~~ chapter 607 or chapter 617.

(b) "Limited partnership," "limited liability limited partnership," "LP," "L.P.," "LLLP," or "L.L.L.P.," unless the person or business for which the name is registered is organized as a limited partnership or has obtained a certificate of

authority to transact business in this state pursuant to ss. 620.1101-620.2205.

(c) "Limited liability partnership," "LLP," or "L.L.P.," unless the person or business for which the name is registered is registered as a limited liability partnership or has obtained a certificate of authority to transact business in this state pursuant to s. 620.9102.

(d) "Limited liability company," "LLC," or "L.L.C.," unless the person or business for which the name is registered is organized as a limited liability company or has obtained a certificate of authority to transact business in this state pursuant to chapter 605.

(e) "Professional association," "P.A.," or "chartered," unless the person or business for which the name is registered is organized as a professional corporation pursuant to chapter 621, or is organized as a professional corporation pursuant to a similar law of another jurisdiction and has obtained a certificate of authority to transact business in this state pursuant to chapter 607.

(f) "Professional limited liability company," "PLLC," "P.L.L.C.," "PL," or "P.L.," unless the person or business for which the name is registered is organized as a professional limited liability company pursuant to chapter 621, or is organized as a professional limited liability company pursuant to a similar law of another jurisdiction and has obtained a

certificate of authority to transact business in this state pursuant to chapter 605.

(15) LEGAL DESIGNATION OF ENTITY.—Notwithstanding any other ~~provision of~~ law to the contrary, a fictitious name registered as provided in this section for a corporation, limited liability company, limited liability partnership, or limited partnership is not required to contain the designation of the type of legal entity in which the person or business is organized, including the terms "corporation," "limited liability company," "limited liability partnership," "limited partnership," or any abbreviation or derivative thereof.

Section 2. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 227 Electrical and Alarm System Contracting
SPONSOR(S): Careers & Competition Subcommittee, Killebrew and Others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1372

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	12 Y, 0 N, As CS	Wright	Anstead
2) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

Electrical contractors and alarm system contractors must be certified or registered under the Electrical Contractors' Licensing Board in order to operate in Florida. Electrical contractors and alarm system contractors are permitted to perform contracting only within the scope of their practice.

The bill allows certified electrical and alarm system contractors to act as a prime contractor for contracts that contain work outside the scope of the contractor's license, provided the majority of the work is within the scope of the contractor's license, and they subcontract the remaining work to other licensed contractors. This provision mirrors current law that allows contractors to act as a prime contractor under similar circumstances.

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

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 489, F.S., outlines the law pertaining to contractors in the state of Florida. Part I of ch. 489, F.S., covers contracting regulated by the Construction Industry Licensing Board (CILB) and pt. II of ch. 489, F.S., covers contracting regulated by the Electrical Contractors' Licensing Board (ECLB). Both boards are housed in the Department of Business and Professional Regulation (DBPR).

Electrical contractors and alarm system contractors are certified or registered under ECLB. Certified contractors are those who can practice statewide and are licensed and regulated by ECLB. Registered contractors are those licensed and regulated by a local jurisdiction and who may practice within that locality.[1]

Generally, an "electrical contractor" is a person who has the ability to work on electrical wiring, fixtures, appliances, apparatus, raceways, and conduits which generate, transmit, transform, or utilize electrical energy in any form.[2] The scope of an electrical contractor's license includes alarm system work.[3]

Generally, an "alarm system contractor" is a person who is able to lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service alarm systems.[4] An "alarm system" is defined as "any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency."[5]

In order to become a certified electrical contractor or alarm system contractor, a person at least 18 years of age must submit an application to DBPR and meet the following criteria:

- Be of good moral character;
- Pass the certification examination, achieving a passing grade as established by ECLB rule; and
- Meet eligibility requirements according to one of the following criteria:
    - 3 years of management experience or education equivalent thereto, not more than half of which may be an educational equivalent, within the last 6 years;
    - 4 years of supervisory experience within the last 8 years;
    - 6 years of training, education, or supervisory experience within the last 12 years;
    - any combination of qualifications under the 3 previous options totaling 6 years within the last 12 years; or
    - 3 years as a professional electrical engineer within the last 12 years.[6]

Electrical contractors and alarm system contractors are only permitted to perform contracting within their scope of practice. Contracting includes the attempted sale of contracting services and the negotiation or bid for a contract on these services.[7]

Electrical contractors are specifically permitted to contract for certain work outside the scope of licensure, limited to excavation, paving, related incidental work, and the work of specialty electrical contractors, provided the electrical contractor properly subcontracts all work outside the scope of her or his licensure.[8] There are no similar statutory provisions for alarm system contractors.

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[1] *See generally* s. 489.505, F.S.
[2] Ss. 489.505(12), F.S.
[3] s. 489.537(7), F.S.
[4] Ss. 489.505(2), F.S.
[5] Ss. 489.505(1), F.S.
[6] s. 489.511(1)(a) and (b), F.S.
[7] *See generally* s. 489.505, F.S.
[8] s. 489.537(2)(a), F.S.

Part I of ch. 489, F.S., allows contractors who do not already have the ability to act as a prime contractor to do so when the majority of the work to be performed under a contract falls under the scope of a contractor's license and the contractor subcontracts the remaining work to other licensed contractors.[9]

Currently, ECLB and DBPR read Florida law regulating CILB contractors and ECLB contractors in conjunction with each other.[10] As such, authority granted to "contractors" to act as prime contractor has been interpreted to also apply to electrical contractors and alarm system contractors.[11] However, some local jurisdictions may interpret s. 489.113(9)(a), F.S., as only applying to contractors licensed under pt. I of ch. 489, F.S., therefore, preventing electrical contractors and alarm system contractors from acting as a prime contractor.

Effect of Proposed Changes

The bill specifically states that certified electrical and alarm system contractors are not prevented from acting as a prime contractor where the majority of the work to be performed falls into the scope of the contractor's license or from subcontracting the remaining work to other licensed contractors. This change mirrors the language of s. 489.113(9)(a), F.S. This provision does not apply to registered electrical and alarm system contractors.

The bill has an effective date of July 1, 2017.

B. SECTION DIRECTORY:

Section 1 Amends s. 489.516, F.S, allowing certified electrical contractors and alarm system contractors to act as prime contractors.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

[9] s. 489.113(9)(a), F.S.

[10] "The doctrine of *in pari materia* is a principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature's intent." *Fla. Dep't of State v. Martin*, 916 So. 2d 763, 768 (Fla. 2005) .

[11] Florida Department of Business and Professional Regulation, Agency Analysis of 2017 House Bill 227, p. 2 (Feb. 15, 2017).

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill specifically allows electrical contractors and alarm system contractors to accept and bid on additional contracts, which may increase their work and income.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 22, 2017, the Careers and Competition Subcommittee adopted an amendment and reported the bill favorably as a subcommittee substitute. The amendment clarifies that **certified** electrical and alarm system contractors are not prevented from acting as a prime contractor where the majority of the work to be performed under the contract is within the scope of licensure or from subcontracting the remaining work to other licensed contractors.

This analysis is drafted to the committee substitute as passed by the Careers and Competition Subcommittee.

A bill to be entitled

An act relating to electrical and alarm system contracting; amending s. 489.516, F.S.; specifying that provisions regulating electrical and alarm system contractors do not prevent such certified contractors from acting as a prime contractor or from subcontracting work to other licensed contractors under certain circumstances; providing an effective date.

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

Section 1. Subsection (5) of section 489.516, Florida Statutes, is renumbered as subsection (6), and a new subsection (5) is added to that section to read:

489.516 Qualifications to practice; restrictions; prerequisites.—

(5) This part does not prevent any certified electrical or alarm system contractor from acting as a prime contractor where the majority of the work to be performed under the contract is within the scope of his or her license or from subcontracting to other licensed contractors that remaining work which is part of the project contracted.

Section 2. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 307 Florida Life and Health Insurance Guaranty Association
SPONSOR(S): Insurance & Banking Subcommittee; Drake
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Peterson	Luczynski
2) Commerce Committee		Peterson KP	Hamon K.W.H.

SUMMARY ANALYSIS

Florida operates five insurance guaranty funds and associations to ensure policyholders' paid insurance premiums are protected and outstanding claims are settled, up to limits provided by law, if their insurer is liquidated. Generally, a guaranty association is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance company. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums to policyholders. Insurers are required by law to participate in guaranty associations as a condition of transacting business in Florida.

The bill makes changes to one of the five guaranty funds and associations – the Florida Life and Health Insurance Guaranty Association (FLAHIGA), which is the guaranty association for most health and life insurers.

The FLAHIGA was created in 1979 and is governed by a board of directors composed of nine insurance companies and is a nonprofit corporation. All insurance companies (with limited exceptions) licensed to write life and health insurance or annuities in Florida are required, as a condition of doing business in Florida, to be a member of the FLAHIGA.

Current law specifies life and health policies and annuity contracts from non-licensed insurers are not covered by the FLAHIGA. The maximum amount paid by the FLAHIGA for any one person is:

- Life Insurance Death Benefit: $300,000 per insured life.
- Life Insurance Cash Surrender: $100,000 per insured life.
- Health Insurance Claims: $300,000 per insured life.
- Annuity Cash Surrender: $250,000 for deferred annuity contracts per contract owner.
- Annuity in Benefit: $300,000 per contract owner.

The FLAHIGA is authorized to levy two types of assessments to carry out its responsibilities. Class A assessments may be levied for the purpose of covering the FLAHIGA's general administrative costs. These assessments are capped at $250 per member per calendar year. Class B assessments are authorized to fund the FLAHIGA's duties related to a specific insolvency.

The bill expands the FLAHIGA's scope of coverage to include annuities that are part of an individual retirement account and individual retirement annuities; increases the maximum amount paid by the FLAHIGA for any one person for specified hospital and medical insurance from $300,000 to $500,000; and raises the cap on Class A assessments from $250 per member per year to $500 per member per year.

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

The bill provides for an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Insurance Guaranty Associations – Background

Chapter 631, F.S., relating to insurer insolvency and guaranty payments, governs the receivership process for insurance companies in Florida.[1] Federal law specifies that insurance companies cannot file for bankruptcy. Instead, they are either "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation of the Department of Financial Services is responsible for rehabilitating or liquidating insurance companies.[2]

Florida operates five insurance guaranty funds and associations to ensure policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.[3] A guaranty association generally is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance company. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums[4] to policyholders. Insurers are required by law to participate in guaranty associations as a condition of transacting business in Florida.

The bill makes changes to one of the five guaranty funds and associations – the Florida Life and Health Insurance Guaranty Association (FLAHIGA), which is the guaranty association for most health and life insurers.

Florida Life and Health Insurance Guaranty Association

Statutory provisions relating to the FLAHIGA, which was created in 1979, are contained in part III of chapter 631, F.S. The FLAHIGA is governed by a board of directors composed of nine insurance companies and is a nonprofit corporation. All insurance companies (with limited exceptions) licensed to write life and health insurance or annuities in Florida are required, as a condition of doing business in Florida, to be a member of the FLAHIGA. By law, the FLAHIGA is divided into three accounts:

- The health insurance account;
- The life insurance account; and
- The annuity account.[5]

In the event a member insurer is found to be insolvent and is ordered to be liquidated by a court, a receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. Upon liquidation, the FLAHIGA automatically becomes liable for the policy obligations that

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[1] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. *See* 15 U.S.C. §§ 1011- 1012 (McCarran-Ferguson Act).

[2] Typically, insurers are put into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition. The goal of liquidation, however, is to dissolve the insurer. *See* s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.

[3] The Florida Life and Health Insurance Guaranty Association generally is responsible for claims settlement and premium refunds for health and life insurers who are insolvent. The Florida Health Maintenance Organization Consumer Assistance Plan offers assistance to members of insolvent health maintenance organizations, and the Florida Workers' Compensation Insurance Guaranty Association is directed by law to protect policyholders of insolvent workers' compensation insurers. The Florida Self-Insurers Guaranty Association protects policyholders of insolvent individual self-insured employers for workers' compensation claims. The Florida Insurance Guaranty Association is responsible for paying claims for insolvent insurers for most remaining lines of insurance, including residential and commercial property, automobile insurance, and liability insurance, among others.

[4] The term "unearned premium" refers to that portion of a premium that is paid in advance, typically for six months or one year, and which is still owed on the unexpired portion of the policy.

[5] s. 631.715(2)(a), F.S.

the liquidated insurer owed to its Florida policyholders.[6] The FLAHIGA services the policies, collects premiums, and pays valid claims under the policies. The FLAHIGA's rights under the policies are those that applied to the insurer prior to liquidation. The FLAHIGA may cancel the policy if the insurer could have done so, but normally the FLAHIGA continues the policies until the association can transfer to, or substitute the policies with, a new, stable insurer with approval of the Office of Insurance Regulation.

FLAHIGA Coverage

Generally, direct individual or direct group life and health insurance policies, as well as individual and allocated annuity contracts issued by the FLAHIGA's member insurers, are covered by the FLAHIGA.[7] Current law specifies life and health policies and annuity contracts from non-licensed insurers are not covered by the FLAHIGA.[8] The maximum amount paid by the FLAHIGA for any one person is:[9]

- Life Insurance Death Benefit: $300,000 per insured life.
- Life Insurance Cash Surrender: $100,000 per insured life.
- Health Insurance Claims:[10] $300,000 per insured life.
- Annuity Cash Surrender: $250,000 for deferred annuity contracts per contract owner.
- Annuity in Benefit: $300,000 per contract owner.

FLAHIGA does not provide coverage for, among other exceptions, an annuity or group annuity contract that is not issued to and owned by an individual, unless the benefits are guaranteed directly to the individual.[11]

FLAHIGA Assessments

The FLAHIGA is authorized to levy two types of assessments to carry out its responsibilities. Class A assessments may be levied for the purpose of covering the FLAHIGA's general administrative costs. These assessments are capped at $250 per member per calendar year. Class B assessments are authorized to fund the FLAHIGA's duties related to a specific insolvency. These assessments are based on an insurer's pro rata share of all premiums collected by insurers in the state on policies covered by the account during the three years prior to the assessment.[12] An insurer's assessment for each account may not exceed, in any one calendar year, one percent of the insurer's average premiums during the three-year period on premiums written in the covered account.[13] An insurer may offset any assessment against either its premium tax or corporate income tax liability in five percent increments recovered over a 20-year period.[14] In addition, the board may refund insurers the proportionate amount of their contribution, if the board determines the assessment generated more revenue than was needed for the account.[15]

National Organization of Life and Health Insurance Guaranty Associations (NOLHGA)

The FLAHIGA is a member of the NOLHGA, which is a voluntary association made up of the life and health insurance guaranty associations of all 50 states. The NOLHGA assists its members by coordinating the administration of claims for an insolvent insurer that is licensed in more than one state.

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[6] Generally, FLAHIGA covers only policyholders and certificate holders that were valid Florida residents on the date that a member insurer is declared insolvent and liquidated. However, non-residents of Florida and beneficiaries of covered persons are covered by FLAHIGA under limited circumstances (s. 631.713(2), F.S.).

[7] Allocated annuity contracts are directly issued to and owned by individuals or annuities that directly guarantee benefits to individuals by the insurer.

[8] s. 631.713, F.S.

[9] s. 631.717(9), F.S.; *see also* FLAHIGA, *Frequently Asked Questions*, http://www.flahiga.org/faq.cfm (last visited Feb. 8, 2017).

[10] This includes, among others, basic hospital, medical, and surgical insurance; major medical insurance; long-term care insurance; and disability insurance.

[11] s. 631.713(3)(l), F.S.

[12] s. 631.718(3)(c), F.S.

[13] s. 631.718(5)(a), F.S.

[14] s. 631.72(1), F.S.

[15] s. 631.718(6), F.S.

In general, the financial, legal, and administrative services required for a multi-state insolvency are provided through the NOLHGA, rather than separately by each state, thereby decreasing the need for each state association to individually provide and fund these services.[16] The expenses, including the state's share of the general administrative overhead, are billed to each state guaranty association in proportion to the state's claims liability for the insolvent insurer.[17]

The National Association of Insurance Commissioners (NAIC) – Life and Health Guaranty Association Model Act

The NAIC is the United States' standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer reviews, and coordinate their regulatory oversight.[18] The NAIC has promulgated a model act for use by states in governing their Life and Health Insurance Guaranty Associations. The model act currently recommends a $300 per member/per year Class A assessment (non-pro rata) and a reimbursement limit for basic hospital medical and surgical insurance and major medical insurance of $500,000.[19]

Effect of the Bill on FLAHIGA Coverage

The bill expands the classes of annuities covered by the FLAHIGA to include certain annuities that may be issued or held under 26 U.S.C. § 408(a) & (b), relating to individual retirement accounts (IRA) and individual retirement annuities. An IRA is an account that is established and maintained by an individual, by an employer for the benefit of his employees, or by an employee association for the benefit of its members.[20] An IRA is created as a trust and funds in an IRA are held by a trustee for the exclusive benefit of an individual or his or her beneficiaries. An individual retirement annuity is an annuity contract issued by an insurance company for the exclusive benefit of the participant-owners and their beneficiaries. Each individual who participates in a qualified individual retirement annuity is treated as an owner, and the contract must provide a separate accounting of the benefit allocable to each.[21]

The effect of the bill is to expand the scope of the FLAHIGA's coverage to include individual retirement annuities and annuities issued by an insurer and held in an IRA. The amount of coverage is subject to the limits in current law.

Effect of the Bill on FLAHIGA Reimbursement

The bill increases the maximum amount paid by the FLAHIGA for any one person for hospital expense, basic medical-surgical, or major medical expense health insurance policies from $300,000 to $500,000. This conforms Florida law to the model act of the NAIC with respect to basic and major medical coverage. Currently, Florida is one of only four states that have not adopted the model act standard.[22]

Effect of the Bill on FLAHIGA Assessments

The bill raises the cap on Class A assessments from $250 per member per year to $500 per member per year. Currently, the FLAHIGA has 597 members. Thus, the current assessment generates a maximum of $149,250 per year. The effect of the bill is to double the maximum rate that may be

[16] NOLHGA, *What is NOLHGA*, https://www.nolhga.com/aboutnolhga/main.cfm/location/whatisnolhga (last visited Feb. 12, 2017).
[17] Conversation with William Falck, Executive Director and General Counsel, FLAHIGA (Feb. 3, 2017).
[18] NAIC, *ABOUT THE NAIC,* http://www.naic.org/index_about.htm (last visited Feb. 17, 2017).
[19] NAIC, *Life and Health Insurance Guaranty Association Model Act,* 2017, *available at* http://www.naic.org/store/free/MDL-520.pdf.
[20] 26 U.S.C. § 408(a); 26 C.F.R. § 1.408-2(a).
[21] 26 U.S.C. § 408(b); 26 C.F.R. § 1.408-3(a).
[22] The Life & Health Insurance Guaranty Association System, *The National's Safety Net*, NOLHGA, 2016 Edition, *available at* http://www.nolhga.com/resource/code/file.cfm?ID=2515 (last visited Feb. 17, 2017).

assessed under the Class A assessment to permit a maximum assessment, based on the FLAHIGA's current membership, of $298,500 annually. The Legislature last increased the FLAHIGA's Class A assessment authority in 1989 when it increased the cap from $50 per member per calendar year to the current cap of $250 per member per calendar year. The FLAHIGA's membership at its inception in 1979 is estimated at 1,000 and its membership in 1989, when the cap was raised to its current level of $250, is estimated at 800.[23] Thus, the cap in 1989 when the cap was last increased would have generated an estimated maximum of $200,000 annually.

B. SECTION DIRECTORY:

Section 1: Amends s. 631.713, F.S., relating to application of part.
Section 2: Amends s. 631.717, F.S., relating to powers and duties of the association.
Section 3: Amends s. 631.718, F.S., relating to assessments.
Section 4: Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private insurers may be assessed a higher amount as a result of the increase in the Class A assessment authority. Private insurers may be assessed more often or in higher amounts as a result of the broader coverage for annuities and the increase in the reimbursement limit for specified hospital and medical insurance. These assessments would still be subject to the current one percent cap, which is not changed by the bill. However, this cap is an annual cap, not an aggregate cap, so it is possible that both the expanded annuity coverage and the higher reimbursement limit could result in assessments over a longer period of time than would occur under current law. The risk, with respect to the expanded annuity coverage, is not known. The risk, with respect to the higher reimbursement limit for specified hospital and medical insurance, may be very low, since it is probably unlikely that any single health insurer would have a large number of insureds who are likely to use $500,000 in coverage during the period when the FLAHIGA is liable for the policy. The $500,000 coverage limit also defines a maximum, and could be less depending on the specific terms of any covered policy, since the FLAHIGA does not reimburse more than policy limits.

[23] Conversation with William Falck, Executive Director and General Counsel, FLAHIGA (Feb. 13, 2017).

Individuals who own annuities that are part of their IRA or issued as an individual retirement annuity will benefit from the FLAHIGA coverage in the event the issuing insurer becomes insolvent. Individuals who incur catastrophic health care expenses would benefit from the higher limit and the potential to receive coverage that more closely approximates their policy limits.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 22, 2017, the Insurance & Banking Subcommittee considered and adopted two amendments and reported the bill favorably as a committee substitute. The amendments expanded the FLAHIGA's coverage to include coverage for individual retirement annuities and annuities issued by an insurer and held in an IRA, and limited the increase in the maximum liability for health insurance to specified hospital and medical insurance policies.

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

A bill to be entitled

An act relating to Florida Life and Health Insurance Guaranty Association; amending s. 631.713, F.S.; revising applicability of the Florida Life and Health Insurance Guaranty Association Act as to specified annuity contracts; amending s. 631.717, F.S.; specifying the maximum liability of the association for certain health insurance policies; amending s. 631.718, F.S.; increasing the Class A assessment amount for member insurers; providing an effective date.

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

Section 1. Paragraph (l) of subsection (3) of section 631.713, Florida Statutes, is amended to read:

631.713 Application of part.—

(3) This part does not apply to:

(l) Any annuity contract or group annuity contract that is not issued to and owned by an individual, except to the extent of any annuity benefits:

1. Guaranteed directly and not through an intermediary to an individual by an insurer under such contract or certificate;~~.~~

2. Under an annuity issued by an insurer under 26 U.S.C. s. 408(b); or

3. Under an annuity issued by an insurer and held by a custodian or trustee in accordance with 26 U.S.C. s. 408(a).

This paragraph applies to every insolvency regardless of its date of inception, and an assessment base may not include premiums for such excluded products.

Section 2. Subsection (9) of section 631.717, Florida Statutes, is amended to read:

631.717 Powers and duties of the association.—

(9) The association's liability for the contractual obligations of the insolvent insurer shall be as great as, but no greater than, the contractual obligations of the insurer in the absence of such insolvency, unless such obligations are reduced as permitted by subsection (4), but the aggregate liability of the association with respect to one life may ~~shall~~ not exceed the following:

(a) For life insurance, $100,000 in net cash surrender and net cash withdrawal values. ~~for life insurance,~~

(b) For deferred annuity contracts, $250,000 in net cash surrender and net cash withdrawal values. ~~for deferred annuity contracts, or~~

(c) For all benefits $300,000, ~~for all benefits~~ including cash values, except as provided in paragraph (d) ~~with respect to any one life~~.

(d) For basic hospital expense health insurance policies,

basic medical-surgical health insurance policies, or major medical expense health insurance policies, $500,000.

~~In no event shall~~ The association is not ~~be~~ liable for any penalties or interest.

Section 3. Paragraph (a) of subsection (3) of section 631.718, Florida Statutes, is amended to read:

631.718 Assessments.—

(3)(a) The amount of any Class A assessment shall be determined by the board and may be made on a non-pro rata basis. The assessment may not be credited against future insolvency assessments and may not exceed $500 ~~$250~~ per member insurer in any one calendar year.

Section 4. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 327 Household Movers
SPONSOR(S): Careers & Competition Subcommittee, Yarborough
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 336

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	12 Y, 0 N, As CS	Wright	Anstead
2) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

In order for an intrastate mover to operate in Florida, the mover must register with the Department of Agriculture and Consumer Services (DACS) and comply with the provisions of chapter 507, F.S.

The bill provides that a mover commits a violation of Florida law by knowingly refusing or failing to disclose in writing to a customer before a household move that the mover or an employee of a mover who has access to the customer's dwelling or property has been convicted of certain sexual offenses.

Upon a finding by DACS that a mover has refused or failed to disclose such criminal history, DACS must impose a minimum $10,000 administrative fine. If DACS instead chooses to pursue a civil remedy, it must seek a minimum $10,000 civil penalty.

The bill directs DACS to deny or refuse to renew a registration if the mover has not satisfied a civil penalty or administrative fine related to this violation.

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

The bill takes effect on October 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 507, F.S., establishes the law applying to the operations of any mover or moving broker (broker) engaged in the intrastate transportation or shipment of household goods originating in this state and terminating in this state.[1] Movers and brokers engaged in the interstate transportation of household goods are regulated by the Federal Motor Carrier Safety Administration within the United States Department of Transportation.[2]

A "mover" is a person who, for compensation, contracts for or engages in the loading, transportation or shipment, or unloading of household goods as part of a household move. The term does not include a postal, courier, envelope, or package service that does not advertise itself as a mover or moving service.[3]

A "broker" is a person who, for compensation, arranges for another person to load, transport or ship, or unload household goods as part of a household move or who, for compensation, refers a shipper to a mover by telephone, postal or electronic mail, Internet website, or other means.[4]

"Household goods" means personal effects or property commonly found in a home, personal residence, or other dwelling, such as household furniture. It does not include freight or personal property moving to or from a place of business.[5]

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

- From one dwelling to another;
- From a dwelling to a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent; or
- From a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent to a dwelling.[6]

A mover or broker who is engaged in intrastate moving is required to register with DACS.[7] Required registration information includes the mover's or broker's legal business and trade name, mailing address, and business locations; the full names, addresses, and telephone numbers of its owners or corporate officers and directors and the Florida agent of the corporation; corporation formation information; fictitious name information; and proof of required insurance or alternative coverage.[8]

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[1] s. 507.02(2), F.S.
[2] 49 C.F.R §§ 375.101 and 375.103 (2012).
[3] s. 507.01(9), F.S.
[4] s. 507.01(10), F.S.
[5] s. 507.01(7), F.S.
[6] s. 507.01(8), F.S.
[7] s. 507.03(1), F.S.
[8] *Id.*

Denial of Registration or Registration Renewal

Section 507.03(8), F.S., permits DACS to deny, refuse to renew, or revoke the registration of any mover or broker when it determines that the mover or broker, or any of the mover's or broker's directors, officers, owners, or general partners has:

- failed to meet the requirements for registration as provided in ch. 507;
- been convicted of a crime involving fraud, dishonest dealing, or any other act of moral turpitude;
- not satisfied a civil fine or penalty arising out of any administrative or enforcement action brought by any governmental agency or private person based upon conduct involving fraud, dishonest dealing, or any violation of this chapter;
- pending against him or her any criminal, administrative, or enforcement proceedings in any jurisdiction, based upon conduct involving fraud, dishonest dealing, or any other act of moral turpitude; or
- had a judgment entered against him or her in any action brought by DACS or the Department of Legal Affairs under this chapter or the Florida Deceptive and Unfair Trade Practices Act.

Administrative Remedies and Penalties

DACS or the enforcing authority may impose fines for violations of law in the following categories:

- Class I- A fine not exceeding $1,000 may be imposed for each violation of this class.
- Class II- A fine not exceeding $5,000 may be imposed for each violation of this class.
- Class III- A fine not exceeding $10,000 may be imposed for each violation of this class.
- Class IV- A fine of $10,000 or more may be imposed for each violation of this class.[9]

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

- issuing a notice of noncompliance,[10]
- imposing a Class II administrative fine for each act or omission,
- directing that the person cease and desist specified activities,
- refusing to register or revoking or suspending a registration, and/or
- placing the registrant on probation, subject to the conditions specified by DACS.[11]

Rule 5J-15.002, Florida Administrative Code, provides the specific penalty guidelines for violations of chapter 507, Florida Statutes, or rules promulgated thereunder. DACS may issue a notice of noncompliance for certain first violations. DACS may impose fines for "minor violations" that range from $1,000 to $2,500.[12] For "major violations," DACS may impose an administrative fine that ranges from $1,000 to $5,000 or impose any of the other penalties provided in section 507.09(1)(b)-(e), Florida Statutes.[13]

Civil Penalties

DACS is permitted to seek a civil penalty in the Class II category for each violation of this chapter.[14]

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[9] s. 570.97(1), F.S.

[10] A "notice of noncompliance" is "a notification by the agency charged with enforcing the rule issued to the person or business subject to the rule. A notice of noncompliance may not be accompanied with a fine or other disciplinary penalty" (s. 120.695, F.S.).

[11] s. 507.09(1), F.S.

[12] *See* Fla. Admin. Code R. 5J-15.002(8)(b) (2015). The DACS defines a "minor violation" as a violation of specified provisions and a violation that "does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm."

[13] *See* Fla. Admin. Code R. 5J-15.002(8)(c) (2015). The DACS defines a "major violation" as a violation of specified provisions and a violation that "results in economic or physical harm to a person or adversely affects the public health, safety, or welfare, or creates a significant threat of such harm."

[14] s. 507.10(2), F.S.

Sexual Offense Criteria

Section 775.21(4)(a)1., F.S., lists felony criminal offenses that, upon conviction, designate the offender as a "sexual predator." Those criminal offenses are as follows:

- sexual misconduct by a care or support provider with an individual with a developmental disability who meets certain criteria (s. 393.135(2), F.S.);
- sexual misconduct by an employee of the Department of Children and Families (DCF) with a patient who meets certain criteria (s. 394.4593(2), F.S.);
- kidnapping, where the victim is a minor (s. 787.01, F.S.);
- false imprisonment, where the victim is a minor (s. 787.02, F.S.);
- luring or enticing a child, where the victim is a minor (s. 787.025(2)(c), F.S.);
- human trafficking (s. 787.06(3)(b), (d), (f), or (g) and former s. 787.06(3)(h), F.S.);
- sexual battery (s. 794.011, F.S., excluding s. 794.011(10), F.S.);
- unlawful sexual activity with certain minors (s.794.05, F.S.);
- procuring a person under the age of 18 for prostitution (former s. 796.03, F.S.);
- selling or buying of minors into sex trafficking or prostitution (former s. 796.035, F.S.);
- lewd or lascivious offense committed upon or in the presence of persons less than 16 years of age (s. 800.04, F.S.);
- video voyeurism of a minor (s. 810.145(8), F.S.);
- lewd or lascivious offense committed upon or in the presence of an elderly person or disabled adult (s. 825.1025, F.S.);
- sexual performance by a child (s. 827.071, F.S.);
- certain acts in connection with obscenity (s. 847.0133, F.S.);
- computer pornography related to minors (s. 847.0135, F.S., excluding s. 847.0135(6), F.S.);
- transmission of child pornography by electronic device/equipment (s. 847.0137, F.S.);
- transmission of material harmful to minors to a minor by electronic device/equipment (s. 847.0138, F.S.);
- selling of buying of minors for portrayal in a visual depiction engaging in sexually explicit conduct (s. 847.0145, F.S.);
- offenses concerning racketeering and illegal debts where the court makes a written finding that the racketeering activity involved at least one sexual offense listed above (s. 895.03, F.S.);
- sexual misconduct by a DCF provider with a forensic client who meets certain criteria (s. 916.1075(2), F.S.);
- sexual misconduct by an employee of the Department of Juvenile Justice with a juvenile offender (s. 985.701(1), F.S.); and/or
- any similar offense committed in this state which has been redesignated from a former statute number to one of those listed above; and/or
- a violation of a similar law to those listed above in another jurisdiction.

Effect of Proposed Changes

The bill creates a new statutory violation for movers at s. 507.07(9), F.S., which states that a mover violates this chapter if the mover knowingly refuses or fails to disclose in writing to a customer before a household move that the mover or an employee of the mover who has access to the dwelling or property of the customer has been convicted of a sexual offense, defined as those listed in s. 775.21(4)(a)1., F.S., or similar offenses in other jurisdictions.

The bill creates s. 507.03(9), F.S., to require that DACS deny or refuse to renew the registration of a mover or deny a registration or renewal request by any of the mover's directors, officers, owners, or general partners if the mover has not satisfied a civil fine or penalty for a violation of s. 507.07(9), F.S.

The bill requires DACS to impose a minimum $10,000 administrative fine upon a finding by DACS that a violation of s. 507.07(9), F.S., has occurred. If DACS instead chooses to pursue a civil remedy for such violation, it must seek a minimum $10,000 civil penalty.

The bill amends s. 507.10(2), F.S., to require DACS to seek a Class IV category penalty should DACS seek a civil penalty for a violation of s. 507.07(9), F.S, without also seeking an administrative fine for the same offense.

The bill takes effect on October 1, 2017.

B. SECTION DIRECTORY:

Section 1 Creates s. 507.03(9), F.S., relating to registration.

Section 2 Creates s. 507.07(9), F.S., relating to violations.

Section 3 Amends s. 507.09(1)(b), F.S., relating to administrative remedies and penalties.

Section 4 Amends s. 507.10(2), F.S., relating to civil penalties.

Section 5 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Movers may incur expenses related to providing customers with written notices and performing background checks on employees.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None

B. RULE-MAKING AUTHORITY:

DACS will need to amend rules regarding registration and penalties in ch. 5J-15, F.A.C.. Authority is granted by s. 507.09(3), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 22, 2017, the Careers and Competition Subcommittee adopted an amendment and reported the bill favorably as a subcommittee substitute. The amendment makes the bill identical to the Senate companion bill (CS/SB 336) by:

- including unsatisfied administrative fines for a violation of s. 507.07(9), F.S., as bases to deny or refuse to renew a mover registration.
- clarifying which criminal convictions necessitate disclosure to a customer prior to a household move.
- requiring DACS to impose a minimum $10,000 administrative fine upon a finding by DACS that a violation of s. 507.07(9), F.S., has occurred. If DACS instead chooses to pursue a civil remedy for such violation, it must seek a minimum $10,000 civil penalty.

This analysis is drafted to the committee substitute as passed by the Careers and Competition Subcommittee.

A bill to be entitled

An act relating to household movers; amending s. 507.03, F.S.; requiring the Department of Agriculture and Consumer Services to deny or refuse to renew the registration of a mover under certain circumstances; amending s. 507.07, F.S.; prohibiting a mover from knowingly refusing or failing to disclose in writing specified criminal information under certain circumstances; amending ss. 507.09 and 507.10, F.S., relating to administrative remedies and civil penalties, respectively; requiring the department to impose either a civil penalty or an administrative fine for failure to disclose in writing specified criminal information; providing an effective date.

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

Section 1. Present subsections (9) and (10) of section 507.03, Florida Statutes, are redesignated as subsections (10) and (11), respectively, and a new subsection (9) is added to that section to read:

507.03 Registration.—

(9) The department shall deny or refuse to renew the registration of a mover or deny a registration or renewal request by any of the mover's directors, officers, owners, or

general partners if the mover has not satisfied a civil penalty or administrative fine for a violation of s. 507.07(9).

Section 2. Subsection (9) is added to section 507.07, Florida Statutes, to read:

507.07 Violations.—It is a violation of this chapter:

(9) For a mover to knowingly refuse or fail to disclose in writing to a customer before a household move that the mover or an employee of the mover who has access to the dwelling or property of the customer has been convicted of a felony listed in s. 775.21(4)(a)1. or convicted of a similar offense of another jurisdiction, regardless of when such felony offense was committed.

Section 3. Paragraph (b) of subsection (1) of section 507.09, Florida Statutes, is amended to read:

507.09 Administrative remedies; penalties.—

(1) The department may enter an order doing one or more of the following if the department finds that a mover or moving broker, or a person employed or contracted by a mover or broker, has violated or is operating in violation of this chapter or the rules or orders issued pursuant to this chapter:

(b) Imposing an administrative fine in the Class II category pursuant to s. 570.971 for each act or omission. However, the department must impose an administrative fine in the Class IV category for each violation of s. 507.07(9) if the department does not seek a civil penalty for the same offense.

Section 4. Subsection (2) of section 507.10, Florida Statutes, is amended to read:

507.10 Civil penalties; remedies.—

(2) The department may seek a civil penalty in the Class II category pursuant to s. 570.971 for each violation of this chapter. However, the department must seek a civil penalty in the Class IV category for each violation of s. 507.07(9) if the department does not impose an administrative fine for the same offense.

Section 5. This act shall take effect October 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 339 Motor Vehicle Service Agreement Companies
SPONSOR(S): Insurance & Banking Subcommittee; White
TIED BILLS: **IDEN./SIM. BILLS:** SB 794

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Lloyd	Luczynski
2) Commerce Committee		Lloyd	Hamon

SUMMARY ANALYSIS

Motor vehicle service agreement companies are one type of warranty association and are governed by the provisions in part I of ch. 634, F.S. Warranty associations are regulated by the Office of Insurance Regulation. Motor vehicle service agreements generally provide vehicle owners with protection when the manufacturer's warranty expires. Either the company or the holder may cancel the agreement. Upon cancellation, specified refunds of premium must be issued to the holder.

Among other requirements, motor vehicle service agreement companies may meet statutory reserve requirements by purchasing contractual liability insurance from an admitted insurer. They can also meet their reserve requirements by keeping a reserve equaling 50 percent of their gross unearned premium or purchasing insurance for 100 percent of their claims exposure. All existing casualty insurers in Florida are required to have $4,000,000 in surplus.

A risk retention group is a corporation or limited liability association whose primary purpose is to share any or all of the liabilities of the members of the group. Risk retention groups can only insure certain risks. They are limited to liability insurance and reinsurance of other risk retention groups that share the same common interests required to form a group.

The bill requires service agreement companies that purchase insurance to fund their reserve obligation to use an insurer with $15,000,000 minimum in surplus. It allows service agreement companies to meet reserve requirements by participating in a risk retention group, if the group covers 100 percent of the claims exposure and maintains $15,000,000 minimum in surplus. It removes a prohibition on companies that offer vehicle protection expenses from using an affiliated insurer to meet their reserve requirements. Lastly, lenders, finance companies, and creditors are given specific authority to cancel a service agreement in certain circumstances, if provided for in the agreement.

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

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Motor Vehicle Service Agreement Companies

Motor vehicle service agreement companies are one type of warranty association and are governed by the provisions in part I, ch. 634, F.S. Motor vehicle service agreements generally provide vehicle owners with protection when the manufacturer's warranty expires. While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the Office of Insurance Regulation (OIR). The OIR's regulatory authority concerning warranty associations includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, the OIR is not required to approve rates for warranties.

Motor vehicle service agreements indemnify the agreement holder against loss caused by failure of any mechanical or other component part, or any mechanical or other component part of the motor vehicle that does not function as it was originally intended. The term "motor vehicle service agreement" also includes any contract that provides: for coverage which is issued in conjunction with an additive product applied to the motor vehicle that is the subject of such agreement; for payment of vehicle protection expenses (such as meeting applicable deductibles and providing for temporary replacement vehicle rental expenses); and for the payment for paintless dent-removal services.[1]

These companies are required to be licensed by the OIR prior to conducting business in Florida.[2] A company must meet the following conditions to qualify for licensure:[3]

- Be a solvent corporation,
- Prove to OIR that the management of the company is competent and trustworthy and can successfully and lawfully manage the company,
- Deposit $200,000 with the Department of Financial Services (DFS),[4]
- Have and maintain minimum net assets of at least $500,000, which must be kept in the United States,
- Keep and maintain an unearned premium reserve of at least 50 percent of the unearned gross written premium of each service agreement amortized pro rata over the life of the agreement, kept in a 10 to 1 ratio of gross written premium in force to net assets[5] (15% of this reserve must be deposited with the DFS),
    - This reserve is not required if the service agreement company holds a contractual liability policy and meets the following criteria:
        - The policy covers 100 percent of the claim exposure and is with an admitted insurer, [6]

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[1] s. 634.011(8), F.S.

[2] s. 634.031, F.S. The unauthorized transaction of motor vehicle service agreements is a first degree misdemeanor punishable by up to one year in jail and a $1,000 fine. s. 634.031(7), F.S.

[3] s. 634.041, F.S.

[4] s. 634.052, F.S. If the company maintains less than $750,000 in unearned gross premium, the deposit may be lowered to $100,000. Also, the deposit may be lowered to no less than $100,000 after the first year of business upon application to the DFS for a release of a portion of the deposit. For good cause shown after notice and a hearing, the OIR may require the deposit to be increased to no more than $500,000 to protect the company's customers and creditors. The deposit must be in the form of the various securities specified in s. 625.52, F.S.

[5] This ratio only applies to the direct written premiums covered by the reserve, i.e., that are retained and not covered by contractual liability insurance held by the service agreement company. s. 634.041(8)(a)2., F.S.

[6] Contractual liability insurance is casualty insurance. s. 624.605(1)(b), F.S. Casualty insurers are required to initially have at least $5,000,000 in surplus as to policyholders and subsequently must maintain $4,000,000 in surplus as to policy holders. ss. 624.407 and 624.408, F.S.

    - If the service agreement company fails to meet its contractual obligations, the insurer is bound to cover all claims and refunds on agreements issued during the policy period, including those agreements that the company has yet to pay premium on,
    - If the service agreement is being fulfilled by the insurer and the company cancels the agreement, the insurer must issue the required pro rata refund (and representatives or agents must refund the commissions, pro rata),
    - There is a 90 day cancellation, termination, or non-renewal notice to OIR by the insurer, and
    - The company provides claim statistics to OIR.
- The service agreement company must be able to identify which allowed reserve requirement is being used to back each agreement. However, a company with at least $10,000,000 in assets and an audited actuarial statement on file with OIR is granted authority to manage blocks of new agreements under either of the two allowed forms of reserving, i.e., the 50 percent reserve or contractual liability insurance substitute,
- It must file, under oath of two executive officers, any information requested in writing by OIR regarding its transactions and affairs, and
- Limitations on reserve requirements apply to service agreement companies that provide vehicle protection expenses through their agreements, including a prohibition on purchasing insurance from an affiliated insurer.[7]

The OIR is prohibited from licensing a company if it has violated any requirement of part I of ch. 634, F.S., or any rules interpreting and implementing that part within the previous three years. There are 89 motor vehicle service agreement companies active in Florida.[8]

Motor vehicle service agreements are commonly purchased and financed at the same time as the vehicle that they cover. When the vehicle financing is satisfied, such as through sale, trade-in, or pay-off following an insured total loss, the service agreement should be cancelled to avoid unnecessary premiums and obtain a refund, as provided by law,[9] of the unearned portion of paid premium. While statute only references the action of the agreement holder regarding cancellations, the entity that financed the purchase of the vehicle and agreement may be the only one knowledgeable of the need to cancel the agreement in such circumstances. Acting on behalf of their customer, they request the cancellation.

Upon cancellation, the agreement holder is entitled to a refund of a portion of the premium paid.[10] The calculation of the refund amount changes based on the date of the cancellation. If the agreement holder cancels the agreement within 60 days after purchase, they must receive 100 percent of the gross premium paid, after deducting any paid claims and an administrative fee. The administrative fee is limited to 5 percent of the gross premium paid. If the agreement holder cancels the agreement more than 60 days after purchase, they are due a refund of 90 percent of the unearned premiums, after deduction of any claims paid. In this case, the refund is calculated proportionally to the future portion of the policy period being cancelled, i.e., pro rata.

[7] The service agreement company can use an affiliated insurer, if the insurer had issued them a policy prior to January 1, 2002. s. 634.041(11)(a), F.S.

[8] FLORIDA OFFICE OF INSURANCE REGULATION, ACTIVE COMPANY SEARCH, http://www.floir.com/CompanySearch/, Select "Motor Vehicle Service Agreement Company" under "Company Type" (last visited Feb. 17, 2017).

[9] s. 634.121(3), F.S. This section also governs cancellations by the service agreement company and provides detailed requirements concerning justification and process.

[10] "Unearned premium" means that portion of the gross written premium which has not been earned on a straight pro rata basis. s. 634.011(16), F.S. Premium is not earned until the policy period expires and are usually paid in advance. Unearned premium is that portion of a premium that the insurer has already received, but relates to future coverage during the policy period.

Risk Retention Groups

Risk retention groups are authorized under state and federal law.[11] Except for requirements related to oversight of the formation and operations of the group, regulation of these groups is preempted by federal law.[12]

A risk retention group is a corporation or limited liability association whose primary purpose is to share any or all of the liabilities of the members of the group. If they are organized under the law of any state or district of the United States, they may transact business in Florida.[13] They may not exclude businesses from membership solely for competitive advantage. The group must be solely owned by either:

- Its members who receive insurance from the group, or
- By an organization whose members are the members of the group; however, the owning organization must be owned by those making up and receiving insurance from the group.

The group members must be engaged in business or activities that result in similar or related liabilities because of their similar, related or mutual business conditions.

Risk retention groups can only insure certain risks. They are limited to liability insurance and reinsurance of other risk retention groups that share the same common interests required to form a group. The term "risk retention group" must be included in the group's name. None of Florida's insurance insolvency guaranty funds are available for risk retention group insolvencies. There are 108 risk retention groups active in Florida.[14]

By forming or joining a risk retention group, a prospective member, such as a motor vehicle service agreement company, can take advantage of economic opportunities consistent with self-insurance. They may be able to save money by controlling overhead costs and limiting profits that cannot be avoided through the purchase of insurance. As members, they maintain or participate in the control of assets and investments dedicated to the reserves that will fund claims exposure. The availability of participation in risk retention groups provide business with another option to compete in the market and take advantage of economic opportunities.

Effect of the Bill

The bill:

- Requires service agreement companies that purchase insurance to fund their reserve obligation to use an insurer with $15,000,000 minimum in surplus. This increases the minimum surplus as to policyholders from $4,000,000 to $15,000,000.
- Allows service agreement companies to meet their reserve requirement by participating in a risk retention group, if the group:
  - Covers 100 percent of the claims exposure of the company, and
  - Maintains a surplus of $15,000,000, minimum.

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[11] 15 U.S.C. §§ 3901, et seq. (2016), and part XIX of ch. 627, F.S.

[12] 15 U.S.C. §3902 (2016). Rule 69-O-200.006, F.A.C., requires insurers writing contractual liability insurance to obtain a certificate of authority from OIR prior to doing so. Since risk retention groups from outside of Florida are not issued certificates of authority, the OIR asserts that they cannot offer contractual liability insurance in the state. Florida Office of Insurance Regulation, Agency Analysis of 2017 House Bill 339, p. 5 (Feb. 1, 2017). This rule may conflict with federal preemption regarding risk retention groups and would be resolved by the bill.

[13] Certain risk retention groups organized in Bermuda or the Cayman Islands prior to January 1, 1985, may also transact business in Florida. s. 627.942(9)(c)2., F.S.

[14] FLORIDA OFFICE OF INSURANCE REGULATION, ACTIVE COMPANY SEARCH, http://www.floir.com/CompanySearch/, Select "Risk Retention Group" under "Company Type" (last visited Feb. 17, 2017).

- Removes a prohibition regarding use of an affiliated insurer to meet reserve requirements that applies to service agreement companies offering vehicle protection expenses. This allows them to meet their reserve requirements through risk retention groups, if they wish, and also allows them to purchase contractual liability insurance, for this purpose, from an affiliated insurer.
- Provides specific authority for a lender, finance company, or creditor to cancel a service agreement, if provided for in the agreement, after the agreement has been in place for more than 60 days.

B. SECTION DIRECTORY:

Section 1. Amends s. 634.041, F.S., relating to qualifications for licensure.

Section 2. Amends s. 634.121, F.S., relating to forms, required procedures, provisions.

Section 3. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Motor vehicle service agreement companies, and their consumers, may benefit from the expanded options for securing required reserves and the increased financial strength required of the entities that may reinsure the service agreement companies.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 22, 2017, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably with a committee substitute. The amendment made the following revisions to the bill:

- Technical and grammatical changes to the provision of the bill allowing the use of risk retention groups to secure reserve requirements, and
- A new section to the bill was added, which allows a lender, finance company, or creditor to cancel service agreements, if provided for in the agreement.

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to motor vehicle service agreement companies; amending s. 634.041, F.S.; revising qualifications for a motor vehicle service agreement company to obtain and maintain a license; amending s. 634.121, F.S.; allowing certain entities to cancel service agreements in certain circumstances; providing such cancellations are only valid if authorized; providing an effective date.

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

Section 1. Paragraph (b) of subsection (8) and paragraph (a) of subsection (11) of section 634.041, Florida Statutes, are amended to read:

634.041 Qualifications for license.—To qualify for and hold a license to issue service agreements in this state, a service agreement company must be in compliance with this part, with applicable rules of the commission, with related sections of the Florida Insurance Code, and with its charter powers and must comply with the following:

(8)

(b) A service agreement company does not have to establish and maintain an unearned premium reserve if it secures ~~purchases~~ and maintains contractual liability insurance in accordance with

the following:

1. Coverage of ~~The insurance covers~~ 100 percent of the ~~its~~ claim exposure ~~and~~ is obtained from an insurer approved by the office, which holds a certificate of authority under s. 624.401 to do business within this state, or secured through a risk retention group, which is authorized to do business within this state under s. 627.943 or s. 627.944. Such insurer or risk retention group must maintain a surplus as regards policyholders of at least $15 million.

2. If the service agreement company does not meet its contractual obligations, the contractual liability insurance policy binds its issuer to pay or cause to be paid to the service agreement holder all legitimate claims and cancellation refunds for all service agreements issued by the service agreement company while the policy was in effect. This requirement also applies to those service agreements for which no premium has been remitted to the insurer.

3. If the issuer of the contractual liability policy is fulfilling the service agreements covered by the contractual liability policy and the service agreement holder cancels the service agreement, the issuer must make a full refund of unearned premium to the consumer, subject to the cancellation fee provisions of s. 634.121(3). The sales representative and agent must refund to the contractual liability policy issuer their unearned pro rata commission.

4. The policy may not be canceled, terminated, or nonrenewed by the insurer or the service agreement company unless a 90-day written notice thereof has been given to the office by the insurer before the date of the cancellation, termination, or nonrenewal.

5. The service agreement company must provide the office with the claims statistics.

All funds or premiums remitted to an insurer by a motor vehicle service agreement company under this part shall remain in the care, custody, and control of the insurer and shall be counted as an asset of the insurer; provided, however, this requirement does not apply when the insurer and the motor vehicle service agreement company are affiliated companies and members of an insurance holding company system. If the motor vehicle service agreement company chooses to comply with this paragraph but also maintains a reserve to pay claims, such reserve shall only be considered an asset of the covered motor vehicle service agreement company and may not be simultaneously counted as an asset of any other entity.

(11)(a) A service agreement company offering service agreements providing vehicle protection expenses may meet the requirements for this part only by maintaining contractual liability insurance covering 100 percent of its vehicle protection claim exposure in accordance with paragraph (8)(b)~~,~~

~~which insurance must be issued by an insurance company not affiliated with the service agreement company, unless the insurance company had issued a contractual liability insurance policy to a service agreement company on or before January 1, 2002~~. Service agreements providing vehicle protection expenses may be sold only to a service agreement holder that has in-force comprehensive motor vehicle insurance coverage for the vehicle to be covered by the service agreement.

Section 2. Paragraph (b) of subsection (3) of section 634.121, Florida Statutes, is amended to read:

634.121 Forms, required procedures, provisions.—

(3)

(b) After the service agreement has been in effect for 60 days, it may not be canceled by the insurer or service agreement company unless:

1. There has been a material misrepresentation or fraud at the time of sale of the service agreement;

2. The agreement holder has failed to maintain the motor vehicle as prescribed by the manufacturer;

3. The odometer has been tampered with or disabled and the agreement holder has failed to repair the odometer; or

4. For nonpayment of premium by the agreement holder, in which case the service agreement company shall provide the agreement holder notice of cancellation by certified mail.

If the service agreement is canceled by the insurer or service agreement company, the return of premium must not be less than 100 percent of the paid unearned pro rata premium, less any claims paid on the agreement. If, after 60 days, the service agreement is canceled by the service agreement holder, lender, finance company, or creditor, the insurer or service agreement company shall return directly to the agreement holder not less than 90 percent of the unearned pro rata premium, less any claims paid on the agreement. Cancellations initiated by lenders, creditors, or finance companies are only valid if authorized by the terms of the service agreement. The service agreement company remains responsible for full refunds to the consumer on canceled service agreements. However, the salesperson and agent are responsible for the refund of the unearned pro rata commission. A service agreement company may effectuate refunds through the issuing salesperson or agent in accordance with paragraphs (c) and (d).

Section 3. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 379 Underground Facilities
SPONSOR(S): Leek and others
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 446

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	15 Y, 0 N	Voyles	Keating
2) Commerce Committee		Voyles TV	Hamon K.W.H.

SUMMARY ANALYSIS

Chapter 556, F.S., is the "Underground Facility Damage Prevention and Safety Act" (Act). The stated purpose of the Act is to identify and locate underground facilities prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damage to those facilities. To accomplish this, the Act creates a not-for-profit corporation, Sunshine State One-Call of Florida, Inc. (SSOCOF), to administer a free-access notification system.

This bill amends the "Underground Facility Damage Prevention and Safety Act" by:

- Requiring the SSOCOF board of directors, in its annual progress report on the participation by municipalities and counties in the one-call notification system, to include (1) a summary of the damage reporting data received by the system for the preceding year and (2) any analysis of the data by the board;
- Requiring an excavator that causes the contact with or damage to any pipe or other underground facility to immediately report the contact or damage by calling 911 if any natural and other gas or hazardous liquid regulated by the Pipeline and Hazardous Materials Safety Administration (PHMSA) has escaped;
- Requiring member operators, after being notified by an excavator that causes damage to a pipe, cable, or protective covering, to file a report with the one-call system on an annual basis, with a deadline of March 31 each year for all reports from the prior calendar year, or more frequently at the option and sole discretion of the member operator; requiring such reports to include, if known, the cause, nature, and location of the damage; and
- Providing that if a citation is issued by a state law enforcement officer, 80 percent of the civil penalty collected by the clerk of the court will be distributed to the government entity whose employee issued the citation.

The bill may have an insignificant, positive fiscal impact on state government revenues. The bill does not appear to impact state government expenditures or local government revenues or expenditures.

This bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Underground Facility Damage Prevention and Safety Act

Chapter 556, F.S., is the "Underground Facility Damage Prevention and Safety Act" (Act). The goal of the Act is to identify and locate underground facilities[1] prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damage to those facilities.[2] To accomplish this, the Act creates a not-for-profit corporation to administer a free-access notification system whereby a person intending to conduct excavation or demolition activities can give prior notice to the system of the person's intended activities, allowing operators of underground facilities the opportunity to identify and locate their nearby facilities.[3] All operators of underground facilities in the state are required to be members of the corporation ("member operators") and are required to use and participate in the system.[4]

The not-for-profit corporation created under the Act is Sunshine State One-Call of Florida, Inc. (SSOCOF), which exercises its powers through a board of directors.[5] The system is required to provide a single toll-free telephone number within Florida which excavators can use to notify member operators of planned excavation or demolition activities.[6] The person intending to conduct excavation or demolition must notify the system not less than two full business days before beginning the operations.[7] The person must also provide specified identification, location, and operational information which remain valid for 30 calendar days.[8] Upon receipt of this notice, the system provides to the person a list of names of the member operators who will be advised of the notification and a notification number which specifies the date and time of the notification.[9]

The system operator in turn notifies the potentially affected member operators of the planned excavation or demolition activities.[10] Within two full business days after the time the notification is received by the system (or 10 days if the proposed excavation is in proximity to facilities beneath state waters), potentially affected member operators must determine the location of their underground

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[1] s. 556.102(13), F.S., defines "underground facility" as "any public or private personal property which is buried, placed below ground, or submerged on any member operator's right-of-way, easement, or permitted use which is being used or will be used in connection with the storage or conveyance of water; sewage; electronic, telephonic, or telegraphic communication; electric energy; oil; petroleum products; natural gas; optical signals; or other substances, and includes, but is not limited to, pipelines, pipes, sewers, conduits, cables, valves, and lines. For purposes of this act, a liquefied petroleum gas line regulated under chapter 527 is not an underground facility unless such line is subject to the requirements of Title 49 C.F.R. adopted by the Department of Agriculture and Consumer Services, provided there is no encroachment on any member operator's right-of-way, easement, or permitted use. Petroleum storage systems subject to regulation pursuant to chapter 376 are not considered underground facilities for the purposes of this act unless the storage system is located on a member operator's right-of-way or easement. Storm drainage systems are not considered underground facilities."

[2] s. 556.101(3), F.S.

[3] s. 556.101(2), F.S.

[4] s. 556.103(1), F.S.

[5] s. 556.103, F.S.

[6] s. 556.104, F.S.

[7] s. 556.105(1)(a), F.S. The law provides an exception to this requirement for excavation beneath state waters, but does not specify a time frame for notifying the system of such an excavation.

[8] s. 556.105(1)(c), F.S.

[9] s. 556.105(3), F.S.

[10] s. 556.105(5), F.S. The statute also provides that member operators with state-owned underground facilities located within the right-of-way of a state highway need not be notified of excavation or demolition activities and are under no obligation to mark or locate facilities.

facilities in relation to the proposed excavation or demolition. If this cannot be done in this time period, the member operator must contact the person giving notice and negotiate a new schedule and time that is agreeable and does not unreasonably delay the excavator. If a member operator determines that a proposed excavation or demolition is in proximity to or conflicts with an underground facility, the member operator must identify the horizontal route of the facility in a specified manner.[11]

An excavator is required to delay excavations until the first of the following events occurs: (1) each member operator's underground facilities have been marked and located; (2) the excavator has been notified that no member operator has underground facilities in the area described in the notice; or (3) expiration of the time allowed for markings. If a member operator has not located and marked its underground facilities within the time allowed for marking, the excavator may proceed with the excavation, provided the excavator does so with reasonable care, and provided, further, that detection equipment or other acceptable means to locate underground facilities are used. An excavator may not conduct demolition in an area until all member operators' underground facilities have been marked and located or removed.[12]

The Act also establishes violations of certain provisions as noncriminal infractions that are enforceable by citations which may be issued by any local or state law enforcement officer, government code inspector, or code enforcement officer. The Act establishes a civil penalty of $500, plus court costs, for such infractions.[13] If a citation is issued by a local law enforcement officer, a local government code inspector, or a code enforcement officer, 80 percent of the civil penalty collected by the clerk of the court will be distributed to the government entity whose employee issued the citation, with 20 percent of the penalty retained by the clerk of the court to cover administrative costs.[14] If a citation is issued by a state law enforcement officer, the civil penalty collected by the clerk of the court is retained by the clerk for deposit into the fine and forfeiture fund established pursuant to s. 142.01, F.S.[15] The fine and forfeiture fund is established by the clerk of the circuit court in each county of this state and functions as a separate fund for use by the clerk of the circuit court in performing court-related functions.

By March 31 of each year, each clerk of court must submit a report to SSOCOF listing each violation notice written under s. 556.107(1)(a), F.S., which has been filed in that county during the preceding calendar year.[16] The report must state the name and address of the member or excavator who committed each infraction and indicate whether or not the civil penalty for the infraction was paid.[17] Additionally, the SSOCOF board must submit an annual progress report, including the summary of the reports to the system from the clerks of court, to the President of the Senate, the Speaker of the House of Representative, and the Governor, no later than 60 days before the convening of each regular session of the Legislature.[18]

U.S. DOT Pipeline and Hazardous Material Safety Administration - Pipeline Damage Prevention Programs

The U.S. Department of Transportation (DOT) has back stop authority to conduct administrative civil enforcement proceedings against excavators who damage hazardous liquid and natural gas pipelines in a state that has failed to adequately enforce its excavation damage prevention or one-call laws.[19]

On July 13, 2015, the DOT Pipeline and Hazardous Materials Safety Administration (PHMSA) announced the issuance of a final rule to establish the process for evaluating state excavation damage

[11] s. 556.105(5), F.S.
[12] s. 556.105(6), F.S.
[13] s. 556.107(1), F.S.
[14] s. 556.107(1)(c), F.S.
[15] *Id.*
[16] s. 556.107(2), F.S.
[17] *Id.*
[18] s. 556.103(5), F.S.
[19] 49 U.S.C. § 60114.

prevention law enforcement programs and enforcing minimum Federal damage prevention standards in states where damage prevention law enforcement is deemed inadequate or does not exist.[20]

Under its rule,[21] PHMSA uses the following criteria in evaluating the effectiveness of a state damage prevention program[22]:

- Does the state have the authority to enforce its state excavation damage prevention law using civil penalties and other appropriate sanctions for violations?
- Has the state designated a state agency or other body as the authority responsible for enforcement of the state excavation damage prevention law?
- Is the state assessing civil penalties and other appropriate sanctions for violations at levels sufficient to deter noncompliance and is the state making publicly available information that demonstrates the effectiveness of the state's enforcement program?
- Does the enforcement authority (if one exists) have a reliable mechanism (e.g., mandatory reporting, complaint driven reporting) for learning about excavation damage to underground facilities?
- Does the state employ excavation damage investigation practices that are adequate to determine the responsible party or parties when excavation damage to underground facilities occurs?
- At a minimum, do the state's excavation damage prevention requirements include the following:
    - Excavators may not engage in excavation activity without first using an available one-call notification system to establish the location of underground facilities in the excavation area.
    - Excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator.
    - An excavator who causes damage to a pipeline facility:
        - Must report the damage to the operator of the facility at the earliest practical moment following discovery of the damage; and
        - If the damage results in the escape of any PHMSA regulated natural and other gas or hazardous liquid, must promptly report to other appropriate authorities by calling the 911 emergency telephone number or another emergency telephone number.
- Does the state limit exemptions for excavators from its excavation damage prevention law?
    - A state must provide to PHMSA a written justification for any exemptions for excavators from state damage prevention requirements.
    - PHMSA will make the written justifications available to the public.

Effect of Proposed Changes

Expansion of Annual Progress Report

The bill expands the SSOCOF board's annual progress report on the participation by municipalities and counties in the one-call notification system to include: (1) a summary of the damage reporting data received by the system under s. 556.105(12) for the preceding year; and (2) any analysis of the data by the board.

This expansion of information provided in the annual progress report may provide the data necessary to meet the requirements of PHMSA in its evaluation of the effectiveness of Florida's damage prevention enforcement program.

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[20] U.S. DEP'T OF TRANS., PIPELINE & HAZARDOUS MATERIALS SAFETY ADMIN., *About Excavation Enforcement Final Rule*, http://phmsa.dot.gov/pipeline/safety-awareness-and-outreach/excavator-enforcement (last visited Feb. 8, 2017).

[21] Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 80 Fed. Reg. 43,868 (July 23, 2015) (codified at 49 C.F.R. Pts. 196 and 198).

[22] *Id.*

Procedures for Contact or Damage

The bill provides that, if contact with or damage to an underground pipe or other underground facility causes the escape of natural gas or any other gas or hazardous liquid, the excavator, in addition to immediately notifying the member operator, must immediately report the contact or damage by calling the 911 emergency telephone number.

This requirement to call 911 may provide the procedures necessary to meet the requirements of PHMSA in its evaluation of the effectiveness of Florida's damage prevention enforcement program.

The bill provides that, after being notified by an excavator that has caused contact with or damage to any pipe, cable, or protective covering, or any other underground facility, the member operator must file a report with the SSOCOF system. These reports must be submitted annually to the system, with a deadline of March 31 each year for all reports from the prior calendar year. Member operators also have the option and sole discretion to submit the reports to the system more frequently than the annual deadline. These member operator reports are required, if known, to include the cause, nature, and location of the damage. The bill also provides that the system is required to establish and maintain a process to facilitate the submission of the member operator reports. These requirements may provide the procedures necessary to meet the requirements of PHMSA in its evaluation of the effectiveness of Florida's damage prevention enforcement program.

Civil Penalty Citations

The bill provides that if a citation is issued by a state law enforcement officer or other local officer, 80 percent of the civil penalty collected by the clerk of the court will be distributed to the government entity whose employee issued the citation, and 20 percent of the penalty will be retained by the clerk of the court to cover administrative costs. Thus, the bill may encourage greater enforcement efforts by state law enforcement entities who currently receive no shares of these penalties.

B. SECTION DIRECTORY:

Section 1. Amends s. 556.103, F.S., relating to annual reports of the board of directors of Sunshine State One-Call of Florida, Inc.

Section 2. Amends s. 556.105, F.S., relating to procedures for notification and reporting under certain circumstances.

Section 3. Amends s. 556.107, F.S., relating to violations of certain provisions of ch. 556, F.S.

Section 4. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an insignificant, positive impact on state government revenues.

By entitling a state law enforcement entity that issues a citation to receive 80 percent of the resulting civil penalties collected by the clerk of court, the bill may encourage greater enforcement efforts by such entities, leading to additional state revenues. The significance of the increase in state revenues would depend entirely on the number of citations issued by state law enforcement

officers, and compliance with and enforcement of ch. 556, F.S. In 2015, the Florida Court Clerks & Comptrollers reported a total of 22 citations were issued under ch. 556, F.S.[23] None were issued by state law enforcement officers.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The requirement of calling the 911 emergency telephone number by excavator causing contact or damage if there is resulting escape of any natural and other gas or hazardous liquid regulated by PHMSA does not appear to be a significant economic impact on the private sector. Excavators already are required to provide immediate notification to the member operator if the excavator causes any contact or damage, even if there is no resulting escape of any natural and other gas or hazardous liquid.

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 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.

[23] Email and data on file with House Energy and Utilities Subcommittee staff.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to underground facilities; amending s. 556.103, F.S.; revising the information that must be submitted to the Legislature annually by the board of directors of Sunshine State One-Call of Florida, Inc.; amending s. 556.105, F.S.; requiring excavators to call the 911 emergency telephone number under certain circumstances; requiring member operators to file a report with the free-access notification system under certain circumstances; providing reporting frequencies and required data to be submitted; amending s. 556.107, F.S.; specifying how certain civil penalties issued by state law enforcement officers shall be distributed; deleting a requirement that certain citations be deposited into the fine and forfeiture fund; providing an effective date.

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

Section 1. Subsection (5) of section 556.103, Florida Statutes, is amended to read:

556.103 Creation of the corporation; establishment of the board of directors; authority of the board; annual report.—

(5) The board of directors shall submit to the President of the Senate, the Speaker of the House of Representatives, and

the Governor, not later than 60 days before the convening of each regular session of the Legislature, an annual progress report on the participation by municipalities and counties in the one-call notification system created by this chapter. The report must include a summary of the reports to the system from the clerks of court, a summary of the damage reporting data received by the system under s. 556.105(12) for the preceding year, and any analysis of the data by the board of directors.

Section 2. Subsection (12) of section 556.105, Florida Statutes, is amended to read:

556.105 Procedures.—

(12)(a) If any contact with or damage to any pipe, cable, or its protective covering, or any other underground facility occurs, the excavator causing the contact or damage shall immediately notify the member operator. If contact with or damage to an underground pipe or any other underground facility results in the escape of any natural and other gas or hazardous liquid regulated by the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation, the excavator must immediately report the contact or damage by calling the 911 emergency telephone number. Upon receiving notice, the member operator shall send personnel to the location as soon as possible to effect temporary or permanent repair of the contact or damage. Until such time as the contact or damage has been repaired, the excavator shall

cease excavation or demolition activities that may cause further damage to such underground facility.

(b) If an event damages any pipe, cable or its protective covering, or other underground facility, the member operator receiving the notice shall file a report with the system. Reports must be submitted annually to the system, no later than March 31 for the prior calendar year, or more frequently at the option and sole discretion of the member operator. Each report must describe, if known, the cause, nature, and location of the damage. The system shall establish and maintain a process to facilitate submission of reports by member operators.

Section 3. Paragraph (c) of subsection (1) of section 556.107, Florida Statutes, is amended to read:

556.107 Violations.—

(1) NONCRIMINAL INFRACTIONS.—

(c) Any excavator or member operator who commits a noncriminal infraction under paragraph (a) may be required to pay a civil penalty for each infraction, which is $500 plus court costs. If a citation is issued by a state law enforcement officer, a local law enforcement officer, a local government code inspector, or a code enforcement officer, 80 percent of the civil penalty collected by the clerk of the court shall be distributed to the ~~local~~ governmental entity whose employee issued the citation and 20 percent of the penalty shall be retained by the clerk to cover administrative costs, in addition

to other court costs. ~~If a citation is issued by a state law enforcement officer, the civil penalty collected by the clerk shall be retained by the clerk for deposit into the fine and forfeiture fund established pursuant to s. 142.01.~~ Any person who fails to properly respond to a citation issued pursuant to paragraph (b) shall, in addition to the citation, be charged with the offense of failing to respond to the citation and, upon conviction, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect must be provided at the time any citation is issued pursuant to paragraph (b).

Section 4. This act shall take effect July 1, 2017.