Government Operations Appropriations Subcommittee

Meeting Packet

March 31, 2015
9:00 a.m. – 11:00 a.m.
Morris Hall

Steve Crisafulli
Speaker

Jeanette Nuñez
Chair

The Florida House of Representatives

Appropriations Committee

Government Operations Appropriations Subcommittee

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March 31, 2015

AGENDA
9:00 a.m. – 11:00 a.m.
Morris Hall

I. **Call to Order/Roll Call**

II. **Consideration of Bills**

HB 53 Florida Catastrophic Storm Risk Management Center by Rep. Broxson

CS/HB 165 Property and Casualty Insurance by Insurance & Banking Subcommittee, Rep. Santiago

CS/HB 275 Offer or Sale of Securities by Insurance & Banking Subcommittee, Rep. Santiago

HB 887 Unclaimed Property by Rep. Trumbull

CS/HB 1083 Employment Opportunities for Persons with Disabilities by Government Operations Subcommittee, Rep. Rooney

HB 7085 Financial Literacy Program for Individuals with Developmental Disabilities by Regulatory Affairs Committee, Rep. Diaz, J.

HB 7109 Florida Public Service Commission by Energy & Utilities Subcommittee, Rep. La Rosa

III. **Closing Remarks/Adjourn**

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 53 Florida Catastrophic Storm Risk Management Center
SPONSOR(S): Broxson
TIED BILLS: **IDEN./SIM. BILLS:** SB 130

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 1 N	Cooper	Cooper
2) Government Operations Appropriations Subcommittee		Keith AK	Topp BDT
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Florida Hurricane Catastrophe Fund (FHCF or Fund) is a tax-exempt trust fund created in 1993 as a form of reinsurance for residential property insurers. For solvency reasons, property insurers are required by the Office of Insurance Regulation (OIR) to purchase a certain amount of reinsurance. The amount of reinsurance purchased varies from insurer to insurer and is based on an insurer's financial situation and exposure.

The FHCF sells reinsurance to property insurance companies significantly cheaper than reinsurance sold by private reinsurance companies. Each insurance company writing insurance policies covering residential property or any policy covering a residential structure or its contents must participate in the FHCF. The Fund, which is administered by the State Board of Administration, reimburses insurers for a portion of their hurricane losses to residential property above the insurer's retention (deductible).

The Fund does not receive any state funding (from the General Revenue Fund or other state trust funds) and receives its funding from the reinsurance premium it charges insurers and investment income from investing the reinsurance premium received.

The Florida Catastrophic Storm Risk Management Center (Center) was created by the Florida Legislature in 2007. The Center is housed within the Department of Risk Management/Insurance, Real Estate & Legal Studies in the College of Business located at The Florida State University. The Center's primary focus is to support the state's ability to prepare for, respond to, and recover from catastrophic storms.

The bill provides that the State Board of Administration shall annually transfer a portion of the investment income from the Fund to the Center. The amount of funding to be transferred shall be the lesser amount of $1 million, or 35 percent of the fund's investment income minus $10 million, as determined by using the most recent fiscal year-end audited financial statements of the Fund. The bill specifies that any funds transferred must solely be used for and consistent with the center's statutory purpose of supporting the state's ability to prepare for, respond to, and recover from catastrophic storms.

Other than the transfer of a portion of the investment income from the Fund to the Center, the bill has no fiscal impact on state or local governments.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background on the Florida Hurricane Catastrophe Fund

The Florida Hurricane Catastrophe Fund (FHCF or Fund) is a tax-exempt trust fund created in 1993 as a form of reinsurance for residential property insurers.[1] The FHCF is administered by the State Board of Administration and reimburses property insurers for a selected percentage of hurricane losses to residential property above the insurer's retention (deductible).[2] The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.

The FHCF sells reinsurance to property insurance companies significantly cheaper than reinsurance sold by private reinsurance companies. It is estimated that coverage purchased through the FHCF costs insurers one-fourth to one-third what it would cost in the private reinsurance market.[3] There are several reasons for these cost savings:[4]

1. The FHCF operating cost is less than 1% of the annual premium collected, whereas, the operating costs for private reinsurance can range from 10% to 15% of the premium collected.
2. The FHCF does not pay reinsurance brokerage commissions.
3. The FHCF has no underwriting costs.
4. The FHCF is a tax-exempt entity that does not pay federal income taxes or state taxes.
5. The FHCF has the ability to issue tax-exempt debt which results in lower financing costs should it become necessary to finance losses with revenue bonds.
6. The FHCF does not include a factor for profit for reinsurance sold by the FHCF.
7. The FHCF does not include a risk load for reinsurance sold by the FHCF.

Each insurance company writing insurance policies covering residential property or any policy covering a residential structure or its contents must participate in the FHCF[5]. Residential property is defined in s. 627.4025(1), F.S., to include personal lines and commercial lines residential coverage. This coverage includes the following insurance policies: homeowner's, mobile homeowner's, dwelling, tenant's, condominium unit owner's, condominium association, cooperative association, and apartment building.

The State Board of Administration (SBA) invests funds from the FHCF in accordance with s. 215.47, F.S. and the Fund's investment policy statement. The primary objective of the policy statement can be defined by the following goals: liquidity, safety of principal, and competitive return. These goals are intended to enhance the Fund's investment income by investing in securities that are highly liquid, relatively short term, and have a credit quality in accordance with the policy in order to maintain safety of principal.

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[1] s. 215.555, F.S. The FHCF was created after Hurricane Andrew in 1992.

[2] Retention is defined to mean the amount of losses below which an insurer is not entitled to reimbursement from the Fund. A retention is calculated for each insurer based on its proportionate share of Fund premiums.

[3] Annual Report of the Florida Hurricane Catastrophe Fund Fiscal Year 2011-2012, p. 16, available at http://www.sbafla.com/fhcf/Home/FHCFReports/tabid/315/Default.aspx (last viewed February 6, 2015).

[4] Annual Report of the Florida Hurricane Catastrophe Fund Fiscal Year 2011-2012, p. 16, available at http://www.sbafla.com/fhcf/Home/FHCFReports/tabid/315/Default.aspx (last viewed February 6, 2015).

[5] s. 215.555(4)(a), F.S. and s. 215.555(2)(c), F.S.

The Fund's investment income varies by year but has accounted for $467,258,000 in income over the last ten years as shown in the following historical income chart:

Florida Hurricane Catastrophe Fund Investment Income[6]	
Ten Year History of Audited Financial Statements	
Fiscal Year Ending:	**Investment Income:**
June 30, 2005	$108,672,000
June 30, 2006	$103,175,000
June 30, 2007	$36,065,000
June 30, 2008	$46,816,000
June 30, 2009	$7,803,000
June 30, 2010	$54,298,000
June 30, 2011	$29,983,000
June 30, 2012	$26,634,000
June 30, 2013	$34,638,000
June 30, 2014	$19,174,000
Grand Total	**$467,258,000**

The United States Internal Revenue Service has issued a private letter ruling that grants tax exempt status for the Fund[7]. In order to maintain this tax exempt status, the FHCF must devote funding for hurricane mitigation purposes. Beginning in Fiscal Year 1997-1998, the Florida Legislature authorized the appropriation of amounts from the Fund that are no less than $10,000,000 and no more than 35% of the investment income from the prior fiscal year, providing that the actuarial soundness of the Fund is not jeopardized[8]. These appropriations provide local governments, state agencies, public and private educational institutions, and nonprofit organizations funding support for programs intended to improve hurricane mitigation efforts.

Background on The Florida Catastrophic Storm Risk Management Center

The Florida Legislature created the Florida Catastrophic Storm Risk Management Center (Center) in 2007.[9] The Center is housed within the Department of Risk Management/Insurance, Real Estate & Legal Studies in the College of Business located at The Florida State University. The center's primary focus is to support the state's ability to prepare for, respond to, and recover from catastrophic storms. The support the center provides includes:[10]

- Coordinating and disseminating research efforts that are expected to have an immediate impact on policy and practices related to catastrophic storm preparedness.
- Coordinating and disseminating information related to catastrophic storm risk management, including but not limited to research and information that benefits business, consumers and public policy makers.
- Facilitating Florida's preparedness and responsiveness to catastrophic storms and collaborating with other public and private institutions.

[6] Investment income amounts gathered from the Florida Hurricane Catastrophe Fund Audited Financial Statements available at: http://www.sbafla.com/fhcf/Home/AuditedFinancials/tabid/319/Default.aspx (Last accessed February 6, 2015.)

[7] Annual Report of the Florida Hurricane Catastrophe Fund Fiscal Year 2012-2013, pp. 12, 14 available at http://www.sbafla.com/fhcf/Portals/5/Reports/2012_2013_FHCF_AnnualReport.pdf (Last accessed February 9, 2015.)

[8] s. 215.555(7)(c), F.S.

[9] Ch. 2007-90, s.24, L.O.F. (creating s. 1004.647, F.S., effective June 11, 2007).

[10] Information gathered from the Florida Catastrophic Storm Risk Management Center webpage available at: http://www.stormrisk.org/about-the-center (Last accessed February 6, 2015).

- Creating and promoting studies that enhance the educational options available to risk management and insurance students.
- Publishing and disseminating findings primarily related to risk management.
- Organizing and sponsoring conferences, symposiums, and workshops to educate consumers and policymakers.

Effect of Proposed Changes

The bill provides that the State Board of Administration shall annually transfer a portion of the investment income from the Fund to the Center. The amount of funding to be transferred shall be the lesser amount of $1 million, or 35 percent of the funds' investment income minus $10 million, as determined by using the most recent fiscal year-end audited financial statements of the Fund. The bill specifies that any funds transferred must solely be used for and consistent with the center's statutory purpose of supporting the state's ability to prepare for, respond to, and recover from catastrophic storms. In addition, the bill is not intended to limit or supplant any funding otherwise available to the center.

Based on provisions of the bill requiring the transfer of the lesser amount of $1 million, or 35 percent of the FHCF's investment income minus $10 million, the approximate annual average transfer that would have occurred over the previous five years would have been $498,810.

The calculation of this figure is shown in the following table:

Hypothetical Calculation of FHCF Investment Income Amounts to be Transferred to the Center			
		The lessor amount to be transferred:	
Fiscal Year Ending:	**Investment Income:**[11]	**Calculation: 35 percent of Investment Income minus $10,000,000**	**$1,000,000**
June 30, 2010	$54,298,000	$19,004,300 - $10,000,000 = $9,004,300	**$1,000,000**
June 30, 2011	$29,983,000	$10,494,050 - $10,000,000 = **$494,050**	$1,000,000
June 30, 2012	$26,634,000	$9,321,900 - $10,000,000 = **$0**	$1,000,000
June 30, 2013	$34,638,000	$12,123,300 - $10,000,000 = $2,123,300	**$1,000,000**
June 30, 2014	$19,174,000	$6,710,900 - $10,000,000 = **$0**	$1,000,000
Five-Year Total of investment income that would have been transferred to the Center:			$2,494,050
Five-Year Average of investment income that would have been transferred to the Center:			$498,810

B. SECTION DIRECTORY:

Section 1: Amends s. 215.555, F.S., relating to the Florida Hurricane Catastrophe Fund.

Section 2: Provides an effective date of July 1, 2015.

[11] Investment income amounts gathered from the Florida Hurricane Catastrophe Fund Audited Financial Statements available at: http://www.sbafla.com/fhcf/Home/AuditedFinancials/tabid/319/Default.aspx (Last accessed February 6, 2015.)

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:

The Fiscal Year 2014-2015 General Appropriations Act provides $1.5 Million in funding that is transferred from the Consumer Assistance budget entity within the Department of Financial Services to the Florida Catastrophic Storm Risk Management Center (Center) located at The Florida State University for the purpose of meeting the requirements set forth in s. 1004.647, F.S. In addition, the Center is directed through proviso to study the storm worthiness and characteristics for the estimated probable maximum loss of state-owned buildings and facilities that are provided insurance coverage by the State Risk Management Trust Fund.

The bill provides that the State Board of Administration shall annually transfer a portion of the investment income from the Florida Hurricane Catastrophe Fund to the Center. The amount of funding to be transferred shall be the lesser amount of $1 million, or 35 percent of the fund's investment income minus $10 million, as determined by using the most recent fiscal year-end audited financial statements of the Fund. The bill specifies that any funds transferred must solely be used for and consistent with the center's statutory purpose of supporting the state's ability to prepare for, respond to, and recover from catastrophic storms.

Other than the transfer of a portion of the investment income from the Fund to the Center, the bill has no fiscal impact on state or local governments.

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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Florida Catastrophic Storm Risk Management Center; amending s. 215.555, F.S.; requiring the State Board of Administration to annually transfer a portion of the investment income from the Florida Hurricane Catastrophe Fund to the Florida Catastrophic Storm Risk Management Center to support the center's ongoing operations; specifying that the transferred income does not affect funding otherwise available to the center; providing an effective date.

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

Section 1. Paragraphs (d), (e), and (f) of subsection (7) of section 215.555, Florida Statutes, are redesignated as paragraphs (e), (f), and (g), respectively, and a new paragraph (d) is added to that subsection, to read:

215.555 Florida Hurricane Catastrophe Fund.—

(7) ADDITIONAL POWERS AND DUTIES.—

(d) Beginning with the 2015-2016 fiscal year, the State Board of Administration shall annually transfer a portion of the investment income from the Florida Hurricane Catastrophe Fund to the Florida Catastrophic Storm Risk Management Center created by s. 1004.647 to fund the center's ongoing operations. The amount of the transfer for each fiscal year shall be the lesser of $1

million, or 35 percent of the fund's investment income minus $10 million as determined by using the most recent fiscal year-end audited financial statements. The amount transferred must be used solely for the center's statutory purposes as specified in s. 1004.647. This paragraph does not limit or supplant any funding otherwise available to the center.

Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 165 Property and Casualty Insurance
SPONSOR(S): Insurance & Banking Subcommittee; Santiago
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 258

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 1 N, As CS	Lloyd	Cooper
2) Government Operations Appropriations Subcommittee		Keith AK	Topp BDT
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill contains changes for various types of property and casualty insurance. Issues addressed include:

- **Motor Vehicle Insurance Rating** – currently, the use of a single zip code as a rating territory for motor vehicle insurance rates is deemed unfairly discriminatory and is thus prohibited; subject to certain conditions, the bill allows single zip code rating territories on a "file and use" basis, rather than deeming them unfairly discriminatory in all instances;

- **Nonrenewal Notice for Property Insurance** – presently, personal lines or commercial lines residential property insurers must give policyholders a notice of cancellation, nonrenewal, or termination at least 100 days prior to the effective date of the action, except, for such actions during hurricane season (Jun 1-Nov1), notice must be given by June 1, also insureds who have been covered by the insurer for 5 years must receive 120 days notice; the bill changes and makes uniform the due date for a notice of cancellation, nonrenewal, or termination – all will get at least a 120-day notice, however, with this change, some may receive such notice during hurricane season, instead of by June 1;

- **Delivery of Insurance Policies Electronically** – current law provides that every insurance policy must be mailed or delivered to the insured within 60 days after the insurance takes effect; the bill permits electronic delivery of personal lines policies in lieu of delivery by mail upon the affirmative election of the policyholder;

- **Neutral Evaluation in Sinkhole Claims** – currently, a notice of right to participate in the neutral evaluation program must be issued by the insurer upon receipt of the sinkhole testing report or when a claim denial is issued; the bill requires such notices to be issued only if there is sinkhole coverage under the policy and if the sinkhole claim was submitted timely;

- **Personal Injury Protection (PIP) Insurance** – reimbursements for medical services are currently made consistent with the Medicare fee schedule in effect on March 1 of the year the service is rendered and the schedule in effect on March 1 applies for the remainder of that year; it is unclear what period "remainder of that year" describes; the bill aligns the period in which services were rendered with the year the applicable fee schedule is in effect and states precisely the beginning and end of the year (March 1 through the end of the following February); and

- **Preinsurance Inspection of Private Passenger Motor Vehicles** – under current law, there are exemptions from required preinsurance inspections for "purchased" cars, if certain documents are provided; the bill adds leased vehicles to the exemptions; allows insurers to elect to receive the documents; revises the types of documents that insurers may require; and, limits claim reimbursement and property damage coverage suspension based on the timing of document delivery.

The bill has no fiscal impact on state or local government revenues or expenditures.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Zip Codes and Rating Territories for Motor Vehicle Insurance

Section 627.062, F.S., is Florida's rating law. Among other requirements, it provides that insurance rates cannot be excessive, inadequate, or unfairly discriminatory. Insurer rate filings that comply with the law and are adequately supported by actuarial justification must be accepted by the OIR.

Pursuant to s. 627.0651, F.S., the use of a single zip code as a rating territory for motor vehicle insurance rates is deemed unfairly discriminatory and is thus prohibited. OIR informs that this provision was most likely enacted as an anti-redlining measure, and at that time it was probably considered unlikely that defining a territory consisting of less than two zip codes had a legitimate purpose. However, OIR notes that given the increasing role of "big data" in rating insurance, it may become more common for models including demographic data and insurance data to be used in the determination of rating territory boundaries in the future.[1]

The bill amends s. 627.0651, F.S., deeming motor vehicle rating territories that are based on a single zip code to be unfairly discriminatory, unless submitted to OIR for review prior to use and the proposed rating territory has sufficient actual or expected loss and loss adjustment expense experience to be actuarially measurable and credible.

Nonrenewal Notice for Property Insurance

Under current law,[2] personal lines or commercial lines residential property insurers must give policyholders a notice of cancellation, nonrenewal, or termination at least 100 days prior to the effective date of the cancellation, nonrenewal, or termination.[3] Further, for any cancellation, nonrenewal, or termination that takes effect between June 1st and November 30th, an insurer must provide at least 100 days written notice, or notice by June 1st, whichever is earlier. The June 1st notice deadline ensures policyholders whose property insurance policies will be cancelled, nonrenewed, or terminated during hurricane season (June 1st – November 30th) will receive notice of the cancellation, nonrenewal, or termination by the start of hurricane season.

The bill repeals the required notice by June 1st for policies being cancelled, nonrenewed, or terminated between June 1st and November 30th. The bill also lengthens the notice time period under current law from 100 days to 120 days. Under the bill, policyholders with a policy renewal date from June 1st to November 30th will receive 120 days' notice before the policy's cancellation, nonrenewal, or termination date. This change means some property insurance policyholders will receive notice of cancellation, nonrenewal, or termination during hurricane season (June 1st–November 30th). Under the bill, policies renewing September 28th–November 30th that are being nonrenewed, cancelled or terminated by the insurer will receive notice of nonrenewal, cancellation or termination during hurricane season.

Policyholders with property insured by the same insurer for five years or more receive 120 days' notice of cancellation, nonrenewal, or termination and the bill does not change the notice period for these policyholders.

[1] Correspondence from OIR dated February 7, 2014, on file with the Regulatory Affairs Committee.
[2] Section 627.4133(2), F.S.
[3] A 45-day notice of cancellation or nonrenewal, rather than the 100-day or 120-day notice is allowed if the OIR determines early cancellation of some or all of an insurer's property insurance policies is necessary to protect the best interest of the public or the policyholders. (s. 627.4133(2)(b)5., F.S.)

Delivery of Insurance Policies Electronically

Section 627.421, F.S., requires every insurance policy[4] to be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect. Insurance policies are typically only delivered when the policy is issued and are not delivered each time the policy is renewed. Regarding electronic transmission, the law also contains specific delivery parameters for insurance covering commercial risks. Also, subject to certain conditions, property and casualty insurers are allowed to post policies on the insurer's website instead of mailing, delivering or electronically transmitting the policies to insureds.

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.[5] Insurance is specifically included in E-SIGN.[6] E-SIGN provides contracts formed using electronic signatures on electronic records will not be denied legal effect only because they are electronic. However, E-SIGN requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under E-SIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications.

Florida's Uniform Electronic Transaction Act (UETA)[7] is similar to the federal E-SIGN law. UETA specifically applies to insurance and provides a requirement in statute that information that must be delivered in writing to another person can be satisfied by delivering the information electronically if the parties have agreed to conduct a transaction by electronic means.

Current law allows all insurance policies to be electronically transmitted to the policyholder[8] and provides electronic delivery parameters for insurance covering commercial risks.

For personal lines insurance,[9] the bill allows insurers to deliver insurance policies by electronic means in lieu of delivery by mail if the policyholder affirmatively elects electronic delivery. The bill does not likely implicate E-SIGN or UETA because it requires the affirmative consent of the policyholder before the electronic delivery of insurance policy documents.

Neutral Evaluation in Sinkhole Claims

Since 1981, insurers offering property coverage in Florida have been required by law to provide coverage for property damage from sinkholes.[10] Beginning in 2007, catastrophic ground cover collapse became the mandatory coverage under basic policies and sinkhole loss became a mandatory offering that may be elected by the insured.[11] A sinkhole is defined as a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater.[12] Catastrophic ground cover collapse is also defined in the law[13] and it describes a more severe circumstance than sinkhole loss, primarily in that it renders the structure uninhabitable.

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[4] Section 627.402, F.S., defines policy to include endorsements, riders, and clauses. Reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance policies do not have to be mailed or delivered. (see s. 627.401, F.S.)

[5] Section 101, Electronic Signatures in Global and National Commerce Act, Pub. L. no. 106-229, 114 Stat 464 (2000). Many of the provisions of E-SIGN took effective October 1, 2000.

[6] *Id.*

[7] Section 668.50, F.S.

[8] Ch. 2013-190, L.O.F.

[9] Personal lines insurance is property and casualty insurance sold to individuals and families for non-commercial purposes. S. 626.015(15), F.S.

[10] Ch. 1981-280, L.O.F.

[11] Section 30, Ch. 2007-1, L.O.F.

[12] Section 627.706(2)(h), F.S.

[13] Catastrophic ground cover collapse is an abrupt ground cover collapse resulting in a depression that is clearly visible to the eye, with structural damage to building that is covered by the insurance, including the foundation, and the building is condemned and ordered vacated. S. 627.706(2)(a), F.S.

Sinkholes occur in certain parts of Florida due to the unique geological structure of the land. Sinkholes are geographic features formed by movement of rock or sediment into voids created by the dissolution of water-soluble rock. Sinkhole formation may be aggravated and accelerated by urbanization and suburbanization, by sub-surface water usage and changes in weather patterns.

Insurers must offer policyholders, for an appropriate additional premium, sinkhole loss coverage covering any structure, including personal property contents.[14] At a minimum, sinkhole loss coverage includes repairing the covered building, repairing the foundation, and stabilizing the underlying land. All property insurers can restrict catastrophic ground cover collapse and sinkhole loss coverage to the property's principal building.[15] Furthermore, insurers can require an inspection of the property before providing sinkhole loss coverage.

Pursuant to s. 627.707, F.S., upon receipt of a claim for sinkhole loss to a covered building, the insurer must inspect the property to determine if sinkhole activity has caused structural damage. If such damage exists and the insurer is unable to identify a valid cause of the damage or identifies damage consistent with sinkhole loss, the insurer is required to conduct testing to determine the cause. However, the testing is only required if the policy covers sinkhole loss. The testing must meet statutory standards and a report must be issued that contains required information. The Department of Financial Services (Department) states that testing under s. 627.707 is necessary to proceed with the neutral evaluation program operated by the Department, but that the Department does not determine when the testing must be performed.[16]

Under s. 627.7074(3), F.S., following the report or a denial of the claim, the insurer must inform the policyholder in writing of their right to participate in the neutral evaluation program and must include an informational brochure prepared by the Department.[17] In the context of that subsection, it is not readily apparent whether the term "denial of the claim" means all denials, denials involving the existence of a sinkhole, or something else. So, ineffectual or unwarranted notices may be going out to policyholders.

The neutral evaluation program is mandatory once requested by either party.[18] The Department has received requests for neutral evaluation from individuals in cases where the insurer alleges that there is no sinkhole coverage or that the sinkhole claim is untimely filed. Since the testing, and the appurtenant report, is unlikely to be done until contests over coverage and timeliness are resolved, the insureds may receive notice of the right to neutral evaluation at a point in the process that neutral evaluation cannot be done.

The bill requires an insurer to notify a policyholder of the right to participate in neutral evaluation of a sinkhole claim only if there is sinkhole coverage on the damaged property and if the sinkhole claim was submitted within the statute of limitations period,[19] which is two years after the policyholder knew or reasonably should have known about the sinkhole loss.

Personal Injury Protection Insurance

House Bill 119, the personal injury protection insurance (PIP) reform bill enacted in 2012,[20] amended s. 627.736(5)(a)2., F.S., by establishing the date on which changes to the Medicare fee schedule or payment limitation are effective. The legislation provides in part that:

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[14] Section 627.706, F.S.

[15] By law, sinkhole loss coverage by Citizens Property Insurance Corporation (Citizens) does not cover sinkhole losses to appurtenant structures, driveways, sidewalks, decks, or patios. Citizens Property Insurance Corporation is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company.

[16] Department of Financial Services, Division of Consumer Services, letter dated February 13, 2015, on file with the Insurance and Banking Subcommittee.

[17] Section 627.7074(3)(d), F.S., and Rule 69J-8.006, F.A.C. The Department's sinkhole pamphlet is posted on the web at http://www.myfloridacfo.com/division/Consumers/Mediation/documents/SettlingSinkholeClaim.pdf (last accessed: February 12, 2015).

[18] Section 627.7074(4), F.S., and Rule 69J-8.007(3), F.A.C.

[19] Section 627.706(5), F.S.

[20] Ch. 2012-151, L.O.F.

> [T]he applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered... *and the applicable fee schedule or payment limitation applies throughout the remainder of that year* [italics added for emphasis]...."

The above-emphasized language created uncertainty as to whether the Medicare fee schedule in place on March 1st applied through the calendar year (through December 31st) or whether it applied through the end of February of the following year. On November 6, 2012, the OIR issued Informational Memorandum OIR-12-06M,[21] stating that the plain language of the section requires the fee schedule in place on March 1st to apply throughout the following 365 days, or until the following March 1st.

The bill amends s. 627.736(5)(a)2., F.S., to define a "service year" for rendered services, supplies, or care. For this purpose, a "service year" is from March 1 through the end of the following February. The period for the applicable Medicare fee schedule is then applied to this same period. This should provide certainty that reimbursement for any medical services, supplies, or care under PIP will be reimbursed based on the applicable Medicare fee schedule in effect on the preceding March 1.

Preinsurance Inspection of Private Passenger Motor Vehicles

Section 627.744, F.S., requires preinsurance inspections of private passenger motor vehicles, but lists various exemptions, including for new, unused motor vehicles "purchased" from a licensed motor vehicle dealer or leasing company when the insurer is provided with the bill of sale, buyer's order, or copy of the title and certain other documentation. Despite the exemptions, an insurer may require a preinsurance inspection of any motor vehicle as a condition of issuance of physical damage coverage. Physical damage coverage may not be suspended during the policy period due to the applicant's failure to provide the required documents. However, claim payments are conditioned upon and are not payable until the required documents are received by the insurer. Applicants for insurance may be required to pay the cost of the preinsurance inspection, not to exceed five dollars.

The bill adds an exemption from preinsurance inspection for new, unused "leased" motor vehicles to the existing exemption for "purchased" vehicles, if the vehicle is leased from a licensed motor vehicle dealer or leasing company. If the insurer waives its right to a preinsurance inspection, it also provides an insurer the discretion to require persons who purchase or lease a new, unused motor vehicle to submit certain documents. Currently, such documents are required to be provided whenever the exemption is utilized. Persons who do not submit the required documentation, upon request, at the time the policy is issued are required to submit the document before any physical damage loss is payable under the policy. The bill amends the list of documents that an insurer may require to include the vehicle registration in addition to the existing option of providing the vehicle title along with the window sticker and deletes from the list of documents the detailed dealer's invoice. Failure of the insurer to request the documentation is added to the prohibition on suspending coverage due to the insured's failure to provide documentation. Finally, the condition on claim payment pending receipt of documentation is revised to apply only if the carrier exercised its option to require the documentation.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.0651, F.S., relating to making and use of rates for motor vehicle insurance.

Section 2: Amends s. 627.3518, F.S., relating to Citizens Property Insurance Corporation policyholder eligibility clearinghouse program to correct a cross reference.

Section 3: Amends s. 627.4133, F.S., relating to notice of cancellation, nonrenewal, or renewal premium.

Section 4: Amends s. 627.421, F.S., relating to delivery of policy.

[21] Available at http://www.floir.com/Sections/PandC/ProductReview/PIPInfo.aspx (last accessed: January 23, 2015).

Section 5: Amends s. 627.7074, F.S., relating to alternative procedure for resolution of disputed sinkhole insurance claims.

Section 6: Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims.

Section 7: Amends s. 627.744, F.S., relating to required preinsurance inspection of private passenger motor vehicles.

Section 8: Provides an effective date of July 1, 2015.

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:

Insurers emailing policies would likely save costs associated with printing and mailing insurance policies to policyholders. The exact amount of savings cannot be calculated as it is unknown how many insurers would opt to deliver their policies by email and how many policyholders would choose to obtain their policies by email rather than by mail. However, any savings realized by insurers should be passed through to policyholders.

Consolidating the notice of nonrenewal, cancellation, or termination into a uniform 120 day notice requirement would likely benefit insurers. Administering multiple conditions that set the notice period (currently the earlier of 100 days or June 1st, if the date falls between June 1 and November 30, or 120 days if the policyholder has been with the insurer for five or more years) would no longer be required. The extent of this benefit has not been calculated. However, any savings realized by insurers should be passed through to policyholders.

Limiting the issuance of notices of right to sinkhole neutral evaluators would likely benefit insurers by only requiring the notice in fewer instances. The extent of this benefit has not been calculated. However, any savings realized by insurers should be passed through to policyholders.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 17, 2015, the Insurance & Banking Subcommittee considered a proposed committee substitute (PCS) and one amendment to the PCS, and reported the bill favorably as a committee substitute. The committee substitute reflects multiple changes, as follows:

- Removed a provision from the bill that allowed the use of a straight average of hurricane loss projection models in a rate filing.
- Removed a provision from the bill that allowed the use of hurricane loss projection models for 180 days following the Florida Commission on Hurricane Loss Projection Methodology finding that a subsequent model is accurate or reliable.
- Restructured a provision to reflect that a policyholder has 90 days following the effectuation of the policy to comply with underwriting criteria of the insurer.
- Clarified a provision by moving the proposed conditions precedent to the issuance of the required notice of right to participate in the neutral evaluation program for sinkhole loss claims to the beginning of the sentence.
- Revised a provision to provide that the applicable Medicare schedule in effect on March 1 would apply to PIP medical services, supplies, and care rendered from March 1 through the end of February of the following year and to provide a definition of "service year" to facilitate reimbursements.

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

A bill to be entitled

An act relating to property and casualty insurance; amending s. 627.0651, F.S.; revising provisions for making and use of rates for motor vehicle insurance; amending s. 627.3518, F.S.; conforming a cross-reference; amending s. 627.4133, F.S.; increasing the amount of prior notice required with respect to the nonrenewal, cancellation, or termination of certain insurance policies; deleting certain provisions that require extended periods of prior notice with respect to the nonrenewal, cancellation, or termination of certain insurance policies; prohibiting the cancellation of certain policies that have been in effect for a specified amount of time except under certain circumstances; amending s. 627.421, F.S.; authorizing a policyholder of personal lines insurance to affirmatively elect delivery of policy documents by electronic means; amending s. 627.7074, F.S.; revising notification requirements for participation in the neutral evaluation program; amending s. 627.736, F.S.; revising the period for applicability of certain Medicare fee schedules or payment limitations; amending s. 627.744, F.S.; revising preinsurance inspection requirements for private passenger motor vehicles; providing an effective date.

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

Section 1. Subsection (8) of section 627.0651, Florida Statutes, is amended to read:

627.0651 Making and use of rates for motor vehicle insurance.—

(8) Rates are not unfairly discriminatory if averaged broadly among members of a group; nor are rates unfairly discriminatory even though they are lower than rates for nonmembers of the group. However, such rates are unfairly discriminatory if they are not actuarially measurable and credible and sufficiently related to actual or expected loss and expense experience of the group so as to ensure ~~assure~~ that nonmembers of the group are not unfairly discriminated against. Use of a single United States Postal Service zip code as a rating territory shall be deemed unfairly discriminatory unless filed pursuant to paragraph (1)(a) and such territory incorporates sufficient actual or expected loss and loss adjustment expense experience so as to be actuarially measurable and credible.

Section 2. Subsection (9) of section 627.3518, Florida Statutes, is amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.

(9) The 45-day notice of nonrenewal requirement set forth in s. 627.4133(2)(b)5. ~~627.4133(2)(b)5.b.~~ applies when a policy is nonrenewed by the corporation because the risk has received an offer of coverage pursuant to this section which renders the risk ineligible for coverage by the corporation.

Section 3. Paragraph (b) of subsection (2) of section 627.4133, Florida Statutes, is amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(2) With respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner, mobile home owner, farmowner, condominium association, condominium unit owner, apartment building, or other policy covering a residential structure or its contents:

(b) The insurer shall give the first-named insured written notice of nonrenewal, cancellation, or termination at least 120 ~~100~~ days before the effective date of the nonrenewal, cancellation, or termination. ~~However, the insurer shall give at least 100 days' written notice, or written notice by June 1, whichever is earlier, for any nonrenewal, cancellation, or termination that would be effective between June 1 and November 30.~~ The notice must include the reason for the nonrenewal, cancellation, or termination, except that:

~~1. The insurer shall give the first-named insured written notice of nonrenewal, cancellation, or termination at least 120~~

~~days before the effective date of the nonrenewal, cancellation, or termination for a first-named insured whose residential structure has been insured by that insurer or an affiliated insurer for at least 5 years before the date of the written notice.~~

1.~~2.~~ If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor must be given. As used in this subparagraph, the term "nonpayment of premium" means failure of the named insured to discharge when due her or his obligations for paying the premium on a policy or an installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under a premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail. If the contract is void, any premium received by the insurer from a third party must be

refunded to that party in full.

2.~~3.~~ If cancellation or termination occurs during the first 90 days the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor must be given unless there has been a material misstatement or misrepresentation or a failure to comply with the underwriting requirements established by the insurer.

3. After the policy has been in effect for 90 days, the policy may not be canceled by the insurer unless there has been a material misstatement; a nonpayment of premium; a failure to comply, within 90 days after the date of effectuation of coverage, with underwriting requirements established by the insurer before the date of effectuation of coverage; or a substantial change in the risk covered by the policy or unless the cancellation is for all insureds under such policies for a given class of insureds. This subparagraph does not apply to individually rated risks that have a policy term of less than 90 days.

4. After a policy or contract has been in effect for more than 90 days, the insurer may not cancel or terminate the policy or contract based on credit information available in public records.

~~5. The requirement for providing written notice by June 1 of any nonrenewal that would be effective between June 1 and~~

~~November 30 does not apply to the following situations, but the insurer remains subject to the requirement to provide such notice at least 100 days before the effective date of nonrenewal:~~

~~a. A policy that is nonrenewed due to a revision in the coverage for sinkhole losses and catastrophic ground cover collapse pursuant to s. 627.706.~~

5.~~b.~~ A policy that is nonrenewed by Citizens Property Insurance Corporation, pursuant to s. 627.351(6), for a policy that has been assumed by an authorized insurer offering replacement coverage to the policyholder is exempt from the notice requirements of paragraph (a) and this paragraph. In such cases, the corporation must give the named insured written notice of nonrenewal at least 45 days before the effective date of the nonrenewal.

~~After the policy has been in effect for 90 days, the policy may not be canceled by the insurer unless there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days after the date of effectuation of coverage, a substantial change in the risk covered by the policy, or the cancellation is for all insureds under such policies for a given class of insureds. This paragraph does not apply to individually rated risks that have a policy term of less than 90 days.~~

6. Notwithstanding any other provision of law, an insurer

may cancel or nonrenew a property insurance policy after at least 45 days' notice if the office finds that the early cancellation of some or all of the insurer's policies is necessary to protect the best interests of the public or policyholders and the office approves the insurer's plan for early cancellation or nonrenewal of some or all of its policies. The office may base such finding upon the financial condition of the insurer, lack of adequate reinsurance coverage for hurricane risk, or other relevant factors. The office may condition its finding on the consent of the insurer to be placed under administrative supervision pursuant to s. 624.81 or to the appointment of a receiver under chapter 631.

7. A policy covering both a home and a motor vehicle may be nonrenewed for any reason applicable to the property or motor vehicle insurance after providing 90 days' notice.

Section 4. Subsection (1) of section 627.421, Florida Statutes, is amended to read:

627.421 Delivery of policy.—

(1) Subject to the insurer's requirement as to payment of premium, every policy shall be mailed, delivered, or electronically transmitted to the insured or to the person entitled thereto not later than 60 days after the effectuation of coverage. Notwithstanding any other provision of law, an insurer may allow a policyholder of personal lines insurance to affirmatively elect delivery of the policy documents, including, but not limited to, policies, endorsements, notices, or

documents, by electronic means in lieu of delivery by mail. Electronic transmission of a policy for commercial risks, including, but not limited to, workers' compensation and employers' liability, commercial automobile liability, commercial automobile physical damage, commercial lines residential property, commercial nonresidential property, farmowners insurance, and the types of commercial lines risks set forth in s. 627.062(3)(d), constitutes ~~shall constitute~~ delivery to the insured or to the person entitled to delivery~~,~~ unless the insured or the person entitled to delivery communicates to the insurer in writing or electronically that he or she does not agree to delivery by electronic means. Electronic transmission shall include a notice to the insured or to the person entitled to delivery of a policy of his or her right to receive the policy via United States mail rather than via electronic transmission. A paper copy of the policy shall be provided to the insured or to the person entitled to delivery at his or her request.

Section 5. Subsection (3) of section 627.7074, Florida Statutes, is amended to read:

627.7074 Alternative procedure for resolution of disputed sinkhole insurance claims.—

(3) If there is coverage available under the policy and the claim was submitted within the timeframe provided in s. 627.706(5), following the receipt of the report provided under s. 627.7073 or the denial of a claim for a sinkhole loss, the

insurer shall notify the policyholder of his or her right to participate in the neutral evaluation program under this section. Neutral evaluation supersedes the alternative dispute resolution process under s. 627.7015 but does not invalidate the appraisal clause of the insurance policy. The insurer shall provide to the policyholder the consumer information pamphlet prepared by the department pursuant to subsection (1) electronically or by United States mail.

Section 6. Paragraph (a) of subsection (5) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

(a) A physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge the insurer and injured party only a reasonable amount pursuant to this section for the services and supplies rendered, and the insurer providing such coverage may pay for such charges directly to such person or institution lawfully rendering such treatment if the insured receiving such treatment or his or her guardian has countersigned the properly completed invoice, bill, or claim form approved by the office upon which such charges are to be paid for as having actually been rendered, to the best knowledge of the insured or his or her guardian. However, such a charge may not exceed the amount

the person or institution customarily charges for like services or supplies. In determining whether a charge for a particular service, treatment, or otherwise is reasonable, consideration may be given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute, reimbursement levels in the community and various federal and state medical fee schedules applicable to motor vehicle and other insurance coverages, and other information relevant to the reasonableness of the reimbursement for the service, treatment, or supply.

1. The insurer may limit reimbursement to 80 percent of the following schedule of maximum charges:

a. For emergency transport and treatment by providers licensed under chapter 401, 200 percent of Medicare.

b. For emergency services and care provided by a hospital licensed under chapter 395, 75 percent of the hospital's usual and customary charges.

c. For emergency services and care as defined by s. 395.002 provided in a facility licensed under chapter 395 rendered by a physician or dentist, and related hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community.

d. For hospital inpatient services, other than emergency services and care, 200 percent of the Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services.

e. For hospital outpatient services, other than emergency services and care, 200 percent of the Medicare Part A Ambulatory Payment Classification for the specific hospital providing the outpatient services.

f. For all other medical services, supplies, and care, 200 percent of the allowable amount under:

(I) The participating physicians fee schedule of Medicare Part B, except as provided in sub-sub-subparagraphs (II) and (III).

(II) Medicare Part B, in the case of services, supplies, and care provided by ambulatory surgical centers and clinical laboratories.

(III) The Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B, in the case of durable medical equipment.

However, if such services, supplies, or care is not reimbursable under Medicare Part B, as provided in this sub-subparagraph, the insurer may limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under s. 440.13 and rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.

2. For purposes of subparagraph 1., the applicable fee

schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the service year in which the services, supplies, or care is rendered and for the area in which such services, supplies, or care is rendered, and the applicable fee schedule or payment limitation applies to services, supplies, or care rendered during ~~throughout the remainder of~~ that service year, notwithstanding any subsequent change made to the fee schedule or payment limitation, except that it may not be less than the allowable amount under the applicable schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B. For purposes of this subparagraph, the term "service year" means the period from March 1 through the end of February of the following year.

3. Subparagraph 1. does not allow the insurer to apply any limitation on the number of treatments or other utilization limits that apply under Medicare or workers' compensation. An insurer that applies the allowable payment limitations of subparagraph 1. must reimburse a provider who lawfully provided care or treatment under the scope of his or her license, regardless of whether such provider is entitled to reimbursement under Medicare due to restrictions or limitations on the types or discipline of health care providers who may be reimbursed for particular procedures or procedure codes. However, subparagraph 1. does not prohibit an insurer from using the Medicare coding policies and payment methodologies of the federal Centers for

Medicare and Medicaid Services, including applicable modifiers, to determine the appropriate amount of reimbursement for medical services, supplies, or care if the coding policy or payment methodology does not constitute a utilization limit.

4. If an insurer limits payment as authorized by subparagraph 1., the person providing such services, supplies, or care may not bill or attempt to collect from the insured any amount in excess of such limits, except for amounts that are not covered by the insured's personal injury protection coverage due to the coinsurance amount or maximum policy limits.

5. ~~Effective July 1, 2012,~~ An insurer may limit payment as authorized by this paragraph only if the insurance policy includes a notice at the time of issuance or renewal that the insurer may limit payment pursuant to the schedule of charges specified in this paragraph. A policy form approved by the office satisfies this requirement. If a provider submits a charge for an amount less than the amount allowed under subparagraph 1., the insurer may pay the amount of the charge submitted.

Section 7. Paragraphs (a) and (b) of subsection (2) of section 627.744, Florida Statutes, are amended to read:

627.744 Required preinsurance inspection of private passenger motor vehicles.—

(2) This section does not apply:

(a) To a policy for a policyholder who has been insured for 2 years or longer, without interruption, under a private

passenger motor vehicle policy that ~~which~~ provides physical damage coverage for any vehicle~~,~~ if the agent of the insurer verifies the previous coverage.

(b) To a new, unused motor vehicle purchased or leased from a licensed motor vehicle dealer or leasing company.~~, if~~ The insurer may require ~~is provided with~~:

1. A bill of sale, ~~or~~ buyer's order, or lease agreement that ~~which~~ contains a full description of the motor vehicle~~, including all options and accessories~~; or

2. A copy of the title or registration that ~~which~~ establishes transfer of ownership from the dealer or leasing company to the customer and a copy of the window sticker ~~or the dealer invoice showing the itemized options and equipment and the total retail price of the vehicle~~.

For the purposes of this paragraph, the physical damage coverage on the motor vehicle may not be suspended during the term of the policy due to the applicant's failure to provide or the insurer's option not to require the ~~required~~ documents. However, if the insurer requires a document under this paragraph at the time the policy is issued, payment of a claim may be ~~is~~ conditioned upon the receipt by the insurer of the required documents, and no physical damage loss occurring after the effective date of the coverage may be ~~is~~ payable until the documents are provided to the insurer.

Section 8. This act shall take effect July 1, 2015.

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	_____

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative Santiago offered the following:

Amendment

Remove line 46 and insert:

and credible. The amendment made by this act to section 627.0651(8), Florida Statutes, expires July 1, 2018, and the text of that section shall revert to that in existence on June 30, 2015, except that any amendments to such text enacted other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text that expire pursuant to this section.

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		

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative Santiago offered the following:

Amendment (with title amendment)

Between lines 363 and 364, insert:

Section 8. Subsection (20) is added to section 626.854, Florida Statutes, to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(20) Any contract between a contractor and an insured in violation of this section is void.

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

Amendment No. 2

Remove line 25 and insert:

vehicles; amending s. 626.854, F.S.; providing that certain contracts are void; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 275 Offer or Sale of Securities
SPONSOR(S): Insurance & Banking Subcommittee; Santiago
TIED BILLS: **IDEN./SIM. BILLS:** SB 914

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Bauer	Cooper
2) Government Operations Appropriations Subcommittee		Keith	Topp BDT
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Crowdfunding describes an evolving method of raising funds for a variety of innovative projects, artistic endeavors, and non-profit political and charitable causes, typically through small individual contributions from a large number of people through the Internet. Most crowdfunding projects are *donation-based* or *rewards-based*, where the donor does not receive anything or may receive a free token of gratitude for funding the project. Under this model, the donation is akin to a gift, not a security. In recent years, there has been a growing interest in the use of *equity crowdfunding* to provide start-up or seed capital for small businesses and other ventures that are promoted on the basis of a potential economic return to the donors. Equity crowdfunding implicates state and federal securities laws, which require registration of securities and market participants by the U.S. Securities & Exchange Commission and state securities regulators, unless an applicable exemption applies. These laws also contain disclosure requirements and civil remedies for investors.

In 2012, Congress enacted the Jumpstart Our Business Startups (JOBS) Act in an effort to ease regulatory burdens faced by startups and small businesses in connection with capital formation, especially for relatively small-dollar amounts. Title III of the JOBS Act created a new registration exemption from federal securities law to permit the issuance, offer, and sale of up to $1 million of crowdfunding securities per year, subject to specified requirements for issuers and intermediaries, and is not limited to accredited investors. However, national equity crowdfunding under Title III is not permitted until the SEC implements Title III by final rule, which has not yet been completed. In response to the delay, a number of states have recently enacted intrastate crowdfunding exemptions, which combine some elements of Title III of JOBS with §3(a)(11) of the 1933 Act, which exempts issuers from federal registration if the issuer, purchaser, and securities offering are all contained within the same state.

The bill creates an intrastate crowdfunding exemption within the Florida Securities and Investor Protection Act, ch. 517, F.S., which is administered by the Florida Office of Financial Regulation (OFR). The issuer, intermediary, investor, and transaction must all be in Florida in accordance with the federal intrastate exemption. Like Title III of JOBS, the bill exempts an issuer and the offering for a 12-month offering up to $1 million of securities, requires registration for the intermediary, and mirrors the federal law's investment limitations for investors. The bill requires issuer notice filings and intermediary registration with OFR, initial and periodic disclosures to investors, an escrow agreement for investor funds, a right of rescission, and financial reporting to investors and to the OFR. The bill also gives authority to the Financial Services Commission to adopt rules relating to notice-filing and registration forms, books and records, and investor protections.

The bill has an indeterminate positive fiscal impact on state revenues, and a potential negative fiscal impact on state expenditures from the Regulatory Trust Fund within the OFR. The OFR indicates that the anticipated number of issuers and intermediaries that may utilize this exemption is unknown at this time.

The bill is effective on October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Crowdfunding – Donation/Rewards vs. Equity Models

Crowdfunding describes an evolving method of raising funds for a variety of projects, typically through small individual contributions from a large number of people through the Internet. These projects often involve innovative product ideas or artistic endeavors like movies or music, as well as political, charitable, and non-profit causes. Currently, the most popular forms of crowdfunding are *donation-based*, where the donor does not receive anything in exchange, or *rewards-based*, where the donor may receive a free item (such as a t-shirt or movie ticket) as a token of gratitude for funding the project. These projects are increasingly facilitated online through platforms such as Kickstarter, Indiegogo, and Fundable. Under this model, the donation is akin to a gift, not a security.

In recent years, there has been a growing interest in the use of *equity crowdfunding* to provide start-up or seed capital for small businesses and other ventures that are promoted on the basis of a potential economic return to the donors. As discussed in further detail below, equity crowdfunding has been particularly attractive for small or emerging businesses since the 2008-2009 recession and the resulting constriction in the credit markets, although borrowing conditions for small businesses have been gradually improving.

Unlike donation- or rewards-based crowdfunding, *equity crowdfunding* triggers the application of the federal and state securities laws. Both federal and Florida securities law broadly define "security" to include, among other things: notes; stocks; bonds; debentures; certificates of deposit; evidence of indebtedness; and investment contracts.[1] In 1946, the U.S. Supreme Court interpreted "investment contract" to include the purchase of a real estate interest in a Lake County, Florida citrus grove that included an optional management package. The Court articulated the following test (sometimes referred to as the *Howey* test) that is widely used at the state levels to determine the existence of a security:

1. An investment of money due to
2. an expectation of profits arising from
3. a common enterprise
4. which depends solely on the efforts of a promoter or third party.[2]

Securities Regulation

Federal Securities Regulation

The federal Securities Act of 1933 ("'33 Act"), often described as a "truth in securities" act, requires every offer or sale of securities using the means and instrumentalities of interstate commerce to be registered with the U.S. Securities & Exchange Commission (SEC), unless an exemption (such as the intrastate exemption, discussed below) is available.[3] The '33 Act's emphasis on disclosure of important financial information through the registration of securities enables investors to make informed judgments about whether to purchase a company's securities. While the SEC requires that the information provided be accurate, it does not guarantee it. Investors who purchase securities and suffer losses have important recovery rights if they can prove that there was incomplete or inaccurate disclosure of important information.[4] Once a company is registered under the '33 Act or becomes publicly traded, it becomes subject to periodic reporting requirements under the federal Securities

[1] 15 U.S.C. § 77b(a)(1) and s. 517.021(21), F.S.
[2] *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).
[3] 15 U.S.C. §§ 77a-77aa.
[4] U.S. SECURITIES & EXCHANGE COMMISSION, *The Laws That Govern the Securities Industry*, http://www.sec.gov/about/laws.shtml (last visited February 10, 2015).

Exchange Act of 1934, which also requires registration of market participants like broker-dealers and exchanges.[5]

State Securities Regulation

In addition to federal securities laws, "Blue Sky Laws" are state laws that protect the investing public through registration requirements for both broker-dealers and securities offerings, merit review of offerings, and various investor remedies for fraudulent sales practices and activities.[6] In Florida, the Securities and Investor Protection Act, ch. 517, F.S. ("the Act"), regulates securities issued, offered, and sold in the state of Florida. The Florida Office of Financial Regulation (the OFR)'s Division of Securities regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms in accordance with the Act and Chapter 69W, Florida Administrative Code.[7] As of December 2014, the OFR oversees:

- 2,789 dealers
- 5,182 investment advisers
- 10,373 branch offices
- 296,271 stockbrokers.[8]

The Act prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR or specifically exempted.[9] Additionally, all securities in Florida must be registered with the OFR unless they meet one of the exemptions in ss. 517.051 or 517.061, F.S., or are federally covered (i.e., under the exclusive jurisdiction of the SEC).[10] Failure to meet the precise requirements of these exemptions, can subject the issuer to civil, criminal, and administrative liability for the sale of unregistered securities, which is a third-degree felony in Florida.[11] Civil remedies under the act include rescission and damages.[12] In addition, issuers must comply with disclosure requirements in state and federal laws that provide potential investors with full and fair disclosures regarding the security.

In 2009, the Legislature amended the Act to expand the jurisdiction of the statewide grand jury and the Office of Statewide Prosecution to consider and prosecute violations of the Florida Money Laundering Act and the Act. Additionally, the 2009 legislation expanded the investigative and enforcement authority of Office of the Attorney General for commodities, antifraud, and boiler room telephonic sales violations, in coordination with OFR.[13]

Currently, no Florida exemption permits the advertising or solicitation for the offer or sale of unregistered securities to the general public, or for securities sold to the general public to be sold by an unregistered dealer.

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[5] *Id.*

[6] U.S. SECURITIES & EXCHANGE COMMISSION, *Blue Sky Laws*, http://www.sec.gov/answers/bluesky.htm

[7] Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the OFR's agency head for purposes of rulemaking and appoints the OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.

[8] Office of Financial Regulation, *Fast Facts* (2nd ed., Dec. 2014), at http://flofr.com/StaticPages/documents/FastFacts2015.pdf

[9] s. 517.12, F.S.

[10] s. 517.07, F.S. If a security is registered with the SEC, s. 517.082, F.S., requires the broker or issuer to notify OFR that the security is registered with the SEC.

[11] s. 517.302(1), F.S.

[12] s. 517.211(3-5), F.S.

[13] Ch. 2009-242, Laws of Fla; *see* s. 517.191(5), F.S.

Self-Regulatory Organizations

The Financial Industry Regulatory Authority, Inc. (FINRA) is the largest private self-regulatory organization for all securities firms doing business in the United States.[14] FINRA was formed as a result of a 2007 merger between its predecessor, the National Association of Securities Dealers, and certain operational arms of the New York Stock Exchange. In addition to operating the largest securities arbitration forum in the U.S., FINRA operates the Central Registration Depository and the Investment Adviser Registration Depository, which are central databases for registration, reporting, and disclosure information for the securities industry.

Funding Sources for Startups and Small Businesses

According to the U.S. Small Business Administration (SBA), the most common startup sources are owners' savings, family contributions, and external credit (i.e., bank or finance company loans, credit cards, credit lines).[15] A 2012 study by the National Small Business Association found that 43% of small business owners surveyed could not obtain the financing they needed.[16] The SBA reported that small businesses (meaning an independent business having fewer than 500 employees) make up over 99% of employer firms in the U.S. Below are funding options for small and startup businesses, and trends following the 2008-2009 recession.

Bank Lending

Bank lending data from 2006-2013 shows that small business loans (under $1 million) declined from a lending peak in 2008, with a decline of 18% from 2008-2013.[17] However, small businesses have experienced gradually improving borrowing conditions, although at an uneven and slower pace than those for large firms. The SBA estimated that total small business borrowing amounted to almost $1 trillion in 2013.[18]

Surveys from mid-2013 indicate that the net portion of small businesses having difficulty obtaining credit has declined, and approval rates for small business loans has increased at credit unions and at large banks (i.e., those with $10 billion or more in assets). Many commercial banks reported easing their lending conditions and terms, although not to pre-recession levels. However, bank lending growth has been weaker for small business loans, partly due to regulatory demands such as increased bank capital requirements as well as increased collateral and underwriting requirements for borrowers.[19] According to a 2014 Federal Reserve study, most banks expect a moderate increase in retail small business lending in 2015.[20] The Federal Reserve recently reported that for its Atlanta district (which includes Florida), "while large businesses had easy access to credit, small businesses were experiencing small improvements in their ability to access credit."[21] This reflects the greater risk in lending to smaller businesses, as the latter are more sensitive to economic swings and have fewer collateral.

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[14] About FINRA, http://www.finra.org/AboutFINRA/

[15] SEC Proposed Regulation Crowdfunding, pp. 325-326; Small Business Administration Office of Advocacy, *Small Business Finance: Frequently Asked Questions* (Feb. 2014), at: https://www.sba.gov/category/advocacy-navigation-structure/frequently-asked-questions-about-small-business-finance

[16] NATIONAL SMALL BUSINESS ASSOCIATION, *Small Business Access to Capital Survey* (July 11, 2012), p. 4, http://www.nsba.biz/wp-content/uploads/2012/07/Access-to-Capital-Survey.pdf .

[17] U.S. SECURITIES & EXCHANGE COMMISSION, Proposed Regulation Crowdfunding, pp. 325-326, *citing* Federal Deposit Insurance Corporation, *Statistics on Banking, available at*: http://www2.fdic.gov/SDI/SOB/

[18] SBA Small Business Finance FAQ, p. 1

[19] Victoria Williams, *Small Business Lending in the United States 2013*, OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION , Dec. 2014, at: https://www.sba.gov/advocacy/small-business-lending-united-states-2013

[20] THE FEDERAL RESERVE BOARD, *The October 2014 Senior Loan Officer Opinion Survey on Bank Lending Practices* (Oct. 2014), at: http://www.federalreserve.gov/BoardDocs/snloansurvey/201411/default.htm

[21] FEDERAL RESERVE, *Summary of Commentary on Current Economic Conditions by Federal Reserve District* (Jan. 14, 2015), *available at* http://www.federalreserve.gov/monetarypolicy/beigebook/default.htm)

Additionally, some bank loans may be federally guaranteed, such as SBA loans or the U.S. Treasury's Small Business Lending Fund, which may increase availability of bank credit for small businesses.[22]

Other Lending Options

- *Peer-to-peer (P2P) lending*, which matches interested lenders with borrowers over the Internet and offers an alternative to bank financing due to some flexibility in pricing terms.[23]
- Personal and business *credit card debt*, which the SBA reports makes up roughly 7% of all startup capital.[24]
- *State-administered business assistance programs*, such as those administered by the Department of Economic Opportunity.[25]

Capital Markets

- *Registered offerings*, which are cost-prohibitive for small or startup businesses. Recent surveys estimated the average initial regulatory costs for an initial public offering (IPO) averaged $2.5 million, with ongoing annual compliance costs of $1.5 million.[26]
- *Exempt offerings* (such as private placements, Rule 504, Rule 505, Rule 506), although varying restrictions on general solicitation and advertising, resale, and investor quantity and experience, significantly limit the offerings and may also not be suitable for startups and small businesses.[27]
- The *angel investment* market, which has been on a gradual upward trend since 2012 and has been shifting to later-stage investments.[28]
- *Venture capital* (VC), which has remained relatively flat since 1999-2001, and is almost evenly split in terms of early-stage, expansion, and later-stage investments.[29] VC tends to be selective as to geography and industry niche (e.g., Silicon Valley tech firms), and often expects significant control rights over the startup company and specific growth benchmarks.[30] The research findings on the failure rate of VC-backed businesses in the U.S. vary, ranging from industry estimates of 25-30%, to as high as 75% by one business academic.[31]

Title III of the Jumpstart Our Business Startups (JOBS) Act – Equity Crowdfunding

In 2012, Congress enacted the Jumpstart Our Business Startups (JOBS) Act in an effort to ease the funding gap and regulatory burdens faced by startups and small businesses in connection with capital formation, especially for relatively small-dollar amounts.[32] In particular, Title III of the JOBS Act (Title III) created a new registration exemption from the '33 Act to permit the issuance, offer, and sale of up to $1 million of crowdfunding securities in a 12-month period, subject to specified requirements for issuers and intermediaries and investor limitations. Title III provides that individual investments are limited to 1) the greater of $2,000 or 5% of the investor's annual income or net worth, if annual income or net worth

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[22] U.S. DEPARTMENT OF THE TREASURY, *SBLF Helps Lenders Increase Small Business Loans by $14 Billion,* http://www.treasury.gov/connect/blog/Pages/SBLF-Helps-Lenders-Increase-Small-Business-Loans-by-$14-Billion.aspx

[23] The SEC generally requires P2P lenders to register their offerings under the '33 Act. Additionally, P2P lending may be subject to oversight by other federal and state financial regulatory agencies. *See* Karen Gordon Mills and Brayden McCarthy, *The State of Small Business Lending: Credit Access during the Recovery and How Technology May Change the Game*, Harvard Business School Working Paper 15-004 (Jul. 22, 2014), at http://www.hbs.edu/faculty/Publication%20Files/15-004_09b1bf8b-eb2a-4e63-9c4e-0374f770856f.pdf

[24] SBA Small Business Finance, p. 1.

[25] DEO administers several loan programs under ch. 288, F.S., designed to stimulate business activity and to expand economic opportunity, including the Rural Community Development Revolving Loan Program, the Economic Gardening Business Loan Pilot Program, and the Microfinance Loan Program, which the Legislature created in 2014 (ch. 2014-218, Laws of Fla.).

[26] *See* IPO Task Force, *Rebuilding the IPO On-Ramp*, at 9 (Oct. 20, 2011), *available at* http://www.sec.gov/info/smallbus/acsec/rebuilding_the_ipo_on-ramp.pdf.

[27] SEC Proposed Regulation Crowdfunding, pp. 319-324.

[28] SBA Small Business Finance (Feb. 2014), p. 2.

[29] *Id.*

[30] SEC Proposed Regulation Crowdfunding, p. 331.

[31] Deborah Gage, *The Venture Capital Secret: 3 Out of 4 Start-Ups Fail*; THE WALL ST. JOURNAL (Sept. 20, 2012), http://www.wsj.com/articles/SB10000872396390443720204578004980476429190

[32] The JOBS Act was signed into law on April 5, 2012. Pub. L. No. 112-106, 126 Stat. 306 (2012) (codified at various sections of 15 U.S.C.).

is less than $100,000; and 2) 10% of the investor's annual income or net worth (not to exceed a total investment of $100,000), if annual income or net worth is over $100,000.

Unlike other securities exemptions, Title III permits the fundraiser (*issuer*) to advertise and solicit sales of securities from the general public and to sell the securities to non-accredited investors without first registering with the SEC or other regulatory authority. Title III also allows *intermediaries* - either registered broker-dealers or a new Internet-based platform entity (funding portals) – to facilitate the online offer or sale of securities, subject to certain requirements, including registering with "with any applicable self-regulatory organization" as defined as in the 1934 Securities Exchange Act. The SEC's proposed rule provides that this self-regulatory organization is FINRA, which is the only registered national securities association.[33] If the Title III conditions are met, funding portals are exempt from having to also register with the SEC.

Certain companies are not eligible to use the Title III exemption, such as non-U.S. companies, companies that already are SEC reporting companies, certain investment companies, and as determined by SEC rule. Title III also includes a disqualification provision under which the exemption is unavailable if the issuer or related persons were subject to certain disqualifying events, such as being subject to a state financial regulatory final order barring the individual from the financial industry or a criminal conviction involving the purchase or sale of securities or false filings with the SEC.

Intermediaries (whether broker-dealers or funding portals) are required to comply with certain due diligence requirements and Title III's investor protections, including:

- Providing investors with disclosures and education materials,
- Conducting background checks on the issuer and related persons to ensure they are not subject to disqualification;
- Ensuring investor funds are escrowed, and released only when the target offering amount is reached, and
- Protecting the privacy of information collected from investors, and ensure that promoters and finders are not compensated for providing potential investors' personal identifying information,

Title III is a brief federal statutory framework, and requires the SEC to write significant implementing rules and to issue studies to facilitate capital formation, disclosure, and registration requirements.

SEC Rulemaking for Title III National Equity Crowdfunding

Many of the Title III requirements must be implemented by SEC rule. Title III directed the SEC to write rules within 270 days of enactment, i.e., by December 31, 2012. However, it was not until October 23, 2013 that the SEC published proposed rules ("Regulation Crowdfunding") and sought public comment.[34] Since the notice and comment period of the proposed rules, the SEC has not yet finalized them. Recently, the SEC released a rulemaking agenda indicating a target date of October 2015 to adopt final rules to implement Title III.[35] The federal rules will then require an additional 60 days of publication in the Federal Register before becoming law, which means it is more likely that national equity crowdfunding will not legally begin until early 2016.

The SEC has advised that no Title III (interstate) crowdfunding is permitted until the SEC's rules are finalized; specifically, one cannot operate a crowdfunding intermediary or funding portal unless registered in accordance with the final rules.[36]

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[33] SEC Proposed Regulation Crowdfunding §227.400.

[34] SEC Release No. 33-9470; 34-70741 (Oct. 23, 2013) (Proposed Regulation Crowdfunding), available at http://www.sec.gov/rules/proposed/2013/33-9470.pdf

[35] EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, RIN 3235-AL37, at: http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=3235-AL37

[36] U.S. SECURITIES & EXCHANGE COMMISSION, Information Regarding the Use of Crowdfunding Exemption in the JOBS Act, at http://www.sec.gov/spotlight/jobsact/crowdfundingexemption.htm. *See also* JOBS Act Frequently Asked Questions About Crowdfunding Intermediaries, at http://www.sec.gov/divisions/marketreg/tmjobsact-crowdfundingintermediariesfaq.htm

Currently, the only legally authorized national equity crowdfunding is under Title II of the JOBS Act, which is limited to accredited investors.[37] "Accredited investors" are defined in Rule 501 of Regulation D to include banks, insurance companies, or individuals and entities with specified income and net worth levels. A natural person with an individual net worth of over $1,000,000 (not including the value of a primary residence), an individual income in excess of $200,000 in each of the two most recent years, or a joint income of $3,000,000 in each of those two years, is considered an accredited investor.[38]

The Intrastate Exemption & State Crowdfunding Legislation

In light of the SEC's significant delay in implementing Title III national equity crowdfunding, a number of states have crafted *intrastate* crowdfunding exemptions, based on the federal intrastate exemption in §3(a)(11) of the '33 Act.[39] Section 3(a)(11) exempts "any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within or, if a corporation, incorporated by and doing business within such State or Territory." This exemption recognizes that state, not federal, regulation is more appropriate for an issuer that only offers and sells securities within one state and does most of its business within that state.

Issuers may also rely on the SEC's Rule 147, known as the "safe harbor" rule, which provides specific guidance on §3(a)(11) offerings.[40] For example, Rule 147 specifies that at least 80% of the gross revenues and its subsidiaries (on a consolidated basis) be derived from the subject state in order to be deemed "doing business within a state or territory." Rule 147 states that the legislative history of §3(a)(11) suggests that "the exemption was intended to apply only to issues genuinely local in character, which in reality represent local financing to local industries, carried out through local investment."

Unlike the Title III crowdfunding exemption, §3(a)(11) does not limit the size of the offering, and unlike several other exemptions, §3(a)(11) does not limit the number of investors or require that they be accredited. However, it is noted that §3(a)(11) is strictly and narrowly construed, and if any of the securities are offered or sold to even one out-of-state person, the exemption may be lost and the company could be in violation of the '33 Act.[41] It is also important to note that §3(a)(11) only provides an exemption from federal registration, but does not provide immunity from the antifraud or civil liability provisions of the federal securities laws, including investor rescission. States may still require registration for purely intrastate offerings involving a general solicitation of investors.

Currently, seventeen states and the District of Columbia have some form of intrastate crowdfunding law in place (whether by statute, regulation, or administrative order), to exempt the issuer and offering from state registration, if certain regulatory requirements are met. Many of these exemptions were only recently enacted or became effective in the latter half of 2014, and intrastate crowdfunding legislation or rulemaking has been introduced and pending in more than a dozen other states.[42] While these intrastate exemptions are based on §3(a)(11) of the '33 Act, they also appear to be based Title III's goals of easing regulatory burdens and promoting small business growth. Accordingly, these "hybrid" intrastate crowdfunding exemptions incorporate elements of Title III to varying degrees; for example, while most states have capped the total offering amount at $1 million to match Title III of JOBS, some

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[37] Title II of the JOBS Act was implemented by final SEC rule on July 10, 2013. SEC Release No. 33-9415, at: http://www.sec.gov/rules/final/2013/33-9415.pdf

[38] 17 CFR § 230.501(a)(5-6). Issuers may be exempt from the '33 Act if they sell securities to only accredited investors in accordance with Rules 505 or 506 of Regulation D.

[39] 15 U.S.C. §77c(a)(11).

[40] 17 CFR §230.147.

[41] U.S. SECURITIES & EXCHANGE COMMISSION, *Small Business and the SEC*, http://www.sec.gov/info/smallbus/qasbsec.htm#intrastate

[42] NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, *Intrastate Crowdfunding Resource Center*, http://www.nasaa.org/industry-resources/corporation-finance/instrastate-crowdfunding-resource-center/ (last viewed Feb. 10, 2015).

have allowed issuances up to $2 million, or have income or net worth requirements for investors different than those found in Title III.[43]

The cost of raising capital under an intrastate crowdfunding campaign of identical offering amount is unknown, given the infancy and wide variation of existing state intrastate crowdfunding exemptions. However, the SEC has estimated that the cost of raising capital under Title III of JOBS is approximately $39,000 (in fees for accountants, attorneys, and funding portal) for a $100,000 national equity crowdfunding campaign, and more than $150,000 to raise $1 million. The SEC estimates that initial development of an intermediary platform could cost an additional $250,000 to $600,000, and would likely include establishing functionalities such as investor account opening procedures, electronic delivery, and the maintenance and transmission of investor funds.[44]

Additionally, data on the success of these intrastate offerings or regarding regulatory or enforcement trends is not yet available.[45]

The Internet and Intrastate Offerings

Questions have arisen as to the applicability of the intrastate exemption to crowdfunding offers and sales conducted through the Internet, which can be accessed across state lines. SEC guidance from 2008 has suggested that internet-based offerings would be deemed interstate, not intrastate, in nature if out-of-state investors are given access to such offerings.[46] Some securities law experts have questioned the appropriateness and effectiveness of using §3(a)(11) for internet-based offerings, stating that the intrastate exemption is "fraught with both technical and subtle traps for issuers"[47] and may not be useful to issuers making a broad solicitation over the Internet.[48]

Issuers and intermediaries conducting online crowdfunding issuances, even under the auspices of an state law referencing the federal exemption, must ensure they comply with the substantive requirements of the federal exemption, or risk running afoul of the federal securities law for illegal, unregistered transactions.[49] The North American Securities Administrators Association (NASAA) recently suggested minimum safeguards, such as password access upon residency verification, or other attestations or certifications of investor residency prior to sale.[50]

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[43] Indiana, Michigan, and Wisconsin permit up to a $2 million offering of crowdfunding securities if the issuer has audited financial statements. The D&O Diary, *Some States have Sidestepped the JOBS Act's Burdensome Crowdfunding Rules* (May 15, 2014), at http://www.dandodiary.com/2014/05/articles/securities-litigation/some-states-have-sidestepped-the-jobs-acts-burdensome-crowdfunding-rules/

[44] SEC Proposed Regulation Crowdfunding, pp. 442-454.

[45] A recent notable example of a state enforcement action against a *rewards-based* crowdfunding project is the State of Washington's Attorney General's lawsuit against a Kickstarter campaign promising, but failing to deliver, a deck of cards and other promotional gifts, in return for cash donations. The complaint alleged a violation of Washington State's unfair and deceptive trade practices law. Ángel González, *AG sues Kickstarter project that didn't deliver*, THE SEATTLE TIMES (May 1, 2014), http://www.seattletimes.com/business/ag-sues-kickstarter-project-that-didnrsquot-deliver/

[46] U.S. SECURITIES & EXCHANGE COMMISSION, *The SEC Guide to Broker-Dealer Registration* (Apr. 2008), http://www.sec.gov/divisions/marketreg/bdguide.htm (last viewed Feb. 10, 2015), stating "information posted on the Internet that is accessible by persons in another state would be considered an interstate offer of securities or investment services that would require Federal broker-dealer registration."

[47] Stuart R. Cohn, *The New Crowdfunding Registration Exemption: Good Idea, Bad Execution*, 64 FLA. L. REV. 1433 (2012). Available at: http://scholarship.law.ufl.edu/flr/vol64/iss5/9

[48] Thomas Lee Hazen, *Crowdfunding or Fraudfunding? Social Networks and the Securities Laws – Why the Specially Tailored Exemption Must Be Conditioned on Meaningful Disclosure*, 90 N.C.L. REV. 1735 (2012). Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1954040

[49] As noted above, national crowdfunding to unaccredited investors is not permitted until the SEC's Title III rules are final.

[50] Letter from NASAA to the National Conference of State Legislatures (Jan. 17, 2014), on file with the Insurance & Banking Subcommittee staff. NASAA is the oldest international organization devoted to investor protection and consists of the securities regulators in the 50 states, the District of Columbia, Mexico, Puerto Rico and the U.S. Virgin Islands.

On April 10, 2014, the SEC issued interpretive guidance regarding §3(a)(11) and the Internet.[51] The SEC indicated that use of a third-party Internet portal to promote an offering to residents of a single state would not violate the intrastate exemption, if the portal implemented "adequate measures," such as disclaimers, restrictive legends, and limited access to information about specific investment opportunities to persons who confirm they are residents of the relevant states by way of zip codes or address verification. Although the SEC's interpretive ruling is not conclusive, issuers generally would not be able to use popular social media platforms (such as Facebook, Twitter, or LinkedIn) to promote an intrastate crowdfunding offering, because these sites can be indiscriminately accessed by non-Florida residents. In addition, the issuer would likely need to ensure that an investor does not continue to use the portal after moving out of state.[52]

Investor Protections

A primary investor protection concern regarding equity crowdfunding is that investors may not adequately appreciate the high risk of loss when investing in a startup company. According to U.S. Department of Labor statistics, almost half of all new businesses do not survive after their fifth year of operation.[53] Survival rates have changed little over time, even before, during, and after the recent recession.

An offering under several other securities exemptions, such as Regulation D, requires investors to be accredited in order to invest in a start-up company. On the other hand, Title III and almost all current intrastate crowdfunding exemptions allow all types of investors to participate in crowdfunding offerings, including individuals with modest incomes or net worth who may not have the financial sophistication or means to avoid or absorb a loss of investment.

Because non-accredited, intrastate equity crowdfunding is only in its infancy in several states, no data exists for average rates of return or loss. However, one study reviewed return rates in angel investments, finding a "kind of feast-or-famine universe," where only the top 10% of angel investors garnered 75% of the total returns. Even where angel investors spread their risk through a portfolio strategy, the top 10% of angel investors still earned 50% of the total gains. However, the strategies and resources (time, due diligence, legal and accounting advice, etc.,) necessary for such investments are mostly unavailable for non-accredited investors, leaving the possibility that rates of return could be even less favorable in equity crowdfunding offerings.[54] Additionally, investments in these startup companies are illiquid, and investors cannot resell their investments until such investments are executed on an exchange or in a public market. It is unknown the extent to which a secondary market for intrastate crowdfunding securities will be readily available.

NASAA has identified internet fraud (including social media and crowdfunding) as a persistent threat facing investors in 2015.[55] NASAA and the OFR have issued investor alerts regarding crowdfunding and investment scams, respectively.[56] The SEC has also issued an investor alert regarding social media and investing.[57]

Effect of the Bill

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[51] *See* Questions 141.03-141.05 (issued April 10, 2014), *available at* http://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm

[52] Elizabeth J. Chandler, *SEC Staff Releases Compliance and Disclosure Interpretations Related to Intrastate Crowdfunding*, THE NATIONAL LAW REVIEW (Apr. 14, 2014), http://www.natlawreview.com/article/sec-securities-and-exchange-commission-staff-releases-compliance-and-disclosure-inte

[53] U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, *Business Employment Dynamics, Chart 3: Survival rates of establishments*, at: http://www.bls.gov/bdm/entrepreneurship/entrepreneurship.htm

[54] Michael B. Dorff, *The Siren Call of Equity Crowdfunding* (Sept. 13, 2013). Available at SSRN: http://ssrn.com/abstract=2325634

[55] NASAA, New Products in Classic Schemes Identified as Top Investor Threats (Nov. 12, 2014), at http://www.nasaa.org/33485/new-products-classic-schemes-identified-top-investor-threats/ .

[56] NASAA Investor Advisory, http://www.nasaa.org/12842/informed-investor-advisory-crowdfunding/; OFR, *Consumer Alert: Common Investment Scam Red Flags*, http://flofr.com/PressReleaseDetail.aspx?id=4371

[57] U.S. Securities & Exchange Commission, *Updated Investor Alert: Social Media & Investing – Avoiding Fraud*, http://www.investor.gov/news-alerts/investor-alerts/investor-alert-social-media-investing-avoiding-fraud

The bill amends the Act to create a new equity crowdfunding exemption from state securities registration. The bill requires the issuer to file a notice with the OFR before conducting an offering. These proposed securities may be generally advertised to the public (such as over the Internet), and may be sold through an intermediary, who is required to register with the OFR. The bill provides for the exempt offer and sale of up to $1 million of unregistered securities per offering, and sets forth terms and conditions for issuers and intermediaries offering and selling such securities. The bill matches the income and investment caps set out in Title III, so that individual investments are limited to 1) the greater of $2,000 or 5% of the investor's annual income or net worth, if annual income or net worth is less than $100,000; and 2) 10% of the investor's annual income or net worth (not to exceed a total investment of $100,000), if annual income or net worth is over $100,000.

The bill clarifies that an offer or sale of a security under the crowdfunding exemption is exempt from the registration provisions of the Act, but like other exempt securities, crowdfunding securities remain subject to the Act's antifraud and boiler room provisions. The bill clarifies that *unlike* the other exempt transactions of s. 517.061, F.S., the crowdfunding exemption is not self-executing, so that crowdfunding issuers must demonstrate compliance with the requirements of this new exemption.

The securities must meet all of the requirements of the federal intrastate exemption, §3(a)(11), and the safe harbor rule, Rule 147, described above. The bill contains many similar or identical requirements of Title III of the JOBS Act.

Issuer[58]

- The bill requires the issuer to be a for-profit business entity formed under Florida law, be registered with the Secretary of State, maintain its principal place of business in the state, and derive its revenues primarily from operations in the state.
- As with Title III of JOBS, the bill prohibits investment companies and certain companies that are required to report to the SEC.
    - The bill also disqualifies directors, officers, and 20% shareholders of the issuer based on s. 517.1611, F.S., or Rule 506(d) of the '33 Act.
    - The bill also prohibits issuers with undefined business operations, that lack business plans and stated investment goals, or that have plans to engage in a merger or acquisition with an unspecified business entity.[59]
- The issuer must submit a $200 filing fee and a notice-filing to OFR, containing specified information, and keep the notice-filing current with OFR. The bill requires the notice filing to contain certain information about the issuer, such as the amount of the offering and the intermediary's website address.
- As with Title III of JOBS, the bill requires the issuer to execute an escrow agreement with a federally insured financial institution to deposit and hold investor funds.
    - The bill requires that escrowed funds be released only when the target offering amount is reached, and the issuer must allow an investor to cancel an investment within 3 days of the offering's deadline.
- Like Title III of JOBS, the bill requires issuers to provide a *disclosure statement* containing specified information to potential investors.
    - The issuer must also provide a copy of the disclosure statement to OFR at the time it files a notice with OFR.
    - The disclosure statement must include certain financial disclosures (depending on the target amount of the offering) and standard language that the investor must accept to affirm his or her knowledge and understanding of the risks involved with crowdfunding.[60]

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[58] Current law defines "issuer" as "any person who proposed to issue, has issued, or shall hereafter issue any security. Any person who acts as a promoter for and on behalf of a corporation, trust, or unincorporated association or partnership of any kind to be formed shall be deemed an issuer." Section 517.021(14), F.S.

[59] These development-stage companies are known as "blank check companies" and often fall within the SEC's definition of "penny stocks" or are considered "microcap stocks." *See* U.S. SECURITIES & EXCHANGE COMMISSION, *Blank Check Company*, at http://www.sec.gov/answers/blankcheck.htm

[60] Similar or identical language appears in other state crowdfunding exemptions, e.g., Mich. Comp. Laws §451.2002a(1)(h).

Intermediary
The intermediary may be either a natural person who resides in Florida or a legal entity registered with the Secretary of State to do business in Florida. The bill creates a definition of "intermediary" to mean a natural person residing in this state, or legal entity registered with the Secretary of State to do business in this state, that facilitates the offer or sale of securities under the crowdfunding exemption.

The bill contains several requirements that are similar or identical to requirements in Title III. The bill:

- Prohibits intermediaries from engaging in crowdfunding transactions if certain affiliated persons are disqualified based on their regulatory and criminal backgrounds.
- Requires intermediaries to conduct a background check and regulatory enforcement history check on each officer, director, and persons holding more than 20% of the issuer's outstanding equity.
- Requires intermediaries to provide specified basic information on its website, including its business plan, a description of the escrow agreement for investor funds, and whether its financial information has been audited by an independent certified public accountant.
- Requires intermediaries to conduct certain due diligence requirements, such as:
    - Verifying that potential investors are Florida residents in order to comply with the intrastate requirement,
    - Obtaining affidavits from investors stating their investments are consistent with the Act's income requirements, and require investors to certify in writing that they acknowledge the risks of the investment,
    - Depositing and releasing investor funds in accordance with the Act's escrow requirements,
    - Providing monthly updates to investors after the offering's first full month,
    - Directing investor funds to the qualified third-party designated in the escrow agreement, and
    - Taking reasonable steps to protect investors' personal information, as required by s. 501.171, F.S.[61]
- Prohibits an intermediary from:
    - Offering investment advice or recommendations;
    - Soliciting purchases, sales, offers (or compensate others to solicit) to buy the securities offered on its website;
    - Holding, managing, possessing, or otherwise handling investor funds or securities; and
    - Compensating certain third parties for providing personal identifying information of potential investors.

Intermediary Registration
The bill requires intermediaries to be registered dealers or to register as an intermediary, and creates a new registration requirement for the latter within s. 517.12, F.S. The bill requires a $200 filing fee, a consent to process, and information determined by commission rule as part of the application.

Books and Records
The bill amends s. 517.121, F.S. to require intermediaries to be subject to the Act's requirements to maintain books and records and OFR examinations.

B. SECTION DIRECTORY:

Section 1. Amends s. 517.021, F.S., relating to definitions.

Section 2. Amends s. 517.061, F.S., relating to exempt transactions.

Section 3. Creates s. 517.0611, F.S., relating to the Florida Intrastate Crowdfunding Act.

Section 4. Amends s. 517.12, F.S., relating to registration of dealers, associated persons, and investment advisers.

Section 5. Amends s. 517.121, F.S., relating to books and records requirements; examinations.

[61] Section 501.171, F.S., is the Florida Information Protection Act of 2014, which requires "covered entities" to. give notice of a security breach to the Department of Legal Affairs. Ch. 2014-189, Laws of Fla.

Section 6. Amends s. 626.9911, F.S., relating to definitions.

Section 7. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has a positive, yet indeterminate, fiscal impact to state revenues. The bill requires issuers to pay notice-filing fees ($200) and requires intermediaries to pay registration fees ($200). However, the anticipated number of notice-filing and registration applications is unknown at this time.[62]

2. Expenditures:

The bill has an indeterminate negative fiscal impact on state expenditures from the Regulatory Trust Fund within the OFR. The OFR indicates that it is difficult to anticipate the full impact of this program change, but that provisions of the bill are anticipated to create increased workload for the office resulting in the estimated need for three additional full-time equivalent positions with a total cost of $182,673.[63] However, the actual amount of resources necessary to implement the provisions outlined in the bill remains unclear. The uncertainty arises from the number of issuers and intermediaries that may utilize the exemption provided in the bill, which according to the OFR is unknown at this time.

In addition, the OFR noted that additional IT support, increased storage, and modifications to the Regulatory Enforcement and Licensing (REAL) system would be necessary to implement provisions of the bill relating to the integration of notice-filings by issuers and applications by intermediaries. The OFR estimates the cost to perform the necessary upgrades to be $63,150. The timetable for implementing such changes is unknown at this time. The bill also authorizes the Financial Services Commission to adopt rules creating electronic forms for notice-filings and applications.[64]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. It is unknown how many issuers and intermediaries will utilize this exemption.

The bill may provide an additional source of capital for new businesses in Florida. As discussed above, however, the rates of return or loss for crowdfunding investors are also unknown.

D. FISCAL COMMENTS:

None.

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[62] Office of Financial Regulation, Agency bill analysis of 2015 House Bill 275. (March 18, 2015)
[63] *Id.*
[64] *Id.* at pp. 5-6.

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:

The OFR notes that the SEC has not yet promulgated final rules implementing interstate crowdfunding under Title III of the JOBS Act, and notes that such final rules could conflict with provisions of the bill or rules adopted under it.[65]

B. RULE-MAKING AUTHORITY:

The bill grants authority to the Financial Services Commission to adopt rules for notice-filing and application forms, procedures, the deposit of notice-filing and registration fees, certain financial reporting requirements, intermediary requirements for reducing the risk of fraud, prohibited intermediary activities, and books and records requirements for intermediaries.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[65] *Id.* at p. 7.

A bill to be entitled

An act relating to the offer or sale of securities; amending s. 517.021, F.S.; conforming a cross-reference; defining the term "intermediary" for purposes of the Florida Securities and Investor Protection Act; amending s. 517.061, F.S.; exempting offers or sales of securities by certain issuers from registration requirements; creating s. 517.0611, F.S.; providing a short title; exempting the intrastate offering and sale of certain securities from certain regulatory requirements; providing applicability; providing registration and reporting requirements for issuers and intermediaries offering such securities; limiting the aggregate amount of sales of such securities within a specified period; limiting the aggregate amount of sales to specified investors; requiring a qualified third party to hold certain funds in escrow; authorizing the Financial Services Commission to adopt rules; amending s. 517.12, F.S.; providing registration requirements for an intermediary; conforming a cross-reference; amending s. 517.121, F.S.; requiring an intermediary to comply with specified recordkeeping requirements; amending s. 626.9911, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (9) of section 517.021, Florida Statutes, is amended, subsections (13) through (23) are renumbered as subsections (14) through (24), respectively, and a new subsection (13) is added to that section, to read:

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

(9) "Federal covered adviser" means a person who is registered or required to be registered under s. 203 of the Investment Advisers Act of 1940. The term "federal covered adviser" does not include any person who is excluded from the definition of investment adviser under subparagraphs (14)(b)1.-8. ~~(13)(b)1.-8.~~

(13) "Intermediary" means a natural person residing in the state or a corporation, trust, partnership, association, or other legal entity registered with the Secretary of State to do business in the state, which facilitates the offer or sale of securities under s. 517.0611.

Section 2. Section 517.061, Florida Statutes, is amended to read:

517.061 Exempt transactions.—Except as otherwise provided in s. 517.0611 for a transaction listed in subsection (21), the exemption for each transaction listed below is self-executing and does not require any filing with the office before ~~prior to~~

claiming the ~~such~~ exemption. Any person who claims entitlement to any of the exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to the provisions of ss. 517.301, 517.311, and 517.312:

(1) At any judicial, executor's, administrator's, guardian's, or conservator's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy, or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests.

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

(3) The isolated sale or offer for sale of securities when made by or on behalf of a vendor not the issuer or underwriter of the securities, who, being the bona fide owner of such securities, disposes of her or his own property for her or his own account, and such sale is not made directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter. For purposes of this subsection,

isolated offers or sales include, but are not limited to, an isolated offer or sale made by or on behalf of a vendor of securities not the issuer or underwriter of the securities if:

(a) The offer or sale of securities is in a transaction satisfying all of the requirements of subparagraphs (11)(a)1., 2., 3., and 4. and paragraph (11)(b); or

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

For purposes of this subsection, any person, including, without limitation, a promoter or affiliate of an issuer, shall not be deemed an underwriter, an issuer, or a person acting for the direct or indirect benefit of the issuer or an underwriter with respect to any securities of the issuer which she or he has owned beneficially for at least 1 year.

(4) The distribution by a corporation, trust, or partnership, actively engaged in the business authorized by its charter or other organizational articles or agreement, of securities to its stockholders or other equity security holders, partners, or beneficiaries as a stock dividend or other distribution out of earnings or surplus.

(5) The issuance of securities to such equity security holders or other creditors of a corporation, trust, or partnership in the process of a reorganization of such corporation or entity, made in good faith and not for the purpose of avoiding the provisions of this chapter, either in

exchange for the securities of such equity security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such equity security holders or creditors.

(6) Any transaction involving the distribution of the securities of an issuer exclusively among its own security holders, including any person who at the time of the transaction is a holder of any convertible security, any nontransferable warrant, or any transferable warrant which is exercisable within not more than 90 days of issuance, when no commission or other remuneration is paid or given directly or indirectly in connection with the sale or distribution of such additional securities.

(7) The offer or sale of securities to a bank, trust company, savings institution, insurance company, dealer, investment company as defined by the Investment Company Act of 1940, pension or profit-sharing trust, or qualified institutional buyer as defined by rule of the commission in accordance with Securities and Exchange Commission Rule 144A (17 C.F.R. s. 230.144(A)(a)), whether any of such entities is acting in its individual or fiduciary capacity; provided that such offer or sale of securities is not for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter.

(8) The sale of securities from one corporation to another corporation provided that:

(a) The sale price of the securities is $50,000 or more; and

(b) The buyer and seller corporations each have assets of $500,000 or more.

(9) The offer or sale of securities from one corporation to another corporation, or to security holders thereof, pursuant to a vote or consent of such security holders as may be provided by the articles of incorporation and the applicable corporate statutes in connection with mergers, share exchanges, consolidations, or sale of corporate assets.

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

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

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

2. Neither the issuer nor any person acting on behalf of the issuer offers or sells securities pursuant to this

subsection by means of any form of general solicitation or general advertising in this state.

3. Prior to the sale, each purchaser or the purchaser's representative, if any, is provided with, or given reasonable access to, full and fair disclosure of all material information.

4. No person defined as a "dealer" in this chapter is paid a commission or compensation for the sale of the issuer's securities unless such person is registered as a dealer under this chapter.

5. When sales are made to five or more persons in this state, any sale in this state made pursuant to this subsection is voidable by the purchaser in such sale either within 3 days after the first tender of consideration is made by such purchaser to the issuer, an agent of the issuer, or an escrow agent or within 3 days after the availability of that privilege is communicated to such purchaser, whichever occurs later.

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

1. Any relative or spouse, or relative of such spouse, of a purchaser who has the same principal residence as such purchaser.

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

contingent interest).

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

4. Any purchaser who makes a bona fide investment of $100,000 or more, provided such purchaser or the purchaser's representative receives, or has access to, the information required to be disclosed by subparagraph (a)3.

5. Any accredited investor, as defined by rule of the commission in accordance with Securities and Exchange Commission Regulation 230.501 (17 C.F.R. s. 230.501).

(c)1. For purposes of determining which offers and sales of securities constitute part of the same offering under this subsection and are therefore deemed to be integrated with one another:

a. Offers or sales of securities occurring more than 6 months prior to an offer or sale of securities made pursuant to this subsection shall not be considered part of the same offering, provided there are no offers or sales by or for the issuer of the same or a similar class of securities during such 6-month period.

b. Offers or sales of securities occurring at any time after 6 months from an offer or sale made pursuant to this subsection shall not be considered part of the same offering,

provided there are no offers or sales by or for the issuer of the same or a similar class of securities during such 6-month period.

2. Offers or sales which do not satisfy the conditions of any of the provisions of subparagraph 1. may or may not be part of the same offering, depending on the particular facts and circumstances in each case. The commission may adopt a rule or rules indicating what factors should be considered in determining whether offers and sales not qualifying for the provisions of subparagraph 1. are part of the same offering for purposes of this subsection.

(d) Offers or sales of securities made pursuant to, and in compliance with, any other subsection of this section or any subsection of s. 517.051 shall not be considered part of an offering pursuant to this subsection, regardless of when such offers and sales are made.

(12) The sale of securities by a bank or trust company organized or incorporated under the laws of the United States or this state at a profit to such bank or trust company of not more than 2 percent of the total sale price of such securities; provided that there is no solicitation of this business by such bank or trust company where such bank or trust company acts as agent in the purchase or sale of such securities.

(13) An unsolicited purchase or sale of securities on order of, and as the agent for, another by a dealer registered pursuant to the provisions of s. 517.12; provided that this

exemption applies solely and exclusively to such registered dealers and does not authorize or permit the purchase or sale of securities on order of, and as agent for, another by any person other than a dealer so registered; and provided, further, that such purchase or sale is not directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violation or evading any provision of this chapter.

(14) The offer or sale of shares of a corporation which represent ownership, or entitle the holders of the shares to possession and occupancy, of specific apartment units in property owned by such corporation and organized and operated on a cooperative basis, solely for residential purposes.

(15) The offer or sale of securities under a bona fide employer-sponsored stock option, stock purchase, pension, profit-sharing, savings, or other benefit plan when offered only to employees of the sponsoring organization or to employees of its controlled subsidiaries.

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

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

(b) Such options transactions are cleared by the Options Clearing Corporation or any other clearinghouse recognized by the office; and

(c) The option is not sold by or for the benefit of the issuer of the underlying security; and

(d) The underlying security may be purchased or sold on a recognized securities exchange or is quoted on the National Association of Securities Dealers Automated Quotation System; and

(e) Such sale is not directly or indirectly for the purpose of providing or furthering any scheme to violate or evade any provisions of this chapter.

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

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

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

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

4. Securities, other than any security that is a federal

covered security pursuant to s. 18(b)(1) of the Securities Act of 1933 and is not subject to any registration or filing requirements under this act, which appear in any list of securities dealt in on any stock exchange registered pursuant to the Securities Exchange Act of 1934, as amended, and which securities have been listed or approved for listing upon notice of issuance by such exchange, and also all securities senior to any securities so listed or approved for listing upon notice of issuance, or represented by subscription rights which have been so listed or approved for listing upon notice of issuance, or evidences of indebtedness guaranteed by companies any stock of which is so listed or approved for listing upon notice of issuance, such securities to be exempt only so long as such listings or approvals remain in effect. The exemption provided for herein does not apply when the securities are suspended from listing approval for listing or trading.

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

(c) This exemption shall not be available for any securities which have been denied registration pursuant to s. 517.111. Additionally, the office may deny this exemption with reference to any particular security, other than a federal

covered security, by order published in such manner as the office finds proper.

(18) The offer or sale of any security effected by or through a person in compliance with s. 517.12(17).

(19) Other transactions defined by rules as transactions exempted from the registration provisions of s. 517.07, which rules the commission may adopt from time to time, but only after a finding by the office that the application of the provisions of s. 517.07 to a particular transaction is not necessary in the public interest and for the protection of investors because of the small dollar amount of securities involved or the limited character of the offering. In conjunction with its adoption of such rules, the commission may also provide in such rules that persons selling or offering for sale the exempted securities are exempt from the registration requirements of s. 517.12. No rule so adopted may have the effect of narrowing or limiting any exemption provided for by statute in the other subsections of this section.

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

(a) The issuer of the security is actually engaged in business and is not in the organization stage or in bankruptcy

or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, any unidentified person;

(b) The security is sold at a price reasonably related to the current market price of the security;

(c) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

(d) A nationally recognized securities manual designated by rule of the commission or order of the office or a document filed with the Securities and Exchange Commission that is publicly available through the commission's electronic data gathering and retrieval system contains:

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

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

3. An audited balance sheet of the issuer as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

4. An audited income statement for each of the issuer's

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

(e) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless:

1. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

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

3. The issuer of the security has total assets of at least $2 million based on an audited balance sheet as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.

(21) The offer or sale of a security by an issuer conducted in accordance with s. 517.0611.

Section 3. Section 517.0611, Florida Statutes, is created to read:

517.0611 Intrastate crowdfunding.—

(1) This section may be cited as the "Florida Intrastate Crowdfunding Act of 2015."

(2) Notwithstanding any other provision of this chapter, an offer or sale of a security by an issuer is an exempt transaction under s. 517.061 if the offer or sale is conducted in accordance with this section. The exemption provided in this section may not be used in conjunction with any other exemption from registration requirements under this chapter.

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

(4) An issuer must:

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

(b) Conduct transactions for the offering through a registered dealer or an intermediary registered under s. 517.12(20).

(c) Not be, either before or as a result of the offering, an investment company as defined in s. 3 of the Investment Company Act of 1940, 15 U.S.C. s. 80a-3, subject to the reporting requirements of s. 13 or s. 15(d) of the Securities

Exchange Act of 1934, 15 U.S.C. s. 78m or s. 78o(d), or be a company with an undefined business operation, a company that lacks a business plan, a company that lacks a stated investment goal for the funds being raised, or a company that plans to engage in a merger or acquisition with an unspecified business entity.

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

(e) File a notice of the offering with the office, in writing or electronic form, in a format prescribed by commission rule, together with a nonrefundable filing fee of $200. The commission may adopt rules establishing procedures for the deposit of fees and the filing of documents by electronic means if the procedures provide the office with the information and data required by this section. The office may revoke the filing of a notice under this paragraph if payment for the filing fee is by check or electronic transmission of funds that is dishonored by the financial institution upon which the funds are drawn. A notice is effective upon receipt by the office of the form and filing fee, and the notice may be terminated by filing

with the office a notice of such termination. The notice and offering expire 12 months after filing the notice with the office. The notice must:

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

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

3. Contain the names and addresses of the issuer, all persons who will be involved in the offer or sale of securities on behalf of the issuer, and the federally insured financial institution authorized to do business in the state, in which investor funds will be deposited.

4. Include documentation verifying that the issuer is organized under the laws of the state and authorized to do business in the state.

5. Include the intermediary's website address.

6. Include the target offering amount.

7. Include an attestation that each control person of the issuer is not subject to disqualification under paragraph (c).

A notice filed by an issuer under this section shall be summarily suspended by the office if the issuer fails to provide to the office, within 30 days after a written request from the office, information required by this section or rules adopted

under this section. The summary suspension shall remain in effect until the issuer submits the requested information to the office, pays a fine as prescribed by s. 517.221(3), and a final order is entered. For purposes of s. 120.60(6), failure to provide such information constitutes an immediate and serious danger to the public health, safety, and welfare. If the issuer fails to provide the requested information after 90 days, the office shall revoke the filing of the notice.

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

(g) Execute an escrow agreement with a federally insured financial institution authorized to do business in the state for the deposit of investor funds, and ensure that all offering proceeds are provided to the issuer only when the aggregate capital raised from all investors is equal to or greater than the target offering amount.

(h) Allow an investor to cancel a commitment to invest within 3 business days before the offering deadline.

(i) Provide a disclosure statement to potential investors, with a copy to the office at the time of filing the notice, containing material information about the issuer and the offering, including:

1. The name, legal status, physical address, and website

address of the issuer.

2. The names of the directors, officers, and any person occupying a similar status or performing a similar function, and each person holding more than 20 percent of the shares of the issuer.

3. A description of the business of the issuer and the anticipated business plan of the issuer.

4. A description of the stated purpose and intended use of the proceeds of the offering.

5. The target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount.

6. The price to the public of the securities or the method for determining the price.

7. A description of the ownership and capital structure of the issuer, including terms of the securities and how the terms may be modified.

8. A description of the financial condition of the issuer.

a. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have target offering amounts of $100,000 or less, the description must include the most recent income tax return filed by the issuer, if any, and a financial statement that must be certified by the principal executive officer of the issuer as true and complete in all material respects.

b. For offerings that, in combination with all other

offerings of the issuer within the preceding 12-month period, have target offering amounts of more than $100,000, but not more than $500,000, the description must include financial statements prepared in accordance with generally accepted accounting principles and reviewed by a certified public accountant, as defined in s. 473.302, who is independent of the issuer.

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

9. The following statement in boldface, conspicuous type on the front page of the disclosure statement:

These securities are offered and will be sold in reliance upon an exemption from the registration requirements of federal and Florida securities laws. Consequently, neither the Federal Government nor the State of Florida have reviewed the accuracy or completeness of any offering materials. In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved.

These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as specifically authorized by applicable federal and state securities laws. Investing in these securities involves a speculative risk, and investors should be able to bear the loss of their entire investment.

(j) File with the office and provide to investors through the intermediary annual reports of the results of operations and financial statements of the issuer, subject to additional requirements as the commission may establish by rule.

(5) An intermediary must:

(a)1. Be registered as a dealer in accordance with s. 517.12(6); or

2. Submit a nonrefundable filing fee of $200 and submit an application for registration as an intermediary in accordance with s. 517.12(20), in a format prescribed by commission rule, specifying that the intermediary will conduct business as an intermediary in furtherance of an offering in reliance upon the exemption provided in this section.

(b) Not be subject to a disqualification established by the commission or office or a disqualification described in s. 517.1611 or United States Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933. Each director, officer, control person

of the issuer, any person occupying a similar status or performing a similar function, and each person holding more than 20 percent of the shares of the intermediary is subject to this requirement.

(c) Take measures, as established by commission rule, to reduce the risk of fraud. Such measures shall include obtaining a background check and securities enforcement regulatory history check on each officer, director, and person holding more than 20 percent of the outstanding equity of every issuer whose securities are offered by such person.

(d) Provide basic information on its website regarding the high risk of investment in and limitation on the resale of exempt securities and the potential for loss of an entire investment. The basic information shall include:

1. A description of the escrow agreement that the issuer has executed and the conditions for release of such funds to the issuer in accordance with the agreement and paragraph (4)(g).

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

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

(f) Obtain and verify, pursuant to commission rule, a valid Florida driver license number or identification card

number from each investor, before purchase of a security, to confirm that the investor is a resident of the state.

(g) Obtain an affidavit from each investor stating that the investment being made by the investor is consistent with the income requirements of subsection (8).

(h) Deposit and release investor funds in escrow in accordance with paragraph (4)(g).

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

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

I understand and acknowledge that:

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

This offering has not been reviewed or approved by any state or federal securities commission or other regulatory authority and no regulatory authority has

confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.

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

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

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

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

of these securities is void.

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

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

(m) Prohibit its directors and officers from having any financial interest in the issuer using its services.

(6) An intermediary may not:

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

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

(c) Compensate employees, agents, or other persons for the solicitation of purchases, sales, or offers to buy the securities offered or displayed on its website.

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

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

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

rule.

(7) The sum of all cash and other consideration received for sales of a security under this section may not exceed $1 million, less the aggregate amount received for all sales of securities by the issuer within the 12 months preceding the first offer or sale made in reliance upon this exemption.

(8) Unless the investor is an accredited investor as defined by Rule 501 of Regulation D, adopted pursuant to the Securities Act of 1933, the aggregate amount sold by an issuer to an investor in transactions exempt from registration requirements under this subsection during the 12-month period preceding the date of such transaction may not exceed:

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

(b) Ten percent of the annual income or net worth of such investor, not to exceed a maximum aggregate amount sold of $100,000, if either the annual income or net worth of the investor exceeds $100,000.

(9) All funds received from investors must be directed to the qualified third party designated to hold the funds and must be used in accordance with representations made to investors by the intermediary. If an investor cancels a commitment to invest, the intermediary must direct the third party designated to hold the funds to promptly refund the funds of the investor.

(10) The commission may adopt rules to administer this

section and to protect investors who purchase securities under this section

Section 4. Subsection (20) of section 517.12, Florida Statutes, is renumbered as subsection (21) and amended, and a new subsection (20) is added to that section, to read:

517.12 Registration of dealers, associated persons, intermediaries, and investment advisers.—

(20) An intermediary that has filed a registration application in accordance with this subsection may facilitate the offer or sale of securities in accordance with s. 517.0611.

(a) A registration application must consist of any information required by commission rule, together with a consent to service of process and a nonrefundable filing fee of $200. The commission may adopt rules establishing procedures for the deposit of fees and the filing of documents by electronic means if the procedures provide the office with the information and data required by this section.

(b) The office may issue a permit as evidence of the effectiveness of an intermediary's registration.

(21) ~~(20)~~ The registration requirements of this section do not apply to any general lines insurance agent or life insurance agent licensed under chapter 626, for the sale of a security as defined in s. 517.021(22)(g) ~~517.021(21)(g)~~, if the individual is directly authorized by the issuer to offer or sell the security on behalf of the issuer and the issuer is a federally chartered savings bank subject to regulation by the Federal

Deposit Insurance Corporation. Actions under this subsection shall constitute activity under the insurance agent's license for purposes of ss. 626.611 and 626.621.

Section 5. Subsections (1) and (2) of section 517.121, Florida Statutes, are amended to read:

517.121 Books and records requirements; examinations.—

(1) A dealer, investment adviser, branch office, ~~or~~ associated person, or intermediary shall maintain such books and records as the commission may prescribe by rule.

(2) The office shall, at intermittent periods, examine the affairs and books and records of each registered dealer, investment adviser, associated person, intermediary, or branch office notice-filed with the office, or require such records and reports to be submitted to it as required by rule of the commission, to determine compliance with this act.

Section 6. Paragraph (b) of subsection (4) of section 626.9911, Florida Statutes, is amended to read:

626.9911 Definitions.—As used in this act, the term:

(4) "Life expectancy provider" means a person who determines, or holds himself or herself out as determining, life expectancies or mortality ratings used to determine life expectancies:

(b) In connection with a viatical settlement investment, pursuant to s. 517.021(24) ~~517.021(23)~~; or

Section 7. This act shall take effect October 1, 2015.

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	_____

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee
Representative Santiago offered the following:

Amendment (with title amendment)

Remove line 433 and insert:

rule, together with a nonrefundable filing fee of $200. The filing fee shall be deposited into the Regulatory Trust Fund of the Department of Financial Services, Office of Financial Regulation. The

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

Between lines 13 and 14, insert:

providing for deposit of fees;

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	_____

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative Santiago offered the following:

Amendment

Remove line 567 and insert:

exemption provided in this section. The filing fee shall be deposited into the Regulatory Trust Fund of the Department of Financial Services, Office of Financial Regulation.

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	_____

Committee/Subcommittee hearing bill: Government Operations Appropriations Subcommittee

Representative Santiago offered the following:

Amendment (with title amendment)

Between lines 752 and 753, insert:

Section 7. For the 2015-2016 fiscal year, the sum of $120,000 in nonrecurring funds from the Regulatory Trust Fund is appropriated to the Office of Financial Regulation for the purpose of implementing this act.

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

Remove line 25 and insert:

providing an appropriation; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 887 Unclaimed Property
SPONSOR(S): Trumbull
TIED BILLS: **IDEN./SIM. BILLS:** SB 1138

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N	Bauer	Cooper
2) Government Operations Appropriations Subcommittee		Keith	Topp
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Unclaimed property consists of any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain period of time. Savings and checking accounts, stocks, bonds, insurance policy payments, refunds, and contents of safe deposit boxes are potentially unclaimed property. Holders of unclaimed property, which typically include banks and insurance companies, are required to report unclaimed property to the Department of Financial Services (DFS) Bureau of Unclaimed Property, pursuant to the Florida Disposition of Unclaimed Property Act (ch. 717, F.S.).

U.S. savings bonds are debt securities issued by the U.S. Department of the Treasury (Treasury) to help pay for the federal government's borrowing needs. Most of the bonds at issue (Series E) were issued between 1941 and 1980. As contracts between the U.S. government and the bond's owner, they are backed by the full faith and credit of the U.S. government. Given the passage of time, the long maturities of these bonds, the deaths or relocations of registered owners, and bonds being lost, stolen, or destroyed, the Treasury currently holds nearly 50 million unredeemed Series E savings bonds and will do so in perpetuity. Federal law does not require an unclaimed property process to reunite the bond owner with the bond, as state unclaimed property law does. Treasury policy dictates that the Treasury will not release bonds to a state with a custody-based unclaimed property law, but will do so if the state can take title to the bonds. The state of Florida currently holds custody of unclaimed, physical bonds (*bonds in possession)* with a face value of more than $1.2 million. However, federal law prohibits the transfer of U.S. savings bonds to anyone other than the named beneficiary except in limited circumstances, including pursuant to a valid judicial proceeding. Currently, the custody-based nature of the Act precludes recovery of these physical bonds. In addition, the DFS estimates there is an even greater number of *absent bonds* issued to individuals whose last known address is in Florida, but have been lost, stolen, or destroyed.

The bill creates a judicial process whereby the DFS may seek a court order to obtain title to the bonds in possession, similar to a Kansas statute that led to a recent favorable recovery of proceeds from physical U.S. savings bonds issued to Kansas residents. The bill establishes a post-maturity period of time which will indicate that the bonds are lost, stolen, or destroyed, allowing the DFS to initiate escheat proceeds. If or when the proceeds are received, the bill requires the proceeds to be deposited in accordance with s. 717.123, F.S., as with any other unclaimed property. The bill creates a claims process that requires the DFS to comport with due process prior to any escheat hearing, in that it must undertake specific efforts to notify registered owners, co-owners, and beneficiaries of the escheat proceedings through notice of publication. Even after the bonds escheat to the state, the original bond owner may still recover the bond proceeds under the claims process set forth in the bill, and may make a claim to the DFS for the proceeds of the bond. Once the DFS obtains title to these bonds, it may petition the Treasury for redemption of these bonds in possession, and if necessary, to render a full accounting of the necessary information of absent bonds, which would identify the class of bonds registered with the last known address in Florida.

There is a potential positive, yet indeterminate fiscal impact to state revenues and an indeterminate fiscal impact to state expenditures. The fiscal impact depends on whether the state prevails in obtaining title to the physical bonds, whether it prevails in a petition to the Treasury for information and ultimate release of absent bond proceeds, and the extent to which originally registered bond owners may make a claim.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Unclaimed Property

Unclaimed property constitutes any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain number of years. Unclaimed property may include savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.[1]

Florida Disposition of Unclaimed Property Act

In 1987, Florida adopted the Uniform Unclaimed Property Act and enacted the Florida Disposition of Unclaimed Property Act (ch. 717, F.S., "the Act").[2] The Act serves to protect the interests of missing owners of property, while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. Under the Act, the Department of Financial Services (DFS) Bureau of Unclaimed Property is responsible for receiving property, attempting to locate the rightful owners, and returning the property or proceeds to them. There is no statute of limitations in the Act, and citizens may claim their property at any time and at no cost.

Generally, all intangible property, including any income less any lawful charges, which is held in the ordinary course of the holder's business, is presumed to be unclaimed when the owner fails to claim the property for more than five years after the property becomes payable or distributable, unless otherwise provided in the Act.[3] Holders of unclaimed property (which typically include banks and insurance companies) are required to use due diligence to locate apparent owners within 180 days after an account becomes inactive.[4] Once this search period expires, holders must file an annual report with the DFS for all property, valued at $50 or more, that is presumed unclaimed for the preceding year.[5] The report must contain certain identifying information, such as the apparent owner's name, social security number or federal employer identification number, and last known address. The holder must deliver all reportable unclaimed property to the DFS when it submits its annual report.[6]

Upon the payment or delivery of unclaimed property to DFS, the state assumes custody and responsibility for the safekeeping of the property.[7] The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to the DFS may file a claim for the property, subject to certain requirements.[8] The DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, the department is to deliver or pay over to the claimant the property or the amount the department actually received or the proceeds, if it has been sold by the DFS.[9]

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[1] ss. 717.104 – 717.116, F.S.
[2] Ch. 87-105, Laws of Fla. *See also* UNIFORM LAW COMMISSION, *Unclaimed Property Act Summary*, http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act
[3] s. 717.102(1), F.S.
[4] s. 717.117(4), F.S.
[5] s. 717.117, F.S.
[6] s. 717.119, F.S.
[7] s. 717.1201, F.S.
[8] ss.717.117 and 717.124, F.S.
[9] s.717.124, F.S.

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the Unclaimed Property Trust Fund.[10] The DFS is allowed to retain up to $15 million to make prompt payment of verified claims and to cover costs incurred by the DFS in administering and enforcing the Act. All remaining funds received must be deposited into the State School Trust Fund to be utilized for public education.[11]

Like many other states' unclaimed property act, the Act is based on the common-law doctrine of escheat and is a "custody" statute, rather than a "title" statute, in that the DFS does not take title to abandoned property, but instead obtains its custody and beneficial use pending identification of the property owner.[12]

U.S. Savings Bonds[13]

Pursuant to its constitutional power "to borrow money on the credit of the United States,"[14] Congress delegated authority to the United States Department of the Treasury ("Treasury"), with approval of the President, to issue savings bonds "for expenditures authorized by law."[15] U.S. savings bonds are debt securities issued by the Treasury to help pay for the federal government's borrowing needs and are backed by the full faith and credit of the U.S. government. A U.S. savings bond is a contract between the federal government and the bond's owner that is controlled by federal law. However, in disputes which do not concern the rights and duties of the United States, questions of title are to be decided by state law.[16]

The federal government began selling savings bonds in 1941 for World War II defense spending, and subsequently to encourage thrift and savings by small investors. The majority of the bonds at issue are Series E bonds (known informally as Defense Bonds), which were issued between 1941 and 1980 and had maturity terms of 30-40 years. In 2011, the last Series E bonds matured and stopped earning interest.[17]

Due to the passage of time, the long maturities of these bonds, the deaths or relocations of registered owners, and bonds being lost, stolen, or destroyed, a significant number of bonds remain unclaimed. As of January 31, 2015, the Treasury holds nearly $49.3 million matured, unredeemed savings bonds, with a maturity value of $16.5 billion.[18] The federal regulations do not impose any time limits for bond owners to redeem Series E savings bonds.

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[10] s. 717.123, F.S.

[11] *Id.*

[12] Ch. 717, F.S., was intended to replace ch. 716, F.S. (Escheats), which was enacted in 1947 and has not been repealed. While ch. 716, F.S., does provide that funds in the possession of federal agencies (including Treasury) shall escheat to the state upon certain conditions, it does not contain the necessary administrative processes and receipt mechanism (such as a Trust Fund) that the Act contains.

[13] Except where specifically identified, this portion of the analysis is derived from the facts and background in *Treasurer of New Jersey v U.S. Dep't of Treasury*, 684 F.3d 382 (3rd Cir. 2012).

[14] U.S. CONST. art. I, § 8, cl. 2

[15] 31 U.S.C. § 3105(a). The federal legislation authorizing Treasury to sell U.S. savings bonds was signed into law in 1935. *See* TREASURY DIRECT, *The History of U.S. Savings Bonds*, http://www.treasurydirect.gov/timeline.htm

[16] 91 C.J.S. United States § 249 (Government bonds, generally).

[17] TREASURYDIRECT, *The Volunteer Program and Series E Savings Bonds*, http://www.treasurydirect.gov/indiv/research/history/history_ebond.htm. The federal government sold the Series E bonds at a discount and paid interest on them only at maturity. While Series E bonds have stopped earning interest, owners of E bonds may still redeem them. Series E bonds were replaced by the Series EE bond in 1980.

[18] TREASURYDIRECT, *Matured, Unredeemed Debt and Unclaimed Moneys Reports: Statistical report of matured, unredeemed savings bonds and notes* (Jan. 21, 2015), http://www.treasurydirect.gov/foia/foia_mud.htm

There are two types of unclaimed savings bonds:

- *Bonds in possession* are U.S. savings bonds physically held by an unclaimed property administrator's office, typically discovered from expired safe deposit boxes. These bonds are delivered to the DFS pursuant to the Act. However, as described in further detail below, the DFS currently cannot redeem bonds in possession without first taking title to these bonds via escheatment.
- *Absent bonds* are the class of U.S. savings bonds issued to an individual whose last known address is in Florida, but have been lost, stolen, or destroyed. As such, these bonds are not physically in the possession of the DFS. The records regarding absent bonds (such as registration information, serial numbers, and addresses) are exclusively held by the Treasury. The Treasury's online unredeemed bonds database, Treasury Hunt, does not contain a record of all savings bonds. The system only provides information on Series E bonds issued in 1974 or after, and is organized by social security number. Additionally, pursuant to the Privacy Act of 1974, Treasury Hunt only provides limited information to anyone who is not the bond owner or co-owner.[19]

In Florida, the DFS presently is in possession of unclaimed *physical* U.S. savings bonds with a face value of more than $1.2 million. According to the DFS, the total amount of unclaimed, matured *absent* U.S. savings bonds registered to persons with a last known address in Florida is estimated to be well over $100 million.[20]

Unlike many other types of securities, "savings bonds are not transferable and are payable only to the owners named on the bonds," except as specifically provided for in the federal regulations.[21] There are limited exceptions to this general rule against transferability of savings bonds, including cases in which a third party attains an interest in a bond through valid judicial proceedings.[22] A registered owner of a bond is presumed conclusively to be its owner, absent errors in registration.[23]

While federal law pervades the terms and conditions of the U.S. savings bond program (including the authority to fix the bonds' investment yield, transfer, redemption, and sales prices),[24] there is no federal escheat or unclaimed property law requiring the federal government to search for and reunite bond owners with the bonds. Instead, the federal government will hold these bonds in perpetuity. State unclaimed property laws, on the other hand, govern the significant public policy concerns of the abandonment of intangible personal property.[25]

For several decades, various states have sought to recover the proceeds from matured but unredeemed savings bonds. In 1952, Treasury issued a bulletin (referred to as the "Escheat Decision") explaining that it would pay the proceeds of savings bonds to the state of New York if it actually obtained *title* to the bonds, but would not do so if the state merely obtained a right to the *custody* of the proceeds.[26] In 2000, the Treasury published online guidance consistent with the 1952 Escheat Decision.[27] Both articulations of the Treasury policy raised serious concerns with releasing U.S. bonds to states with custody-based statutes, because such a state that steps into the shoes of the *payor* (Treasury) merely as a custodian would not discharge the Treasury of its contractual obligation and

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[19] TREASURYDIRECT, *Treasury Hunt*, at http://www.treasurydirect.gov/indiv/tools/tools_treasuryhunt.htm
[20] Department of Financial Services, Agency Analysis of House Bill 887, p. 1 (Mar. 17, 2015).
[21] 31 C.F.R. §§ 315.15, 353.15.
[22] 31 C.F.R. §§ 315.20(b), 353.20(b).
[23] 31 C.F.R. §§315.15, 353.15.
[24] 31 U.S.C. § 3105.
[25] Other scenarios involving the application of state unclaimed property laws to unclaimed intangible property in the federal government's possession include unclaimed accounts from liquidated nationally-chartered financial institutions or property subject to administration by the U.S. bankruptcy courts.
[26] *New Jersey v. Treasury*, at 390-391.
[27] TREASURYDIRECT, *EE/E Savings Bonds FAQs*, http://www.treasurydirect.gov/indiv/research/indepth/ebonds/res_e_bonds_eefaq.htm

liability to bond holders.[28] On the other hand, the Treasury guidance appears to accept a state stepping into the shoes of the *payee* (the bond owner) through a valid judicial determination made under a title-based law.

Kansas Title-Based Statute and Recovery of Proceeds from Bonds in Possession

In 2000, the state of Kansas enacted a change in state law to designate its state treasurer's office as the official *title owner* of unclaimed U.S. savings bonds,[29] in order to align with long-standing Treasury policy. Based on this state law, Kansas obtained a favorable declaratory judgment in state trial court awarding title to 1,447 fully matured and unclaimed U.S. savings bonds in possession found in unclaimed safe deposit boxes. In January 2014, the Kansas state treasurer announced the receipt of $861,908 from the Treasury for those physical bonds (bonds in possession).[30]

In contrast to the outcome in Kansas, a federal appeals court in 2012 denied an attempt by several state unclaimed property administrators to recover proceeds of unredeemed physical U.S. savings bonds from the Treasury, based on several constitutional grounds.[31] However, a significant aspect of the court's holding turned on the fact that these states' unclaimed property acts were "custody" statutes, not "title" statutes, thus conflicting with the Treasury's policy.[32]

To date, seven states have enacted similar title-based unclaimed property laws based on the Kansas statute, in an effort to seek the proceeds of bonds in possession. Title-based unclaimed property legislation is currently pending in at least nine other states.

Unclaimed Absent Bonds

Following its receipt of proceeds from the Treasury for unclaimed physical bonds, Kansas next petitioned the Treasury to redeem the remaining class of matured *absent* savings bonds issued to owners with a last known address in Kansas. While the Treasury made limited information available to Kansas about matured savings bonds issued after 1974 on its Treasury Hunt website, the Treasury did not provide other information necessary to search the database (such as the original owners' social security numbers) or any information about older bonds.

In December 2014, the Kansas state treasurer initiated suit against the Treasury in the U.S. Court of Federal Claims,[33] seeking payment for $151 million in unclaimed absent bonds and for records identifying the original owners.[34] This lawsuit is still pending. The parties recently completed supplemental briefing on the Treasury's motion to dismiss, but a final ruling has not yet been issued.[35]

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[28] In *New Jersey v. Treasury*, several states with custody-based statutes offered to indemnify Treasury in exchange for the bond proceeds; however, Treasury declined.

[29] Kan. Stat. Ann. §§ 58-3979 and 3980 (2014).

[30] KANSAS STATE TREASURER, *Media Release: State Treasurer Estes Announces Kansas the First State in Nation to Receive Title & Payment for U.S. Savings Bonds* (Jan. 14, 2014), at: https://www.kansasstatetreasurer.com/prodweb/news/mr-2014-01-14.php

[31] The constitutional issues in *New Jersey v. Treasury* involved preemption, intergovernmental immunity, and waiver of sovereign immunity under the federal Administrative Procedures Act.

[32] *New Jersey v. Treasury*, at 389. The plaintiff states were New Jersey, North Carolina, Montana, Kentucky, Oklahoma, Missouri, and Pennsylvania.

[33] *Ron Estes, Treasurer of the State of Kansas v. United States*, U.S. Ct. of Fed. Claims (Case No. 1:13-cv-01011-EDK). The U.S. Court of Federal Claims is an Article I, congressionally created court that has exclusive jurisdiction over claims for monetary damages against the federal government and that arise from federal constitutional, statutory, and regulatory laws, as well as contracts with the U.S. government. *See* 28 U.S.C. § 1491.

[34] KANSAS STATE TREASURER, *Media Release: State Treasurer Estes Announces Kansas the First State in Nation to Receive Title & Payment for U.S. Savings Bonds* (Jan. 14, 2014), at: https://www.kansasstatetreasurer.com/prodweb/news/mr-2014-01-14.php

[35] Supplemental briefs in *Estes v. United States*, on file with the Insurance & Banking Subcommittee staff.

Effect of the Bill

The bill, similar to the Kansas law, creates a judicial process in the Act, whereby the DFS may file a civil action in a court of competent jurisdiction in Leon County, Florida to determine that title to unclaimed U.S. savings bonds escheat to the state. If the DFS obtains title to these bonds, it places the DFS in the same position as the record owner of the bond, which is necessary to recover proceeds from Treasury.

Under the bill, U.S. savings bonds are not considered unclaimed until they have matured and have remained unclaimed for five years after the bond maturity date (typically 30-40 years). This five year post-maturity period will indicate that the bonds are lost, stolen, or destroyed, allowing the DFS to initiate escheat proceedings.

If or when the proceeds are received, the bill requires the proceeds to be deposited in accordance with s. 717.123, F.S. (as with any other unclaimed property), which requires deposit of proceeds into the Unclaimed Property Trust Fund within the DFS, allows the DFS to retain $15 million to pay proceeds and administrative expenses, and requires deposit of any remaining funds into the State School Trust Fund to be utilized for public education.

The bill creates a claims process to return the money to valid claimants and requires the DFS to comport with due process prior to any escheat hearing, in that it must undertake specific efforts to notify registered owners, co-owners, and beneficiaries of the escheat proceedings through notice of publication,[36] as it must do when parties cannot be found through reasonable and customary due diligence efforts. Even after the bonds escheat to the state, an original bond owner may still recover the proceeds of the bond under the claims process set forth in the bill, and may make a claim to the DFS for the proceeds of the bond. This "second chance" provision allows originally named bond owners who did not or could not comply with the Treasury's regulations for redemption.

Once the DFS obtains title to these bonds, it may petition the Treasury for redemption of these bonds in possession, and if necessary, to render a full accounting of the necessary information of absent bonds, which would identify the class of bonds registered with the last known address in Florida.[37]

The bill applies to any U.S. savings bonds that reach maturity on, before, or after the bill's effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1. Creates s. 717.1382, F.S., relating to United States savings bond; unclaimed property; escheatment; procedure.

Section 2. Creates s. 717.1383, F.S., relating to U.S. savings bond; claim for bond.

Section 3. Provides a statement of applicability.

Section 4. Provides an effective date of July 1, 2015.

[36] Service of process by publication is set forth in ch. 49, F.S. (Constructive Service of Process).

[37] If necessary, the state may join the lawsuit against Treasury. Because the value of absent bonds is significantly higher than the bonds in possession, it is likely that the state will have to file suit to recover the proceeds from the absent bonds.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

There is a potential positive, yet indeterminate fiscal impact to state revenues and an indeterminate fiscal impact to state expenditures. The fiscal impact depends on whether the state prevails in obtaining title to the physical bonds, whether it prevails in a petition to the Treasury for information and ultimate release of absent bond proceeds, and the extent to which originally registered bond owners may make a claim. The DFS anticipates legal costs associated with potential litigation as a result of the bill. The actual costs are unknown at this time; however, the department indicates that any legal costs can be absorbed with existing resources. The DFS indicates that any revenue or expenditure impact to the department as a result of this legislation is unknown at this time. [38]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

[38] Department of Financial Services, Agency Analysis of House Bill 887, p. 2 (Mar. 17, 2015).

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to unclaimed property; creating s. 717.1382, F.S.; providing for escheatment to the state of unclaimed United States savings bonds; providing for judicial determination of escheatment; providing procedures for challenging escheatment; providing for deposit of the proceeds of escheatment; creating s. 717.1383, F.S.; providing that a person claiming a United States savings bond may file a claim with the Department of Financial Services; providing limitations on such claim; providing applicability; providing an effective date.

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

Section 1. Section 717.1382, Florida Statutes, is created to read:

717.1382 United States savings bond; unclaimed property; escheatment; procedure.—

(1) Notwithstanding any other provision of law, a United States savings bond in possession of the department or registered to a person with a last known address in the state, including a bond that is lost, stolen, or destroyed, is presumed abandoned and unclaimed 5 years after the bond reaches maturity and no longer earns interest and shall be reported and remitted to the department by the financial institution or other holder

in accordance with ss. 717.117(1) and (3) and 717.119, if the department is not in possession of the bond.

(2)(a) After a United States savings bond is abandoned and unclaimed in accordance with subsection (1), the department may commence a civil action in a court of competent jurisdiction in Leon County for a determination that the bond shall escheat to the state. Upon determination of escheatment, all property rights to the bond or proceeds from the bond, including all rights, powers, and privileges of survivorship of an owner, coowner, or beneficiary, shall vest solely in the state.

(b) Service of process by publication may be made on a party in a civil action pursuant to this section. A notice of action shall state the name of any known owner of the bond, the nature of the action or proceeding in short and simple terms, the name of the court in which the action or proceeding is instituted, and an abbreviated title of the case.

(c) The notice of action shall require a person claiming an interest in the bond to file a written defense with the clerk of the court and serve a copy of the defense by the date fixed in the notice. The date must not be less than 28 or more than 60 days after the first publication of the notice.

(d) The notice of action shall be published once a week for 4 consecutive weeks in a newspaper of general circulation published in Leon County. Proof of publication shall be placed in the court file.

(e)1. If no person files a claim with the court for the

bond and if the department has substantially complied with the provisions of this section, the court shall enter a default judgment that the bond, or proceeds from such bond, has escheated to the state.

2. If a person files a claim for one or more bonds and, after notice and hearing, the court determines that the claimant is not entitled to the bonds claimed by such claimant, the court shall enter a judgment that such bonds, or proceeds from such bonds, have escheated to the state.

3. If a person files a claim for one or more bonds and, after notice and hearing, the court determines that the claimant is entitled to the bonds claimed by such claimant, the court shall enter a judgment in favor of the claimant.

(3) The department may redeem a United States savings bond escheated to the state pursuant to this section or, in the event that the department is not in possession of the bond, seek to obtain the proceeds from such bond. Proceeds received by the department shall be deposited in accordance with s. 717.123.

Section 2. Section 717.1383, Florida Statutes, is created to read:

717.1383 United States savings bond; claim for bond.—A person claiming a United States savings bond escheated to the state under s. 717.1382, or for the proceeds from such bond, may file a claim with the department. The department may approve the claim if the person is able to provide sufficient proof of the validity of the person's claim. Once a bond, or the proceeds

from such bond, are remitted to a claimant, no action thereafter may be maintained by any other person against the department, the state, or any officer thereof, for or on account of such funds. The person's sole remedy, if any, shall be against the claimant who received the bond or the proceeds from such bond.

Section 3. This act applies to any United States savings bond that reaches maturity on, before, or after the effective date of this act.

Section 4. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1083 Employment Opportunities for Persons with Disabilities
SPONSOR(S): Government Operations Subcommittee; Rooney, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 848

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	11 Y, 0 N, As CS	Toliver	Williamson
2) Government Operations Appropriations Subcommittee		White CCW	Topp BDT
3) State Affairs Committee			

SUMMARY ANALYSIS

In 2013, Governor Scott issued Executive Order Number 13-284 to require certain agencies and organizations to develop and implement an interagency cooperative agreement to improve the employment outcomes for disabled persons. The agreement became effective on July 1, 2014.

The bill provides definitions and legislative findings regarding employment opportunities for persons with disabilities.

The bill requires certain agencies and organizations to develop and implement an interagency cooperative agreement (agreement) to provide the framework for a long-term commitment to improving employment outcomes for persons with disabilities. It requires the agreement to:

- Establish a commitment among the leadership of each agency and organization to maximize resources and to coordinate with other agencies and organizations to improve employment outcomes for persons with disabilities;
- Develop strategic goals and benchmarks to assist each agency and organization in implementing the agreement;
- Identify financing and contracting methods that will prioritize employment for persons with disabilities;
- Identify how training opportunities may be better utilized by employees of each agency and organization to ensure effectiveness of supported employment services;
- Ensure collaboration between each agency and organization during the development of supported employment services when persons with disabilities are served by multiple agencies and organizations to achieve their employment goals;
- Promote the innovation of supported employment services; and
- Identify accountability measures to ensure sustainability of agreement initiatives.

The bill has a minimal negative fiscal impact on state government that is anticipated to be absorbed within existing resources. The bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Americans with Disabilities Act

The Americans with Disabilities Act (ADA) was passed by congress and signed by President George H. W. Bush in 1990.[1] Its purpose is to provide "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."[2] The ADA specifically prohibits discrimination against disabled individuals with regard to employment:[3]

> No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

Florida Statutes

The Legislature enacted the Florida Civil Rights Act of 1992,[4] which prohibits discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status.[5] Section 760.10(1)(a), F.S., provides that it is unlawful to discharge or to fail to refuse to hire any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions or privileges of employment, because of such individual's handicap.

Furthermore, it is the state's policy that: [6]

> [A]n individual with a disability be employed in the service of the state or political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds, and an employer may not refuse employment to such a person on the basis of the disability along, unless it is shown that the particular disability prevents the satisfactory performance of the work involved.

Gubernatorial Executive Orders

In 1993, Governor Chiles issued Executive Order Number 93-166 which created the Florida Coordinating Council (coordinating council) for the ADA. The purpose of the coordinating council was to aid in the elimination of discrimination against disabled individuals in the areas of employment, transportation, telecommunications, state and local services, and public accommodations.[7]

In 1997, Governor Chiles issued Executive Order Number 97-56 in an effort to refocus Florida's efforts in implementing the ADA. The executive order disbanded the coordinating council and created the Americans with Disabilities Act Working Group (working group).[8] The working group was created to foster a cooperative effort between state and local governments, the education

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[1] Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327.
[2] 42 U.S.C. s. 12101(b)(1) (2015).
[3] 42 U.S.C. s. 12112(a) (2015).
[4] Sections 760.01-760.11, F.S.
[5] Section 760.01(2), F.S.
[6] Section 413.08(5), F.S.
[7] Fla. Exec. Order No. 93-166 (1993).
[8] Fla. Exec. Order No. 97-56 (1997).

community, the business community, the private sector, and the disability community.[9] In 1999, Governor Bush issued Executive Order Number 99-80 to expand the responsibilities of the working group to "provide information, referrals, education, and recommendations for compliance and implementation of the [ADA] in order to increase the independence and quality of life for citizens of Florida with disabilities."[10]

In 2007, Governor Crist extended the duration of the working group[11] before dissolving the group and creating the Governor's Commission on Disabilities.[12] The commission was responsible for identifying and recommending methods to maximize the freedom and independence of Floridians with disabilities, with a focus on employment, transportation, education, and independent living.[13]

In 2011, Governor Scott created the Governor's Commission on Jobs for Floridians with Disabilities (commission).[14] The vision of the commission is to "advance job and employment opportunities for Floridians with disabilities in order to help those Floridians achieve greater independence."[15] The commission, which consists of 13 members appointed by the Governor,[16] has three responsibilities:[17]

- Identify and recommend strategies to cultivate job opportunities for persons with disabilities in the State of Florida;
- Identify barriers in state and local programs that hinder individuals with disabilities from gaining employment and proposing solutions to mitigate those barriers; and
- Develop and leverage state and community resources to advance service delivery.

Each year, on or before July 26, the commission must provide a report to the Governor outlining its accomplishments during the previous 12 months.[18]

In 2013, Governor Scott issued Executive Order Number 13-284, which ordered that an interagency cooperative agreement (agreement) be created "among state agencies and other disabilities service organizations to ensure the continuation of this long-term commitment to improving employment outcomes for this population." It required certain agencies[19] to develop and implement the agreement with the following objectives:[20]

- Establish a commitment among the agencies' leadership to maximize resources and coordinate with each other to improve employment outcomes for persons with disabilities seeking publicly funded services;

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[9] *Id.*
[10] Fla. Exec. Order No. 99-80 s. 1 (1999).
[11] Fla. Exec. Order No. 07-04 (2007).
[12] Fla. Exec. Order No. 07-148 (2007).
[13] *Id.* at s. 2.
[14] Fla. Exec. Order No. 11-161 (2011); Governor's Commission on Jobs for Floridians with Disabilities, http://www.flgov.com/gcjfd/ (last visited 3/17/15).
[15] Fla. Exec. Order No 11-161, s. 1 (2011).
[16] *Id.* at s. 4. The commission membership is as follows: two Florida citizens representing persons with physical or developmental disabilities; four individuals representing the business community who have personal experience in creating private-sector jobs; two individuals representing the state community college system who have experience in education-to-employment transition programs; one individual who has a background in employment recruiting or experience in job training for persons with disabilities; one representative from the Able Trust; one representative from the Division of Vocation Rehabilitation, Department of Education; one representative from the Agency for Persons with Disabilities; and one representative from the Agency for Workforce Development.
[17] *Id.* at s. 2.
[18] *Id.* at s. 3.
[19] The following agencies were tasked with developing the agreement: Division of Vocational Rehabilitation, Department of Education; Division of Blind Services, Department of Education; Bureau of Exception Education and Student Services, Department of Education; Agency for Persons with Disabilities; Mental Health and Substance Abuse Program, Department of Children and Families; Workforce Florida, Inc.; Florida Developmental Disabilities Council; and other state agencies and disability organizations that wish to participate. Fla. Exec. Order No. 13-284 at s. 4.
[20] *Id.* at s. 3.

- Develop strategic goals and reasonable benchmarks to assist the agencies in implementing the agreement;
- Identify financing and contracting methods that will prioritize employment among the array of services paid for or provided by agencies;
- Identify ways training opportunities can be better utilized by agency employees and contracted providers to ensure effectiveness of employment services;
- Ensure collaboration occurs during the development of service plans, including the Individual Plan for Employment, when individuals are served by multiple agencies to achieve their employment goals;
- Promote service innovation; and
- Identify accountability measures to ensure sustainability.

The agreement was executed and became effective on July 1, 2014.[21] The agreement incorporates the objectives from the executive order and establishes an organizational structure.[22] The agreement establishes three entities to carry out its required responsibilities: the Employment Partnership Coalition,[23] the State Level Employment First Collaborative Team,[24] and the Grassroots Level Group.[25] The agreement further provides that it will automatically terminate on June 30, 2019, unless it is renewed.[26]

Effect of the Bill

The bill provides legislative findings regarding employment opportunities for persons with disabilities.

The bill requires the following agencies and organizations to develop and implement an interagency cooperative agreement (agreement) to provide the framework for a long-term commitment to improving employment outcomes for persons with disabilities:

- The Division of Vocational Rehabilitation, Department of Education;
- The Division of Blind Services, Department of Education;
- The Bureau of Exceptional Education and Student Services, Department of Education;
- The Substance Abuse and Mental Health Program, Department of Children and Families;
- The Agency for Persons with Disabilities;
- The Department of Economic Opportunity;
- Workforce Florida, Inc.;
- The Florida Developmental Disabilities Council; and
- The Florida Association of Rehabilitation Facilities, Inc.

The agreement must:

- Establish a commitment among the leadership of each agency and organization to maximize resources and to coordinate with other agencies and organizations to improve employment outcomes for persons with disabilities;
- Develop strategic goals and benchmarks to assist each agency and organization in implementing the agreement;

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[21] Interagency Cooperative Agreement: Employment First Initiative, s. VI, FLDOE Contract No. IA-556.
[22] *Id.* at s. IV.
[23] The coalition is composed of the leaders of each agency or organization that is a participant in the agreement and charged with overall coordination and implementation of activities required by the agreement, as well as to ensure continuous improvement.
[24] The team is composed of staff assigned by the participating entities and meet on a monthly basis. The team is responsible for identifying the barriers within extant systems and practices and creating potential solutions for those barriers. The team will present recommendations based upon their findings to the coalition.
[25] The group is "composed of self-advocates and local stakeholders representing a cross-section of persons with various disabilities." The group meets quarterly to share information and "ensure the voice of the stakeholders is heard."
[26] FLDOE Contract No. IA-556 at s. VI.

- Identify financing and contracting methods that will prioritize employment for persons with disabilities;
- Identify how training opportunities may be better utilized by employees of each agency and organization to ensure effectiveness of supported employment services;[27]
- Ensure collaboration between each agency and organization during the development of supported employment services when persons with disabilities are served by multiple agencies and organizations to achieve their employment goals;
- Promote the innovation of supported employment services; and
- Identify accountability measures to ensure sustainability of agreement initiatives.

The bill defines the term "employment" to mean a person with disabilities performing an activity or service in return for a minimum wage or greater paid by an employer, is fully integrated in the community workforce, and is working towards maximum self-sufficiency. It provides that the term includes integrated employment designed to provide jobs for persons with disabilities in workplace settings where the majority of persons employed are not persons with disabilities, supported employment, customized employment designed to personalize the employment relationship between a person with disabilities and his or her employer in a way that meets both their needs, and suitable gainful employment.[28]

The bill also defines the term "employment outcome" as having the same meaning as in s. 413.20(9), F.S. Section 413.20(9), F.S., defines the term "employment outcome" to mean "with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market to the greatest extent practicable, supported employment, or any other type of employment, including self-employment, telework, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice."

B. SECTION DIRECTORY:

Section 1: Creates s. 445.08, F.S. regarding employment opportunities for persons with disabilities.

Section 2: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state government revenues.

[27] Section 413.20(23), F.S. defines the term "supported employment services" to mean on-going support services and other appropriate services needed to support and maintain a person who has a most significant disability in supported employment. It provides that supported employment services are based upon a determination of the needs of the eligible individual as specified in the person's individualized plan for employment. The services are provided singly or in combination and are organized and made available in such a way as to assist eligible individuals in entering or maintaining integrated, competitive employment. The services are provided for a period not to extend beyond 18 months, but can be extended under special circumstances with the consent of the individual in order to achieve the objectives of the rehabilitation plan.

[28] Section 440.491(1)(g), F.S. defines the term "suitable gainful employment" to mean employment or self-employment that is reasonably attainable in light of the employee's age, education, work history, transferable skills, previous occupation, and injury, and which offers an opportunity to restore the individual as soon as practicable and as nearly as possible to his or her average weekly earnings at the time of injury.

2. Expenditures:

   The bill does not appear to impact state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to impact local government revenues.

2. Expenditures:

   The bill has a minimal negative fiscal impact on the state agencies required to work on the interagency agreement. These agencies will have to provide staff to work on the interagency agreement, so there is an increased workload; however, it is anticipated that the increased workload can be absorbed within existing resources.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill appears to codify several provisions in Executive Order Number 13-284.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2015, the Government Operations Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The first amendment removes the Department of Children and Families from the list of participants due to redundancy and adds the Agency for Persons with Disabilities in its place. The second amendment removes the rulemaking authority provided in the bill.

This analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.

A bill to be entitled

An act relating to employment opportunities for persons with disabilities; creating s. 445.08, F.S.; providing legislative findings and purpose; providing definitions; requiring specified state agencies and organizations to develop and implement an interagency cooperative agreement for certain purposes; providing requirements; providing an effective date.

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

Section 1. Section 445.08, Florida Statutes, is created to read:

445.08 Employment opportunities for persons with disabilities; interagency cooperative agreements.—

(1) The Legislature finds that persons with disabilities are confronted by unique employment barriers that inhibit their opportunities in the labor force and that employment of such persons is the most direct and cost-effective means to help them achieve independence and self-fulfillment. Therefore, the Legislature finds that employment for persons with disabilities should be prioritized and a means to support such employment should be encouraged. The purpose of this section is to require a collaborative effort by state agencies and organizations to determine the barriers to achieving better employment outcomes for persons with disabilities and to act collaboratively to

eliminate such barriers.

(2) For purposes of this section, the term:

(a) "Employment" means a person with disabilities is performing an activity or service in return for minimum wage or greater paid by an employer, is fully integrated in the community workforce, and is working towards maximum self-sufficiency. The term includes integrated employment designed to provide jobs for a persons with disabilities in workplace settings where the majority of persons employed are not persons with disabilities, supported employment as defined in s. 393.063(38), customized employment designed to personalize the employment relationship between a person with disabilities and his or her employer in a way that meets both of their needs, and suitable gainful employment as defined in s. 440.491(1)(g).

(b) "Employment outcome" has the same meaning as in s. 413.20(9).

(3)(a) The following state agencies and organizations shall develop and implement an interagency cooperative agreement to provide the framework, including their roles and responsibilities, for a long-term commitment to improving employment outcomes for persons with disabilities in this state:

1. The Division of Vocational Rehabilitation of the Department of Education.

2. The Division of Blind Services of the Department of Education.

3. The Bureau of Exceptional Education and Student

Services of the Department of Education.

4. The Substance Abuse and Mental Health Program of the Department of Children and Families.

5. The Agency for Persons with Disabilities.

6. The Department of Economic Opportunity.

7. Workforce Florida, Inc.

8. The Florida Developmental Disabilities Council.

9. The Florida Association of Rehabilitation Facilities, Inc.

(b) The interagency cooperative agreement shall:

1. Establish a commitment among the leadership of each agency and organization to maximize resources and to coordinate with other agencies and organizations to improve employment outcomes for persons with disabilities.

2. Develop strategic goals and benchmarks to assist each agency and organization in implementing the agreement.

3. Identify financing and contracting methods that will prioritize employment for persons with disabilities.

4. Identify how training opportunities may be better utilized by employees of each agency and organization to ensure effectiveness of supported employment services as defined in s. 413.20(23).

5. Ensure collaboration between each agency and organization during the development of supported employment services when persons with disabilities are served by multiple agencies and organizations to achieve their employment goals.

6. Promote the innovation of supported employment services.

7. Identify accountability measures to ensure sustainability of agreement initiatives.

Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7085 PCB RAC 15-01 Financial Literacy Program for Individuals with Developmental Disabilities
SPONSOR(S): Regulatory Affairs Committee, Diaz
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Affairs Committee	16 Y, 0 N	Hamon	Hamon
1) Government Operations Appropriations Subcommittee		Keith AK	Topp BDT

SUMMARY ANALYSIS

The bill creates the Financial Literacy Program for Individuals with Developmental Disabilities within the Department of Financial Services (DFS). The program is designed to promote economic independence for individuals with developmental disabilities by providing education, outreach, and resources on specific financial strategies. The strategies include information regarding earning income; money management skills; buying goods and services; saving and financial investing; mortgage and homeownership; taxes; the use of credit and credit cards; personal budgeting and debt management, including secured and unsecured loans; effective use of banking and financial services; financial planning for the future, including retirement; credit reports and scores; and fraud and identity theft prevention.

The bill requires the DFS to establish a clearinghouse for information regarding the program and other resources available on its website and to develop a brochure that describes the program. Financial institutions, including banks, credit unions, savings associations, and savings banks, will be participants in the development and implementation of the program.

The bill appropriates $137,234 in nonrecurring funds from the Insurance Regulatory Trust Fund within the Department of Financial Services to implement the program. Financial institutions may incur indeterminate costs associated with the program.

The bill is effective on January 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Definition of Developmental Disabilities in Florida

Section 393.063(9), F.S., defines developmental disabilities to mean "a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely."

The Agency for Persons with Disabilities (APD) currently serves approximately 55,000 clients[1] with developmental disabilities. The total population of individuals in Florida with developmental disabilities is indeterminate at this time. In January 2015, the APD extrapolated the estimated Florida population of individuals with developmental disabilities based on national prevalence rates of disorders and syndromes. This calculation suggests that the population of individuals with developmental disabilities could be between 300,000 to 600,000.[2]

Financial Literacy and Economic Independence

Financial education and literacy are critical components for gaining economic independence. Recently, the National Disability Institute (NDI) evaluated the financial capability among individuals with and without disabilities based on information derived from the FINRA[3] Investor Education Foundation's 2012 National Financial Capability Study.[4] The NDI report found that individuals with disabilities have greater difficulty in meeting monthly expenses, are less likely to have access to emergency funds, are more likely to carry credit card balances and use non-bank methods of borrowing, are less likely to have received financial education, and have lower financial literacy. The report concluded that individuals with disabilities "are generally marginalized from the economic mainstream, as indicated by the notably lower levels of overall financial capability and economic security compared to persons without disabilities." The report advocated, "innovative approaches that increase access for individuals with disabilities to financial tools and services that foster informed decision making, build financial confidence, and improve financial capability."

Various state agencies provide services, benefits, and resources for individuals with disabilities. These agencies include the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Children and Families, the Department of Economic Opportunity (DEO), and the Department of Education. Many state and regional advocacy groups also provide resources and services.

Department of Financial Services

The Chief Financial Officer (CFO) of the State of Florida is the head of the Department of Financial Services.[5] The CFO has instituted many outreach and education programs to increase the financial literacy of Florida residents and to protect them from financial fraud. These initiatives include a

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[1] Email from the Agency for Persons with Disabilities, Summary of Active Clients.
[2] Email from the Agency for Persons with Disabilities.
[3] FINRA is the Financial Industry Regulatory Authority, which is an independent, not-for-profit organization authorized by Congress charged with regulatory oversight of all securities broker-dealers conducting business with the public in the United States.
[4] Nicole E. Conroy, ET AL., Financial *Capabilities of Adults with Disabilities, Findings from the FINRA Investor Education Foundation 2012 National Financial Capability Study,* National Disability Institute, July 22, 2014.
[5] Section 20.121, F.S.

comprehensive online financial literacy and education initiative to provide Hispanic Floridians and their families with important personal financial information, a program to educate and protect seniors from financial schemes, and financial education for military service members.[6]

Federal Financial Literacy Programs for Individuals with Disabilities

The Federal Deposit Insurance Corporation developed a voluntary "Money Smart" educational program to help low- to moderate-income individuals understand basic financial services and develop money management skills. The Money Smart program may be used by financial institutions and other organizations interested in sponsoring financial education workshop, and its training materials include training tips and strategies to accommodate participants with disabilities.[7]

The Money Smart program can help banks fulfill part of their Community Reinvestment Act (CRA) obligations. The CRA encourages federally insured banks and thrifts to help meet the credit needs of their entire community, including areas of low-and moderate-income. When a bank's CRA performance is reviewed, the institution's efforts to provide financial education and other retail services are a positive consideration.[8]

On July 21, 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173, commonly referred to as "Dodd-Frank") was signed into law. Title X of Dodd-Frank created the Consumer Financial Protection Bureau (CFPB) as an independent bureau housed within the Federal Reserve System. Dodd-Frank mandates that the CFPB work to improve the financial literacy of American consumers by directing the establishment of offices and divisions focused on financial education. The CFPB's 2014 financial literacy annual report discussed several initiatives for vulnerable populations, including individuals with disabilities. The report discussed a national forum on improving financial capabilities for individuals with disabilities, as well as an ongoing initiative to increase access to financial education services and workforce readiness.[9]

Financial Institutions

The Financial Institutions Codes define "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust company representative office, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.[10]

Under the U.S. dual regulatory system of financial institutions, financial institutions may be chartered under either state or federal law and have a primary federal regulator (Federal Reserve, Federal Deposit Insurance Corporation, etc.). In addition, federal law allows a financial institution to operate in states other than its home charter state.

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[6] See Money Matter$, a one-stop website to access the CFO's financial literacy resources at http://www.myfloridacfo.com/sitePages/services/flow.aspx?ut=Financial+Literacy (last accessed on March 9, 2015).
[7] Federal Deposit Insurance Corporation, Money Smart – Train-the-Trainer, at https://www.fdic.gov/consumers/consumer/moneysmart/trainthetrainer.htm (last accessed Mar. 9, 2015).
[8] Federal Deposit Insurance Corporation, Money Smart – A Financial Education Program, at https://www.fdic.gov/consumers/consumer/moneysmart/index.html (last accessed Mar. 9, 2015).
[9] CONSUMER FINANCIAL PROTECTION BUREAU, *2014 Financial Literacy Annual Report*, pp. 62-64, http://www.consumerfinance.gov/reports/financial-literacy-annual-report-2014/ (last visited Mar. 9, 2015).
[10] s. 655.005(1)(i), F.S.

Effect of the Bill

The bill creates the Financial Literacy Program for Individuals with Developmental Disabilities in the Department of Financial Services (DFS). The program is designed to promote economic independence for individuals with developmental disabilities by providing education, outreach, and resources on specific financial strategies. The strategies include information regarding earning income; money management skills; buying goods and services; saving and financial investing; mortgage and homeownership; taxes; the use of credit and credit cards; personal budgeting and debt management, including secured and unsecured loans; effective use of banking and financial services; financial planning for the future, including retirement; credit reports and scores; and fraud and identity theft prevention.

The bill provides that the DFS, in consultation with stakeholders, will develop and implement the program. Financial institutions, including banks, credit unions, savings associations, and savings banks, will be participants in the development and implementation of the program. The DFS will establish a clearinghouse for information regarding the program and other available resources on its website for individuals with developmental disabilities and their employers. The DFS will publish a brochure on its website that describes the program. Upon request, the DFS shall provide print copies of the brochure to financial institutions.

The bill provides that each financial institution may make the DFS brochures available in its principal place of business and each branch office located in Florida, or may provide a hyperlink to the DFS program website. A financial institution or other program participant shall not be subjected to a civil cause of action arising from the distribution or nondistribution of program information.

The bill appropriates $137,234 in nonrecurring funds from the Insurance Regulatory Trust Fund within the DFS to develop and manage the program which includes printing and postage costs for the brochures.

The bill is effective on January 1, 2016.

B. SECTION DIRECTORY:

Section 1 creates the Financial Literacy Program for Individuals with Developmental Disabilities within DFS.

Section 2 provides a nonrecurring appropriation for the program in the 2015-16 fiscal year.

Section 3 provides an effective date of January 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill appropriates $137,234 in nonrecurring funds from the Insurance Regulatory Trust Fund within the Department of Financial Services (DFS) to implement this program. This appropriation provides the DFS with nonrecurring funding for a temporary employee and for costs relating to the printing and mailing of brochures to financial institutions, upon request.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Implementation of the program will provide individuals with developmental disabilities an opportunity to obtain a better understanding of financial products and services, money management skills, and other financial resources that may be available. The program will facilitate greater financial literacy and economic independence. Employers will also benefit from resources that will assist their employees with developmental disabilities.

Financial institutions may incur indeterminate costs associated with providing brochures about the program at their places of business and revising their websites to provide a link to access the Financial Literacy Program's website.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the Financial Literacy Program for Individuals with Developmental Disabilities; creating s. 20.122, F.S.; providing legislative findings; establishing the Financial Literacy Program for Individuals with Developmental Disabilities within the Department of Financial Services; requiring the department to develop and implement the program in consultation with stakeholders; providing for the participation of financial institutions; requiring the program to provide information regarding specified issues to individuals with developmental disabilities and certain employers in the state; requiring the department to establish on its website a clearinghouse for information regarding the program and to publish a brochure describing the program; authorizing financial institutions to make available copies of the department's brochure and provide a hyperlink on their websites to the department's website for the program; providing a limitation on civil causes of action; providing an appropriation; providing an effective date.

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

Section 1. Section 20.122, Florida Statutes, is created to

read:

20.122 Financial Literacy Program for Individuals with Developmental Disabilities.—

(1) The Legislature finds that the state has a compelling interest in promoting the economic independence of individuals with developmental disabilities, as defined in s. 393.063. Individuals with developmental disabilities, compared to the general population, experience lower rates of educational achievement, employment, and annual earnings and are more likely to live in poverty. Additionally, these individuals must navigate a complex network of federal and state programs in order to be eligible for financial benefits. Thus, it is essential that these individuals have sufficient financial management knowledge and skills to be able to make informed decisions regarding financial services and products provided by financial institutions. Enhancing the financial literacy of these individuals will provide a pathway for economic independence and a lifetime of financial well-being.

(2) The Financial Literacy Program for Individuals with Developmental Disabilities is established within the Department of Financial Services. The department, in consultation with public and private stakeholders, shall develop and implement the program, which shall be designed to promote the economic independence and financial literacy of individuals with developmental disabilities. Financial institutions, including banks, credit unions, savings associations, and savings banks,

may participate in the development and implementation of the program. The program shall provide information, resources, outreach, and education regarding the following issues:

(a) For individuals with developmental disabilities:

1. Financial literacy strategies to promote income preservation and asset development. Financial literacy includes the knowledge, understanding, skills, behaviors, attitudes, and values that enable an individual with developmental disabilities to make responsible and effective financial decisions on a daily basis. Financial literacy strategies include information regarding earning income; money management skills; buying goods and services; saving and financial investing; mortgage and homeownership; taxes; the use of credit and credit cards; personal budgeting and debt management, including secured and unsecured loans; effective use of banking and financial services; financial planning for the future, including retirement; credit reports and scores; and fraud and identity theft prevention.

2. Identification of available financial programs and services.

3. Referral to existing state and local workforce development programs and resources.

4. The impacts of earnings and assets on federal and state benefit programs and options to manage those impacts.

(b) For financial institutions, businesses, government agencies, and local organizations, strategies to make program

information and educational materials available to their employees with developmental disabilities.

(3) The department shall:

(a) Establish on its website a clearinghouse for information regarding the program and other financial literacy resources available for individuals with developmental disabilities and their employers. If the department changes the website address for the program, the department shall notify financial institutions of the change.

(b) Publish a brochure on its website describing the program. Upon request, the department shall provide printed copies of the brochure to participating financial institutions.

(4) Once the department establishes the website and publishes the brochure, each participating financial institution may:

(a) Make copies of the department's brochure available at the financial institution's principal place of business and each branch office in the state that has in-person teller services. An office shall have copies of the brochure available or have the capability to print a copy of the brochure from the department's website.

(b) Provide a hyperlink on its website to the department's website for the program.

(5) A financial institution or other program participant shall not be subject to a civil cause of action arising from the distribution or nondistribution of the brochure or program

website information. The contents of the brochure or the program website information may not be attributed to the financial institution or program participant by virtue of its distribution, and nothing contained in the brochure or the program website information may be deemed as financial advice or guidance to the recipient or anyone acting on his or her behalf that would support a civil action against the financial institution or program participant.

Section 2. For the 2015-2016 fiscal year, the sum of $137,234 in nonrecurring funds from the Insurance Regulatory Trust Fund is appropriated to the Division of Consumer Services of the Department of Financial Services for the purpose of implementing this act.

Section 3. This act shall take effect January 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7109 PCB EUS 15-01 Florida Public Service Commission
SPONSOR(S): Energy & Utilities Subcommittee, La Rosa
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 288, HB 219

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Energy & Utilities Subcommittee	12 Y, 0 N	Keating	Keating
1) Government Operations Appropriations Subcommittee		White CCW	Topp RDT
2) Regulatory Affairs Committee			

SUMMARY ANALYSIS

This proposed committee bill:

- Establishes term limits of three consecutive terms for persons appointed to serve on the Public Service Commission (PSC) after July 1, 2015;
- Requires a person who lobbies the Public Service Commission Nominating Council to register as a legislative lobbyist pursuant to s. 11.045, F.S., and comply with the provisions of that section;
- Requires PSC commissioners to annually complete four hours of ethics training on s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of the state;
- Expands the prohibition on ex parte communications to communications in a proceeding affecting substantial interests which a commissioner knows or reasonably expects will be filed within 180 days after the date of the communication;
- Expands the prohibition on ex parte communications to include certain communications at scheduled and noticed open public meetings of educational programs and conferences of associations of regulatory agencies;
- Authorizes the Governor to remove from office a commissioner found by the Commission on Ethics to have willfully and knowingly violated the law with respect to ex parte communications, and requires removal from office after a second such finding;
- Requires the PSC to provide live streaming on the Internet of each PSC meeting attended by two or more commissioners and each PSC meeting at which a decision is made concerning the rights or obligations of any person;
- Requires the PSC to make a recorded copy of each meeting, workshop, hearing, or proceeding available on its website;
- Prohibits a regulated electric utility from charging a higher rate under a tiered rate structure due to an increase in usage attributable to a billing cycle extension;
- Establishes limits on the total amount of deposit that a regulated electric utility may require from a customer;
- Requires a regulated electric utility to notify each customer of all available rates and to provide good faith assistance to the customer in selecting the best rate;
- Requires new and amended tariffs of regulated electric utilities to be approved by vote of the PSC, except for administrative changes; and
- Specifies that moneys received for implementation of measures to encourage demand-side renewable energy systems must be used solely for that purpose, including administrative costs of such measures.

The bill does not appear to have an impact on state government revenues. As discussed in the *Fiscal Comments* section, the bill may have an insignificant negative fiscal impact on state government expenditures.
The bill does not appear to have an impact on local government revenues or expenditures.
The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Proceedings of the Florida Public Service Commission

The Florida Public Service Commission ("PSC" or "commission") is an arm of the legislative branch of government.[1] The role of the PSC is to ensure that Florida's consumers receive some of their most essential services – electric, natural gas, telephone, water, and wastewater – in a safe, affordable, and reliable manner.[2] In doing so, the PSC exercises regulatory authority over utilities in one or more of three key areas: rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.[3]

In performing this role, the PSC conducts proceedings ranging from workshops, customer hearings, internal affairs meetings, and rulemaking to informal "proposed agency action" proceedings and formal evidentiary hearings. The PSC conducts customer service hearings in the service territory of a rate-regulated utility to obtain customer comments in all formal evidentiary proceedings in which the PSC is considering a change in a utility's base rates.[4] If feasible, the PSC holds formal evidentiary hearings concerning water and wastewater certificates in the service area of the utility seeking a new or amended certificate.[5]

The PSC streams live on the Internet all internal affairs meetings, agenda conferences, and hearings held in Tallahassee. It also streams live on the Internet all workshops, including rule development workshops, that it believes are of great public interest. All recordings of such meetings, hearings, and workshops are available for future review on the PSC's web page.[6]

Appointment of Public Service Commissioners

The PSC is comprised of five commissioners appointed to staggered four-year terms.[7] There are no limits on the number of terms that a commissioner may serve. Although the PSC is an arm of the legislative branch of government, the Legislature has delegated to the Governor a "limited authority with respect to the Public Service Commission by authorizing him or her to participate in the selection of members" in a specific manner[8]: commissioners are appointed by the Governor from a slate of nominees selected by the Public Service Commission Nominating Council (PSC Nominating Council), and the Governor's appointments must be confirmed by the Senate.[9]

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[1] s. 350.001, F.S.

[2] http://www.psc.state.fl.us/about/overview.aspx#one

[3] *Id.* During 2014, the PSC regulated five investor-owned electric companies, eight investor-owned natural gas utilities, and 149 investor-owned water and/or wastewater utilities. While the PSC does not fully regulate publicly owned municipal or cooperative electric utilities, the Commission does have jurisdiction, with regard to rate structure, territorial boundaries, bulk power supply operations and planning, over 34 municipally owned electric systems and 18 rural electric cooperatives. The PSC has jurisdiction, with regard to territorial boundaries and safety, over 28 municipally owned natural gas utilities and also exercises safety authority over all electric and natural gas systems operating in the state.

[4] Public Service Commission Analysis of HB 219 (2015), submitted February 17, 2015 (on file with the Energy & Utilities Subcommittee).

[5] *Id.* See s. 367.045(4), F.S.

[6] *Id.*

[7] ss. 350.01 and 350.031, F.S.

[8] s. 350.001, F.S.

[9] s. 350.031, F.S.

The PSC Nominating Council consists of 12 members, with six appointed by the President of the Senate and six appointed by the Speaker of the House of Representatives. The President and the Speaker must each appoint three members from their own chamber, including one member from the minority party, and three nonlegislator members. Council members have four-year terms, except that legislator members serve two-year terms concurrent with the two-year elected terms of House members. Council meetings are subject to public records and public meetings law.[10]

Before nominating a person to the Governor for appointment, the PSC Nominating Council must determine that the person is competent and knowledgeable in one or more fields, including but not limited to: public affairs, law, economics, accounting, engineering, finance, natural resource conservation, energy, or "another field substantially related to the duties and functions of the commission." The law requires that the commission fairly represent these fields.[11]

Public Service Commissioners – Standards of Conduct

The PSC is required to perform its duties independently.[12] Part III of Chapter 112, F.S., establishes a code of ethics for public officers and employees, which includes Public Service Commissioners. Generally, this code prohibits public officers, including commissioners, from soliciting or accepting anything of value to influence a vote or official action, using their official position to secure a special benefit, disclosing or using non-public information for personal benefit, soliciting gifts from lobbyists, and soliciting an honorarium from anyone or accepting an honorarium from a lobbyist. This code also establishes restrictions on public officers, including commissioners, from doing business with one's own agency, having outside employment or contractual relationships that conflict with public duties, representing any party before one's agency for compensation for two years after leaving office, and employing relatives in the agency. Finally, this code requires that public officers, including commissioners, disclose voting conflicts when a vote would result in a special private gain or loss, file quarterly reports for gifts over $100 from persons not lobbyists or relatives, file quarterly reports for receipt of honorarium-related expenses from lobbyists, and disclose certain financial interests.

In addition to the provisions of part III of chapter 112, F.S., public service commissioners are subject to more stringent requirements in s. 350.041, F.S. In the event of a conflict between part III of chapter 112 and s. 350.041, F.S., the more restrictive provision applies.[13] Section 350.041, F.S., provides the following standards of conduct:

- A commissioner may not accept anything from a regulated public utility (or a business entity that owns or controls the utility or an affiliate or subsidiary of the utility).
- A commissioner may not accept anything from a party in a proceeding currently pending before the commission.
- A commissioner may not accept any form of employment with, or engage in any business activity with, a regulated public utility (or a business entity that owns or controls the utility or an affiliate or subsidiary of the utility).
- A commissioner may not have any financial interest in a regulated public utility (or a business entity that owns or controls the utility or an affiliate or subsidiary of the utility), except for shares in a mutual fund.
- A commissioner may not serve as the representative of, or serve as an executive officer or employee of, a political party; campaign for any candidate for public office; or become a candidate for any public office without first resigning.
- A commissioner, during his or her term of office, may not make any public comment on the merits of a formal proceeding in which a person's substantial interests are determined.

[10] *Id.*
[11] *Id.*
[12] s. 350.001, F.S.
[13] s. 350.041(1), F.S.

- A commissioner may not conduct himself or herself in an unprofessional manner during the performance of official duties.
- A commissioner must avoid impropriety in all activities and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission.

There are no statutory requirements for training related to commissioners' duties and responsibilities under these standards. However, the PSC's Office of General Counsel provides training for all new commissioners on the duties, responsibilities, and prohibitions contained in Chapters 112 and 350, F.S., as well as the public records and meeting laws, and informs commissioners of new developments in these areas.[14]

Ex Parte Communications

Commissioners are prohibited from initiating or considering ex parte communications concerning the merits, threat, or offer of reward in any proceeding other than a rulemaking proceeding, a declaratory statement proceeding, workshops, or internal affairs meetings.[15] The law also prohibits an individual from discussing ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 90 days.[16]

If a commissioner receives a prohibited ex parte communication, he or she must: place on the record of the proceeding a copy of any written correspondence or a memo stating the substance of any oral communication; provide written notice to all parties to the proceeding; and provide all parties the opportunity to respond to the ex parte communication. The commissioner may choose to withdraw from the proceeding if he or she believes it is necessary to do so to eliminate the effect of having received the communication.[17] Any individual other than a commissioner that makes a prohibited ex parte communication must submit to the commission: a written statement describing the nature of the communication; copies of all written communications made and written responses received; and a memorandum stating the substance of all oral communications made and oral responses received. The commission must place this information on the record of the relevant proceeding.[18]

The prohibition on ex parte communications does not apply to oral communications or discussions in scheduled and noticed open public meetings of educational programs or of a conference or other meeting of an association of regulatory agencies.[19]

The Commission on Ethics is empowered to investigate sworn complaints of violations of this section. If the Commission on Ethics finds that there has been a violation by a PSC commissioner, it must provide a report of its findings and recommendations to the Governor and the Florida Public Service Commission Nominating Council. The Governor is authorized to enforce the findings and recommendations. A commissioner who fails to place the communication on the record within 15 days is subject to removal and a civil penalty of up to $5,000. Any other person who participated in the communication faces a two-year ban on practice before the PSC.[20]

[14] Public Service Commission Analysis of HB 219, *supra* note 4.
[15] s. 350.042(1), F.S. The law does not define "ex parte communications" for purposes of this section, though it is generally understood to mean a communication between a commissioner and a party or other interested person, including an attorney or representative of that party or person, that was neither on the record nor on reasonable prior notice to all parties.
[16] *Id.*
[17] s. 350.042(4), F.S.
[18] s. 350.042(5), F.S.
[19] s. 350.042(3), F.S.
[20] s. 350.042(6) and (7), F.S.

Regulation of Electric Utility Customer Billing Practices

Rate Information Provided to Customers

The rates and terms of service for each rate-regulated electric utility (electric utility) are reflected in rate schedules applicable to various classes of customers, as established by order of the PSC. In some cases, a customer may be eligible to receive service under more than one rate schedule. PSC rules require an electric utility to notify each customer of any new rate schedule that they may be eligible for within 60 days of approval of the rate schedule and to notify each customer at least once a year of all rate schedules that the customer may elect. Upon request of a customer, an electric utility is required to provide the customer information about applicable rate schedules and assist the customer in obtaining the rate schedule which is most advantageous to the customer's requirements.[21] Absent a customer request, there is no affirmative duty for an electric utility to assist a customer in identifying the most advantageous rate.

Establishment of Deposits

Under its authority to prescribe fair and reasonable rates and charges, the PSC has adopted a rule on customer deposits.[22] Under this rule, each electric utility's tariff must contain the utility's specific criteria for determining the amount of initial deposit. After a customer has had continuous service for a period of 23 months and has established a satisfactory payment record, the utility must:

- Refund a residential customer's deposit.
- At its option, either refund or pay a higher rate of interest[23] for nonresidential deposits.

An electric utility may also increase a customer's required deposit to secure payment of current bills. For new or additional deposits, the amount of the required deposit may not exceed "an amount equal to twice the average charges for actual usage of electric service for the twelve month period immediately prior to the date of notice." If a customer has had service for less than twelve months, the utility must calculate the new or additional deposit based upon the "average actual monthly usage available."[24]

Though the first part of the rule is ambiguous as to the period of usage for which charges should be averaged, the rule has consistently been interpreted and implemented to mean that the total amount of the deposit required by the utility may not exceed twice the average monthly bill for the immediately preceding twelve months.[25]

Customer Billing Cycles

PSC rules specify that "each [electric utility] service meter shall be read at monthly intervals on the approximate corresponding day of each meter-reading period."[26] Further, utilities may adjust a billing cycle, provided that "[t]he regular meter reading date may be advanced or postponed not more than five days without a pro-ration of the billing for the period."[27]

Upon approval of the PSC, electric utilities may use tiered rates in particular rate schedules. Tiered rates are typically used to encourage conservation by applying a higher rate for usage above a threshold specified in the rate schedule.

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[21] Rule 25-6.093, F.A.C.
[22] Rule 25-6.097, F.A.C.
[23] *Id.* This higher interest rate is three percent instead of the usual two percent. In all cases the interest is simple interest, not compounded.
[24] *Id.*
[25] *See, e.g.,* PSC Order No. PSC-13-0124-PAA-EI, issued March 13, 2013, in Docket No. 120176-EI (In re: Complaint of Frederick Smallakoff against Progress Energy Florida, Inc. concerning alleged improper bills, Case No. 1059336E).
[26] Rule 25-6.099, F.A.C.
[27] Rule 25-6.100, F.A.C.

The PSC's rules do not address the application of tiered rates to extended billing periods. Recently, an electric utility adjusted its billing period for one billing cycle "as part of an ongoing process started in May 2013 to streamline the company's routes for meter-reading throughout central and northern Florida."[28] As a result of the extended billing period, some customers' total usage for the extended billing period increased such that a tiered rate was applicable, even though their average daily use did not increase during that period. After many complaints, the utility agreed to refund all increased charges and absorb the remaining unbilled charges that would have resulted.[29]

Approval of Electric Utility Tariffs

The PSC-approved rate schedules for each electric utility are set forth in tariffs. In certain circumstances, the PSC authorizes its staff to administratively approve utility tariffs without a vote of the commission. These circumstances include approval of tariffs filed to correct typographical errors, approval of tariff amendments that clarify or reorganize text, approval of tariffs filed in response to PSC rules or orders, and removal of obsolete tariffs once all customers have discontinued service under the tariff.[30]

Recovery of Costs for Energy Efficiency and Conservation Programs

Pursuant to the Florida Energy Efficiency and Conservation Act (FEECA), the PSC must establish energy efficiency and conservation goals for certain electric utilities and must establish plans and programs designed to meet those goals.[31] In 2008, the Legislature added a requirement for the PSC to adopt appropriate goals for increasing the development of demand-side renewable energy systems.[32] To implement this requirement, the PSC created a five-year solar pilot project, and each year the utilities collected money for these purposes. In the most recent FEECA goal-setting hearings in 2014, electric utilities proposed ending the project early, and parties to the proceeding expressed concern about the potential disposition of the remaining funds.

In annual hearings, the PSC reviews each utility's costs for FEECA programs. Cost recovery through rates in a given calendar year is based on the net of projected expenses for that year and the positive or negative "true-up" balance from the preceding period. Under this mechanism, utilities are able to recover only the actual costs of providing the FEECA programs, including costs to administer the programs.

Effect of Proposed Changes

Proceedings of the Florida Public Service Commission

The bill establishes requirements for the PSC to provide live streaming on the Internet of specified proceedings. Specifically, the bill requires live streaming of each PSC meeting that is attended by two or more commissioners, including each internal affairs meeting, workshop, hearing, or other proceeding. The bill also requires live streaming of each PSC meeting, workshop, hearing, or other proceeding at which a decision is made which concerns the rights or obligations of any person. The bill

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[28] Jim Turner, *Duke Energy called to explain billing change*, Tallahassee Democrat, August 25, 2014, http://www.tallahassee.com/story/news/politics/2014/08/25/duke-energy-called-explain-billing-change/14594563/ (last accessed March 13, 2015).

[29] Ivan Penn, *Duke charges were set to reach more than $2.6 million in overbilling*, Tampa Bay Times, September 10, 2014, http://www.tampabay.com/news/business/energy/duke-energy-refunds-17-million-to-customers-because-of-meter-issue/2197029 (last accessed March 13, 2015).

[30] Public Service Commission Analysis of HB 219, *supra* note 4 (referring to FPSC Agency Procedure Manual, Chapter 2.07).

[31] ss. 366.80-366.83 and 403.519, F.S

[32] Chapter 2008-227, Laws of Fla. The term "demand-side renewable energy" means a system located on a customer's premises generating thermal or electric energy using Florida renewable energy resources and primarily intended to offset all or part of the customer's electricity requirements provided such system does not exceed 2 megawatts.

requires that a recorded copy of each meeting, workshop, hearing, or proceeding be made available on the PSC's website.

The PSC currently provides live streaming, and makes recordings available on its website, for most of the types of meetings addressed in the bill, but it does not do so for all workshops or for many events held outside of Tallahassee. Thus, the bill will expand public access to view these events.

Appointment of Public Service Commissioners

Noting that the purpose of the PSC Nominating Council is to select nominees for an arm of the legislative branch of government, the bill establishes a requirement that any person who lobbies the PSC Nominating Council must register as a lobbyist pursuant to s. 11.045, F.S., which governs registration and reporting requirements for legislative branch lobbying. The bill specifies the type of activity that qualifies as lobbying for purposes of registration, using essentially the same language used in s. 11.045, F.S., to define such activity. Specifically, the requirement applies to:

> a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of influencing or attempting to influence action of the council through oral or written communication or through an attempt to obtain the goodwill of a legislator or nonlegislator member of the council, or a person who is principally employed for governmental affairs by another person or governmental entity to act on behalf of that other person or entity for this purpose ....

Each person subject to registration under the bill must also comply with the other provisions of s. 11.045, F.S., which address the filing of compensation reports, prohibited expenditures to the benefit of a member, and penalties for noncompliance.

The bill also establishes term limits for PSC commissioners. Commissioners appointed after July 1, 2015, may not serve more than three consecutive terms.

Public Service Commissioners – Standards of Conduct

The bill requires that PSC commissioners must annually complete four hours of ethics training that addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of the state. The bill provides that this requirement can be met by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation, if the required subjects are covered.

Ex Parte Communications

The bill expands the prohibition on ex parte communications to include any communication between a commissioner and a person legally interested in a proceeding (e.g., a party, interested person, or legal counsel for either) concerning the merits, threat, or offer of reward in a proceeding which a commissioner knows or reasonably expects will be filed within 180 days after the date of the communication. This reduces the period of time during which communications could potentially occur between interested persons and commissioners concerning the merits of matters that may come before the PSC. The bill specifies that the prohibition applies in proceedings under sections 120.569 and 120.57, F.S., i.e., proceedings in which a party's substantial interests may be affected.

The bill eliminates the exception for ex parte communications in scheduled and noticed open public meetings of educational programs and conferences of associations of regulatory agencies. The bill provides a finding that recognizes the value of having commissioners attend educational programs, conferences, and meetings of associations of regulatory agencies, but

establishes requirements for attendance and participation in such meetings that are intended to avoid violations of the ex parte prohibition. While participating in these meetings, a commissioner must refrain from commenting on or discussing the subject matter of any proceeding covered by the prohibition and must use reasonable care to ensure that the content of a meeting in which the commissioner participates is not designed to address or create a forum to influence the commissioner on the subject matter of any such proceeding.

The bill authorizes the Governor to remove from office any commissioner found by the Commission on Ethics to have willfully and knowingly violated s. 350.042, F.S., related to ex parte communications, even if the Commission on Ethics does not recommend removal. The bill requires the Governor to remove a commissioner from office upon a finding by the Commission on Ethics that the commissioner willfully and knowingly violated s. 350.042, F.S., in a second, subsequent matter.

Regulation of Electric Utility Customer Billing Practices

Rate Information Provided to Customers

In each instance where an electric utility offers more than one rate for any customer class, the bill requires the utility to notify each customer in that class of the available rates and explain how each rate is charged. The bill requires each electric utility, when contacted by a customer seeking assistance in selecting the most advantageous rate, to provide good faith assistance to the customer.

Establishment of Deposits

The bill establishes clear provisions for the calculation of deposits that an electric utility may require as a condition of service. The bill provides that a utility may not charge or receive a deposit in excess of the following amounts:

- For an existing account, the total deposit may not exceed the total charges for two months of average actual usage, calculated by adding the monthly charges from the 12-month period immediately before the date any change in the deposit amount is sought, dividing this total by 12, and multiplying the result by two. If the account has less than 12 months of actual usage, the deposit must be calculated by adding the available monthly charges, dividing this total by the number of months available, and multiplying the result by two.
- For a new customer, the amount may not exceed two months of projected charges, calculated by adding the projected 12 months of charges, dividing this total by 12, and multiplying the result by two. Once a new customer has had continuous service for a 12-month period, the amount of the deposit must be recalculated, using actual usage data. Any difference between the projected and actual amounts must be resolved by the customer paying any additional amount that may be billed by the utility or the utility returning any overcharge.

Customer Billing Cycles

In situations where the PSC has approved tiered rates for an electric utility and has authorized the utility to adjust its regular billing period, the bill prohibits a utility from charging the customer higher rates because of an increase in usage attributable to the extended billing period. The bill maintains the current practice of allowing meter reading dates to be advanced or postponed up to five days, for routine operating reasons, without a requirement that billing be pro-rated for that period.

Approval of Electric Utility Tariffs

The bill provides that the new and amended electric utility tariffs must be approved by vote of the PSC. The bill provides an exception for administrative changes that do not substantially change the meaning or operation of a tariff.

Recovery of Costs for Energy Efficiency and Conservation Programs

The bill provides that moneys received by a rate-regulated electric utility to implement measures to encourage development of demand-side renewable energy systems may only be used for that purposes, including related administrative costs. This provision is consistent with current PSC practice.

B. SECTION DIRECTORY:

Section 1. Amends s. 350.01, F.S., relating to terms of Public Service Commissioners and Public Service Commission proceedings.

Section 2. Amends s. 350.031, F.S., relating to the Florida Public Service Commission Nominating Council.

Section 3. Amends s. 350.041, F.S., relating to standards of conduct for Public Service Commissioners.

Section 4. Amends s. 350.042, F.S., relating to ex parte communications.

Section 5. Amends s. 366.05, F.S., relating to powers of the Public Service Commission.

Section 6. Amends s. 366.82, F.S., relating to energy efficiency and conservation goals, plans, programs, annual reports, and energy audits.

Section 7. Providing an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See *Fiscal Notes*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Customers of rate-regulated electric utilities will be protected from the imposition of higher, tiered rates in certain situations resulting from the extension of a utility's billing cycle. Customers will be protected from the imposition of excessive deposits and will receive rate schedule information that will allow cost comparisons.

Persons who lobby the PSC Nominating Council may incur costs to register as a lobbyist, if not otherwise registered.

D. FISCAL COMMENTS:

According to the PSC's analysis of similar provisions in HB 219, the bill may increase operating costs for the Public Service Commission to live-stream meetings in locations that lack adequate in-house technology and, if the agency's current in-house ethics training will not satisfy the training requirements in the bill, the bill may increase costs to obtain outside ethics training for commissioners. The PSC has estimated $30,555 in expenditures the first year and $16,760 in recurring expenditures to implement the provisions of the bill.[33]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[33] March 25, 2015 e-mail on file with the House Government Operations Appropriations Subcommittee.

A bill to be entitled

An act relating to the Florida Public Service Commission; amending s. 350.01, F.S.; providing term limits for commissioners appointed after a specified date; requiring that specified meetings, workshops, hearings, or proceedings of the commission be streamed live and recorded copies be made available on the commission's website; amending s. 350.031, F.S.; requiring a person who lobbies a member of the Florida Public Service Commission Nominating Council to register as a lobbyist; amending s. 350.041, F.S.; requiring public service commissioners to annually complete ethics training; amending s. 350.042, F.S.; revising the prohibition against ex parte communications to include any matter that a commissioner knows or reasonably expects will be filed within a certain timeframe; providing legislative intent; defining terms; applying the prohibition against ex parte communications to specified meetings; specifying conditions under which the Governor must remove from office any commissioner found to have willfully and knowingly violated the ex parte communications law; amending s. 366.05, F.S.; limiting the use of tiered rates in conjunction with extended billing periods; limiting deposit amounts; requiring a utility to notify each customer if it has more than

one rate for any customer class; requiring the utility to provide good faith assistance to the customer in determining the best rate; assigning responsibility to the customer for the rate selection; requiring the commission to approve new tariffs and certain changes to existing tariffs; amending s. 366.82, F.S.; requiring that money received by a utility for the development of demand-side renewable energy systems be used solely for that purpose; providing an effective date.

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

Section 1. Subsection (3) of section 350.01, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

350.01 Florida Public Service Commission; terms of commissioners; vacancies; election and duties of chair; quorum; proceedings.—

(3) Any person serving on the commission who seeks to be appointed or reappointed shall file with the nominating council no later than June 1 prior to the year in which his or her term expires a statement that he or she desires to serve an additional term. A commissioner appointed after July 1, 2015, may not serve more than three consecutive terms.

(8) Each meeting, including each internal affairs meeting,

workshop, hearing, or other proceeding attended by two or more commissioners, and each such meeting, workshop, hearing, or other proceeding where a decision that concerns the rights or obligations of any person is made, shall be streamed live on the Internet and a recorded copy of the meeting, workshop, hearing, or proceeding shall be made available on the commission's website.

Section 2. Subsection (10) is added to section 350.031, Florida Statutes, to read:

350.031 Florida Public Service Commission Nominating Council.—

(10) In keeping with the purpose of the council, which is to select nominees to be appointed to an arm of the legislative branch of government, a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of influencing or attempting to influence action of the council through oral or written communication or through an attempt to obtain the goodwill of a legislator or nonlegislator member of the council, or a person who is principally employed for governmental affairs by another person or governmental entity to act on behalf of that other person or entity for this purpose, must register as a lobbyist pursuant to s. 11.045 and otherwise comply with the requirements of that section.

Section 3. Subsection (3) of section 350.041, Florida Statutes is renumbered as subsection(4), and a new subsection (3) is added to that section to read:

350.041 Commissioners; standards of conduct.—

(3) ETHICS TRAINING.—Beginning January 1, 2016, a commissioner must annually complete at least 4 hours of ethics training that addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation, if the required subjects are covered.

Section 4. Subsections (1) and (3) and paragraph (b) of subsection (7) of section 350.042, Florida Statutes, are amended to read:

350.042 Ex parte communications.—

(1) A commissioner should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, shall neither initiate nor consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding under s. 120.569 or s. 120.57 that is currently pending before the commission or that he or she knows or reasonably expects will be filed with the commission within 180 days after the date of any such communication, other than a proceeding under s. 120.54 or s. 120.565, workshops, or internal affairs meetings. An ~~No~~ individual may not ~~shall~~ discuss ex parte with a commissioner the merits of any issue that he or she

knows will be filed with the commission within 180 ~~90~~ days. ~~The provisions of~~ This subsection does ~~shall~~ not apply to commission staff.

(3)(a) The Legislature finds that it is important to have commissioners who are educated and informed on regulatory policies and developments in science, technology, business management, finance, law, and public policy which are associated with the industries that the commissioners regulate. The Legislature also finds that it is in the public interest for commissioners to become educated and informed on these matters through active participation in meetings that are scheduled by organizations that sponsor such educational or informational sessions, programs, conferences, and similar events and that are duly noticed and open to the public.

(b) As used in this subsection, the term "active participation" or "participating in" includes, but is not limited to, attending or speaking at educational sessions, participating in organization governance by attending meetings, serving on committees or in leadership positions, participating in panel discussions, and attending meals and receptions associated with such events that are open to all attendees.

(c) The prohibition in subsection (1) remains in effect at all times at such meetings wherever located. While participating in such meetings, a commissioner shall:

1. Refrain from commenting on or discussing the subject matter of any proceeding under s. 120.569 or s. 120.57 that is

currently pending before the commission or that he or she knows or reasonably expects will be filed with the commission within 180 days after the meeting.

2. Use reasonable care to ensure that the content of the educational session or other session in which the commissioner participates is not designed to address or create a forum to influence the commissioner on the subject matter of any proceeding under s. 120.569 or s. 120.57 that is currently pending before the commission or that he or she knows or reasonably expects will be filed with the commission within 180 days after the meeting ~~This section shall not apply to oral communications or discussions in scheduled and noticed open public meetings of educational programs or of a conference or other meeting of an association of regulatory agencies~~.

(7)

(b) If the Commission on Ethics finds that there has been a violation of this section by a public service commissioner, it shall provide the Governor and the Florida Public Service Commission Nominating Council with a report of its findings and recommendations. The Governor is authorized to enforce the findings and recommendations of the Commission on Ethics, pursuant to part III of chapter 112 and to remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated this section. The Governor shall remove from office a commissioner who is found by the Commission on Ethics to have willfully and knowingly violated

this section after a previous finding by the Commission on Ethics that the commissioner willfully and knowingly violated this section in a separate matter.

Section 5. Subsection (1) of section 366.05, Florida Statutes, is amended to read:

366.05 Powers.—

(1)(a) In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, including the ability to adopt construction standards that exceed the National Electrical Safety Code, for purposes of ensuring the reliable provision of service, and service rules and regulations to be observed by each public utility; to require repairs, improvements, additions, replacements, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto; to employ and fix the compensation for such examiners and technical, legal, and clerical employees as it deems necessary to carry out the provisions of this chapter; and to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

(b) If the commission authorizes a public utility to charge tiered rates based upon levels of usage and to vary its regular billing period, the utility may not charge a customer a

higher rate because of an increase in usage attributable to an extension of the billing period; however, the regular meter reading date may not be advanced or postponed more than 5 days for routine operating reasons without prorating the billing for the period.

(c) A utility may not charge or receive a deposit in excess of the following amounts:

1. For an existing account, the total deposit may not exceed the total charges for 2 months of average actual usage, calculated by adding the monthly charges from the 12-month period immediately before the date any change in the deposit amount is sought, dividing this total by 12, and multiplying the result by 2. If the account has less than 12 months of actual usage, the deposit shall be calculated by adding the available monthly charges, dividing this total by the number of months available, and multiplying the result by 2.

2. For a new service request, the total deposit may not exceed 2 months of projected charges, calculated by adding the 12 months of projected charges, dividing this total by 12, and multiplying the result by 2. Once a new customer has had continuous service for a 12-month period, the amount of the deposit shall be recalculated using actual usage data. Any difference between the projected and actual amounts must be resolved by the customer paying any additional amount that may be billed by the utility or the utility returning any overcharge.

(d) If a utility has more than one rate for any customer class, it must notify each customer in that class of the available rates and explain how the rate is charged to the customer. If a customer contacts the utility seeking assistance in selecting the most advantageous rate, the utility must provide good faith assistance to the customer. The customer is responsible for charges for service provided under the selected rate.

(e) New tariffs and changes to an existing tariff, other than an administrative change that does not substantially change the meaning or operation of the tariff, must be approved by majority vote of the commission.

Section 6. Subsection (2) of section 366.82, Florida Statutes, is amended to read:

366.82 Definition; goals; plans; programs; annual reports; energy audits.—

(2) The commission shall adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of demand-side renewable energy systems, specifically including goals designed to increase the conservation of expensive resources, such as petroleum fuels, to reduce and control the growth rates of electric consumption, to reduce the growth rates of weather-sensitive peak demand, and to encourage development of demand-side renewable energy resources. The commission may allow efficiency investments across generation, transmission, and distribution as well as

efficiencies within the user base. Moneys received by a utility to implement measures to encourage the development of demand-side renewable energy systems shall be used solely for such purposes and related administrative costs.

Section 7. This act shall take effect July 1, 2015.