



Economic Development & Tourism Subcommittee

Tuesday, March 25, 2014
9:00 AM – 10:00 AM
12 HOB

Meeting Packet

Will Weatherford
Speaker

Carlos Trujillo
Chair



The Florida House of Representatives

Economic Development and Tourism Subcommittee

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Meeting Agenda
Tuesday, March 25, 2014
Room 12, House Office Building
9:00 a.m. – 10:00 a.m.

- I. Call to Order**

- II. Roll Call**

- III. Welcome and Opening Remarks**

- IV. HB 351 – Neighborhood Improvement Districts**

- V. CS/HB 685 – Business Organizations**

- VI. HB 979 – Homelessness**

- VII. HB 1129 – Special Districts**

- VIII. Adjournment**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 351 Neighborhood Improvement Districts
SPONSOR(S): Nelson and others
TIED BILLS: IDEN./SIM. BILLS: SB 510

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Duncan	West
2) Local & Federal Affairs Committee			
3) Finance & Tax Subcommittee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

The "Safe Neighborhoods Act" (Act) was created to promote the health, safety, and general welfare of neighborhoods and their residents, visitors, property owners, and workers. The Act established other public benefit goals to include:

- establishing, maintaining, and preserving property values and foster the development of attractive neighborhood and business environments;
- preventing overcrowding and congestion;
- improving or redirecting traffic and providing pedestrian safety;
- reducing crime rates and the opportunities for the commission of crime; and
- providing improvements in neighborhoods so they are defensible against crime.

The Act established four types of neighborhood improvement districts (NIDs) to carry out the purposes of the Act:

- Local Government NIDs.
- Property Owners' Association NIDs.
- Special NIDs (business and residential).
- Community Redevelopment NIDs.

The bill grants local government NIDs the power to borrow money, contract loans, and issue bonds, certificates, warrants, notes, or other evidence of indebtedness to finance the undertaking of a capital or other project for a purpose permitted by the State Constitution.

The bill does not have a fiscal impact on state government revenues. See FISCAL COMMENTS.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Safe Neighborhoods Act

In 1987,¹ the Legislature created the "Safe Neighborhoods Act" (Act) to guide and accomplish the coordinated and balanced development of safe neighborhoods for the purpose of:

- promoting the health, safety, and general welfare of these areas and their residents, visitors, property owners, and workers;
- establishing, maintaining, and preserving property values and foster the development of attractive neighborhood and business environments;
- preventing overcrowding and congestion;
- improving or redirecting traffic and providing pedestrian safety;
- reducing crime rates and the opportunities for the commission of crime; and
- providing improvements in neighborhoods so they are defensible against crime.²

Neighborhood Improvement Districts

The Act establishes four types of NIDs to carry out the purposes of the Act:

- Local government NIDs.
- Property owners' association NIDs.
- Special NIDs (Business and Residential).
- Community redevelopment NIDs.

As of March 19, 2014, there were approximately 31 active NIDs in Florida: 27 local government NIDs, two special (residential) NIDs, one property owners' association NID, and one neighborhood preservation and enhancement district.³

County or municipal governing bodies are authorized to create neighborhood improvement districts (NIDs) through the adoption of a planning ordinance.⁴ For property owners' association NIDs, the local governing body's ordinance must establish that an incorporated property owners' association representing 75 percent of all property owners within a proposed district has petitioned the county or municipal governing body requesting that a district be created for the area encompassed by the property owned by the association.⁵ Special business or residential NIDs require a referendum to implement the ordinance.⁶

Each NID that is established is required to register within 30 days with the Department of Economic Opportunity and the Department of Legal Affairs and provide the name, location, size, type of NID, and such other information that the departments may require.⁷

¹ Sections 55-73, Chapter 87-243, L.O.F., codified at Part IV, ch. 163, F.S.

² Section 163.502(3), F.S.

³ Florida Department of Economic Opportunity, Division of Community Development, Special District Information Program, Official List of Special Districts Online, *Customized Special District List*, <http://www.floridajobs.org/community-planning-and-development> (Last visited March 19, 2014). Neighborhood preservation and enhancement districts are created pursuant to s. 163.524, F.S. Such districts are not granted the same powers as neighborhood improvement districts.

⁴ See ss. 163.506, 163.508, 163.511, and 163.512, F.S.

⁵ Section 163.508(1)(a), F.S.

⁶ Section 163.511(1)(a) and (2) – (4), F.S.

⁷ Section 163.5055, F.S.

The body governing NIDs depends upon the specific type of NID created. For local government NIDs, the local governing body is designated as the board of directors; however, as an alternative, the local governing body may appoint a board of directors.⁸ For property owners' association NIDs, the local governing body's ordinance designates the officers of the incorporated property owners' association as the board of directors of the district.⁹ With respect to special business or residential NIDs, the ordinance provides the appointment of a three-member board of directors.¹⁰ As for community redevelopment NIDs, the ordinance designates the community redevelopment board of commissioners as the board of directors for the NID.¹¹

Ad Valorem Tax

Local government NIDs are authorized to levy an ad valorem tax on real and personal property of up to 2 mills annually.¹²

Special NIDs have the same taxing authority; however, this authority is subject to a referendum. Special *residential* NID ad valorem taxes are approved by a majority of the district electors voting in a referendum.¹³ Special *business* NID ad valorem taxes may be levied if freeholders representing in excess of 50 percent of the assessed value of the property within the district approve the referendum.¹⁴

Special Assessments

Local government, property owners' association, and special NIDs are also authorized, subject to referendum approval, to make and collect special assessments pursuant to the procedures established in the Act.¹⁵ Such assessments may not exceed \$500 for each individual parcel of land per year and require an affirmative vote by a majority of the registered voters residing in the district.¹⁶ Community redevelopment NIDs are authorized to utilize community redevelopment trust funds to implement district planning and programming.¹⁷

Bonding Authority, Fees and User Charges

The Act does not grant NIDs the power to bond or borrow money to carry out its purposes. In addition, the Act does not authorize local government NIDs to charge, collect and enforce fees and other user charges.

In 2006, the City of DeBary requested the Florida Attorney General's Advisory Legal Opinion on the following question:

Does a Neighborhood Improvement District created by ordinance pursuant to Section 163.511, Florida Statutes, have the power to borrow money to carry out the purposes of such district?

The Attorney General opined "... Nothing in section 163.511, Florida Statutes, authorizes a special neighborhood improvement district to borrow money to carry out the purposes of the act. In contrast, section 190.011(4), Florida Statutes, specifically authorizes community development districts to borrow money, and sections 163.568(2)(h) and 163.370(2)(g), Florida Statutes, authorize regional transportation authorities and community redevelopment agencies to borrow money."¹⁸ The Attorney

⁸ Section 163.506(1)(e), F.S., and s. 163.506(3), F.S.

⁹ Section 163.508(1)(e), F.S.

¹⁰ Section 163.511(7)-(10), F.S.

¹¹ Section 163.512(1)(d), F.S.

¹² Section 163.506(1)(c), F.S.

¹³ Section 163.511(3)(g), F.S.

¹⁴ Section 163.511(4)(g), F.S.

¹⁵ Sections 163.506(1)(d), 163.508(3)(c), 163.511(1)(c), and 163.514(16), F.S.

¹⁶ Section 163.514(16)(a), F.S.

¹⁷ Section 163.512(1)(c), F.S.

¹⁸ Op. Atty. Gen. Fla. AGO 2006-49 (Dec. 2006)

General's Office reasoned that a statutorily created entity is limited to such powers expressly granted by law or reasonably implied to carry out its expressly granted power. The opinion further stated that "[w]hen the Legislature has directed how a thing shall be done, that is in effect a prohibition against its being done any other way."¹⁹

Other Sources of Funding for Local Government Improvements

County and municipal governments have authority under current law and under their constitutional home rule authority to raise revenue that could be used for many of the purposes identified by the Safe Neighborhoods Act. Section 125.01(1)(q), F.S., provides that counties may establish:

municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which it may provide fire protection, law enforcement, beach erosion control, recreation service and facilities, water..., streets, sidewalks, street lighting, garbage and trash collection and disposal, waste and sewage collection and disposal, drainage, transportation, indigent health care services, mental health care services, and other essential facilities and municipal services from funds derived from service charges, special assessments, or taxes within such unit only.... This paragraph authorizes all counties to levy additional taxes, within the limits fixed for municipal purposes, within such municipal service taxing units under the authority of the second sentence of s. 9(b), Art. VII of the State Constitution.

Section 125.01(1)(r), F.S., grants counties the power to levy and collect ad valorem taxes and provides that no referendum is required for the levy by a county of ad valorem taxes for county purposes or for providing municipal services within any municipal service taxing unit. The distinction between a municipal service taxing unit and a municipal service benefit unit is that in a benefit unit the services are funded by a service charge or a special assessment rather than a tax.

All taxes, other than ad valorem taxes, are reserved to the state.²⁰ Local governments may levy other taxes only if they are authorized by general law. Not all local government revenue sources are taxes. Counties and municipalities may levy fees, assessments, or charges for services under their home rule authority.²¹ Special assessments may be used to fund certain services and to construct and maintain capital facilities, such as those appropriate for NIDs, if they meet two requirements: (1) the property subject to assessment must derive a special benefit from the service or improvement funded by the assessment, and (2) the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.²²

Effect of Proposed Changes

The bill provides that a local government NID may borrow money, contract loans, issue bonds, certificates, warrants, notes, or other evidence of indebtedness to finance a capital or other project for a purpose permitted by the State Constitution. The local government NID may pledge the funds, credit, property and special assessment for the payment of the NID's debts and bonds.

Bonds issued must be authorized by the NID's board, the governing body of the county or municipality that created the NID, and by referendum. The referendum is the same referendum currently required under the Act in order for a NID to make and collect special assessments.²³ However, for commercial districts, the referendum is approved if it is approved by an affirmative vote of the freeholders representing more than 50 percent of the value of the properties represented by the ballots cast.

¹⁹ *Id.*

²⁰ Section 1(a), Art. VII of the State Constitution.

²¹ See part I, ch. 125, F.S., part III, ch. 166, F.S., and ch. 170, F.S.

²² Florida Legislature, Office of Economic & Demographic Research, 2013 Local Government Financial Information Handbook, Dec. 2013, p. 15, available at <http://edr.state.fl.us/Content/local-government/reports/lgfih13.pdf>.

²³ See s. 163.514(16), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.506(1), F.S., relating to local government NIDs, authorizing an ordinance to grant such NIDs the power to borrow money, contract loans, and issue bonds, certificates, warrants, notes, or other evidence of indebtedness to finance the undertaking of a capital or other project for a purpose permitted by the State Constitution.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Local governments may incur the costs associated with conducting referenda.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Local governments may incur the costs associated with conducting referenda.

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 to 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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to neighborhood improvement districts;
 3 amending s. 163.506, F.S.; providing that an ordinance
 4 that creates a neighborhood improvement district may
 5 authorize the district to exercise certain powers, in
 6 addition to those already granted to such districts;
 7 specifying such powers; conditioning the exercise of
 8 those powers on resolution and referendum; providing
 9 an effective date.

10

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

12

13 Section 1. Paragraph (i) is added to subsection (1) of
 14 section 163.506, Florida Statutes, to read:

15 163.506 Local government neighborhood improvement
 16 districts; creation; advisory council; dissolution.—

17 (1) After a local planning ordinance has been adopted
 18 authorizing the creation of local government neighborhood
 19 improvement districts, the local governing body of a
 20 municipality or county may create local government neighborhood
 21 improvement districts by the enactment of a separate ordinance
 22 for each district, which ordinance:

23 (i) Authorizes the district to borrow money, contract
 24 loans, and issue bonds, certificates, warrants, notes, or other
 25 evidence of indebtedness to finance the undertaking of a capital
 26 or other project for a purpose permitted by the State

27 Constitution and this part, and to pledge the funds, credit,
 28 property, and special assessment power of the district for the
 29 payment of such debts and bonds. Bonds that are issued under
 30 this paragraph must be authorized by resolution of the board, by
 31 resolution of the governing body of the municipality or county,
 32 and by a referendum as described in s. 163.514(16), except that
 33 for commercial districts, such referendum is deemed approved if
 34 so approved by an affirmative vote of freeholders owning more
 35 than 50 percent of the assessed value of the properties
 36 represented by ballots cast. Such bonds may be issued in one or
 37 more series and shall bear such date or dates, be payable upon
 38 demand or mature at such time or times, bear interest at such
 39 rate or rates, be in such denomination or denominations, be in
 40 such form, registered or not, with or without coupon, carry such
 41 conversion or registration privileges, have such rank or
 42 priority, be executed in such manner, be payable in such medium
 43 of payment, at such place or places, and subject to such terms
 44 of redemption, with or without premium, be secured in such
 45 manner, and have such other characteristics as may be provided
 46 by such resolution or trust indenture or mortgage issued
 47 pursuant thereto.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Economic Development &
2 Tourism Subcommittee
3 Representative Nelson offered the following:

Amendment

Remove lines 23-47 and insert:

7 (i) May authorize the district to borrow money, contract
8 loans, and issue bonds, certificates, warrants, notes, or other
9 evidence of indebtedness to finance the undertaking of a capital
10 project for a purpose permitted by the State Constitution and
11 this part, and to pledge the special assessment power of the
12 district for the payment of such debts and bonds.

13 1. Loans contracted by the district pursuant to this
14 paragraph may not have a term that exceeds the life of the
15 project secured by the loan.

16 2. Bonds issued by the district pursuant to this paragraph
17 must be authorized by resolution of the board, by resolution of



Amendment No. 1

18 the governing body of the municipality or county, and by a
19 referendum as described in s. 163.514(16). As provided by
20 resolution or trust indenture, or a mortgage issued pursuant
21 thereto, bonds may be issued in one or more series and must bear
22 the specified date or dates; be payable upon demand or mature at
23 the specified time or times; bear interest at the specified rate
24 or rates; be in the specified denomination or denominations; be
25 in the specified form, registered or not, with or without
26 coupon; carry specified conversion or registration privileges;
27 have the specified rank or priority; be executed in the
28 specified manner; be payable in the specified medium of payment,
29 at such place or places, and subject to the specified terms of
30 redemption, with or without premium; be secured in the specified
31 manner; and have other characteristics as may be specified.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 685 Business Organizations
SPONSOR(S): Civil Justice Subcommittee; Rooney; Workman and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 654

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 0 N, As CS	Ward	Bond
2) Economic Development & Tourism Subcommittee		Collins <i>RC</i>	West <i>RW</i>
3) Transportation & Economic Development Appropriations Subcommittee			
4) Judiciary Committee			

SUMMARY ANALYSIS

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

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

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Corporations

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

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

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

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

Social Purpose and Benefit Corporations

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

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

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

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

⁴ Section 607.01401(5), F.S.

⁵ Section 607.0301, F.S.

⁶ Section 617.0301, F.S.

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

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

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

¹⁰ Section 617.0301, F.S.

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

Names of Business Entities

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

Effect of Proposed Changes

Corporations

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

Social Purpose Corporations

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

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

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

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

¹² Section 605.0112(1)(b), F.S.

¹³ Section 607.0401(4), F.S.

¹⁴ Section 617.0401(1)(e), F.S.

¹⁵ Section 620.1108(4), F.S.

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

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

Definitions

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

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

Directors of Social Purpose Corporations

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

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

The bill also provides that:

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

- Except as provided in the articles of incorporation, a director does not have a duty to a person who is a beneficiary of the public benefit purpose or any specific public benefit purpose of a social purpose corporation.

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

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

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

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

Officers of Social Purpose Corporations

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

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

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

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

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

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

Rights of Action Against a Social Purpose Corporation

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

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

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

Annual Benefit Report of a Social Purpose Corporation

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

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

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

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

Availability of Annual Benefit Report

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

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

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

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

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

Benefit Corporations

The bill creates Part III of ch. 607, F.S., to provide for the creation of a new business entity designated as the "benefit corporation". The bill provides that both the benefit corporation and the social purpose corporation may be simultaneously subject to one or more chapters of the statutes, including ch. 621, F.S., the professional corporation statute. Where there is conflict between other provisions of the statutes governing corporations, the particular provisions applicable to these new entities will prevail.

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

As part of the purpose of creating a general public benefit, directors of benefit corporations must consider the effects of any action or inaction upon:

- The shareholders of the benefit corporation;
- The employees and workforce of the benefit corporation, its subsidiaries, and its suppliers;
- The interests of customers and suppliers as beneficiaries of the general public benefit and any specific public benefit purposes of the benefit corporation;
- Community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;
- The local and global environment;
- The short-term and long-term interests of the benefit corporation; and
- The ability of the benefit corporation to accomplish its general public benefit purpose and each of its specific public benefit purposes, if any.

Names of Business Entities

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

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

The bill amends chs. 605, 607, 617, and 620, F.S., to reflect the name of a limited liability company, profit corporation, nonprofit corporation, or limited partnership does not have to be distinguishable from the name of any general partnership registration or limited liability partnership statement registered with

the Department of State, which, like fictitious name registrations, are merely registered with the Department of State for public notice purposes only.

The bill makes other conforming changes to the statutes.

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

B. SECTION DIRECTORY:

Section 1 amends s. 605.0112, F.S., relating to names.

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

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

Section 4 amends s. 607.0401, F.S., relating to corporate names.

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

Section 6 designates ss. 607.501 through 607.513 as Part II of Chapter 607, F.S., entitled "SOCIAL PURPOSE CORPORATIONS."

Section 7 creates s. 607.502, F.S., relating to applications and effect of part.

Section 8 creates s. 607.502, F.S., relating to definitions.

Section 9 creates s. 607.503, F.S., relating to incorporation.

Section 10 creates s. 607.504, F.S., relating to election of social purpose corporations status.

Section 11 creates s. 607.505, F.S., relating to termination of social purpose corporation status.

Section 12 creates s. 607.506, F.S., relating to corporate purpose.

Section 13 creates s. 607.507, F.S., relating to standard of conduct for directors.

Section 14 creates s. 607.508, F.S., relating to benefit director.

Section 15 creates s. 607.509, F.S., relating to standard of conduct for officers.

Section 16 creates s. 607.510, F.S., relating to benefit officer.

Section 17 creates s. 607.511, F.S., relating to right of action.

Section 18 creates s. 607.512, F.S., relating to preparation of annual benefit report.

Section 19 creates s. 607.513, F.S., relating to availability of annual benefit report.

Section 20 designates ss. 607.601 through 607.613, F.S., as Part III of ch. 607, F.S., entitled "BENEFIT CORPORATIONS."

Section 21 creates s. 607.601, F.S., relating to application and effect of part.

Section 22 creates s. 607.602, F.S., relating to definitions.

Section 23 creates s. 607.603, F.S., relating to incorporation.

Section 24 creates s. 607.604, F.S., relating to election of benefit corporation status.

Section 25 creates s. 607.605, F.S., relating to termination of benefit corporation status.

Section 26 creates s. 607.606, F.S., relating to corporate purpose.

Section 27 creates s. 607.607, F.S., relating to standard of conduct for directors.

Section 28 creates s. 607.608, F.S., relating to benefit director.

Section 29 creates s. 607.609, F.S., relating to standard of conduct for officers.

Section 30 creates s. 607.610, F.S., relating to benefit officer.

Section 31 creates s. 607.611, F.S., relating to right of action.

Section 32 creates s. 607.612, F.S., relating to preparation of annual benefit report.

Section 33 creates s. 607.613, F.S., relating to availability of annual benefit report.

Section 34 amends s. 617.0401, F.S., relating to corporate name.

Section 35 amends s. 620.1108, F.S., relating to name.

Section 36 amends s. 48.091, F.S., relating to corporations; designation of registered agent and registered office.

Section 37 amends s. 215.555, F.S., relating to Florida Hurricane Catastrophe Fund.

Section 38 amends s. 243.54, F.S., relating to powers of the authority.

Section 39 amends s. 310.171, F.S., relating to pilots may incorporate themselves.

Section 40 amends s. 310.181, F.S., relating to corporate powers.

Section 41 amends s. 329.10, F.S., relating to aircraft registration.

Section 42 amends s. 339.412, F.S., relating to powers of corporation.

Section 43 amends s. 420.101, F.S., relating to Housing Development Corporation of Florida; creation, membership, and purposes.

Section 44 amends s. 420.111, F.S., relating to Housing Development Corporation of Florida; additional powers.

Section 45 amends s. 420.161, F.S., relating to Housing Development Corporation of Florida; period of existence; method of dissolution.

Section 46 amends s. 440.02, F.S., relating to definitions.

Section 47 amends s. 440.386, F.S., relating to individual self-insurers' insolvency; conservation; liquidation.

Section 48 amends s. 609.08, F.S., relating to merger of association into wholly owned subsidiary corporation; dissenters' rights of appraisal.

Section 49 amends s. 617.1908, F.S., relating to applicability of Florida Business Corporation Act.

Section 50 amends s. 618.221, F.S., relating to conversion into a corporation for profit.

Section 51 amends s. 619.04, F.S., relating to articles of incorporation.

Section 52 amends s. 624.430, F.S., relating to withdrawal of insurer or discontinuance of writing certain kinds or lines of insurance.

Section 53 amends s. 624.462, F.S., relating to commercial self-insurance funds.

Section 54 amends s. 624.489, F.S., relating to liability of trustees of self-insurance trust fund and directors of self-insurance funds operating as corporations.

Section 55 amends s. 628.041, F.S., relating to applicability of general corporation statutes.

Section 56 amends s. 631.262, F.S., relating to transfers prior to petition.

Section 57 amends s. 636.204, F.S., relating to license required.

Section 58 amends s. 641.2015, F.S., relating to incorporation required.

Section 59 amends s. 655.0201, F.S., relating to service of process, notice, or demand on financial institutions.

Section 60 amends s. 658.23, F.S., relating to submission of articles of incorporation; contents; form; approval; filing; commencement of corporate existence; bylaws.

Section 61 amends s. 658.2953, F.S., relating to interstate branching.

Section 62 amends s. 658.30, F.S., relating to application of the Florida Business Corporation Act.

Section 63 amends s. 658.36, F.S., relating to changes in capital.

Section 64 amends s. 663.03, F.S., relating to applicability of the Florida Business Corporation Act.

Section 65 amends s. 663.04, F.S., relating to requirements for carrying on financial institution business.

Section 66 amends s. 663.301, F.S., relating to definitions.

Section 67 amends s. 663.306, F.S., relating to decision by office.

Section 68 amends s. 663.313, F.S., relating to ownership of stock.

Section 69 amends s. 718.111, F.S., relating to the association.

Section 70 amends s. 719.104, F.S., relating to cooperatives; access to units; records; financial reports; assessments; purchase of leases.

Section 71 amends s. 720.302, F.S., relating to purposes, scope, and application.

Section 72 amends s. 720.306, F.S., relating to meetings of members; voting and election procedures; amendments.

Section 73 amends s. 766.101, F.S., relating to medical review committee, immunity from liability.

Section 74 amends s. 865.09, F.S., relating to fictitious name registration.

Section 75 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

II. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

Current law at s. 607.0130(4), F.S., gives the Department of State rulemaking power regarding regulation of corporations by reference to the corporations "act" which, under current law, refers to all of ch. 607, F.S. However this bill amends s. 607.0101, F.S., to provide that reference to the "act" only applies to Part I of revised ch. 607, F.S. It appears that the department may have no rulemaking power over parts II and III of ch. 607, F.S., as created by this bill. If the Legislature wishes to clearly give the department rulemaking power over parts II and III, the following amendment to s. 607.0130(4), F.S., is suggested:

The Department of State shall have the power and authority reasonably necessary to enable it to administer this chapter act efficiently, to perform the duties herein imposed upon it, and to promulgate reasonable rules necessary to carry out its duties and functions under this chapter act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

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

As stated by another commentator:

Social enterprises are entities dedicated to a blended mission of earning profits for owners and promoting social good. They are neither typical businesses, concentrated on the bottom line of profit, nor traditional charities....Their founders instead see value in blending both goals....Yet, these social entrepreneurs worry traditional organizational forms designed for either businesses or charities will constrain their ability to achieve the gains they see in blended mission enterprises.²¹

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

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

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

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

to pursue or achieve such goals."²³ Shareholders and the transparent qualities required of these new corporations are designed to provide accountability as a balance to the risk of "green washing."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 19, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides conforming changes to match the bill to CS/SB 654 without substantive change. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

1 A bill to be entitled
2 An act relating to business organizations; amending s.
3 605.0112, F.S.; providing additional exceptions
4 regarding the requirement that limited liability
5 company names be distinguishable from the names of
6 other entities or filings; specifying differences in
7 names which are not considered distinguishable;
8 designating part I of ch. 607, F.S., entitled
9 "Corporations"; amending s. 607.0101, F.S.; revising a
10 provision to conform to changes made by the act;
11 amending s. 607.0401, F.S.; providing additional
12 exceptions regarding the requirement that corporate
13 names be distinguishable; specifying differences in
14 corporate names which are not considered
15 distinguishable; amending s. 607.1302, F.S.; providing
16 that the amendment of articles of incorporation or the
17 merger, conversion, or share exchange of a social
18 purpose or benefit corporation entitles the
19 shareholders to appraisal rights; creating part II of
20 ch. 607, F.S., entitled "Social Purpose Corporations";
21 creating s. 607.501, F.S.; providing application and
22 effect; creating s. 607.502, F.S.; providing
23 definitions; creating s. 607.503, F.S.; establishing
24 requirements for the formation of a social purpose
25 corporation; creating s. 607.504, F.S.; providing
26 procedures for an existing corporation to become a

27 social purpose corporation; creating s. 607.505, F.S.;

28 providing procedures for the termination of a social

29 purpose corporation status; creating s. 607.506, F.S.;

30 requiring that the corporate purpose must be to create

31 a public benefit; providing criteria; creating s.

32 607.507, F.S.; requiring that the directors of a

33 social purpose corporation meet a standard of conduct;

34 providing criteria for the standards; creating s.

35 607.508, F.S.; authorizing the articles of

36 incorporation of a social purpose corporation to

37 provide for a benefit director; providing powers and

38 duties of a benefit director; creating s. 607.509,

39 F.S.; requiring that the officers of a social purpose

40 corporation meet a standard of conduct; providing

41 criteria for the standards of conduct; creating s.

42 607.510, F.S.; authorizing a social purpose

43 corporation to designate an officer as a benefit

44 officer; providing for the powers and duties of a

45 benefit officer; creating s. 607.511, F.S.;

46 authorizing certain legal actions to be brought

47 against a social purpose corporation, its officers, or

48 its directors; creating s. 607.512, F.S.; requiring

49 the board of directors to prepare an annual benefit

50 report; providing criteria for the preparation of the

51 report; creating s. 607.513, F.S.; establishing

52 requirements for the availability and dissemination of

53 the annual report; authorizing a court to order
54 dissemination of the report; providing criteria;
55 creating part III of ch. 607, F.S., entitled "Benefit
56 Corporations"; creating s. 607.601, F.S.; providing
57 for application and effect; creating s. 607.602, F.S.;
58 providing definitions; creating s. 607.603, F.S.;
59 establishing requirements for the formation of a
60 benefit corporation; creating s. 607.604, F.S.;
61 providing procedures for an existing corporation to
62 become a benefit corporation; creating s. 607.605,
63 F.S.; providing procedures for the termination of a
64 benefit corporation status; creating s. 607.606, F.S.;
65 requiring that the corporate purpose be to create a
66 public benefit; providing criteria; creating s.
67 607.607, F.S.; requiring the directors of a benefit
68 corporation to meet a standard of conduct; providing
69 criteria for the standards; creating s. 607.608, F.S.;
70 authorizing the articles of incorporation of a benefit
71 corporation to provide for a benefit director;
72 providing powers and duties of the benefit director;
73 creating s. 607.609, F.S.; requiring the officers of a
74 benefit corporation to meet a standard of conduct;
75 providing criteria for the standards of conduct;
76 creating s. 607.610, F.S.; authorizing a benefit
77 corporation to designate an officer as a benefit
78 officer; providing for the powers and duties of the

79 benefit officer; creating s. 607.611, F.S.;

80 authorizing certain legal actions to be brought

81 against a benefit corporation, its officers, or its

82 directors; creating s. 607.612, F.S.; requiring the

83 board of directors to prepare an annual benefit

84 report; providing criteria for the preparation of the

85 report; creating s. 607.613, F.S.; establishing

86 requirements for the availability and dissemination of

87 the annual report; authorizing a court to order

88 dissemination of the report; amending ss. 617.0401 and

89 620.1108, F.S.; providing additional exceptions

90 regarding the requirement that the names of entities

91 be distinguishable; specifying differences in names

92 which are not considered distinguishable; amending ss.

93 48.091, 215.555, 243.54, 310.171, 310.181, 329.10,

94 339.412, 420.101, 420.111, 420.161, 440.02, 440.386,

95 609.08, 617.1908, 618.221, 619.04, 624.430, 624.462,

96 624.489, 628.041, 631.262, 636.204, 641.2015,

97 655.0201, 658.23, 658.2953, 658.30, 658.36, 663.03,

98 663.04, 663.301, 663.306, 663.313, 718.111, 719.104,

99 720.302, 720.306, 766.101, and 865.09, F.S.;

100 conforming cross-references to changes made by the

101 act; providing an effective date.

102

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

104

105 Section 1. Subsection (1) of section 605.0112, Florida
 106 Statutes, is amended to read:

107 605.0112 Name.—

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

109 (a) Must contain the words "limited liability company" or
 110 the abbreviation "L.L.C." or "LLC."~~+~~

111 (b) Must be distinguishable in the records of the Division
 112 of Corporations of the department from the names of all other
 113 entities or filings that are on file with the division, except
 114 fictitious name registrations pursuant to s. 865.09, general
 115 partnership registrations pursuant to s. 620.8105, and limited
 116 liability partnership statements pursuant to s. 620.9001 which
 117 are organized, registered, or reserved under the laws of this
 118 state, which names are on file with the division; however, a
 119 limited liability company may register under a name that is not
 120 otherwise distinguishable on the records of the division with
 121 the written consent of the owner entity if, provided the consent
 122 is filed with the division at the time of registration of such
 123 name. A name that is different from the name of another entity
 124 or filing due to any of the following is not considered
 125 distinguishable:

- 126 1. A suffix.
- 127 2. A definite or indefinite article.
- 128 3. The word "and" and the symbol "&."
- 129 4. The singular, plural, or possessive form of a word.
- 130 5. A recognized abbreviation of a root word.

131 6. A punctuation mark or a symbol.†

132 (c) May not contain language stating or implying that the
 133 limited liability company is organized for a purpose other than
 134 a purpose authorized in this chapter and its articles of
 135 organization. ~~† and~~

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

140 Section 2. Sections 607.0101 through 607.193, Florida
 141 Statutes, are designated as part I of chapter 607, Florida
 142 Statutes, and entitled "CORPORATIONS."

143 Section 3. Section 607.0101, Florida Statutes, is amended
 144 to read:

145 607.0101 Short title.—This part act ~~shall be known and~~ may
 146 be cited as the "Florida Business Corporation Act."

147 Section 4. Section 607.0401, Florida Statutes, is amended
 148 to read:

149 607.0401 Corporate name.—A corporate name:

150 (1) Must contain the word "corporation," "company," or
 151 "incorporated" or the abbreviation "Corp.," "Inc.," or "Co.," or
 152 the designation "Corp," "Inc," or "Co," as will clearly indicate
 153 that it is a corporation instead of a natural person,
 154 partnership, or other business entity.†

155 (2) May not contain language stating or implying that the
 156 corporation is organized for a purpose other than that permitted

157 in this act and its articles of incorporation.~~†~~

158 (3) May not contain language stating or implying that the
 159 corporation is connected with a state or federal government
 160 agency or a corporation chartered under the laws of the United
 161 States.~~†~~ ~~and~~

162 (4) Must be distinguishable from the names of all other
 163 entities or filings that are on file with the Division of
 164 Corporations, except fictitious name registrations pursuant to
 165 s. 865.09, general partnership registrations pursuant to s.
 166 620.8105, and limited liability partnership statements pursuant
 167 to s. 620.9001 which are organized, registered, or reserved
 168 under the laws of this state, which names are on file with the
 169 Division of Corporations. A name that is different from the name
 170 of another entity or filing due to any of the following is not
 171 considered distinguishable:

- 172 (a) A suffix.
- 173 (b) A definite or indefinite article.
- 174 (c) The word "and" and the symbol "&."
- 175 (d) The singular, plural, or possessive form of a word.
- 176 (e) A recognized abbreviation of a root word.
- 177 (f) A punctuation mark or a symbol.

178 (5) ~~The name of the corporation~~ As filed with the
 179 Department of State, is shall be for public notice only and does
 180 ~~shall~~ not alone create any presumption of ownership beyond that
 181 which is created under the common law.

182 Section 5. Subsection (1) of section 607.1302, Florida

183 Statutes, is amended to read:

184 607.1302 Right of shareholders to appraisal.—

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

189 (a) Consummation of a conversion of such corporation
 190 pursuant to s. 607.1112 if shareholder approval is required for
 191 the conversion and the shareholder is entitled to vote on the
 192 conversion under ss. 607.1103 and 607.1112(6), or the
 193 consummation of a merger to which such corporation is a party if
 194 shareholder approval is required for the merger under s.
 195 607.1103 and the shareholder is entitled to vote on the merger
 196 or if such corporation is a subsidiary and the merger is
 197 governed by s. 607.1104;

198 (b) Consummation of a share exchange to which the
 199 corporation is a party as the corporation whose shares will be
 200 acquired if the shareholder is entitled to vote on the exchange,
 201 except that appraisal rights are ~~shall~~ not ~~be~~ available to any
 202 shareholder of the corporation with respect to any class or
 203 series of shares of the corporation that is not exchanged;

204 (c) Consummation of a disposition of assets pursuant to s.
 205 607.1202 if the shareholder is entitled to vote on the
 206 disposition, including a sale in dissolution but not including a
 207 sale pursuant to court order or a sale for cash pursuant to a
 208 plan by which all or substantially all of the net proceeds of

209 | the sale will be distributed to the shareholders within 1 year
 210 | after the date of sale;

211 | (d) An amendment of the articles of incorporation with
 212 | respect to the class or series of shares which reduces the
 213 | number of shares of a class or series owned by the shareholder
 214 | to a fraction of a share if the corporation has the obligation
 215 | or right to repurchase the fractional share so created;

216 | (e) Any other amendment to the articles of incorporation,
 217 | merger, share exchange, or disposition of assets to the extent
 218 | provided by the articles of incorporation, bylaws, or a
 219 | resolution of the board of directors, except that no bylaw or
 220 | board resolution providing for appraisal rights may be amended
 221 | or otherwise altered except by shareholder approval; ~~or~~

222 | (f) With regard to a class of shares prescribed in the
 223 | articles of incorporation prior to October 1, 2003, including
 224 | any shares within that class subsequently authorized by
 225 | amendment, any amendment of the articles of incorporation if the
 226 | shareholder is entitled to vote on the amendment and if such
 227 | amendment would adversely affect such shareholder by:

228 | 1. Altering or abolishing any preemptive rights attached
 229 | to any of his or her shares;

230 | 2. Altering or abolishing the voting rights pertaining to
 231 | any of his or her shares, except as such rights may be affected
 232 | by the voting rights of new shares then being authorized of any
 233 | existing or new class or series of shares;

234 | 3. Effecting an exchange, cancellation, or

235 reclassification of any of his or her shares, when such
 236 exchange, cancellation, or reclassification would alter or
 237 abolish the shareholder's voting rights or alter his or her
 238 percentage of equity in the corporation, or effecting a
 239 reduction or cancellation of accrued dividends or other
 240 arrearages in respect to such shares;

241 4. Reducing the stated redemption price of any of the
 242 shareholder's redeemable shares, altering or abolishing any
 243 provision relating to any sinking fund for the redemption or
 244 purchase of any of his or her shares, or making any of his or
 245 her shares subject to redemption when they are not otherwise
 246 redeemable;

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

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

252 7. Reducing any stated preferential amount payable on any
 253 of the shareholder's preferred shares upon voluntary or
 254 involuntary liquidation;—

255 (g) An amendment of the articles of incorporation of a
 256 social purpose corporation to which s. 607.504 or s. 607.505
 257 applies;

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

260 (i) A merger, conversion, or share exchange of a social

261 purpose corporation to which s. 607.504 applies; or

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

264 Section 6. Sections 607.501 through 607.513, Florida
 265 Statutes, are designated as part II of chapter 607, Florida
 266 Statutes, and entitled "SOCIAL PURPOSE CORPORATIONS."

267 Section 7. Section 607.501, Florida Statutes, is created
 268 to read:

269 607.501 Application and effect of part.-

270 (1) This part applies to a social purpose corporation and
 271 does not affect a corporation that is not a social purpose
 272 corporation.

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

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

279 (4) Except as authorized by this part, a provision of the
 280 articles of incorporation or bylaws of a social purpose
 281 corporation, or a shareholders agreement among shareholders of a
 282 social purpose corporation, may not limit, be inconsistent with,
 283 or supersede a provision of this part.

284 Section 8. Section 607.502, Florida Statutes, is created
 285 to read:

286 607.502 Definitions.-As used in this part, unless the

287 context otherwise requires, the term:

288 (1) "Benefit director" means:

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

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

294 (2) "Benefit enforcement proceeding" means a claim or
 295 action for:

296 (a) The failure of a social purpose corporation to pursue
 297 or create a public benefit or a specific public benefit
 298 established in its articles of incorporation; or

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

301 (3) "Benefit officer" means the individual designated as
 302 the benefit officer of a social purpose corporation under s.
 303 607.510.

304 (4) "Independent" means not having a material relationship
 305 with the social purpose corporation or a subsidiary of the
 306 social purpose corporation. A person does not have a material
 307 relationship solely by virtue of serving as the benefit director
 308 or benefit officer of the social purpose corporation or a
 309 subsidiary of the social purpose corporation. In determining
 310 whether a director or officer is independent, a material
 311 relationship between an individual and a social purpose
 312 corporation or any of its subsidiaries will be conclusively

313 presumed to exist, at the time independence is to be determined,
 314 if any of the following apply:

315 (a) The individual is or was within the prior 3 years an
 316 employee, other than a benefit officer, of the social purpose
 317 corporation or a subsidiary.

318 (b) An immediate family member of the individual is or was
 319 within the prior 3 years an executive officer, other than a
 320 benefit officer, of the social purpose corporation or a
 321 subsidiary.

322 (c) When ownership is calculated as if all outstanding
 323 rights to acquire equity interests in the social purpose
 324 corporation had been exercised, there is beneficial or record
 325 ownership of 5 percent or more of the outstanding shares of the
 326 social purpose corporation by:

327 1. The individual; or

328 2. An entity:

329 a. Of which the individual is a director, an officer, or a
 330 manager; or

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

335 (5) "Minimum status vote" means:

336 (a) In the case of a corporation that is to become a
 337 social purpose corporation, whether by amendment of the articles
 338 of incorporation or by way of or pursuant to a merger,

339 conversion, or share exchange; a social purpose corporation
 340 whose articles of incorporation are to be amended pursuant to s.
 341 607.506(2); or a social purpose corporation that is to cease
 342 being a social purpose corporation, in addition to any other
 343 required approval or vote, the satisfaction of the following
 344 conditions:

345 1. The holders of each class or series of shares shall be
 346 entitled to vote as a separate voting group on the corporate
 347 action regardless of any limitation on the voting rights of any
 348 class or series stated in the articles of incorporation or
 349 bylaws.

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

353 (b) In the case of a domestic entity, other than a
 354 corporation, which is to be simultaneously converted to a social
 355 purpose corporation or merged into a social purpose corporation,
 356 in addition to any other required approval, vote, or consent,
 357 the satisfaction of the following conditions:

358 1. The holders of each class or series of equity interest
 359 in the entity who are entitled to receive a distribution of any
 360 kind are entitled, as a separate voting group, to vote on or
 361 consent to the action regardless of any applicable limitation on
 362 the voting or consent rights of any class or series.

363 2. The action is approved by vote or consent of each class
 364 or series of equity interest described in subparagraph 1. who

365 are entitled to vote by at least two-thirds of the votes or
 366 consent of the class or series.

367 (6) "Public benefit" means a positive effect, or the
 368 minimization of negative effects taken as a whole, on the
 369 environment or on one or more categories of persons or entities,
 370 other than shareholders in their capacity as shareholders, of an
 371 artistic, charitable, economic, educational, cultural, literary,
 372 religious, social, ecological, or scientific nature, from the
 373 business and operations of a social purpose corporation. The
 374 term includes, but is not limited to, the following:

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

377 (b) Promoting economic opportunity for individuals or
 378 communities beyond the creation of jobs in the normal course of
 379 business.

380 (c) Protecting or restoring the environment.

381 (d) Improving human health.

382 (e) Promoting the arts, sciences, or advancement of
 383 knowledge.

384 (f) Increasing the flow of capital to entities that have
 385 as their stated purpose the provision of a benefit to society or
 386 the environment.

387 (7) "Social purpose corporation" means a corporation that
 388 is formed, or has elected to become, subject to this part, the
 389 status of which as a social purpose corporation has not been
 390 terminated.

391 (8) "Specific public benefit" means a benefit identified
 392 as a purpose of the social purpose corporation which is set
 393 forth in the articles of incorporation and is consistent with a
 394 public benefit.

395 (9) "Subsidiary" means, in relation to a person other than
 396 an individual, an entity in which the person owns beneficially
 397 or of record 50 percent or more of the outstanding equity
 398 interests.

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

402 (a) Comprehensive, because it assesses the effect of the
 403 business and its operations upon the interests listed in s.
 404 607.507(1)(a).

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

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

411 (d) Transparent, because the following information is
 412 publicly available:

413 1. The criteria considered under the standard when
 414 measuring the overall effect of the business and its operations
 415 upon the interests provided in s. 607.507(1)(a) and the relative
 416 weights, if any, of those criteria; and

417 2. The process used in the development and revision of the
 418 third-party standard regarding the identity of the directors,
 419 officers, material owners, and governing body of the entity that
 420 developed and controls revisions to the standard; the process by
 421 which revisions to the standard and changes to the membership of
 422 the governing body are made; and an accounting of the revenue
 423 and sources of financial support for the entity with sufficient
 424 detail to disclose any relationships that could reasonably be
 425 considered to present a potential conflict of interest.

426 Section 9. Section 607.503, Florida Statutes, is created
 427 to read:

428 607.503 Incorporation.—To incorporate as a social purpose
 429 corporation, an incorporator must satisfy the requirements of
 430 this chapter, and the articles of incorporation must state that
 431 the corporation is a social purpose corporation under this part.

432 Section 10. Section 607.504, Florida Statutes, is created
 433 to read:

434 607.504 Election of social purpose corporation status.—

435 (1) An existing corporation may become a social purpose
 436 corporation under this part by amending its articles of
 437 incorporation to include a statement that the corporation is a
 438 social purpose corporation under this part. The amendment must
 439 be adopted by the minimum status vote.

440 (2) A plan of merger, conversion, or share exchange must
 441 be adopted by the minimum status vote if an entity that is not a
 442 social purpose corporation is a party to the merger or

443 conversion or if the exchanging entity in a share exchange and
 444 the surviving, new, or resulting entity is, or will be, a social
 445 purpose corporation.

446 (3) If an entity elects to become a social purpose
 447 corporation by amendment of the articles of incorporation or by
 448 a merger, conversion, or share exchange, the shareholders of the
 449 entity are entitled to appraisal rights under and pursuant to
 450 ss. 607.1301-607.1333.

451 Section 11. Section 607.505, Florida Statutes, is created
 452 to read:

453 607.505 Termination of social purpose corporation status.-

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

459 (2) A plan of merger, conversion, or share exchange which
 460 has the effect of terminating the status of a corporation as a
 461 social purpose corporation must be adopted by the minimum status
 462 vote. A sale, lease, exchange, or other disposition of all or
 463 substantially all of the assets of a social purpose corporation
 464 is not effective unless the transaction is approved by the
 465 minimum status vote. However, a minimum status vote is not
 466 required if the transaction is in the usual and regular course
 467 of business, is pursuant to court order, or is a sale pursuant
 468 to which all or a substantial portion of the net proceeds of the

469 sale will be distributed to the shareholders within 1 year after
 470 the date of the sale.

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

475 Section 12. Section 607.506, Florida Statutes, is created
 476 to read:

477 607.506 Corporate purpose.—

478 (1) A social purpose corporation has the purpose of
 479 creating a public benefit. This purpose is in addition to its
 480 purpose under s. 607.0301.

481 (2) The articles of incorporation of a social purpose
 482 corporation may identify one or more specific public benefits as
 483 its purpose in addition to its purposes under s. 607.0301 and
 484 subsection (1). A social purpose corporation may amend its
 485 articles of incorporation to add, amend, or delete the
 486 identification of a specific public benefit purpose; however,
 487 the amendment must be adopted by the minimum status vote.

488 (3) The creation of a public benefit and a specific public
 489 benefit under subsections (1) and (2) is deemed to be in the
 490 best interest of the social purpose corporation.

491 (4) A professional corporation that is a social purpose
 492 corporation does not violate s. 621.08 by having as its purpose
 493 the creation of a public benefit or a specific public benefit.

494 Section 13. Section 607.507, Florida Statutes, is created

495 to read:

496 607.507 Standard of conduct for directors.-

497 (1) In discharging their duties and in considering the
 498 best interests of the social purpose corporation, the directors:

499 (a) Shall consider the effects of any action or inaction
 500 upon:

501 1. The shareholders of the social purpose corporation; and

502 2. The ability of the social purpose corporation to
 503 accomplish its public benefit or any specific public benefit
 504 purpose.

505 (b) May consider the effects of any action or inaction
 506 upon any of the following:

507 1. The employees and work force of the social purpose
 508 corporation, its subsidiaries, and its suppliers.

509 2. The interests of customers and suppliers as
 510 beneficiaries of the public benefit or specific public benefits
 511 of the social purpose corporation.

512 3. Community and societal factors, including those of each
 513 community in which offices or facilities of the social purpose
 514 corporation, its subsidiaries, or its suppliers are located.

515 4. The local and global environment.

516 5. The short-term and long-term interests of the social
 517 purpose corporation, including benefits that may accrue to the
 518 social purpose corporation from its long-term plans and the
 519 possibility that these interests may be best served by the
 520 continued independence of the social purpose corporation.

521 (c) May consider other pertinent factors or the interests
 522 of any other group that they deem appropriate.

523 (d) Are not required to give priority to the interests of
 524 a particular person or group referred to in paragraph (a),
 525 paragraph (b), or paragraph (c) unless the social purpose
 526 corporation states in its articles of incorporation its
 527 intention to give such priority.

528 (e) Are not required to give equal weight to the interests
 529 of any particular person or group referred to in paragraph (a),
 530 paragraph (b), or paragraph (c) unless the social purpose
 531 corporation has stated in its articles of incorporation its
 532 intention to give such equal weight.

533 (2) Except as provided in the articles of incorporation, a
 534 director is not personally liable for monetary damages to the
 535 corporation, or to any other person, for the failure of the
 536 social purpose corporation to pursue or create a public benefit
 537 or a specific public benefit. A director is subject to the
 538 duties specified in s. 607.0830.

539 (3) Except as provided in the articles of incorporation, a
 540 director does not have a duty to a person who is a beneficiary
 541 of the public benefit purpose or any one or more specific public
 542 benefit purposes of a social purpose corporation.

543 Section 14. Section 607.508, Florida Statutes, is created
 544 to read:

545 607.508 Benefit director.-

546 (1) If the articles of incorporation so provide, the board

547 of directors of a social purpose corporation may include a
 548 director who is designated as the benefit director and, in
 549 addition to the powers, duties, rights, and immunities of the
 550 other directors of the social purpose corporation, has the
 551 powers, duties, rights, and immunities provided in this part.

552 (2) The benefit director shall be elected, and may be
 553 removed, in the manner provided by this chapter. Except as
 554 provided under subsection (5), the benefit director shall be
 555 independent and may serve as a benefit officer. The articles of
 556 incorporation or bylaws may prescribe additional qualifications
 557 of the benefit director.

558 (3) Unless the articles of incorporation or bylaws provide
 559 otherwise, the benefit director shall prepare, and the social
 560 purpose corporation shall include in the annual benefit report
 561 to shareholders required under s. 607.512, the opinion of the
 562 benefit director on the following:

563 (a) Whether the social purpose corporation in all material
 564 respects acted in accordance with its public benefit purpose and
 565 any specific public benefit purpose during the period covered by
 566 the report.

567 (b) Whether the directors and officers complied with ss.
 568 607.507(1) and 607.509(1).

569 (c) Whether the social purpose corporation or its
 570 directors or officers failed to comply with paragraph (a) or s.
 571 607.507(1) or s. 607.509(1), including a description of the ways
 572 in which the social purpose corporation or its directors or

573 officers failed to comply.

574 (4) The action or inaction of an individual in his or her
 575 capacity as a benefit director shall constitute for all purposes
 576 an action or inaction of that individual in his or her capacity
 577 as a director of the social purpose corporation.

578 (5) The benefit director of a corporation formed under
 579 chapter 621 is not required to be independent.

580 Section 15. Section 607.509, Florida Statutes, is created
 581 to read:

582 607.509 Standard of conduct for officers.-

583 (1) If an officer of a social purpose corporation
 584 reasonably believes that a matter may have a material effect on
 585 the ability of the corporation to create a public benefit or a
 586 specific public benefit identified in the articles of
 587 incorporation and the officer has discretion to act on the
 588 matter, the officer shall consider the interests and factors
 589 provided in s. 607.507(1).

590 (2) The officer's consideration of interests and factors
 591 under subsection (1) does not constitute a violation of s.
 592 607.0841.

593 (3) Except as provided in the articles of incorporation,
 594 an officer is not personally liable for monetary damages to the
 595 corporation or any other person for the failure of the social
 596 purpose corporation to pursue or create a public benefit or a
 597 specific public benefit; however, he or she is subject to s.
 598 607.0841.

599 | (4) Except as provided in the articles of incorporation,
 600 | an officer does not have any duty to a person who is a
 601 | beneficiary of the public benefit purpose or any specific public
 602 | benefit purpose of a social purpose corporation arising from the
 603 | status of the person as a beneficiary.

604 | Section 16. Section 607.510, Florida Statutes, is created
 605 | to read:

606 | 607.510 Benefit officer.—

607 | (1) A social purpose corporation may designate an officer
 608 | as the benefit officer.

609 | (2) The benefit officer has the powers and duties set
 610 | forth in the bylaws or determined by the board of directors,
 611 | which may include, but are not limited to:

612 | (a) Powers and duties relating to the public benefit or a
 613 | specific public benefit purpose of the corporation; and

614 | (b) The duty to prepare the annual benefit report required
 615 | under s. 607.512.

616 | Section 17. Section 607.511, Florida Statutes, is created
 617 | to read:

618 | 607.511 Right of action.—

619 | (1)(a) Except in a benefit enforcement proceeding, a
 620 | person may not bring an action or assert a claim against a
 621 | social purpose corporation or its directors or officers with
 622 | respect to:

623 | 1. A failure to pursue or create a public benefit or a
 624 | specific public benefit set forth in its articles of

625 incorporation; or

626 2. A violation of an obligation, duty, or standard of
 627 conduct under this part.

628 (b) A social purpose corporation is not liable for
 629 monetary damages under this part for the failure of the social
 630 purpose corporation to pursue or create a public benefit or a
 631 specific public benefit.

632 (2) A benefit enforcement proceeding may be commenced or
 633 maintained only:

634 (a) Directly by the social purpose corporation; or

635 (b) Derivatively by:

636 1. A shareholder of record on the date of the action or
 637 inaction complained of in the benefit enforcement proceeding;

638 2. A director;

639 3. A person or group of persons that owns beneficially or
 640 of record 5 percent or more of the outstanding equity interests
 641 in an entity of which the social purpose corporation is a
 642 subsidiary on the date of the action or inaction complained of
 643 in the benefit enforcement proceeding; or

644 4. Any other person who is specified in the articles of
 645 incorporation or bylaws of the social purpose corporation.

646 Section 18. Section 607.512, Florida Statutes, is created
 647 to read:

648 607.512 Preparation of annual benefit report.-

649 (1) Unless it is prepared by a benefit director or benefit
 650 officer, the board of directors shall prepare an annual benefit

651 report. The annual benefit report must include all of the
 652 following:

653 (a) A narrative description of:

654 1. The ways in which the social purpose corporation
 655 pursued a public benefit during the year and the extent to which
 656 a public benefit was created.

657 2. Any circumstance that has hindered the pursuit or
 658 creation of a public benefit by the social purpose corporation.

659 3. The process and rationale for selecting or changing the
 660 third-party standard used to prepare the benefit report, if the
 661 articles of incorporation of the social purpose corporation
 662 require, or the board of directors determines, that the annual
 663 benefit report must be prepared in accordance with a third-party
 664 standard.

665 (b) If the articles of incorporation of the social purpose
 666 corporation require, or the board of directors determines, that
 667 the annual benefit report must be prepared in accordance with a
 668 third-party standard, the third-party standard must be:

669 1. Applied consistently with any previous application in
 670 prior annual benefit reports; or

671 2. Accompanied by an explanation of the reasons for
 672 inconsistent application or any change in the standard from the
 673 immediate prior report.

674 (c) The name of the benefit director and the benefit
 675 officer, if those positions exist, and the respective addresses
 676 to which correspondence may be directed.

677 (d) If the corporation has a benefit director, his or her
 678 statement as provided in s. 607.508(3).

679 (e) If the articles of incorporation of the social purpose
 680 corporation require, or the board of directors determines, that
 681 the annual benefit report must be prepared in accordance with a
 682 third-party standard, a statement of any connection between the
 683 organization that established the third-party standard, or its
 684 directors, officers, or any holder of 5 percent or more of the
 685 governance interests in the organization, and the social purpose
 686 corporation or its directors, officers, or any holder of 5
 687 percent or more of the outstanding shares of the social purpose
 688 corporation, including any financial or governance relationship
 689 that might materially affect the credibility of the use of the
 690 third-party standard.

691 (2) If, during the year covered by an annual benefit
 692 report, a benefit director resigned from, or refused to stand
 693 for reelection to, his or her position, or was removed from his
 694 or her position, and he or she furnished written correspondence
 695 to the social purpose corporation concerning the circumstances
 696 surrounding his or her departure, that correspondence must be
 697 included as an exhibit in the annual benefit report.

698 (3) The annual benefit report and the assessment of the
 699 performance of the social purpose corporation in the annual
 700 benefit report required under paragraph (1)(b) are not required
 701 to be audited or certified by a third-party standards provider.

702 Section 19. Section 607.513, Florida Statutes, is created

703 to read:

704 607.513 Availability of annual benefit report.-

705 (1) Each social purpose corporation shall send its annual
 706 benefit report to each shareholder:

707 (a) Within 120 days after the end of the fiscal year of
 708 the social purpose corporation; or

709 (b) At the same time that the social purpose corporation
 710 delivers any other annual report to its shareholders.

711 (2) A social purpose corporation shall post each annual
 712 benefit report on the public portion of its website, if any, and
 713 it shall remain posted for at least 3 years.

714 (3) If a social purpose corporation does not have a
 715 website, the corporation shall provide a copy of its most recent
 716 annual benefit report, without charge, to any person who
 717 requests a copy.

718 (4) If a social purpose corporation does not comply with
 719 the annual benefit report delivery requirement, the circuit
 720 court in the county in which the principal office of the social
 721 purpose corporation is located or, if no office is located in
 722 this state, the county in which its registered office is
 723 located, may, after a shareholder of the social purpose
 724 corporation requests a copy, summarily order the corporation to
 725 furnish the annual benefit report. If the court orders the
 726 annual benefit report to be furnished, the court may also order
 727 the social purpose corporation to pay the shareholder's costs,
 728 including reasonable attorney fees, which were incurred in

729 obtaining the order and otherwise enforce his or her rights
 730 under this section.

731 Section 20. Sections 607.601 through 607.613, Florida
 732 Statutes, are designated as part III of chapter 607, Florida
 733 Statutes, entitled "BENEFIT CORPORATIONS."

734 Section 21. Section 607.601, Florida Statutes, is created
 735 to read:

736 607.601 Application and effect of part.-

737 (1) This part applies to a benefit corporation and does
 738 not affect a corporation that is not a benefit corporation.

739 (2) Except as provided in this part, this chapter applies
 740 generally to all benefit corporations.

741 (3) A benefit corporation may be simultaneously subject to
 742 this part and to one or more chapters, including chapter 621. In
 743 such event, this part takes precedence with respect to a benefit
 744 corporation.

745 (4) Except as authorized by this part, a provision of the
 746 articles of incorporation or bylaws of a benefit corporation, or
 747 a shareholders agreement among shareholders of a benefit
 748 corporation, may not limit, be inconsistent with, or supersede a
 749 provision of this part.

750 Section 22. Section 607.602, Florida Statutes, is created
 751 to read:

752 607.602 Definitions.-As used in this part, unless the
 753 context otherwise requires, the term:

754 (1) "Benefit corporation" means a corporation that is

755 formed, or has elected to become, subject to this part, the
 756 status of which as a benefit corporation has not been
 757 terminated.

758 (2) "Benefit director" means:

759 (a) The director designated as the benefit director of a
 760 benefit corporation under s. 607.608; or

761 (b) A person with one or more of the powers, duties, or
 762 rights of a benefit director to the extent provided in the
 763 articles of incorporation or bylaws under s. 607.608.

764 (3) "Benefit enforcement proceeding" means any claim or
 765 action for:

766 (a) The failure of a benefit corporation to pursue or
 767 create general public benefit or a specific public benefit
 768 purpose set forth in its articles of incorporation; or

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

771 (4) "Benefit officer" means the individual designated as
 772 the benefit officer of a benefit corporation under s. 607.610.

773 (5) "General public benefit" means a material, positive
 774 effect on society and the environment, taken as a whole, as
 775 assessed using a third-party standard which is attributable to
 776 the business and operations of a benefit corporation.

777 (6) "Independent" means not having a material relationship
 778 with the benefit corporation or a subsidiary of the benefit
 779 corporation. A person does not have a material relationship
 780 solely by virtue of serving as the benefit director or benefit

781 officer of the benefit corporation or a subsidiary of the
 782 benefit corporation. In determining whether a director or
 783 officer is independent, a material relationship between an
 784 individual and a benefit corporation or any of its subsidiaries
 785 will be conclusively presumed to exist, at the time independence
 786 is to be determined, if any of the following apply:

787 (a) The individual is or has been within the prior 3 years
 788 an employee, other than a benefit officer, of the benefit
 789 corporation or a subsidiary.

790 (b) An immediate family member of the individual is or has
 791 been within the prior 3 years an executive officer, other than a
 792 benefit officer, of the benefit corporation or a subsidiary.

793 (c) When ownership is calculated as if all outstanding
 794 rights to acquire equity interests in the benefit corporation
 795 had been exercised, there is beneficial or record ownership of 5
 796 percent or more of the outstanding shares of the benefit
 797 corporation by:

798 1. The individual; or

799 2. An entity:

800 a. Of which the individual is a director, an officer, or a
 801 manager; or

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

806 (7) "Minimum status vote" means:

807 (a) In the case of a corporation that is to become a
 808 benefit corporation, whether by amendment of the articles of
 809 incorporation or by way of or pursuant to a merger, conversion,
 810 or share exchange; a benefit corporation whose articles of
 811 incorporation are to be amended pursuant to s. 607.606(2); or a
 812 benefit corporation that is to cease being a benefit
 813 corporation, in addition to any other required approval or vote,
 814 the satisfaction of the following conditions:

815 1. The holders of each class or series of shares shall be
 816 entitled to vote as a separate voting group on the corporate
 817 action regardless of any limitation on the voting rights of any
 818 class or series stated in the articles of incorporation or
 819 bylaws.

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

823 (b) In the case of a domestic entity, other than a
 824 corporation, which is to be simultaneously converted to a
 825 benefit corporation or merged into a benefit corporation, in
 826 addition to any other required approval, vote, or consent, the
 827 satisfaction of the following conditions:

828 1. The holders of each class or series of equity interest
 829 in the entity who are entitled to receive a distribution of any
 830 kind are entitled, as a separate voting group, to vote on or
 831 consent to the action regardless of any applicable limitation on
 832 the voting or consent rights of any class or series.

833 2. The action is approved by vote or consent of each class
 834 or series of equity interest described in subparagraph 1. who
 835 are entitled to vote by at least two-thirds of the votes or
 836 consent of the class or series.

837 (8) "Specific public benefit" includes, but is not limited
 838 to:

839 (a) Providing low-income or underserved individuals or
 840 communities with beneficial products or services;

841 (b) Promoting economic opportunity for individuals or
 842 communities beyond the creation of jobs in the normal course of
 843 business;

844 (c) Protecting or restoring the environment;

845 (d) Improving human health;

846 (e) Promoting the arts, sciences, or advancement of
 847 knowledge;

848 (f) Increasing the flow of capital to entities that have
 849 as their stated purpose the provision of a benefit to society or
 850 the environment; and

851 (g) Any other public benefit consistent with the purposes
 852 of the benefit corporation.

853 (9) "Subsidiary" means, in relation to a person other than
 854 an individual, an entity in which a person owns beneficially or
 855 of record 50 percent or more of the outstanding equity
 856 interests.

857 (10) "Third-party standard" means a recognized standard
 858 for defining, reporting, and assessing the societal and

859 environmental performance of a business which is:

860 (a) Comprehensive, because it assesses the effect of the
 861 business and its operations upon the interests provided in s.
 862 607.607(1)(a)2.-5.

863 (b) Developed by an entity that is not controlled by the
 864 benefit corporation.

865 (c) Credible, because it is developed by an entity that
 866 has access to necessary expertise to assess the overall societal
 867 and environmental performance of a business and uses a balanced,
 868 collaborative approach to develop the standard, including a
 869 period for public comment.

870 (d) Transparent, because the following information is
 871 publicly available:

872 1. The criteria considered under the standard when
 873 measuring the overall societal and environmental performance of
 874 a business and the relative weights, if any, of those criteria.

875 2. The identity of the directors, officers, material
 876 owners, and the governing body of the entity that developed and
 877 controlled revisions; the process by which revisions to the
 878 standard and changes to the membership of the governing body are
 879 made; and an accounting of the revenue and sources of financial
 880 support for the entity, with sufficient detail to disclose any
 881 relationships that could reasonably be considered to present a
 882 potential conflict of interest.

883 Section 23. Section 607.603, Florida Statutes, is created
 884 to read:

885 607.603 Incorporation.—To incorporate as a benefit
 886 corporation, an incorporator must satisfy the requirements of
 887 this chapter, and the articles of incorporation must state that
 888 the corporation is a benefit corporation under this part.

889 Section 24. Section 607.604, Florida Statutes, is created
 890 to read:

891 607.604 Election of benefit corporation status.—

892 (1) An existing corporation may become a benefit
 893 corporation under this part by amending its articles of
 894 incorporation to include a statement that the corporation is a
 895 benefit corporation under this part. The amendment must be
 896 adopted by the minimum status vote.

897 (2) A plan of merger, conversion, or share exchange must
 898 be adopted by the minimum status vote if an entity that is not a
 899 benefit corporation is a party to a merger or conversion or if
 900 the exchanging entity in a share exchange and the surviving,
 901 new, or resulting entity is, or will be, a benefit corporation.

902 (3) If an entity elects to become a benefit corporation by
 903 amendment of the articles of incorporation or by a merger,
 904 conversion, or share exchange, the shareholders of the entity
 905 are entitled to appraisal rights under and pursuant to ss.
 906 607.1301-607.1333.

907 Section 25. Section 607.605, Florida Statutes, is created
 908 to read:

909 607.605 Termination of benefit corporation status.—

910 (1) A benefit corporation may terminate its status as such

CS/HB 685

2014

911 and cease to be subject to this part by amending its articles of
 912 incorporation to delete the provision required under s. 607.603
 913 or s. 607.604. The amendment must be adopted by the minimum
 914 status vote.

915 (2) A plan of merger, conversion, or share exchange which
 916 has the effect of terminating the status of a corporation as a
 917 benefit corporation must be adopted by the minimum status vote.
 918 A sale, lease, exchange, or other disposition of all or
 919 substantially all of the assets of a benefit corporation is not
 920 effective unless the transaction is approved by the minimum
 921 status vote. However, a minimum status vote is not required if
 922 the transaction is in the usual and regular course of business,
 923 is pursuant to court order, or is a sale pursuant to which all
 924 or a substantial portion of the net proceeds of the sale will be
 925 distributed to the shareholders within 1 year after the date of
 926 the sale.

927 (3) If a corporation's status as a benefit corporation is
 928 terminated pursuant to subsection (1) or subsection (2),
 929 shareholders of the corporation are entitled to appraisal rights
 930 under and pursuant to ss. 607.1301-607.1333.

931 Section 26. Section 607.606, Florida Statutes, is created
 932 to read:

933 607.606 Corporate purpose.—

934 (1) A benefit corporation has the purpose of creating
 935 general public benefit. This purpose is in addition to its
 936 purpose under s. 607.0301.

937 (2) The articles of incorporation of a benefit corporation
 938 may identify one or more specific public benefits as its purpose
 939 in addition to its purposes under s. 607.0301 and subsection
 940 (1). A benefit corporation may amend its articles of
 941 incorporation to add, amend, or delete the identification of a
 942 specific public benefit purpose; however, the amendment must be
 943 adopted by the minimum status vote. The identification of a
 944 specific public benefit under this subsection does not limit the
 945 obligation of a benefit corporation under subsection (1).

946 (3) The creation of general public benefit and a specific
 947 public benefit under subsections (1) and (2) is deemed to be in
 948 the best interest of the benefit corporation.

949 (4) A professional corporation that is a benefit
 950 corporation does not violate s. 621.08 by having as its purpose
 951 the creation of general public benefit or a specific public
 952 benefit.

953 Section 27. Section 607.607, Florida Statutes, is created
 954 to read:

955 607.607 Standard of conduct for directors.-

956 (1) In discharging their duties and in considering the
 957 best interests of the benefit corporation, the directors:

958 (a) Shall consider the effects of any action or inaction
 959 upon:

- 960 1. The shareholders of the benefit corporation;
- 961 2. The employees and workforce of the benefit corporation,
 962 its subsidiaries, and its suppliers;

963 3. The interests of customers and suppliers as
 964 beneficiaries of the general public benefit and any specific
 965 public benefit purposes of the benefit corporation;
 966 4. Community and societal factors, including those of each
 967 community in which offices or facilities of the benefit
 968 corporation, its subsidiaries, or its suppliers are located;
 969 5. The local and global environment;
 970 6. The short-term and long-term interests of the benefit
 971 corporation, including benefits that may accrue to the benefit
 972 corporation from its long-term plans and the possibility that
 973 these interests may be best served by the continued independence
 974 of the benefit corporation; and
 975 7. The ability of the benefit corporation to accomplish
 976 its general public benefit purpose and each of its specific
 977 public benefit purposes, if any.
 978 (b) May consider other pertinent factors or the interests
 979 of any other group that they deem appropriate.
 980 (c) Are not required to give priority to the interests of
 981 a particular person or group referred to in paragraph (a) or
 982 paragraph (b) over the interests of any other person or group,
 983 unless the benefit corporation has stated in its articles of
 984 incorporation its intention to give priority to certain
 985 interests.
 986 (d) Are not required to give equal weight to the interests
 987 of a particular person or group referred to in paragraph (a) or
 988 paragraph (b) unless the benefit corporation has stated in its

989 articles of incorporation its intention to give such equal
 990 weight.

991 (2) Except as provided in the articles of incorporation, a
 992 director is not personally liable for monetary damages to the
 993 corporation, or to any other person, for the failure of the
 994 benefit corporation to pursue or create general public benefit
 995 or a specific public benefit. A director is subject to the
 996 duties established in s. 607.0830.

997 (3) Except as provided in the articles of incorporation, a
 998 director does not have a duty to a person who is a beneficiary
 999 of the general public benefit purpose or any one or more
 1000 specific public benefit purposes of the benefit corporation.

1001 Section 28. Section 607.608, Florida Statutes, is created
 1002 to read:

1003 607.608 Benefit director.-

1004 (1) If the articles of incorporation so provide, the board
 1005 of directors of a benefit corporation may include a director who
 1006 is designated as the benefit director and, in addition to the
 1007 powers, duties, rights, and immunities of the other directors of
 1008 the benefit corporation, has the powers, duties, rights, and
 1009 immunities provided in this part.

1010 (2) The benefit director shall be elected, and may be
 1011 removed, in the manner provided by this chapter. Except as
 1012 provided under subsection (5), the benefit director shall be
 1013 independent and may serve as a benefit officer. The articles of
 1014 incorporation or bylaws may prescribe additional qualifications

1015 of the benefit director.

1016 (3) Unless the articles of incorporation or bylaws provide
 1017 otherwise, the benefit director shall prepare, and the benefit
 1018 corporation shall include in the annual benefit report to
 1019 shareholders required under s. 607.612, the opinion of the
 1020 benefit director on the following:

1021 (a) Whether the benefit corporation in all material
 1022 respects acted in accordance with its general public benefit
 1023 purpose and any specific public benefit purpose during the
 1024 period covered by the report.

1025 (b) Whether the directors and officers complied with ss.
 1026 607.607(1) and 607.609(1).

1027 (c) Whether the benefit corporation or its directors or
 1028 officers failed to comply with paragraph (a) or s. 607.607(1) or
 1029 s. 607.609(1), including a description of the ways in which the
 1030 benefit corporation or its directors or officers failed to
 1031 comply.

1032 (4) The action or inaction of an individual in his or her
 1033 capacity as a benefit director shall constitute for all purposes
 1034 an action or inaction of that individual in his or her capacity
 1035 as a director of the benefit corporation.

1036 (5) The benefit director of a corporation formed under
 1037 chapter 621 is not required to be independent.

1038 Section 29. Section 607.609, Florida Statutes, is created
 1039 to read:

1040 607.609 Standard of conduct for officers.-

1041 (1) If an officer of a benefit corporation reasonably
 1042 believes that a matter may have a material effect on the ability
 1043 of the corporation to create, or the creation by the corporation
 1044 of, general public benefit or a specific public benefit
 1045 identified in the articles of incorporation and the officer has
 1046 discretion to act on the matter, the officer shall consider the
 1047 interests and factors provided in s. 607.607(1).

1048 (2) The officer's consideration of interests and factors
 1049 under subsection (1) does not constitute a violation of s.
 1050 607.0841.

1051 (3) Except as provided in the articles of incorporation,
 1052 an officer is not personally liable for monetary damages to the
 1053 corporation or to any other person for the failure of the
 1054 benefit corporation to pursue or create general public benefit
 1055 or a specific public benefit; however, he or she is subject to
 1056 s. 607.0841.

1057 (4) Except as provided in the articles of incorporation,
 1058 an officer does not have a duty to a person who is a beneficiary
 1059 of the general public benefit purpose or any specific public
 1060 benefit purpose of the benefit corporation arising from the
 1061 status of the person as a beneficiary.

1062 Section 30. Section 607.610, Florida Statutes, is created
 1063 to read:

1064 607.610 Benefit officer.—

1065 (1) A benefit corporation may designate an officer as the
 1066 benefit officer.

1067 (2) The benefit officer has the powers and duties set
 1068 forth in the bylaws or determined by the board of directors,
 1069 which may include, but are not limited to:

1070 (a) Powers and duties relating to the general public
 1071 benefit or a specific public benefit purpose of the corporation;
 1072 and

1073 (b) The duty to prepare the annual benefit report required
 1074 under s. 607.612.

1075 Section 31. Section 607.611, Florida Statutes, is created
 1076 to read:

1077 607.611 Right of action.—

1078 (1)(a) Except in a benefit enforcement proceeding, no
 1079 person may bring an action or assert a claim against a benefit
 1080 corporation or its directors or officers with respect to:

1081 1. A failure to pursue or create a general public benefit
 1082 or a specific public benefit set forth in its articles of
 1083 incorporation; or

1084 2. A violation of an obligation, duty, or standard of
 1085 conduct under this part.

1086 (b) A benefit corporation is not liable for monetary
 1087 damages under this part for the failure of the benefit
 1088 corporation to pursue or create general public benefit or a
 1089 specific public benefit.

1090 (2) A benefit enforcement proceeding may be commenced or
 1091 maintained only:

1092 (a) Directly by the benefit corporation; or

1093 (b) Derivatively by:
 1094 1. A shareholder of record on the date of the action or
 1095 inaction complained of in the benefit enforcement proceeding;
 1096 2. A director;
 1097 3. A person or group of persons that owns beneficially or
 1098 of record 5 percent or more of the outstanding equity interests
 1099 in an entity of which the benefit corporation is a subsidiary on
 1100 the date of the action or inaction complained of in the
 1101 proceeding; or
 1102 4. Any other person who is specified in the articles of
 1103 incorporation or bylaws of the benefit corporation.
 1104 Section 32. Section 607.612, Florida Statutes, is created
 1105 to read:
 1106 607.612 Preparation of annual benefit report.—
 1107 (1) Unless it is prepared by a benefit director or a
 1108 benefit officer, the board of directors shall prepare an annual
 1109 benefit report. The annual benefit report must include all of
 1110 the following:
 1111 (a) A narrative description of:
 1112 1. The ways in which the benefit corporation pursued
 1113 general public benefit during the year and the extent to which
 1114 the general public benefit was created.
 1115 2. Any circumstance that has hindered the pursuit or
 1116 creation of general public benefit or a specific public benefit
 1117 by the benefit corporation.
 1118 3. The process and rationale for selecting or changing the

1119 third-party standard used to prepare the benefit report.

1120 (b) The name of the benefit director and the benefit
 1121 officer, if those positions exist, and the respective business
 1122 addresses to which correspondence may be directed.

1123 (c) If the corporation has a benefit director, the
 1124 statement as provided in s. 607.608(3).

1125 (d) A statement of any connection between the organization
 1126 that established the third-party standard, or its directors,
 1127 officers, or any holder of 5 percent or more of the governance
 1128 interests in the organization, and the benefit corporation or
 1129 its directors, officers, or any holder of 5 percent or more of
 1130 the outstanding shares of the benefit corporation, including any
 1131 financial or governance relationship that might materially
 1132 affect the credibility of the use of the third-party standard.

1133 (2) The annual benefit report must be prepared in
 1134 accordance with a third-party standard that is:

1135 (a) Applied consistently with any previous application in
 1136 prior annual benefit reports; or

1137 (b) Accompanied by an explanation of the reasons for any
 1138 inconsistent application or any change in the standard from the
 1139 immediate prior report.

1140 (3) If, during the year covered by an annual benefit
 1141 report, a benefit director resigned from, or refused to stand
 1142 for reelection to, his or her position, or was removed from his
 1143 or her position, and he or she furnished written correspondence
 1144 to the benefit corporation concerning the circumstances

1145 surrounding his or her departure, that correspondence must be
 1146 included as an exhibit in the annual benefit report.

1147 (4) The annual benefit report and the assessment of the
 1148 performance of the benefit corporation in the annual benefit
 1149 report required under subsection (2) are not required to be
 1150 audited or certified by a third-party standards provider.

1151 Section 33. Section 607.613, Florida Statutes, is created
 1152 to read:

1153 607.613 Availability of annual benefit report.-

1154 (1) Each benefit corporation shall send its annual benefit
 1155 report to each shareholder:

1156 (a) Within 120 days after the end of the fiscal year of
 1157 the benefit corporation; or

1158 (b) At the same time that the benefit corporation delivers
 1159 any other annual report to its shareholders.

1160 (2) A benefit corporation shall post each annual benefit
 1161 report on the public portion of its website, if any, and it
 1162 shall remain posted for at least 3 years.

1163 (3) If a benefit corporation does not have a website, the
 1164 benefit corporation shall provide a copy of its most recent
 1165 annual benefit report, without charge, to any person who
 1166 requests a copy.

1167 (4) If a benefit corporation does not comply with the
 1168 annual benefit report delivery requirement, the circuit court in
 1169 the county in which the principal office of the benefit
 1170 corporation is located or, if no office is located in this

1171 state, the county in which its registered office is located,
 1172 may, after a shareholder of the benefit corporation requests a
 1173 copy, summarily order the corporation to furnish the report. If
 1174 the court orders the report to be furnished, the court may also
 1175 order the benefit corporation to pay the shareholder's costs,
 1176 including reasonable attorney fees, which were incurred in
 1177 obtaining the order and otherwise enforce his or her rights
 1178 under this section.

1179 Section 34. Subsection (1) of section 617.0401, Florida
 1180 Statutes, is amended to read:

1181 617.0401 Corporate name.—

1182 (1) A corporate name:

1183 (a) Must contain the word "corporation" or "incorporated"
 1184 or the abbreviation "Corp." "~~corp.~~" or "Inc." "~~inc.~~" or words or
 1185 abbreviations of like import in language, as will clearly
 1186 indicate that it is a corporation instead of a natural person,
 1187 unincorporated association, or partnership. The name of the
 1188 corporation may not contain the word "company" or its
 1189 abbreviation "Co." "~~co.~~";

1190 (b) May contain the word "cooperative" or "co-op" only if
 1191 the resulting name is distinguishable from the name of any
 1192 corporation, agricultural cooperative marketing association, or
 1193 nonprofit cooperative association existing or doing business in
 1194 this state under part I of chapter 607, chapter 618, or chapter
 1195 619.†

1196 (c) May not contain language stating or implying that the

1197 corporation is organized for a purpose other than that permitted
 1198 in this act and its articles of incorporation.~~†~~

1199 (d) May not contain language stating or implying that the
 1200 corporation is connected with a state or federal government
 1201 agency or a corporation chartered under the laws of the United
 1202 States.~~†~~ and

1203 (e) Must be distinguishable from the names of all other
 1204 entities or filings that are on file with the Division of
 1205 Corporations, except fictitious name registrations pursuant to
 1206 s. 865.09, general partnership registrations pursuant to s.
 1207 620.8105, and limited liability partnership statements pursuant
 1208 to s. 620.9001 which are organized, registered, or reserved
 1209 under the laws of this state, that are on file with the Division
 1210 of Corporations. A name that is different from a name of another
 1211 entity or filing due to any of the following is not considered
 1212 distinguishable:

- 1213 1. A suffix.
- 1214 2. A definite or indefinite article.
- 1215 3. The word "and" and the symbol "&."
- 1216 4. The singular, plural, or possessive form of a word.
- 1217 5. A recognized abbreviation of a root word.
- 1218 6. A punctuation mark or a symbol.

1219 Section 35. Subsection (4) of section 620.1108, Florida
 1220 Statutes, is amended to read:

1221 620.1108 Name.—

1222 (4) The name of a limited partnership must be

1223 distinguishable in the records of the Department of State from
 1224 the names of all other entities or filings that are on file with
 1225 the Department of State, except fictitious name registrations
 1226 pursuant to s. 865.09, general partnership registrations
 1227 pursuant to s. 620.8105, and limited liability partnership
 1228 statements pursuant to s. 620.9001 which are organized,
 1229 registered, or reserved under the laws of this state, ~~the names~~
 1230 ~~of which are on file with the Department of State.~~ A name that
 1231 is different from the name of another entity or filing due to
 1232 any of the following is not considered distinguishable:

- 1233 (a) A suffix.
- 1234 (b) A definite or indefinite article.
- 1235 (c) The word "and" and the symbol "&."
- 1236 (d) The singular, plural, or possessive form of a word.
- 1237 (e) A recognized abbreviation of a root word.
- 1238 (f) A punctuation mark or a symbol.

1239 Section 36. Subsection (1) of section 48.091, Florida
 1240 Statutes, is amended to read:

1241 48.091 Corporations; designation of registered agent and
 1242 registered office.—

1243 (1) Every Florida corporation and every foreign
 1244 corporation now qualified or hereafter qualifying to transact
 1245 business in this state shall designate a registered agent and
 1246 registered office in accordance with part I of chapter 607.

1247 Section 37. Paragraph (d) of subsection (6) of section
 1248 215.555, Florida Statutes, is amended to read:

1249 215.555 Florida Hurricane Catastrophe Fund.—
 1250 (6) REVENUE BONDS.—
 1251 (d) *State Board of Administration Finance Corporation.*—
 1252 1. In addition to the findings and declarations in
 1253 subsection (1), the Legislature also finds and declares that:
 1254 a. The public benefits corporation created under this
 1255 paragraph will provide a mechanism necessary for the cost-
 1256 effective and efficient issuance of bonds. This mechanism will
 1257 eliminate unnecessary costs in the bond issuance process,
 1258 thereby increasing the amounts available to pay reimbursement
 1259 for losses to property sustained as a result of hurricane
 1260 damage.
 1261 b. The purpose of such bonds is to fund reimbursements
 1262 through the Florida Hurricane Catastrophe Fund to pay for the
 1263 costs of construction, reconstruction, repair, restoration, and
 1264 other costs associated with damage to properties of
 1265 policyholders of covered policies due to the occurrence of a
 1266 hurricane.
 1267 c. The efficacy of the financing mechanism will be
 1268 enhanced by the corporation's ownership of the assessments, by
 1269 the insulation of the assessments from possible bankruptcy
 1270 proceedings, and by covenants of the state with the
 1271 corporation's bondholders.
 1272 2.a. There is created a public benefits corporation, which
 1273 is an instrumentality of the state, to be known as the State
 1274 Board of Administration Finance Corporation.

1275 b. The corporation shall operate under a five-member board
 1276 of directors consisting of the Governor or a designee, the Chief
 1277 Financial Officer or a designee, the Attorney General or a
 1278 designee, the director of the Division of Bond Finance of the
 1279 State Board of Administration, and the Chief Operating Officer
 1280 of the Florida Hurricane Catastrophe Fund.

1281 c. The corporation has all of the powers of corporations
 1282 under part I of chapter 607 and under chapter 617, subject only
 1283 to ~~the provisions of~~ this subsection.

1284 d. The corporation may issue bonds and engage in such
 1285 other financial transactions as are necessary to provide
 1286 sufficient funds to achieve the purposes of this section.

1287 e. The corporation may invest in any of the investments
 1288 authorized under s. 215.47.

1289 f. There shall be no liability on the part of, and no
 1290 cause of action shall arise against, any board members or
 1291 employees of the corporation for any actions taken by them in
 1292 the performance of their duties under this paragraph.

1293 3.a. In actions under chapter 75 to validate any bonds
 1294 issued by the corporation, the notice required under ~~by~~ s. 75.06
 1295 shall be published in two newspapers of general circulation in
 1296 the state, and the complaint and order of the court shall be
 1297 served only on the State Attorney of the Second Judicial
 1298 Circuit.

1299 b. The state hereby covenants with holders of bonds of the
 1300 corporation that the state will not repeal or abrogate the power

1301 of the board to direct the Office of Insurance Regulation to
 1302 levy the assessments and to collect the proceeds of the revenues
 1303 pledged to the payment of such bonds as long as any such bonds
 1304 remain outstanding unless adequate provision has been made for
 1305 the payment of such bonds pursuant to the documents authorizing
 1306 the issuance of such bonds.

1307 4. The bonds of the corporation are not a debt of the
 1308 state or of any political subdivision, and neither the state nor
 1309 any political subdivision is liable on such bonds. The
 1310 corporation does not have the power to pledge the credit, the
 1311 revenues, or the taxing power of the state or of any political
 1312 subdivision. The credit, revenues, or taxing power of the state
 1313 or of any political subdivision shall not be deemed to be
 1314 pledged to the payment of any bonds of the corporation.

1315 5.a. The property, revenues, and other assets of the
 1316 corporation; the transactions and operations of the corporation
 1317 and the income from such transactions and operations; and all
 1318 bonds issued under this paragraph and interest on such bonds are
 1319 exempt from taxation by the state and any political subdivision,
 1320 including the intangibles tax under chapter 199 and the income
 1321 tax under chapter 220. This exemption does not apply to any tax
 1322 imposed by chapter 220 on interest, income, or profits on debt
 1323 obligations owned by corporations other than the State Board of
 1324 Administration Finance Corporation.

1325 b. All bonds of the corporation shall be and constitute
 1326 legal investments without limitation for all public bodies of

1327 | this state; for all banks, trust companies, savings banks,
 1328 | savings associations, savings and loan associations, and
 1329 | investment companies; for all administrators, executors,
 1330 | trustees, and other fiduciaries; for all insurance companies and
 1331 | associations and other persons carrying on an insurance
 1332 | business; and for all other persons who are now or may hereafter
 1333 | be authorized to invest in bonds or other obligations of the
 1334 | state and shall be and constitute eligible securities to be
 1335 | deposited as collateral for the security of any state, county,
 1336 | municipal, or other public funds. This sub-subparagraph is ~~shall~~
 1337 | ~~be considered as~~ additional and supplemental authority and may
 1338 | ~~shall~~ not be limited without specific reference to this sub-
 1339 | subparagraph.

1340 | 6. The corporation and its corporate existence continues
 1341 | ~~shall continue~~ until terminated by law; however, ~~no~~ such law may
 1342 | not shall take effect as long as the corporation has bonds
 1343 | outstanding unless adequate provision has been made for the
 1344 | payment of such bonds pursuant to the documents authorizing the
 1345 | issuance of such bonds. Upon termination of the existence of the
 1346 | corporation, all of its rights and properties in excess of its
 1347 | obligations shall pass to and be vested in the state.

1348 | 7. The State Board of Administration Finance Corporation
 1349 | is for all purposes the successor to the Florida Hurricane
 1350 | Catastrophe Fund Finance Corporation.

1351 | Section 38. Subsection (1) of section 243.54, Florida
 1352 | Statutes, is amended to read:

1353 243.54 Powers of the authority.—The purpose of the
 1354 authority is to assist institutions of higher education in
 1355 constructing, financing, and refinancing projects throughout the
 1356 state and, for this purpose, the authority may:

1357 (1) Exercise all powers granted to corporations under part
 1358 I of the Florida Business Corporation Act, chapter 607.

1359 Section 39. Section 310.171, Florida Statutes, is amended
 1360 to read:

1361 310.171 Pilots may incorporate themselves.—Any one or more
 1362 licensed state pilots may incorporate in the manner provided
 1363 under part I of chapter 607 or chapter 621.

1364 Section 40. Section 310.181, Florida Statutes, is amended
 1365 to read:

1366 310.181 Corporate powers.—All the rights, powers, and
 1367 liabilities conferred or imposed by the laws of Florida relating
 1368 to corporations for profit organized under part I of chapter 607
 1369 or under chapter 608 before January 1, 1976, or to corporations
 1370 organized under chapter 621 ~~shall~~ apply to corporations
 1371 organized pursuant to s. 310.171.

1372 Section 41. Paragraph (c) of subsection (4) of section
 1373 329.10, Florida Statutes, is amended to read:

1374 329.10 Aircraft registration.—

1375 (4) It is a violation of this section for any person or
 1376 corporate entity to knowingly supply false information to any
 1377 governmental entity in regard to ownership by it or another
 1378 firm, business, or corporation of an aircraft in or operated in

1379 | this state if it is determined that such corporate entity or
 1380 | other firm, business, or corporation:

1381 | (c) Has lapsed into a state of no longer being a legal
 1382 | entity in this state as defined in part I of chapter 607 or s.
 1383 | 865.09, and no documented attempt has been made to correct such
 1384 | information with the governmental entity for a period of 90 days
 1385 | after the date on which such lapse took effect with the
 1386 | Secretary of State.

1387 | Section 42. Subsection (1) of section 339.412, Florida
 1388 | Statutes, is amended to read:

1389 | 339.412 Powers of corporation.—As to designated projects
 1390 | and in addition to other powers prescribed by law, a corporation
 1391 | may exercise the following powers with respect to the promotion
 1392 | and development of transportation facilities, pursuant to a
 1393 | written contract for the same, together with all powers
 1394 | incidental thereto or necessary for the performance of those
 1395 | hereinafter stated:

1396 | (1) The corporation may exercise all the powers as granted
 1397 | by the department to work directly with landowners, local and
 1398 | state governmental agencies, elected officials, and any other
 1399 | person to support those activities required to promote and
 1400 | develop the projects. These activities shall include:

1401 | (a) Acquiring, holding, investing, and administering
 1402 | property and transferring title of such property to the
 1403 | department for development of projects on behalf of the
 1404 | department;

1405 (b) Performing preliminary and final alignment studies in
 1406 a manner consistent with state and federal laws;

1407 (c) Receiving contributions of land for rights-of-way and
 1408 cash donations to be applied to the purchase of rights-of-way
 1409 not donated or to be applied to the design or construction of
 1410 the projects;

1411 (d) Reviewing candidates for advisory directorships and
 1412 adding or removing such advisory directors as may be
 1413 appropriate;

1414 (e) Retaining such administrative staff and legal, public
 1415 relations, and engineering services as may be required for the
 1416 development of the projects and paying such employees and
 1417 consultants from funds donated for this purpose;

1418 (f) Preparing such exhibits, right-of-way documents,
 1419 environmental reports, schematics, and preliminary and final
 1420 engineering plans as are necessary for the development of the
 1421 projects;

1422 (g) Borrowing money to meet any expenses or needs
 1423 associated with the regular operations of the corporation or a
 1424 particular project; provided, however, that no corporation shall
 1425 have the power to issue bonds, the provisions of part I of
 1426 chapter ~~chapters~~ 607 and chapter 617 notwithstanding;

1427 (h) Making official presentations to the state and other
 1428 affected agencies or groups concerning the development of the
 1429 projects;

1430 (i) Issuing press releases and other material to promote

1431 the activities of the projects; and

1432 (j) Performing any other functions requested by the
 1433 department in order to promote and develop the projects.

1434

1435 Nothing in this act empowers the corporation to enter into any
 1436 contracts for construction or to undertake any construction, on
 1437 behalf of the department.

1438 Section 43. Subsection (4) of section 420.101, Florida
 1439 Statutes, is amended to read:

1440 420.101 Housing Development Corporation of Florida;
 1441 creation, membership, and purposes.—

1442 (4) Whenever the articles of incorporation have been filed
 1443 in the Department of State and approved by it and all filing
 1444 fees and taxes prescribed by part I of chapter 607 have been
 1445 paid, the subscribers and their successors and assigns shall
 1446 constitute a corporation, and the corporation shall then be
 1447 authorized to commence business, and stock thereof to the extent
 1448 herein or hereafter duly authorized may from time to time be
 1449 issued.

1450 Section 44. Section 420.111, Florida Statutes, is amended
 1451 to read:

1452 420.111 Housing Development Corporation of Florida;
 1453 additional powers.—In furtherance of its purposes and in
 1454 addition to the powers now or hereafter conferred on business
 1455 corporations by part I of chapter 607, the corporation shall,
 1456 subject to the restrictions and limitations ~~herein~~ contained in

1457 this section, have the following powers:

1458 (1) To elect, appoint, and employ officers, agents and
 1459 employees and to make contracts and incur liabilities for any of
 1460 the purposes of the corporation, except that the corporation may
 1461 ~~shall~~ not incur any secondary liability by way of guaranty or
 1462 endorsement of the obligations of any person, firm, corporation,
 1463 joint-stock company, association, or trust, or in any other
 1464 manner.

1465 (2) To borrow money from its stockholders, other financial
 1466 institutions, and state and federal agencies for any of the
 1467 purposes of the corporation; to issue therefor its bonds,
 1468 debentures, notes, or other evidences of indebtedness, whether
 1469 secured or unsecured, and to secure the same by mortgage,
 1470 pledge, deed of trust, or other lien on its property,
 1471 franchises, rights, and privileges of every kind and nature, or
 1472 any part thereof or interest therein, without securing
 1473 stockholder approval.

1474 (3) To make loans to any person, firm, corporation, joint-
 1475 stock company, association, or trust and to regulate the terms
 1476 and conditions with respect to any such loans and the charges
 1477 for interest and service connected therewith, provided subsidies
 1478 may be in the form of below market interest rates or such other
 1479 assistance as determined by the board with the concurrence of
 1480 the applicable regulatory agencies governing the several
 1481 stockholder industries.

1482 (4) To purchase, receive, hold, lease, or otherwise

1483 acquire, and to sell, convey, transfer, lease, or otherwise
 1484 dispose of, real and personal property, together with such
 1485 rights and privileges as may be incidental and appurtenant
 1486 thereto and the use thereof, including, but not restricted to,
 1487 any real or personal property acquired by the corporation from
 1488 time to time in the satisfaction of debts or enforcement of
 1489 obligations.

1490 (5) For the purposes of foreclosure, to acquire the good
 1491 will, business, rights, real and personal property, and other
 1492 assets, or any part thereof, or interest therein, of any
 1493 persons, firms, corporations, joint-stock companies,
 1494 associations or trusts, and to assume, undertake, or pay the
 1495 obligations, debts and liabilities of any such person, firm,
 1496 corporation, joint-stock company, association or trust; to
 1497 acquire improved or unimproved real estate for the purpose of
 1498 constructing new housing or rehabilitation thereof; for the
 1499 purposes of disposing of such real estate to others for the
 1500 construction of housing or rehabilitation thereof; and to
 1501 acquire, construct or reconstruct, alter, repair, maintain,
 1502 operate, sell, convey, transfer, lease, or otherwise dispose of
 1503 such housing, provided, however that nothing herein contained
 1504 shall authorize the acquisition, construction, reconstruction,
 1505 or operation of any public lodging establishment as defined in
 1506 chapter 509.

1507 (6) To acquire, subscribe for, own, hold, sell, assign,
 1508 transfer, mortgage, pledge, or otherwise dispose of the stock,

1509 shares, bonds, debentures, notes, or other securities and
 1510 evidences of interest in, or indebtedness of, any person, firm,
 1511 corporation, joint-stock company, association, or trust, and,
 1512 while the owner or holder thereof, to exercise all the rights,
 1513 powers, and privileges of ownership, including the right to vote
 1514 thereon.

1515 (7) To mortgage, pledge, or otherwise encumber any
 1516 property, right, or thing of value, acquired pursuant to the
 1517 powers contained in subsection (4), subsection (5), or
 1518 subsection (6), as security for the payment of any part of the
 1519 purchase price thereof.

1520 (8) To cooperate with, and avail itself of the facilities
 1521 of, the United States Department of Housing and Urban
 1522 Development, the Department of Economic Opportunity, and any
 1523 other similar local, state, or Federal Government agency; and to
 1524 cooperate with and assist, and otherwise encourage,
 1525 organizations in the various communities of the state on the
 1526 promotion, assistance, and development of the housing and
 1527 economic welfare of such communities or of this state or any
 1528 part thereof.

1529 (9) To do all acts and things necessary or convenient to
 1530 carry out the powers expressly granted in this part.

1531 Section 45. Subsection (2) of section 420.161, Florida
 1532 Statutes, is amended to read:

1533 420.161 Housing Development Corporation of Florida; period
 1534 of existence; method of dissolution.-

1535 (2) The corporation may, upon the affirmative vote of two-
 1536 thirds of the votes to which the stockholders are ~~shall be~~
 1537 entitled, dissolve the said corporation as provided under part I
 1538 of ~~by~~ chapter 607, as long as that part does insofar as chapter
 1539 ~~607 is not in~~ conflict with ~~the provisions of~~ this act. Upon any
 1540 dissolution of the corporation, ~~none of~~ the corporation's assets
 1541 may not ~~shall~~ be distributed to the stockholders until all sums
 1542 due the members of the corporation as creditors thereof have
 1543 been paid in full.

1544 Section 46. Subsection (9) of section 440.02, Florida
 1545 Statutes, is amended to read:

1546 440.02 Definitions.—When used in this chapter, unless the
 1547 context clearly requires otherwise, the following terms shall
 1548 have the following meanings:

1549 (9) "Corporate officer" or "officer of a corporation"
 1550 means any person who fills an office provided for in the
 1551 corporate charter or articles of incorporation filed with the
 1552 Division of Corporations of the Department of State or as
 1553 authorized ~~permitted~~ or required under part I of ~~by~~ chapter 607.
 1554 The term "officer of a corporation" includes a member owning at
 1555 least 10 percent of a limited liability company created and
 1556 approved under chapter 608.

1557 Section 47. Paragraph (d) of subsection (10) of section
 1558 440.386, Florida Statutes, is amended to read:

1559 440.386 Individual self-insurers' insolvency;
 1560 conservation; liquidation.—

1561 (10) TRANSFERS PRIOR TO PETITION.—

1562 (d) The personal liability of the officers or directors of
 1563 an insolvent individual self-insurer is ~~shall be~~ subject to part
 1564 I of the provisions of chapter 607 and the penalties provided
 1565 therein.

1566 Section 48. Subsection (3) of section 609.08, Florida
 1567 Statutes, is amended to read:

1568 609.08 Merger of association into wholly owned subsidiary
 1569 corporation; dissenters' rights of appraisal.—

1570 (3) If the surviving corporation is to be governed by the
 1571 laws of any jurisdiction other than this state, it shall comply
 1572 with part I of the provisions of chapter 607 with respect to
 1573 foreign corporations if it is to transact business in this
 1574 state, and in every case it shall file with the Department of
 1575 State of this state:

1576 (a) An agreement that it may be served with process in
 1577 this state in any proceeding for the enforcement of any
 1578 obligation of the association and in any proceeding for the
 1579 enforcement of any rights under the declaration of trust of the
 1580 association of a dissenting shareholder of the association
 1581 against the surviving corporation.

1582 (b) An irrevocable appointment of the Secretary of State
 1583 as its agent to accept service of process in any such
 1584 proceeding.

1585 (c) An agreement that it will promptly pay to the
 1586 dissenting shareholders of the association the amount, if any,

1587 to which they are ~~shall be~~ entitled under ~~the provisions of~~ its
 1588 declaration of trust with respect to the rights of dissenting
 1589 shareholders.

1590 Section 49. Section 617.1908, Florida Statutes, is amended
 1591 to read:

1592 617.1908 Applicability of Florida Business Corporation
 1593 Act.—Except as ~~otherwise~~ made applicable by specific reference
 1594 in any other section of this chapter, part I ~~the provisions~~ of
 1595 chapter 607, the Florida Business Corporation Act, does ~~shall~~
 1596 not apply to any corporations not for profit.

1597 Section 50. Section 618.221, Florida Statutes, is amended
 1598 to read:

1599 618.221 Conversion into a corporation for profit.—Any
 1600 association incorporated under or that has adopted the
 1601 provisions of this chapter, may, by a majority vote of its
 1602 stockholders or members be brought under part I of ~~the~~
 1603 ~~provisions of~~ chapter 607, as a corporation for profit by
 1604 surrendering all right to carry on its business under this
 1605 chapter, and the privileges and immunities incident thereto. It
 1606 shall make out in duplicate a statement signed and sworn to by
 1607 its directors to the effect that the association has, by a
 1608 majority vote of its stockholders or members, decided to
 1609 surrender all rights, powers, and privileges as a nonprofit
 1610 cooperative marketing association under this chapter and to do
 1611 business under and be bound by part I of ~~the provisions of said~~
 1612 chapter 607, as a corporation for profit and has authorized all

1613 changes accordingly. Articles of incorporation shall be
 1614 delivered to the Department of State for filing as required
 1615 under part I of chapter 607 ~~in and by s. 607.164~~, except that
 1616 they shall be signed by the members of the then board of
 1617 directors. The filing fees and taxes shall be as provided under
 1618 part I of ~~in~~ chapter 607. Such articles of incorporation shall
 1619 adequately protect and preserve the relative rights of the
 1620 stockholders or members of the association so converting into a
 1621 corporation for profit; provided that no rights or obligations
 1622 due any stockholder or member of such association or any other
 1623 person, firm, or corporation which has not been waived or
 1624 satisfied shall be impaired by such conversion into a
 1625 corporation for profit as herein authorized.

1626 Section 51. Section 619.04, Florida Statutes, is amended
 1627 to read:

1628 619.04 Articles of incorporation.—Each association formed
 1629 under this chapter must prepare and file articles of
 1630 incorporation in the same manner and under the same regulations
 1631 as required under part I of chapter 607, and therein shall set
 1632 forth:

- 1633 (1) The name of the association.
- 1634 (2) The purpose for which it is formed.
- 1635 (3) The place where its principal business will be
 1636 transacted.
- 1637 (4) The term for which it is to exist, not exceeding 50
 1638 years.

1639 (5) The number of directors thereof, which must not be
 1640 less than three and which may be any number in excess thereof,
 1641 and the names and residences of those selected for the first
 1642 year and until their successors shall have been elected and
 1643 shall have accepted office.

1644 (6) Whether the voting power and the property rights and
 1645 interest of each member shall be equal, or unequal, and if
 1646 unequal these articles shall set forth a general rule applicable
 1647 to all members by which the voting power and the property rights
 1648 and interests, respectively, of each member may and shall be
 1649 determined and fixed, but the association shall have power to
 1650 admit new members, who shall be entitled to vote and to share in
 1651 the property of the association with the old members, in
 1652 accordance with such general rule. This provision of the
 1653 articles of incorporation may ~~shall~~ not be altered, amended, or
 1654 repealed except by the unanimous written consent or the vote of
 1655 all the members.

1656 (7) Said articles must be subscribed by the original
 1657 members and acknowledged by one of them before an officer
 1658 authorized by the law of this state to take and certify
 1659 acknowledgments of deeds of conveyance, and shall be filed in
 1660 accordance with the provisions of law, and when so filed the
 1661 said articles of incorporation or certified copies thereof shall
 1662 be received in all the courts of this state and other places as
 1663 prima facie evidence of the facts contained therein.

1664 Section 52. Subsection (3) of section 624.430, Florida

1665 Statutes, is amended to read:

1666 624.430 Withdrawal of insurer or discontinuance of writing
 1667 certain kinds or lines of insurance.—

1668 (3) Upon office approval of the surrender of the
 1669 certificate of authority of a domestic property and casualty
 1670 insurer that is a corporation, the insurer may initiate the
 1671 dissolution of the corporation in accordance with the applicable
 1672 provisions of part I of chapter 607.

1673 Section 53. Subsection (1) of section 624.462, Florida
 1674 Statutes, is amended to read:

1675 624.462 Commercial self-insurance funds.—

1676 (1) Any group of persons may form a commercial self-
 1677 insurance fund for the purpose of pooling and spreading
 1678 liabilities of its group members in any commercial property or
 1679 casualty risk or surety insurance. Any fund established pursuant
 1680 to subparagraph (2)(a)1. may be organized as a corporation under
 1681 part I of chapter 607.

1682 Section 54. Subsection (3) of section 624.489, Florida
 1683 Statutes, is amended to read:

1684 624.489 Liability of trustees of self-insurance trust fund
 1685 and directors of self-insurance funds operating as
 1686 corporations.—

1687 (3) The immunities from liability provided in this section
 1688 with respect to trustees also apply to members of the board of
 1689 directors of a commercial self-insurance fund organized as a
 1690 corporation under part I of chapter 607 if the board of

1691 directors has contracted with an administrator authorized under
 1692 s. 626.88 to administer the day-to-day affairs of the fund.

1693 Section 55. Section 628.041, Florida Statutes, is amended
 1694 to read:

1695 628.041 Applicability of general corporation statutes.—The
 1696 applicable statutes of this state relating to the powers and
 1697 procedures of domestic private corporations formed for profit
 1698 shall apply to domestic stock insurers and to domestic mutual
 1699 insurers, except:

1700 (1) As to any domestic mutual insurers incorporated
 1701 pursuant to chapter 617, which chapter shall govern such
 1702 insurers when in conflict with part I of chapter 607; and

1703 (2) When in conflict with the express provisions of this
 1704 code.

1705 Section 56. Subsection (4) of section 631.262, Florida
 1706 Statutes, is amended to read:

1707 631.262 Transfers prior to petition.—

1708 (4) The personal liability of the officers or directors of
 1709 an insolvent insurer is shall be subject to part I of the
 1710 ~~provisions of~~ chapter 607 and the penalties provided therein.

1711 Section 57. Subsection (1) of section 636.204, Florida
 1712 Statutes, is amended to read:

1713 636.204 License required.—

1714 (1) Before doing business in this state as a discount
 1715 medical plan organization, an entity must be a corporation, a
 1716 limited liability company, or a limited partnership,

1717 incorporated, organized, formed, or registered under the laws of
 1718 this state or authorized to transact business in this state in
 1719 accordance with part I of chapter 607, chapter 608, chapter 617,
 1720 chapter 620, or chapter 865, and must be licensed by the office
 1721 as a discount medical plan organization or be licensed by the
 1722 office pursuant to chapter 624, part I of this chapter, or
 1723 chapter 641.

1724 Section 58. Section 641.2015, Florida Statutes, is amended
 1725 to read:

1726 641.2015 Incorporation required.—On or after October 1,
 1727 1985, any entity that has not yet obtained a certificate of
 1728 authority to operate a health maintenance organization in this
 1729 state shall be incorporated or shall be a division of a
 1730 corporation formed under the provisions of either part I of
 1731 chapter 607 or chapter 617 or shall be a public entity that is
 1732 organized as a political subdivision. In the case of a division
 1733 of a corporation, the financial requirements of this part shall
 1734 apply to the entire corporation. Incorporation shall not be
 1735 required of any entity which has already been issued an initial
 1736 certificate of authority prior to this date and which is not a
 1737 corporation on October 1, 1985, or which is incorporated in any
 1738 other state on October 1, 1985; nor shall incorporation be
 1739 required on renewal of any certificate of authority by such an
 1740 organization or be required of a public entity that is organized
 1741 as a political subdivision.

1742 Section 59. Subsection (1) of section 655.0201, Florida

1743 Statutes, is amended to read:

1744 655.0201 Service of process, notice, or demand on
1745 financial institutions.—

1746 (1) Process against any financial institution authorized
1747 by federal or state law to transact business in this state may
1748 be served in accordance with chapter 48, chapter 49, part I of
1749 chapter 607, or chapter 608, as appropriate.

1750 Section 60. Subsection (2) of section 658.23, Florida
1751 Statutes, is amended to read:

1752 658.23 Submission of articles of incorporation; contents;
1753 form; approval; filing; commencement of corporate existence;
1754 bylaws.—

1755 (2) The articles of incorporation shall contain:

1756 (a) The name of the proposed bank or trust company.

1757 (b) The general nature of the business to be transacted or
1758 a statement that the corporation may engage in any activity or
1759 business permitted by law. Such statement shall authorize all
1760 such activities and business by the corporation.

1761 (c) The amount of capital stock authorized, showing the
1762 maximum number of shares of par value common stock and of
1763 preferred stock, and of every kind, class, or series of each,
1764 together with the distinguishing characteristics and the par
1765 value of all shares.

1766 (d) The amount of capital with which the corporation will
1767 begin business, which may ~~shall~~ not be less than the amount
1768 required by the office pursuant to s. 658.21.

1769 (e) A provision that the corporation is to have perpetual
 1770 existence unless existence is terminated pursuant to the
 1771 financial institutions codes.

1772 (f) The initial street address of the main office of the
 1773 corporation, which shall be in this state.

1774 (g) The number of directors, which shall be five or more,
 1775 and the names and street addresses of the members of the initial
 1776 board of directors.

1777 (h) A provision for preemptive rights, if applicable.

1778 (i) A provision authorizing the board of directors to
 1779 appoint additional directors, pursuant to s. 658.33, if
 1780 applicable.

1781

1782 The office shall provide to the proposed directors form articles
 1783 of incorporation which must ~~shall~~ include only those provisions
 1784 required under ~~by~~ this section or under part I of ~~by~~ chapter
 1785 607. The form articles shall be acknowledged by the proposed
 1786 directors and returned to the office for filing with the
 1787 Department of State.

1788 Section 61. Paragraph (c) of subsection (11) of section
 1789 658.2953, Florida Statutes, is amended to read:

1790 658.2953 Interstate branching.—

1791 (11) DE NOVO INTERSTATE BRANCHING BY STATE BANKS.—

1792 (c) An out-of-state bank may establish and maintain a de
 1793 novo branch or acquire a branch in this state upon compliance
 1794 with part I of chapter 607 or chapter 608 relating to doing

1795 business in this state as a foreign business entity, including
 1796 maintaining a registered agent for service of process and other
 1797 legal notice pursuant to s. 655.0201.

1798 Section 62. Section 658.30, Florida Statutes, is amended
 1799 to read:

1800 658.30 Application of the Florida Business Corporation
 1801 Act.—

1802 (1) When not in direct conflict with or superseded by
 1803 specific provisions of the financial institutions codes, the
 1804 provisions of the Florida Business Corporation Act, part I of
 1805 chapter 607, ~~shall~~ extend to state banks and trust companies
 1806 formed under the financial institutions codes. This section
 1807 shall be liberally construed to accomplish the purposes stated
 1808 herein.

1809 (2) Without limiting the generality of subsection (1),
 1810 stockholders, directors, and committees of state banks and trust
 1811 companies may hold meetings in any manner authorized ~~permitted~~
 1812 by part I of chapter 607, and any action by stockholders,
 1813 directors, or committees required or authorized ~~permitted~~ to be
 1814 taken at a meeting may be taken without a meeting in any manner
 1815 authorized ~~provided or permitted~~ by part I of chapter 607.

1816 Section 63. Subsection (3) of section 658.36, Florida
 1817 Statutes, is amended to read:

1818 658.36 Changes in capital.—

1819 (3) If a bank or trust company's capital accounts have
 1820 been diminished by losses to less than the minimum required

1821 pursuant to the financial institutions codes, the market value
 1822 of its shares of capital stock is less than the present par
 1823 value, and the bank or trust company cannot reasonably issue and
 1824 sell new shares of stock to restore its capital accounts at a
 1825 share price of par value or greater of the previously issued
 1826 capital stock, the office, notwithstanding any other provisions
 1827 of part I of chapter 607 or the financial institutions codes,
 1828 may approve special stock offering plans.

1829 (a) Such plans may include, but are not limited to,
 1830 mechanisms for stock splits including reverse splits;
 1831 revaluations of par value of outstanding stock; changes in
 1832 voting rights, dividends, or other preferences; and creation of
 1833 new classes of stock.

1834 (b) The plan must be approved by majority vote of the bank
 1835 or trust company's entire board of directors and by holders of
 1836 two-thirds of the outstanding shares of stock.

1837 (c) The office shall disapprove a plan that provides
 1838 unfair or disproportionate benefits to existing shareholders,
 1839 directors, executive officers, or their related interests. The
 1840 office shall also disapprove any plan that is not likely to
 1841 restore the capital accounts to sufficient levels to achieve a
 1842 sustainable, safe, and sound financial institution.

1843 (d) For any bank or trust company that the office
 1844 determines to be a failing financial institution pursuant to s.
 1845 655.4185, the office may approve special stock offering plans
 1846 without a vote of the shareholders.

1847 Section 64. Section 663.03, Florida Statutes, is amended
 1848 to read:

1849 663.03 Applicability of the Florida Business Corporation
 1850 Act ~~chapter 607.~~ Notwithstanding s. 607.01401(12) ~~the definition~~
 1851 ~~of the term "foreign corporation" appearing in s. 607.01401,~~ all
 1852 ~~of~~ the provisions of part I of chapter 607 not in conflict with
 1853 the financial institutions codes which relate to foreign
 1854 corporations ~~shall~~ apply to all international banking
 1855 corporations and their offices doing business in this state.

1856 Section 65. Subsection (3) of section 663.04, Florida
 1857 Statutes, is amended to read:

1858 663.04 Requirements for carrying on financial institution
 1859 business.—An international banking corporation or trust company,
 1860 or any affiliate, subsidiary, or other person or business entity
 1861 acting as an agent for, on behalf of, or for the benefit of such
 1862 international banking corporation or trust company who engages
 1863 in such activities from an office located in this state, may not
 1864 transact a banking or trust business, or maintain in this state
 1865 any office for carrying on such business, or any part thereof,
 1866 unless such corporation, trust company, affiliate, subsidiary,
 1867 person, or business entity:

1868 (3) Has filed with the office a certified copy of that
 1869 information required to be supplied to the Department of State
 1870 by those provisions of part I of chapter 607 which are
 1871 applicable to foreign corporations.

1872 Section 66. Paragraph (a) of subsection (1) of section

1873 663.301, Florida Statutes, is amended to read:

1874 663.301 Definitions.—

1875 (1) As used in this part:

1876 (a) "International development bank" means a corporation
 1877 established for the purpose of promoting development in foreign
 1878 countries by directly or indirectly making funding available to
 1879 foreign business enterprises or foreign governments or by
 1880 providing financing in connection with import-export
 1881 transactions. Subject to the limitations contained in s.
 1882 663.313, an international development bank may be organized
 1883 ~~either~~ under chapter 617 as a corporation not for profit or
 1884 under part I of chapter 607 as a corporation for profit.

1885 Section 67. Subsection (2) of section 663.306, Florida
 1886 Statutes, is amended to read:

1887 663.306 Decision by office.—The office may, in its
 1888 discretion, approve or disapprove the application, but it shall
 1889 not approve the application unless it finds that:

1890 (2) The proposed capital structure is adequate, but in no
 1891 case may the paid-in capital stock be:

1892 (a) Less than \$400,000 in the case of an international
 1893 development bank organized under chapter 617 as a corporation
 1894 not for profit; or

1895 (b) The amount required for a state bank in the case of an
 1896 international development bank organized under part I of chapter
 1897 607 as a corporation for profit.

1898

1899 The office may disallow any illegally obtained currency,
 1900 monetary instruments, funds, or other financial resources from
 1901 the capitalization requirements of this section.

1902 Section 68. Subsection (4) of section 663.313, Florida
 1903 Statutes, is amended to read:

1904 663.313 Ownership of stock.—

1905 (4) All of the shares of voting stock of an international
 1906 development bank organized under part I of chapter 607 as a
 1907 corporation for profit shall be owned by a regional development
 1908 bank or by one or more wholly owned subsidiaries of a regional
 1909 development bank.

1910 Section 69. Subsection (2) of section 718.111, Florida
 1911 Statutes, is amended to read:

1912 718.111 The association.—

1913 (2) POWERS AND DUTIES.—The powers and duties of the
 1914 association include those set forth in this section and, except
 1915 as expressly limited or restricted in this chapter, those set
 1916 forth in the declaration and bylaws and part I of chapter
 1917 ~~chapters~~ 607 and chapter 617, as applicable.

1918 Section 70. Subsection (10) of section 719.104, Florida
 1919 Statutes, is amended to read:

1920 719.104 Cooperatives; access to units; records; financial
 1921 reports; assessments; purchase of leases.—

1922 (10) POWERS AND DUTIES.—The powers and duties of the
 1923 association include those set forth in this section and, except
 1924 as expressly limited or restricted in this chapter, those set

1925 | forth in the articles of incorporation and bylaws and part I of
 1926 | chapter ~~chapters~~ 607 and chapter 617, as applicable.

1927 | Section 71. Subsection (5) of section 720.302, Florida
 1928 | Statutes, is amended to read:

1929 | 720.302 Purposes, scope, and application.—

1930 | (5) Unless expressly stated to the contrary, corporations
 1931 | that operate residential homeowners' associations in this state
 1932 | shall be governed by and subject to part I of chapter 607, if
 1933 | the association was incorporated under that part ~~chapter~~, or to
 1934 | chapter 617, if the association was incorporated under that
 1935 | chapter, and this chapter. This subsection is intended to
 1936 | clarify existing law.

1937 | Section 72. Paragraph (c) of subsection (1) of section
 1938 | 720.306, Florida Statutes, is amended to read:

1939 | 720.306 Meetings of members; voting and election
 1940 | procedures; amendments.—

1941 | (1) QUORUM; AMENDMENTS.—

1942 | (c) Unless otherwise provided in the governing documents
 1943 | as originally recorded or permitted by this chapter or chapter
 1944 | 617, an amendment may not materially and adversely alter the
 1945 | proportionate voting interest appurtenant to a parcel or
 1946 | increase the proportion or percentage by which a parcel shares
 1947 | in the common expenses of the association unless the record
 1948 | parcel owner and all record owners of liens on the parcels join
 1949 | in the execution of the amendment. For purposes of this section,
 1950 | a change in quorum requirements is not an alteration of voting

1951 interests. The merger or consolidation of one or more
 1952 associations under a plan of merger or consolidation under part
 1953 I of chapter 607 or chapter 617 ~~is shall~~ not be considered a
 1954 material or adverse alteration of the proportionate voting
 1955 interest appurtenant to a parcel.

1956 Section 73. Paragraph (a) of subsection (1) of section
 1957 766.101, Florida Statutes, is amended to read:

1958 766.101 Medical review committee, immunity from
 1959 liability.—

1960 (1) As used in this section:

1961 (a) The term "medical review committee" or "committee"
 1962 means:

1963 1.a. A committee of a hospital or ambulatory surgical
 1964 center licensed under chapter 395 or a health maintenance
 1965 organization certificated under part I of chapter 641;τ

1966 b. A committee of a physician-hospital organization, a
 1967 provider-sponsored organization, or an integrated delivery
 1968 system;τ

1969 c. A committee of a state or local professional society of
 1970 health care providers;τ

1971 d. A committee of a medical staff of a licensed hospital
 1972 or nursing home, provided the medical staff operates pursuant to
 1973 written bylaws that have been approved by the governing board of
 1974 the hospital or nursing home;τ

1975 e. A committee of the Department of Corrections or the
 1976 Correctional Medical Authority as created under s. 945.602, or

1977 employees, agents, or consultants of either the department or
 1978 the authority or both;τ

1979 f. A committee of a professional service corporation
 1980 formed under chapter 621 or a corporation organized under part I
 1981 of chapter 607 or chapter 617, which is formed and operated for
 1982 the practice of medicine as defined in s. 458.305(3), and which
 1983 has at least 25 health care providers who routinely provide
 1984 health care services directly to patients;τ

1985 g. A committee of the Department of Children and Families
 1986 ~~Family Services~~ which includes employees, agents, or consultants
 1987 to the department as deemed necessary to provide peer review,
 1988 utilization review, and mortality review of treatment services
 1989 provided pursuant to chapters 394, 397, and 916;τ

1990 h. A committee of a mental health treatment facility
 1991 licensed under chapter 394 or a community mental health center
 1992 as defined in s. 394.907, provided the quality assurance program
 1993 operates pursuant to the guidelines that ~~which~~ have been
 1994 approved by the governing board of the agency;τ

1995 i. A committee of a substance abuse treatment and
 1996 education prevention program licensed under chapter 397 provided
 1997 the quality assurance program operates pursuant to the
 1998 guidelines that ~~which~~ have been approved by the governing board
 1999 of the agency;τ

2000 j. A peer review or utilization review committee organized
 2001 under chapter 440;τ

2002 k. A committee of the Department of Health, a county

2003 health department, healthy start coalition, or certified rural
 2004 health network, when reviewing quality of care, or employees of
 2005 these entities when reviewing mortality records;7 or

2006 1. A continuous quality improvement committee of a
 2007 pharmacy licensed pursuant to chapter 465,

2008
 2009 which committee is formed to evaluate and improve the quality of
 2010 health care rendered by providers of health service, to
 2011 determine that health services rendered were professionally
 2012 indicated or were performed in compliance with the applicable
 2013 standard of care, or that the cost of health care rendered was
 2014 considered reasonable by the providers of professional health
 2015 services in the area; or

2016 2. A committee of an insurer, self-insurer, or joint
 2017 underwriting association of medical malpractice insurance, or
 2018 other persons conducting review under s. 766.106.

2019 Section 74. Subsection (14) of section 865.09, Florida
 2020 Statutes, is amended to read:

2021 865.09 Fictitious name registration.—

2022 (14) PROHIBITION.—A fictitious name registered as provided
 2023 in this section may not contain the words "Corporation" or
 2024 "Incorporated," or the abbreviations "Corp." or "Inc.," unless
 2025 the person or business for which the name is registered is
 2026 incorporated or has obtained a certificate of authority to
 2027 transact business in this state pursuant to part I of chapter
 2028 607 or chapter 617.

CS/HB 685

2014

2029

Section 75. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 979 Homelessness
SPONSOR(S): Peters
TIED BILLS: IDEN./SIM. BILLS: SB 1090

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Duncan	West
2) Appropriations Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The Office of Homelessness (Office) within the Department of Children and Families (DCF) is responsible for coordinating resources and programs that serve the homeless across all levels of government and with private providers. The Office also manages targeted state grants to support the implementation of local homeless service continuum of care (CoC) plans.

The Office, with the concurrence of the Homelessness Council, is authorized to accept and administer moneys appropriated to it to provide "Challenge Grants" annually to lead agencies for homeless assistance CoCs designated by the Office. The Department of Economic Opportunity (DEO) is required to secure the necessary expertise to provide training and technical assistance to local government and state agency staffs, community-based organizations, and to persons forming community-based organizations for the purpose of developing new housing or rehabilitating existing housing.

The bill modifies the training and technical assistance program under the Affordable Housing Planning and Community Assistance Act (Act), to provide that an acceptable use of the Act is to meet the needs of the homeless. The bill amends the Act to provide that training and technical assistance is available for designated lead agencies of homeless assistance CoCs to provide or secure housing and other services for the homeless and directs DEO to contract with a nonprofit entity to provide such training and technical assistance. The bill modifies qualifications and eligible activities for "Challenge Grants" administered by the Office.

The bill amends local housing distributions that come from the State Housing Initiatives Program (SHIP) to direct the Florida Housing Finance Corporation to distribute four percent of the total amount distributed each fiscal year from the Local Government Housing Trust Fund to DCF and DEO. Of the four percent distribution, 95 percent will be distributed to DCF to provide operating expenses and other support to the designated lead agency in each CoC. The remaining five percent will be distributed to DEO to fund a nonprofit entity that will provide training and technical assistance to lead agencies.

See FISCAL COMMENTS.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

State Office on Homelessness and the Council on Homelessness

In 2001, the Legislature established the State Office on Homelessness (Office) and the Council on Homelessness (Council) within the Department of Children and Families (DCF).¹ The Office's duties are based on the policies established by the Council and funding availability and include coordinating state, local, and private agencies and providers to produce a program and plan to meet the needs of persons who are experiencing homelessness. The Office also collects and disseminates data and public information, monitors and provides technical assistance to local coalitions, develops policy and legislative proposals, serves as an advocate for issues related to homelessness, and prepares an annual report and recommendations to the Legislature and Governor.²

The Council, which is required to develop policy and advise the Office, consists of 17 members representing state agencies, local governments, homeless advocacy organizations, and private entities. Council members are appointed for two-year terms and the Council is required to meet at least four times a year.³

Local Coalitions for the Homeless/Local Homeless Assistance Continuums of Care

A local CoC is a framework for a comprehensive and seamless array of emergency, transitional and permanent housing, and services to address the various needs of the homeless and those at risk of homelessness.⁴ The purpose of a CoC is to help communities or regions envision, plan, and implement comprehensive and long-term solutions in a community or region.⁵

DCF interacts with the state's 28 CoCs through the Office, which serves as the state's central point of contact on homelessness. The Office has recognized and designated local entities to serve as lead agencies for local planning efforts to create homeless assistance CoC systems. The Office has made these designations in consultation with the local homeless coalitions and the Florida offices of the U.S. Department of Housing and Urban Development (HUD).

The CoC planning effort is an ongoing process that addresses all subpopulations of the homeless. Participation of all interested individuals and organizations is encouraged, including those who are or have been homeless. Faith-based organizations are encouraged to participate, along with state and regional offices that administer mainstream program resources such as Medicaid, food stamps, employment assistance, welfare assistance, and mental health services.⁶

The development of a local CoC plan is a prerequisite to applying for federal housing grants through HUD. The plan also makes a community eligible to compete for the state's "Challenge Grant" and Homeless Housing Assistance Grant.⁷

¹ Section 10, ch. 2001-98, L.O.F., codified at s. 420.622, F.S.

² See s. 420.622(3) and (9), F.S.

³ Section 420.622(2), F.S.

⁴ Section 420.624(1), F.S.

⁵ Section 420.624(2), F.S.

⁶ Florida Department of Children and Families, Lead Agencies, available at: <http://www.myflfamilies.com/service-programs/homelessness/lead-agencies>) last accessed on February 8, 2014.

⁷ *Id.*

Challenge Grant

The Office, with the concurrence of the Council, is authorized to accept and administer moneys appropriated to it to provide "Challenge Grants" annually to designated lead agencies for local homeless assistance CoCs. A lead agency may be a local homeless coalition, municipal or county government, public agency, or private, not-for-profit corporation. The Office may award grants in an amount of up to \$500,000 per lead agency and eight percent of the grant award may be used for administrative expenses.⁸ To qualify for the grant, a lead agency must develop and implement a local homeless assistance CoC plan for its designated catchment area.⁹ Preference must be given to lead agencies that:¹⁰

- have demonstrated the ability of their CoC to provide quality of services to homeless persons and the ability to leverage federal homeless-assistance funding under the Stewart B. McKinney Act and private funding for services provided to homeless persons; and
- are located in catchment areas with the greatest need for housing and services to the homeless, relative to the population of the catchment area.

Homeless Housing Assistance Grant

The Office, with the concurrence of the Council, is authorized to accept and administer moneys appropriated to it to provide homeless housing assistance grants annually to lead agencies for local homeless assistance CoCs. The grants may not exceed \$750,000 per project and an applicant may spend a maximum of five percent of its funding on administrative costs. The grant funds must be used to acquire, construct, or rehabilitate transitional or permanent housing units for homeless persons. The funds may be appropriated or donated from any public or private source.¹¹

2013 Annual Report - Council on Homelessness¹²

In its 2013 Annual Report, the Council on Homelessness issued the following recommendations:

- The state should appropriate resources to the Florida Housing Finance Corporation to produce housing for households with extremely low income, homeless households, and persons with special needs.
- The state should continue recurring funding for local homeless coalitions and lead agencies sufficient to ensure capacity to secure federal resources targeted to reduce homelessness.
- The state should provide a flexible source of financial aid to local homeless coalitions and lead agencies to fund priority services and housing for the homeless.
- Prioritize a state pilot program to conduct a cost benefit analysis of providing affordable housing linked with support services for high utilizers of crisis services.

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC) operates as a public corporation within the Department of Economic Opportunity (DEO) and is the state's affordable housing finance agency.¹³ The FHFC works to increase the supply of safe, affordable housing for households with very low to moderate incomes by stimulating the investment of private capital and encouraging public and private sector housing partnerships. The FHFC administers federal and state resources to finance the

⁸ Section 420.622(4), F.S.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Section 420.602(5), F.S.

¹² Department of Children and Families, Florida's Council on Homelessness, 2013 Report, June 2013, available at <http://www.dcf.state.fl.us/programs/homelessness/docs/2013CouncilReport.pdf>.

¹³ The Florida Housing Finance Corporation is a separate budget entity and is not subject to the control, supervision, or direction of the Department of Economic Opportunity. See s. 420.504, F.S.

development and preservation of affordable homeowner and rental housing and assists homebuyers with financing and Down Payment Assistance.¹⁴

Affordable Housing – Training and Technical Assistance¹⁵

Training and Technical Assistance Program

The Legislature established the Training and Technical Assistance Program (Program) to provide community-based organizations and state and local government staff with the necessary training and technical assistance to meet the needs of very low- and low-income persons for standard affordable housing.¹⁶

The training component must be designed to build the housing development capacity of community-based organizations and local governments as a permanent resource for the benefit of communities in the state. Training activities may include workshops, seminars, and programs developed in conjunction with state universities and community colleges.¹⁷

The technical assistance component must be designed to assist applicants for state-administered programs in developing applications and in expediting project implementation. Technical assistance activities for the staffs of community-based organizations and local governments who are directly involved in the production of affordable housing may include workshops for program applicants, onsite visits, and guidance in achieving project completion.¹⁸

DEO is required to secure the necessary expertise to provide training and technical assistance to local government and state agency staffs, community-based organizations, and to persons forming community-based organizations for the purpose of developing new housing or rehabilitating existing housing. Such housing must be affordable for moderate income-, low- and very low-income persons.¹⁹ To meet these requirements, DEO is authorized to:

- enter into contacts with the federal government or with other state agencies, local governments, or with any other person, association, or corporation, or entity;
- seek and accept funding from any public or private source; and
- adopt and enforce rules consistent with the Program.

Affordable Housing Catalyst Program

The FHFC is required to operate the Affordable Housing Catalyst Program (Catalyst Program) for the purpose of securing the expertise necessary to provide specialized technical support to local governments and community-based organizations to implement affordable housing programs such as the State Housing Initiatives Program (SHIP).²⁰ Providing affordable housing training and technical assistance must be the primary mission of the non-profit tax exempt entity selected by the FHFC. The entity must have the ability to provide training and technical assistance statewide and a proven track record of successfully providing training and technical assistance under the Catalyst Program. The technical support must, at a minimum, include training relating to the following key elements:²¹

- formulation of local and regional housing partnerships as a means of bringing together resources to provide affordable housing;

¹⁴ See ss. 420.501-420.55, F.S., relating to the Florida Housing Finance Corporation.

¹⁵ Sections 420.601, F.S. – 420.609, F.S., are known as the “Affordable Housing Planning and Community Assistance Act.”

¹⁶ Section 420.606(2), F.S.

¹⁷ Section 420.606(3)(a), F.S.

¹⁸ Section 420.606(3)(b), F.S.

¹⁹ Section 420.606(3), F.S.

²⁰ Section 420.531, F.S.

²¹ Section 420.531 (1)-(4), F.S.

- implementation of regulatory reforms to reduce the risk and cost of developing affordable housing;
- implementation of affordable housing programs included in local government comprehensive plans; and
- compliance with requirements of federally funded housing programs.

In 2004,²² the Legislature transferred the Catalyst Program from the Department of Community Affairs²³ to the FHFC. According to the FHFC, in October 2004, the FHFC Board approved a three-year contract with the Florida Housing Coalition as the provider under the Catalyst Program. In subsequent years (2007, 2010, and 2013), the FHFC Board issued solicitations for new Catalyst Program contracts. In each of those three years, the Florida Housing Coalition was the only respondent and was awarded the contract each time.²⁴

The State Housing Initiatives Partnership (SHIP) Program/Distribution of Documentary Stamp Taxes

The SHIP Program was created for the purpose of providing funds to local governments as an incentive for the creation of partnerships to produce and preserve affordable housing, further the element of the local comprehensive plan specific to affordable housing, and increase housing-related employment.²⁵ The SHIP Program provides state funds to local governments to produce and preserve affordable housing for very low-, low-, and moderate-income families.

SHIP funds can be used for a variety of purposes that include paying for emergency repairs, new construction, housing rehabilitation, down payment and closing cost assistance, impact fees, construction and gap financing, property acquisition for affordable housing, matching funds for federal housing grants and programs, and homeownership counseling. This program is funded through documentary stamp tax revenues deposited in the Local Government Housing Trust Fund. Program funds are distributed to Florida counties and 52 Community Development Block Grant entitlement cities. Counties and eligible municipalities must meet a number of requirements in order to receive funding.²⁶

The documentary stamp tax is imposed on documents that transfer interest in Florida real property²⁷ and current law provides for the distribution of documentary stamp taxes.²⁸ Documents subject to the tax include deeds; bonds; notes and written obligations to pay money; and mortgages, liens, and other evidences of indebtedness.²⁹ The taxes are primarily used to fund varied land and water conservation, preservation, and maintenance, as well as transportation programs.³⁰

Effect of Proposed Changes

Training and Technical Assistance Program

The bill adds provisions to provide designated lead agencies of homeless CoCs with training and technical assistance to meet the needs of the homeless as a purpose of the Program.

²² Section 3, ch. 2004-243, L.O.F.

²³ The Department of Community Affairs was abolished by the Legislature during the 2011 legislative session and most of its programs and functions were incorporated into the newly created Department of Economic Opportunity. See ch. 2011-142, L.O.F.

²⁴ Florida Housing Finance Corporation, Email to House Economic Development & Tourism Subcommittee staff – March 7, 2014. Email on file.

²⁵ Section 420.9072, F.S.

²⁶ Section 420.9072(2)(a), F.S.

²⁷ Chapter 201, F.S.

²⁸ Section 201.15, F.S.

²⁹ Florida Department of Revenue, *Documentary Stamp Tax*, May, 2012, available at

<http://dor.myflorida.com/dor/forms/current/gt800014.pdf>.

³⁰ Section 201.15, F.S.

DEO is directed to provide training and technical assistance to designated lead agencies of homeless assistance CoCs, which receive operating or other support from the local government housing trust fund through DCF to provide or secure housing, programs, and other services for homeless persons. Such training and technical assistance must be provided by a nonprofit entity that meets the requirements for providing training and technical assistance under the Catalyst Program.

Challenge Grant

The bill modifies the requirements for Challenge Grants, as follows:

- Local homeless coalitions, municipal or county government, or other public agencies, or private not-for-profit corporations are authorized to act as a lead agency.
- DCF must establish varying levels of grant awards up to \$500,000 per lead agency. The award levels must be based upon the total population within the CoC catchment area and reflect the differing degrees of homelessness in the catchment planning areas.
- DCF, in consultation with the Council, must specify a grant award level in the notice of the solicitation of grant applications.
- The CoC plan must implement a coordinated assessment or central intake system to screen, assess, and refer persons seeking assistance to the appropriate service provider.

The lead agency is required to:

- document the commitment of local government and private organizations to provide matching funds in an amount to the requested amount of the grant; and
- submit a final report to DCF documenting the outcomes achieved by the grant in enabling homeless persons to return to permanent housing.

The lead agency is authorized to:

- allocate the grant to programs, services, or housing providers that implement the local homeless assistance CoC plan; and
- provide subgrants to a local agency to implement programs or services or provide housing identified for funding in the lead agency's application to DCF.

SHIP – Local Government Housing Trust Fund

The bill directs the FHFC to distribute four percent of the total amount distributed each fiscal year from the Local Government Housing Trust Fund to DCF and DEO in the following manner:

- DCF must receive 95 percent of the four percent to provide operating and other support to the designated lead agency in each CoC for use in the designated catchment area; and
- DEO must receive five percent for training and technical assistance to lead agencies.

B. SECTION DIRECTORY:

- Section 1: Amends s. 420.606 (1)–(3), F.S., relating to the training and technical assistance program under the Affordable Housing Planning and Community Assistance Act, to include the provision of training and technical assistance to designated lead agencies of homeless assistance continuums of care.
- Section 2: Amends s. 420.622(4), F.S., relating to the State Office on Homelessness; and the Council on Homelessness, to modify the requirements of the “Challenge Grants.”
- Section 3: Amends s. 420.9073, F.S., relating to local housing distributions, directing the FHFC to distribute four percent of the total amount distributed each fiscal year from the Local Government Housing Trust Fund to DCF and DEO.

Section 4: Provides that the bill is effective July 1, 2014.

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:

There is no direct impact to state or local government revenues. However, the bill does require funds to be distributed each fiscal year from the Local Government Housing Trust Fund.

Based on information provided by the FHFC, beginning in FY 1992-1993, DCF received \$900,000 from the FHFC via the Local Government Housing Trust Fund. Beginning in FY 2001-2002, DCF's allocation was increased to \$5.9 million. DCF received \$7.9 million in FY 2006-2007, \$5.9 million in FY 2007-2008, and \$5.4 million in FY 2008-2009. No funds from the Local Government Housing Trust Fund have been allocated to DCF since FY 2008-2009.³¹

According to DCF, funds received from the Local Government Housing Trust Fund have been used to fund the Emergency Financial Housing Assistance Program (EHAP) and the Homeless Housing Assistance Grants. EHAP provides a one-time rental assistance payment of up to \$400 to prevent families from being evicted and becoming homeless. The Homeless Housing Assistance Grants are competitive grants of up to \$750,000, which are made available to local homeless assistance CoC to construct or rehabilitate transitional or permanent housing for homeless persons.³²

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

³¹ Florida Housing Finance Corporation, Email to House Economic Development & Tourism Subcommittee, March 10, 2014. Email on file.

³² Florida Department of Children and Families, Email to House Economic Development & Tourism Subcommittee staff, March 13, 2014. Email on file.

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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

HB 979

2014

1 A bill to be entitled
2 An act relating to homelessness; amending s. 420.606,
3 F.S.; revising legislative findings; requiring the
4 Department of Economic Opportunity to provide training
5 and technical assistance to certain designated lead
6 agencies of homeless assistance continuums of care;
7 requiring that the provision of such training and
8 assistance be delegated to certain nonprofit entities;
9 conforming provisions to changes made by the act;
10 amending s. 420.622, F.S.; requiring the department to
11 establish award levels for "Challenge Grants";
12 specifying criteria to determine award levels;
13 requiring the department, after consultation with the
14 Council on Homelessness, to specify a grant award
15 level in the notice of solicitation of grant
16 applications; revising qualifications for the grant;
17 specifying authorized uses of grant funds; requiring a
18 lead agency that receives a grant to submit a report
19 to the department; amending s. 420.9073, F.S.;
20 requiring the Florida Housing Finance Corporation to
21 distribute to the department and the Department of
22 Children and Families certain funds from the Local
23 Government Housing Trust Fund for the purpose of
24 providing support, training, and technical assistance
25 to designated lead agencies of continuums of care;
26 providing an effective date.

Page 1 of 7

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

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

Section 1. Subsections (1) through (3) of section 420.606, Florida Statutes, are amended to read:

420.606 Training and technical assistance program.—

(1) LEGISLATIVE FINDINGS.—In addition to the legislative findings set forth in s. 420.6015, the Legislature finds and declares that:

(a) Housing in economically declining or distressed areas is frequently substandard and is often unaffordable or unavailable to homeless persons, very-low-income persons, and low-income persons;

(b) Community-based organizations often have limited experience in development of quality housing for homeless persons, very-low-income persons, and low-income persons in economically declining or distressed areas; ~~and~~

(c) The staffs and board members of community-based organizations need additional training in housing development as well as technical support to assist them in gaining the experience they need to better serve their communities; and.

(d) The staffs of state agencies and local governments, whether directly involved in the production of affordable or available housing or acting in a supportive role, can better serve the goals of state and local governments if their expertise in housing development is expanded.

53 (2) PURPOSE.—The purpose of this section is to provide
 54 community-based organizations, ~~and~~ staff of state and local
 55 governments, and designated lead agencies of homeless assistance
 56 continuums of care with the necessary training and technical
 57 assistance to meet the needs of homeless persons, very-low-
 58 income persons, low-income persons, and moderate-income persons
 59 for standard, affordable housing.

60 (3) TRAINING AND TECHNICAL ASSISTANCE PROGRAM.—The
 61 Department of Economic Opportunity shall be responsible for
 62 securing the necessary expertise to provide training and
 63 technical assistance to:

64 (a) Staff of local governments, to staff of state
 65 agencies, as appropriate, ~~and~~ to community-based organizations,
 66 and to persons forming such organizations, which are formed for
 67 the purpose of developing new housing and rehabilitating
 68 existing housing that ~~which~~ is affordable for very-low-income
 69 persons, low-income persons, and moderate-income persons.

70 1.~~(a)~~ The training component of the program shall be
 71 designed to build the housing development capacity of community-
 72 based organizations and local governments as a permanent
 73 resource for the benefit of communities in this state.

74 a.1. ~~The scope of training must ~~shall~~ include, but need~~
 75 not be limited to, real estate development skills related to
 76 affordable housing, including the construction process and
 77 property management and disposition, the development of public-
 78 private partnerships to reduce housing costs, model housing

79 projects, and management and board responsibilities of
 80 community-based organizations.

81 ~~b.2.~~ Training activities may include, but are not limited
 82 to, materials for self-instruction, workshops, seminars,
 83 internships, coursework, and special programs developed in
 84 conjunction with state universities and community colleges.

85 ~~2.(b)~~ The technical assistance component of the program
 86 shall be designed to assist applicants for state-administered
 87 programs in developing applications and in expediting project
 88 implementation. Technical assistance activities for the staffs
 89 of community-based organizations and local governments who are
 90 directly involved in the production of affordable housing may
 91 include, but are not limited to, workshops for program
 92 applicants, onsite visits, guidance in achieving project
 93 completion, and a newsletter to community-based organizations
 94 and local governments.

95 (b) Designated lead agencies of homeless assistance
 96 continuums of care which receive operating or other support
 97 under s. 420.9073(7) from the Department of Children and
 98 Families to provide or secure housing, programs, and other
 99 services for homeless persons. Such training and technical
 100 assistance must be provided by a nonprofit entity that meets the
 101 requirements for providing training and technical assistance
 102 under s. 420.531.

103 Section 2. Subsection (4) of section 420.622, Florida
 104 Statutes, is amended to read:

105 420.622 State Office on Homelessness; Council on
 106 Homelessness.-

107 (4) ~~Not less than 120 days after the effective date of~~
 108 ~~this act,~~ The State Office on Homelessness, with the concurrence
 109 of the Council on Homelessness, may accept and administer moneys
 110 appropriated to it to provide annual "Challenge Grants" ~~annually~~
 111 to lead agencies of for homeless assistance continuums of care
 112 designated by the State Office on Homelessness pursuant to s.
 113 420.624. A lead agency may be a local homeless coalition,
 114 municipal or county government, or other public agency or
 115 private, not for profit corporation. The department shall
 116 establish varying levels of grant awards ~~Such grants may be up~~
 117 ~~to \$500,000 per lead agency. Award levels shall be based upon~~
 118 the total population within the continuum of care catchment area
 119 and reflect the differing degrees of homelessness in the
 120 catchment planning areas. The department, in consultation with
 121 the Council on Homelessness, shall specify a grant award level
 122 in the notice of the solicitation of grant applications.

123 (a) To qualify for the grant, a lead agency must develop
 124 and implement a local homeless assistance continuum of care plan
 125 for its designated catchment area. The continuum of care plan
 126 must implement a coordinated assessment or central intake system
 127 to screen, assess, and refer persons seeking assistance to the
 128 appropriate service provider. The lead agency shall also
 129 document the commitment of local government and private
 130 organizations to provide matching funds in an amount equal to

131 the grant requested.

132 (b) Preference must be given to those lead agencies that
 133 have demonstrated the ability of their continuum of care to
 134 provide quality services to homeless persons and the ability to
 135 leverage federal homeless-assistance funding under the Stewart
 136 B. McKinney Act and private funding for the provision of
 137 services to homeless persons.

138 (c) Preference must be given to lead agencies in catchment
 139 areas with the greatest need for the provision of housing and
 140 services to the homeless, relative to the population of the
 141 catchment area.

142 (d) The grant may be used to fund any of the housing,
 143 program, or service needs included in the local homeless
 144 assistance continuum of care plan. The lead agency may allocate
 145 the grant to programs, services, or housing providers that
 146 implement the local homeless assistance continuum care plan. The
 147 lead agency may provide subgrants to a local agency to implement
 148 programs or services or provide housing identified for funding
 149 in the lead agency's application to the department. A lead
 150 agency may spend a maximum of 8 percent of its funding on
 151 administrative costs.

152 (e) The lead agency shall submit a final report to the
 153 department documenting the outcomes achieved by the grant in
 154 enabling persons who are homeless to return to permanent housing
 155 thereby ending such person's episode of homelessness.

156 Section 3. Present subsection (7) of section 420.9073,

157 Florida Statutes, is redesignated as subsection (8), and a new
 158 subsection (7) is added to that section, to read:

159 420.9073 Local housing distributions.—

160 (7) Notwithstanding subsections (1)-(4), the corporation
 161 shall first distribute 4 percent of the total amount to be
 162 distributed each fiscal year from the Local Government Housing
 163 Trust Fund to the Department of Children and Families and the
 164 Department of Economic Opportunity as follows:

165 (a) The Department of Children and Families shall receive
 166 95 percent of such amount to provide operating and other support
 167 to the designated lead agency in each continuum of care for the
 168 benefit of the designated catchment area as described in s.
 169 420.624.

170 (b) The Department of Economic Opportunity shall receive 5
 171 percent of such amount to provide training and technical
 172 assistance to lead agencies receiving operating and other
 173 support under paragraph (a) in accordance with s. 420.606(3).
 174 Training and technical assistance funded by this distribution
 175 shall be provided by a nonprofit entity that meets the
 176 requirements for providing training and technical assistance
 177 under s. 420.531.

178 Section 4. This act shall take effect July 1, 2014.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Economic Development &
 2 Tourism Subcommittee

3 Representative Peters offered the following:

Amendment (with title amendment)

6 Remove lines 156-177 and insert:

7 Section 3. Funding authorized pursuant to this act shall be
 8 subject to an appropriation by the Legislature.

9
 10
 11
 12 -----
 13 **T I T L E A M E N D M E N T**

14 Remove lines 19-25 and insert:

15 to the department; making funding subject to an appropriation;
 16

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1129 Special Districts
SPONSOR(S): Caldwell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1518

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Collins <i>RC</i>	West <i>RW</i>
2) Local & Federal Affairs Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Chapter 298, F.S., contains provisions governing the creation and operation of Water Control Districts (WCDs). These special districts are authorized to construct, complete, operate, maintain, repair, and replace any and all works and improvement necessary to execute a water control plan as defined in s. 298.005, F.S. The primary funding source for WCD activities is special assessments, which must be imposed on the property so that the assessment of a particular parcel represents a fair, proportional part of the total cost and maintenance of the improvement. Special assessments are limited to the property benefited, and are not taxes within the meaning of the general constitutional requirement that taxation be imposed at a uniform rate. WCDs may also issue bonds, not to exceed 90 percent of the total amount of special assessments levied.

Chapter 190, F.S., contains provisions governing the creation and operation of Community Development Districts (CDDs). These special districts are an alternative method available for use by public and private sectors to manage and finance basic services for community developments. Initial financing for a CDD is typically secured through the issuance of tax-free bonds, with the corresponding imposition of ad valorem taxes, special assessments, or service charges. Consequently, the burden of paying for the infrastructure is imposed on those buying land, housing, and other structures in the district, not on the other taxpayers of the county or municipality in which the district is located.

The bill amends s. 189.412, F.S., to require the Department of Economic Opportunity (DEO) to collect and maintain the charters of each special district in the state. The charters must be made available to the public on DEO's website.

The bill designates ss. 190.001 through 190.049, F.S., as part I of ch. 190, F.S., and creates ss. 190.10 through 190.13, designated as part II of ch. 190, F.S., which allows for the conversion of WCDs to CDDs. The bill allows the governing board of a WCD to pass a resolution authorizing a referendum on expanding the special powers the WCD may exercise. Following approval of the referendum, the WCD is required to submit a local bill to the Legislature that codifies the special powers approved by the referendum and reestablishing the WCD as a CDD in its charter.

See FISCAL COMMENTS.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Water Control Districts

Chapter 298, F.S., contains provisions governing the creation and operation of WCDs. Some of these provisions are briefly described below.

Creation of Water Control Districts

Section 298.01, F.S., restricts the creation of new WCDs to special acts of the Legislature (independent WCDs) and under the provisions of s.125.01, F.S. (dependent WCDs). Districts created by circuit court decree prior to July 1, 1980, are authorized to operate under the authority provided by ch. 298, F.S. There are 83 active WCDs in the state.¹

Board of Supervisors

Upon the formation of a WCD, landowners are required to elect a three-member board of supervisors. Supervisors serve three-year rotating terms, with one supervisor elected each year at a required annual meeting.² To qualify as a supervisor, a person must own property in the district and be a resident of the county in which the district is located, unless a district's special act provides otherwise.

The members of the board are reimbursed for their travel expenses pursuant to s. 112.061, F.S., but receive no payment for their service unless the landowners decide to provide compensation, which may not exceed \$50 per day for the time actually engaged in work for the district and in attending sessions of the board.

Pursuant to s. 298.22, F.S., the board of supervisors has full power and authority to construct, complete, operate, maintain, repair, and replace all works and improvements necessary to execute the district's water control plan.

Water Control Plans

A "water control plan" is any plan of reclamation, water management plan, or plan of improvement developed and implemented by a WCD.³ The approval and implementation process for water control plans has been removed from the purview of the circuit courts.

Before adopting a water control plan or plan amendment, the board of supervisors must adopt a resolution to consider the issue. The board must publish notice of a public hearing once a week for three consecutive weeks in a newspaper of general circulation. Individual notices are mailed to

¹ DEO maintains a list of all special districts, including WCD's at <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/> (last accessed on March 15, 2014)

² Section 298.11(2), F.S., provides that every acre of assessable land within a district represents one share, or vote, i.e., "one acre, one vote." Each landowner within a district is entitled to one vote per acre of assessable land that he or she owns. Landowners owning less than one accessible acre are entitled to one vote. Landowners owning more than one accessible acre are entitled to one additional vote for any fraction of an acre greater than 1/2 acre, when all of the landowner's acreage is aggregated for purposes of voting. The section allows proxy voting by landowners.

³ Section 298.225, F.S.

landowners, the jurisdictional water management district, the county commission, and any municipality in which the WCD is located.

At the public hearing on the proposed plan or plan amendment, the board of supervisors must consider any objections and then determines whether or not to move forward with the plan. In the event the board decides to proceed, it must direct the district engineer to prepare a written report complete with maps and surveys. The report must include a full and complete water control plan for draining and reclaiming the lands described in the petition. Further, the report must contain an estimate of the costs and benefits of carrying out the water control plan.

A final hearing to consider approval of the engineer's report and the water control plan is noticed by publication, and held at a regularly scheduled board of supervisors' meeting within 60 days after the filing of the report with the district secretary.

Before final adoption of the engineer's report and water control plan or plan amendment under s. 298.301, F.S., the board of supervisors must determine that the estimated costs of construction contemplated in the plan or amendment are less than the benefits determined for the lands.

The board of supervisors must review the water control plan at least every five years following its adoption.

Revenue Sources

The primary funding source for WCD activities is special assessments, which must be imposed on the property so that the assessment of a particular parcel represents a fair, proportional part of the total cost and maintenance of the improvement. Special assessments are limited to the property benefited, and are not taxes within the meaning of the general constitutional requirement that taxation be imposed at a uniform rate.⁴

A board of supervisors is authorized to issue bonds, not to exceed 90 percent of the total amount of special assessments levied.⁵

Section 298.54, F.S., additionally authorizes a maintenance tax to maintain and preserve ditches, drains, or other improvements, and for the purpose of defraying the current expenses of the WCD, including any sum that may be required to pay state and county taxes on any lands that have been purchased. The maintenance tax is apportioned upon the basis of the net assessments of benefits assessed as accruing from original construction.

Powers of Water Control Districts

The supervisors of a WCD created pursuant to ch. 298, F.S., have powers provided in s. 298.22, F.S.⁶ These powers include the authority to construct, complete, operate, maintain, repair, and replace any and all works and improvements necessary to execute the water control plan adopted by that district.⁷ Additionally, this section provides that a WCD:

may build and construct any other works and improvements deemed necessary to preserve and maintain the works in or out of said district; acquire, construct, operate, maintain, use, purchase, sell, lease, convey, or transfer real or personal property, including pumping stations, pumping machinery, motive equipment,

⁴ Section 298.305, F.S.

⁵ Section 289.47(1), F.S.

⁶ Subject to the applicable provisions of chs. 373 and 403, F.S., the "Florida Water Resources Act of 1972" and the "Florida Air and Water Pollution Control Act" respectively.

⁷ Section 298.22, F.S.

electric lines and all appurtenant or auxiliary machines, devices, or equipment.⁸

Limitation on Granting Additional Authority to Water Control Districts

Section 298.76, F.S., provides that there shall be no special law or general law of local application granting additional authority, powers, rights, or privileges to any WCD formed pursuant to ch. 298, F.S. However, special or local legislation may:

- amend an existing special act that provides for the levy of an annual maintenance tax of a district;
- extend the corporate life of a district;
- consolidate adjacent districts; or
- authorize the construction or maintenance of roads for agricultural purposes.

Additionally, s. 298.76, F.S., authorizes special or local legislation that:

- changes the method of voting for a board of supervisors for any WCD;
- provides a change in the term of office of the board of supervisors and changes the qualifications of the board of supervisors of any WCD; and
- changes the governing authority or governing board of any WCD.

Finally, s. 298.76, F.S., provides that any special or local law enacted by the Legislature pertaining to a WCD prevails on the district and has the same force and effect as if it had been a part of ch. 298, F.S., at the time the district was created and organized.

Community Development Districts

Chapter 190, F.S., the Uniform Community Development District Act, allows for the establishment of independent special districts with governmental authority to manage and finance basic community development services.⁹

Chapter 190, F.S., contains a number of provisions directing how community development districts (CDDs) are to be organized and administered. Section 190.041, F.S., gives the board of supervisors of a CDD or any aggrieved person recourse to remedies in law and equity as necessary to ensure compliance with Chapter 190. These remedies include injunctive relief to restrain any person violating the provisions of the act or any bylaws, resolutions, regulations, rules, codes, or orders adopted under the act. CDDs have the power of eminent domain relating to water, sewer, district roads, and water management.

Creation of Community Development Districts

CDDs may only be established through the processes spelled out in ch. 190, F.S.¹⁰ For CDDs over 1000 acres the Governor and Cabinet, acting as the Land and Water Adjudicatory Commission, must grant a petition for the establishment of a CDD.¹¹ CDDs of less than 1000 acres may only be established pursuant to an ordinance adopted by the county commission of the county having jurisdiction over the majority of land in the area in which the CDD is to be located.¹² There are 573 active CDDs in the state.¹³

⁸ Section 298.22(3), F.S.

⁹ Section 190.002(1)(a), F.S.

¹⁰ Section 190.004, F.S.

¹¹ Section 190.005(1), F.S.

¹² Section 190.005(2), F.S.

¹³ DEO maintains a list of all special districts, including CDD's at <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/> (last accessed on March 15, 2014)

Powers of Community Development Districts

CDDs are granted the following general powers:¹⁴

- to sue and be sued in the name of the CDD;
- to adopt and use a seal and authorize the use of a facsimile seal;
- to acquire and dispose of real and personal property;
- to make and execute contracts;
- to apply for coverage of its employees under the state retirement system;
- to contract for the services of consultants to perform engineering, planning, legal, or other professional services;
- to borrow money, and apply for and use grants or loans from the federal government, state government or a local government;
- to adopt rules and orders pursuant to the provisions of ch. 120, F.S., prescribing the powers, duties, and functions of the officers of the district;
- to maintain offices;
- to hold, control, acquire, and make use of public easements, dedications to public use, platted reservations for public purposes, or any reservations for those purposes authorized by law;
- to lease to or from any person, firm, corporation, association, or public or private entity;
- to borrow money and issue bonds, certificates, warrants, notes, or other evidence of indebtedness;
- to levy taxes and special assessments;
- to charge fees and other user charges;
- to exercise the right and power of eminent domain within the district;
- to cooperate with, or contract with, other governmental agencies;
- to assess and impose ad valorem taxes on lands within the district; and
- to impose special assessments authorized by ch. 190, F.S., and ch 170, F.S.

CDDs are granted authority to exercise special powers relating to public improvements and public facilities including:¹⁵

- water management and control;
- water supply, sewer and reuse;
- bridges or culverts;
- district roads;
- buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, and related signage;
- investigation and remediation costs associated with environmental contamination cleanup;
- conservation areas, mitigation areas, and wildlife habitat;
- any other project inside or outside the boundaries of a district when a local government issues a development order¹⁶ approving or requiring the construction or funding of a project by the district; and
- any other project, facility, or service required by the development approval, interlocal agreement, zoning condition, or permit issued by a governmental authority with jurisdiction in the district.

When a general-purpose local government grants it the authority, a CDD may also exercise powers related to the following additional systems and facilities:¹⁷

- parks and facilities for indoor and outdoor recreational, cultural, and educational uses;

¹⁴ Section 190.011, F.S.

¹⁵ Section 190.012(1), F.S.

¹⁶ Pursuant to s. 380.06, F.S. or s. 380.061, F.S.

¹⁷ Section 190.012(2), F.S.

- fire prevention and control, including fire stations, water mains and plugs, fire trucks, and other vehicles and equipment;
- school buildings and related structures which may be leased, sold, or donated to the school district;
- security;
- mosquito control; and
- waste collection and disposal.

A CDD may also adopt and enforce appropriate rules following the procedures of ch. 120, F.S., in connection with the provision of services through its systems and facilities.¹⁸ It may also adopt rules necessary to enforce certain deed restrictions related to the use and operation of real property located within or outside of the CDD's boundaries.¹⁹

Revenue Sources

Initial financing is typically secured through the issuance of tax-free bonds, the corresponding imposition of ad valorem taxes, special assessments, or service charges.²⁰ Consequently, the burden of paying for the infrastructure is imposed on those buying land, housing, and other structures in the district rather than the other taxpayers of the county or municipality in which the district is located.

Effect of Proposed Changes

Special District Information Program

The bill amends s. 189.412, F.S. to require DEO to collect and maintain the charter of each special district in the state. The charters must be made available to the public on DEO's website.

Conversion of Water Control Districts

The bill designates ss. 190.001 through 190.049, F.S., as part I of ch. 190, F.S., and creates ss. 190.10 through 190.13, F.S., which are designated as part II of ch. 190, F.S.

Section 190.10, F.S., is created to allow for the conversion to a CDD from a WCD established under ch. 298, F.S., or by special act that incorporates the powers of ch. 298, F.S. The bill allows the governing board of a WCD to initiate a referendum by adoption of a resolution at a regularly scheduled board meeting. The resolution must establish the date of the referendum and specify the special powers that the governing board is requesting authorization to exercise.

If a majority of the governing board is elected on a parcel or acreage basis, the referendum must be conducted by the governing board on a parcel or acreage basis. Such election will be certified and confirmed by an independent forensic auditor.

If a majority of the governing board is popularly elected, the referendum must be conducted by the supervisor of elections by mail ballot of the registered voters residing within the WCD. The cost of the referendum will be paid by the WCD.

Before conducting a referendum, a WCD must provide public notice of the referendum in a newspaper of general circulation in the county in which the WCD is located, or multiple newspapers if the WCD is located in multiple counties. The notice must be published twice, once in the fifth week and once in the second week before the referendum.

¹⁸ Section 190.012(3), F.S.

¹⁹ Section 190.012(4), F.S.

²⁰ As authorized in ss. 190.021 & 190.035, F.S.

The bill creates s. 190.12, F.S., to establish the effect of a referendum. If a majority voted in the affirmative, following certification of the results, the governing board of the WCD may begin exercising the special powers approved by the referendum. If a majority did not vote in the affirmative, the governing board may not exercise the requested special powers, and may not call a subsequent referendum on the question of exercising those special powers for five years after the date of the referendum.

The bill creates s. 190.13, F.S., providing for codification and the conversion of a WCD to a CDD. At the next regular session of the Legislature occurring at least six months after approval of a referendum, the WCD must submit a local bill to the Legislature codifying in the WCD's charter the special powers approved by the referendum and reestablishing the WCD as a CDD. Upon the effective date of such special act of the Legislature, the WCD is converted to a CDD and governed by part II of ch. 190, F.S., and the district's special act.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 189.412, F.S., providing for the collection and maintenance of special district charters by the DEO.

Section 2: Designates ss. 190.001 through 190.049, F.S. as part I of ch. 190, F.S., and creates ss. 190.10 through 190.13, F.S., designated as part II of ch. 190, F.S.

Section 3: Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

WCDs that choose to convert to CDDs may expand their taxing authority through referendum as CDDs have greater taxing authority than WCDs.

2. Expenditures:

WCDs that choose to conduct a referendum may have additional costs associated with the implementation of the referendum.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A WCD that expands its taxing authority may levy additional taxes and fees on citizens within its jurisdiction.

D. FISCAL COMMENTS:

DEO's agency analysis estimated that the changes to the current Special District website that are proposed in this bill will have a cost of between \$150,000 and \$200,000. DEO will also need between \$50,000 and \$100,000 for Other Personal Services employees to help with the collection, verification, and uploading of the Special District charters and charter amendments. Some of this cost will be recurring.

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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1

- Requiring a special district to provide an electronic copy of its charter to the department may reduce the cost associated with the department's implementation of the bill.
- Adding a deadline of December 31, 2014, to the requirement associated with publishing special district information on the department's website would provide the time needed to gather the information from the special districts and develop the proper application for the department's website.

Section 2

- Providing a cross reference in ch. 298, F.S., to the possibility of a CDD being established through conversion by special act may add additional clarity to the statute.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to special districts; amending s.
3 189.412, F.S.; requiring the Department of Economic
4 Opportunity to publish certain information on its
5 website with respect to special districts; creating
6 part II of chapter 190, F.S., relating to conversion
7 of water control districts to community development
8 districts; authorizing the governing board of a water
9 control district to conduct a referendum on the
10 question of whether the district may exercise certain
11 special powers of a community development district;
12 providing referendum requirements and procedures;
13 providing notice requirements; providing for special
14 act, upon referendum approval, to codify special
15 powers in the charter of the water control district
16 and provide for conversion of the district to a
17 community development district; providing an effective
18 date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Subsection (9) is added to section 189.412,
23 Florida Statutes, to read:
24 189.412 Special District Information Program; duties and
25 responsibilities.—The Special District Information Program of
26 the Department of Economic Opportunity is created and has the

27 following special duties:

28 (9) The collection and maintenance of each district's
 29 charter, which shall be made available to the public on the
 30 department's website.

31 Section 2. Chapter 190, Florida Statutes, consisting of
 32 sections 190.001 through 190.049, is designated as part I of
 33 that chapter, and part II, consisting of sections 190.10 through
 34 190.13, is created to read:

35 PART II

36 CONVERSION OF WATER CONTROL DISTRICTS

37 190.10 Special powers; authorization for water control
 38 district to conduct referendum.-

39 (1) The governing board of a water control district
 40 established under chapter 298, or established by special act
 41 that incorporates the powers of chapter 298, is authorized to
 42 conduct a referendum on the question of whether the district may
 43 exercise one or more of the special powers of a community
 44 development district relating to public improvements and
 45 community facilities authorized by s. 190.012. The governing
 46 board of a water control district may initiate a referendum by
 47 adoption of a resolution at a regularly scheduled board meeting
 48 called to determine whether to conduct the referendum. The
 49 resolution must establish the date of the referendum and specify
 50 the special powers that the governing board requests
 51 authorization to exercise.

52 (2) If a majority of the governing board is elected on a

53 parcel or acreage basis, the referendum election shall be
54 conducted by the governing board on a parcel or acreage basis,
55 in which case, the election results shall be certified and
56 confirmed by an independent forensic auditor.

57 (3) If a majority of the governing board is popularly
58 elected, the referendum election shall be conducted by the
59 supervisor of elections pursuant to ss. 101.6101-101.6107 by
60 mail ballot of the registered electors residing in the district.
61 The costs of the election shall be paid by the district
62 conducting the referendum.

63 190.11 Referendum requirements and procedures.-

64 (1) Each referendum question shall be in substantially the
65 following form:

66
67 REFERENDUM AUTHORIZING THE ...(district name)... WATER CONTROL
68 DISTRICT TO EXERCISE CERTAIN SPECIAL POWERS

69
70 Shall the ...(district name)... water control district
71 be authorized to exercise the following special powers
72 within the jurisdiction of the district:

73
74 ...(List special powers to be exercised)....

75
76 Yes.... No....

77
78 (2) Before conducting a referendum, the governing board of

79 the water control district must provide public notice of the
 80 referendum in a newspaper of general circulation in the county
 81 in which the district is located. If the district is located in
 82 more than one county, the notice shall be provided in a
 83 newspaper of general circulation in each county in which the
 84 district is located. The notice shall be published twice, once
 85 in the fifth week and once in the second week before the
 86 referendum election.

87 190.12 Effect of referendum.—If a majority of the acres or
 88 parcels voted or a majority of the electors voting, as
 89 applicable:

90 (1) Approve the referendum question, following
 91 certification of the referendum results, the governing board of
 92 the water control district may begin exercising the special
 93 powers approved by the referendum; or

94 (2) Disapprove the referendum question, the governing
 95 board may not exercise the requested special powers and is
 96 prohibited from calling a subsequent referendum on the question
 97 of exercising those special powers for 5 years after the date of
 98 the referendum.

99 190.13 Codification; conversion to community development
 100 district.—At the next regular session of the Legislature
 101 occurring at least 6 months after approval of a referendum
 102 authorizing a water control district to exercise special powers
 103 of a community development district, the district shall submit a
 104 local bill to the Legislature codifying in the district's

HB 1129

2014

105 | charter the special powers approved by the referendum and
106 | reestablishing the district as a community development district.
107 | Upon the effective date of such special act of the Legislature,
108 | the water control district is converted to a community
109 | development district and shall be governed by this part and the
110 | district's special act.

111 | Section 3. This act shall take effect July 1, 2014.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Economic Development &
2 Tourism Subcommittee
3 Representative Caldwell offered the following:

Amendment

Remove lines 28-30 and insert:

7 (9) The collection and maintenance of the special act,
8 rule, ordinance, resolution, or other document that provides for
9 the creation of each special district. The department shall make
10 such documents available to the public on its website by
11 December 31, 2014. The department may coordinate with the
12 Department of State to implement this subsection.



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Economic Development &
 2 Tourism Subcommittee
 3 Representative Caldwell offered the following:

Amendment (with title amendment)

Between lines 110 and 111, insert:

7 Section 3. Section 298.76, Florida Statutes, is amended to
8 read:

9 298.76 Special or local legislation; effect.—

10 (1) This chapter is amended to provide that, pursuant to
 11 the authority granted the Legislature in s. 11(a)(21), Art. III
 12 of the State Constitution, there shall be no special law or
 13 general law of local application granting additional authority,
 14 powers, rights, or privileges to any water control district
 15 formed pursuant to this chapter. However, this subsection shall
 16 not prohibit special or local legislation which:



Amendment No. 2

17 (a) Amends an existing special act which provides for the
18 levy of an annual maintenance tax of a district;

19 (b) Extends the corporate life of a district;

20 (c) Consolidates adjacent districts; or

21 (d) Authorizes the construction or maintenance of roads
22 for agricultural purposes as outlined in this chapter.

23 (e) Allows for the conversion of a district to a community
24 development district, as authorized in part II, ch. 190.

25
26
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35

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

Remove line 17 and insert:
community development district; amending s. 298.76, F.S.;
providing for the conversion of a water control district to
a community development district by special or local
legislation; providing an effective



Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Economic Development &
2 Tourism Subcommittee
3 Representative Caldwell offered the following:

Amendment

Remove lines 39-41 and insert:

7 (1) The popularly elected governing board of a water
8 control district established under chapter 298, or established
9 by special act that incorporates the powers of chapter 298, that
10 has been granted additional authority, powers, rights, or
11 privileges through special law or general law of local
12 application, is authorized to

