



Government Operations Appropriations Subcommittee

Meeting Packet

**January 28, 2016
3:30 p.m. – 5:30 p.m.
Morris Hall**



AGENDA

Government Operations Appropriations Subcommittee

January 28, 2016



3:30 p.m. – 5:30 p.m.

Morris Hall

- I. Call to Order/Roll Call**
- II. Presentation of the Chair's Proposed Budget for Fiscal Year 2016-2017**
- III. Consideration of Bills**
 - CS/HB 473 Funeral, Cemetery, and Consumer Services by Insurance & Banking Subcommittee, Roberson, K.
 - CS/HB 535 Building Codes by Business & Professions Subcommittee, Eagle
 - CS/HB 579 Municipal Power Regulation by Energy & Utilities Subcommittee, Mayfield
 - HB 613 Workers' Compensation System Administration by Sullivan
 - HB 657 Foster Family Appreciation Week by Albritton
 - CS/HB 717 Consumer Credit by Insurance & Banking Subcommittee, Burgess
 - CS/HB 817 Mergers and Acquisitions Brokers by Insurance & Banking Subcommittee, Raulerson
- IV. Closing Remarks/Adjourn**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 473 Funeral, Cemetery, and Consumer Services
SPONSOR(S): Insurance & Banking Subcommittee; Roberson and Others
TIED BILLS: IDEN./SIM. BILLS: SB 854

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	10 Y, 0 N, As CS	Bauer	Luczynski
2) Government Operations Appropriations Subcommittee		Keith 	Topp 
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Chapter 497, F.S., entitled the Florida Funeral, Cemetery, and Consumer Services Act (Act), provides for the regulatory oversight of the death care industry, which includes individual and entity licenses for cemetery companies, embalmers, direct disposers, funeral directors, preneed, and others. The Act is administered jointly by the Division of Funeral, Cemetery, & Consumer Services of the Department of Financial Services (DFS) and the Board of Funeral, Cemetery & Funeral Services (Board) as coexisting "licensing authorities."

The bill makes the following changes throughout the Act:

- Creates a unitrust method as an alternative to the current net income approach for care and maintenance trusts required of cemetery companies; also creates definitions, requirements, and procedures for election, modification, and Board approval of a cemetery company's election to use the unitrust method;
- Repeals surety bonding and letters of credit as alternative forms of security for the performance of preneed contracts, and eliminates references to these alternative options throughout the Act;
- Creates definitions of "purchaser" and "beneficiary" for preneed contracts, and updates various financial and trust-related terms throughout the Act;
- Repeals a preneed licensure exemption for certain servicing agents;
- Authorizes the DFS to require email addresses from applicants and licensees for purposes of electronic notifications for official communications;
- Ensures consistent use of the defined term "legally authorized person" throughout the Act;
- Clarifies that cremated remains are not property for purposes of probate, and that division of such remains requires the legally authorized person's consent;
- Permits cemetery companies to increase the fee over the currently capped \$50 for each burial rights transfer, but subject to Board rule and findings;
- Requires applicants for the embalmer apprentice program to demonstrate good character, which is currently required of other licenses under the Act;
- Clarifies the scope of funeral directing;
- Requires cemetery companies to remit unexpended monies paid on irrevocable preneed contracts to the Agency for Health Care Administration (AHCA) for deposit into the Medical Care Trust Fund after the beneficiary's final disposition;
- Clarifies the deposit duties of preneed licensees prior to becoming inactive; and
- Provides specific rulemaking authority for several existing rules and provides new rulemaking authority to administer the unitrust method.

The bill has a positive fiscal impact on state government expenditures by reducing an estimated \$20,000 in operational expenditures from the Regulatory Trust Fund within the DFS. In addition, the bill has a positive, yet indeterminate fiscal impact to the state by requiring the industry to remit unused irrevocable preneed contract funds to AHCA for deposit into the Medical Care Trust Fund. The bill does not have a fiscal impact on local governments. The fiscal impact to the private sector is indeterminate, in that the bill requires annual reporting from trustees of preneed contract funds, but the unitrust method could provide greater long-term returns for cemetery licensees' care and maintenance trusts. In addition, the bill provides the opportunity for the Board to allow an increase in transferal of burial rights fees above the current \$50 statutory cap. The impact to the private sector associated with the fee increase is indeterminate.

The bill has an effective date of July 1, 2016.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 12/14/2015

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 497, F.S., entitled the Florida Funeral, Cemetery, and Consumer Services Act (Act), provides for the regulatory oversight of the death care industry, which includes the following individual and entity licenses:¹

- Brokers of burial rights
- Cemeteries
- Central embalming facilities
- Cinerator facilities
- Direct disposer and direct disposal establishments
- Embalmers (including apprentices, interns, and by endorsement)
- Funeral directors and funeral establishments
- Preneed, preneed branches, and preneed sales agents
- Monument establishments and monument establishment sales agents
- Refrigeration facilities
- Removal services
- Training facilities

The Act is administered jointly by the Division of Funeral, Cemetery, & Consumer Services of the Department of Financial Services ("DFS" or "Division") and the Board of Funeral, Cemetery & Funeral Services ("Board").

Effect of the Bill

The bill amends a number of provisions of the Act:

E-mail Notifications

As required by the Act, the DFS administers a licensing system to process and track applications, renewals, and fees; the DFS is authorized to require specified information in its application forms, such as the applicant's work history, criminal history, and business plans. Currently, application forms adopted by rule require the e-mail address of the applicant or licensee as a means of correspondence for the DFS.²

Sections 2, 3, and 6 of the bill amend ss. 497.141, 497.146, and 497.264, F.S., respectively, to codify the Division's practice of requiring applicants' and licensees' email addresses.

Legally Authorized Persons & the Disposition of Human Remains

Currently, the Act sets forth the order or priority of persons ("legally authorized persons") who are authorized to direct the disposition of human remains. The "legally authorized person" concept is

¹ DFS DIVISION OF FUNERAL, CEMETERY & CONSUMER SERVICES, *Who We Regulate: Regulated Categories & Number of Licensees*, <http://www.myfloridacfo.com/Division/FuneralCemetery/About/Whoweregulate.htm> (last viewed Nov. 20, 2015).

² s. 497.141(2) and (11), F.S. See DIVISION OF FUNERAL, CEMETERY & CONSUMER SERVICES, *Applications*, at <http://www.myfloridacfo.com/Division/funeralcemetery/Licensing/LicensingApplications.htm> (last viewed Nov. 20, 2015).

similar to the Probate Code's order of preference in appointing a personal representative over an estate.³ The Act sets the priority of legally authorized persons⁴ as:

- (1) A written *inter vivos*⁵ authorization made by the deceased;
- (2) The person designated by the decedent as authorized to direct disposition pursuant to Pub. L. No. 109-163, s. 564, as listed on the decedent's United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, if the decedent died while serving military service as described in 10 U.S.C. s. 1481(a)(1)-(8) in any branch of the United States Armed Forces, United States Reserve Forces, or National Guard;
- (3) The surviving spouse;
- (4) A son or daughter of majority age;
- (5) A parent;
- (6) A sibling of majority age;
- (7) A grandchild of majority age;
- (8) A grandparent; or
- (9) Another person in the next degree of kinship.

However, current usage of the term throughout the Act is inconsistent, leading to concerns of uncertainty and potential disputes among heirs regarding the disposition of human remains. Such disputes can also involve funeral homes and other licensees under the Act, because they receive, store, and process the remains, and are sometimes sued by the relative whose wishes regarding final disposition did not prevail.⁶

The bill amends several provisions throughout the Act to ensure consistent usage of the term "legally authorized person":

- Section 4 – s. 497.152, F.S., which subjects a licensee to disciplinary action by the DFS for various acts, including refusing to surrender custody of a dead human body, failing to obtain written permission regarding disposition of funeral merchandise, and making material misrepresentations regarding a preneed contract. The bill clarifies that these acts or omissions directed to legally authorized persons are grounds for disciplinary action.
- Section 12 – s. 497.273(4)(b), F.S., regarding the authorization to inter or entomb cremated animal remains with an inurned.
- Section 13 – s. 497.274(1), F.S., regarding the authority to waive the minimum standard adult grave space.
- Section 16 – s. 497.286(3), F.S., regarding the names of certain persons contained in a cemetery's notice to the DFS of presumptively abandoned burial rights.
- Section 19 – s. 497.381(4), F.S., regarding the prohibition of solicitation of goods and services by funeral directors and direct disposers to legally authorized persons or family.⁷
- Section 25 – s. 497.460, F.S., regarding the disbursement of funds paid on defaulted or unperformed preneed contracts.
- Section 31 – s. 497.601(1), F.S., regarding the scope of permissible activities of licensed direct disposers, including securing pertinent information to complete disposition and the death certificate.
- Section 32 – s. 497.607(1), F.S., regarding authorization for cremation services. In addition to clarifying the "legally authorized person" declaration of intent in subsection 1, the bill creates subsection (2) to s. 497.607, F.S., to state that cremated remains are not property for purposes

³ s. 733.301, F.S.

⁴ s. 497.005(39), F.S. The definition also addresses legally authorized persons when no family member exists or is available.

⁵ An *inter vivos* authorization is one made during the life of the deceased; "between the living; from one living person to another." See BLACK'S LAW DICTIONARY, <http://thelawdictionary.org/inter-vivos/> (last viewed Nov. 25, 2015).

⁶ Florida Department of Financial Services, Agency Analysis of 2016 House Bill 473, p. 2 (Nov. 23, 2015).

⁷ The DFS noted that notwithstanding this provision, monument establishments and any other ch. 497-licensed entity should be able to contact the legally authorized person or family of the decedent, once 30 days have passed from the date of death, to offer for sale grave markers or monuments. DFS Division of Funeral, Cemetery, and Consumer Services, *HB 473 Comments & Suggestions*, p. 16 (Nov. 17, 2015), on file with the Insurance & Banking Subcommittee staff.

of s. 731.201(32), F.S.⁸, and a division of such remains requires the consent of the legally authorized person approving the cremation, or if the legally authorized person is the decedent, the next available legally authorized person. The bill provides that a dispute regarding the division of cremated remains shall be resolved by a court of competent jurisdiction.

Burial Fees

A burial right is the right to use a grave space, mausoleum, columbarium, ossuary, or scattering garden for the internment, entombment, inurnment, or other disposition of human remains or cremated remains.⁹ While cemetery companies may collect fees for the sale of burial rights, merchandise, or services, they may only charge certain fees for the use of any burial right, merchandise, or service, such as sales tax and any interest on unpaid balances. Another permissible fee is the cost of transferring burial rights from one purchaser to another, which current law caps at \$50. The price cap has not been adjusted since the inception of this statute in 1993.

Section 14 of the bill amends s. 497.277, F.S., to permit the cost of transferring burial rights to exceed \$50, but subject to Board rule and based on the Board's findings of average administrative costs to a cemetery of transferring such burial right.

Sale of Personal Property or Services by Cemetery Companies

Currently, s. 497.283, F.S., requires cemetery companies that sell personal property or services in connection with burial or commemorative services to deliver such goods or to perform such services within 120 days of receiving final payment, except for preneed contracts. "Delivery" of goods means actual delivery and installation at the time of need or at the request of the owner or owner's agent. However, subsection (2)(c) provides an alternative delivery method only for manufacturers of outer burial receptacles (OBC) who sell to cemetery companies and funeral establishments if they show evidence of "financial responsibility" as set forth in the "standards and procedures" in s. 497.461, F.S. (relating to surety bonding as an alternative to trust deposit for preneed licensees).

According to the DFS, the alternative delivery method's reference to s. 497.461, F.S., as a source of standards and procedures for OBC manufacturers is unclear and unnecessary. The Division is not aware of any applicable standards or procedures in s. 497.461, F.S. Additionally, this alternative delivery method is not currently used by any manufacturer, and the Division has no record of any manufacturer ever seeking to use the alternative offered in s. 497.283(2)(c), F.S., or the applicable rule.¹⁰ Accordingly, section 15 of the bill deletes the alternative delivery provision in s. 497.283(2)(c), F.S.

Applicants for the Embalmer Apprentice Program

Applicants for the following licenses under the Act require demonstration of good character:

- Cemetery companies - s. 497.263(2)(p), F.S.
- Brokers of burial rights - s. 497.281(2)(d), F.S.
- Embalmers and embalmers by endorsement - ss. 497.368(1)(c) and 497.369(1)(d), F.S.

⁸ Section 731.201(32), F.S., is the definition of "property" for purposes of the Florida Probate Code, and means both real and personal property or any interest in it and anything that may be the subject of ownership. By excluding cremated remains from probate property, the bill ensures that the disposition of cremated remains is subject to the order of priority of legally authorized persons.
⁹ s. 497.005(7), F.S.

¹⁰ DFS Division of Funeral, Cemetery, and Consumer Services, *HB 473 Comments & Suggestions*, p. 14 (Nov. 17, 2015), on file with the Insurance & Banking Subcommittee staff. According to the Division, the applicable rule is 69K-7.0125, F.A.C. Section 497.283, F.S., is the only necessary authority for the rule. The only provision of 497.161, F.S., which is referred to in the rule, is 497.461(12), F.S., which reads as follows: "(12) *In lieu of the surety bond, the licensing authority may provide by rule for other forms of security or insurance.*"

- Funeral directors and funeral director by endorsement - ss. 497.373(1)(c) and 497.374(1)(d), F.S.
- Funeral establishments - s. 497.380(4), F.S.
- Removal services, refrigeration services, and centralized embalming facilities - s. 497.385(1)(a) and (2)(f), F.S.
- Preneed licensees - s. 497.453(2)(f), F.S.
- Direct disposers and direct disposal establishments - ss. 497.602(3)(f) and 497.604(3)(c), F.S.
- Cinerator facilities - s. 497.606(3)(d), F.S.

However, no such requirement currently exists for applicants for the embalmer apprentice program. Section 17 of the bill amends s. 497.371, F.S., to provide that the DFS may not issue a license to an applicant for the embalmer license program, unless it determines that he or she is of good character and has not demonstrated a history of lack of trustworthiness or integrity in business or professional matters.

Scope of Funeral Directing

The Act sets forth the scope of the practice of funeral directing which may be performed only by a licensed funeral director. Currently, one of the permitted acts is planning or arranging, on an at-need basis, the details of funeral services, embalming, cremation, or other services relating to the final disposition of human remains with the decedent's family, friends, or other person responsible for such services.

Section 18 of the bill amends s. 497.372(1)(b), F.S., to remove the language stating that such services be performed "with the family or friends of the decedent or any other person responsible for such services." This language is being removed to avoid possible conflict with "legally authorized persons."

Cemetery Companies - Care & Maintenance Trusts

Cemetery companies that own or control cemetery lands and property are required by the Act to ensure that the grounds, structures and improvements of a cemetery are well cared for and maintained in a proper condition.¹¹ To achieve this, the Act requires cemetery companies to establish "care and maintenance (C&M) trust funds" with state or national trust companies or banks or savings and loan associations with trust powers.¹² In other states, these trusts are commonly known as "perpetual care trusts." Cemetery companies are required to set aside and deposit specified amounts from the sales of burial rights into their care and maintenance trust funds.

Net Income Trusts vs. Total Return Unitrusts

Since 1959, the Act has required the *net income* of these trust funds may only be used for the care and maintenance of the cemetery and monuments (excluding the cleaning, refinishing, repairing or replacement of monuments) and reasonable costs of administering care, maintenance, and the trust fund. This net income approach is how cemetery licensees can determine how much may be withdrawn and paid to them every year from the C&M trust fund. While the Act does not define "net income," it has been understood to include only cash received by the trust as interest or dividends from trust investments, not capital gains (which are treated as accretions to principal, not income). This view has been largely informed by trust practices codified in other parts of Florida law.¹³ As such, cemetery owners have an economic incentive to invest their C&M trust funds to maximize payments of current

¹¹ s. 497.262, F.S.

¹² The appointments of these institutional trustees are subject to the approval of the licensing authority. These trustees are subject to investment limitations and annual financial reporting requirements in the Act.

¹³ DFS DIVISION OF FUNERAL, CEMETERY, AND CONSUMER SERVICES, *Unitrust Concept for Cemetery Care & Maintenance Trust Funds: Background and Analysis ("DFS Unitrust Analysis")*, p. 3 (Nov. 18, 2015), on file with the Insurance & Banking Subcommittee staff.

interest or cash dividends (e.g., government securities and corporate bonds), as opposed to investing in items that provide capital appreciation (e.g., corporate stocks). This approach typically results in erosion of trust principal as a result of inflation and may negatively affect the trust's long-term growth. Currently, the Act does not expressly dictate the relative mix of income-producing versus capital appreciation investments for C&M trusts, but only speaks to permissible investments that are also allowable for the State Board of Administration (SBA).¹⁴

Another type of trust, known as the "total return trust," has attracted some interest among trust practitioners for C&M or perpetual care funds. As the name implies, the total return trust allows the trustee to focus on the total return, and to maximize growth of both income and principal by accounting for both income and capital appreciation. One type of total return trust is the unitrust. With the unitrust, the trustee distributes a percentage of the trust based on the fair market value of its assets, regardless of income earned or the original amount invested in the trust. As opposed to withdrawing only income, the unitrust allows cemeteries to withdraw a percentage, no less than 3 percent and no more than 5 percent, of the total fair market value of the trust for annual care and maintenance. Typically, a unitrust:

- Produces a return of 2 to 4 percent greater than an income trust,
- Allows cemetery operators to receive larger distributions (on average and over time),
- Grows principal at a greater rate than an income trust, and
- Shows exactly how much funds will be available for withdrawal in advance, which is important for budgeting purposes.¹⁵

According to the Division, the unitrust concept as applied to cemetery C&M trusts has only been fairly recently approved for use in 3 states (Iowa, Missouri, and Tennessee).¹⁶

The bill amends the Act to accommodate unitrusts as an alternative option to the current net income approach for C&M trusts.

- **Terminology Updates:** Sections 7 and 8 of the bill update financial and trust terms in existing C&M trust statutes.
 - Section 7 of the bill amends s. 497.266, F.S., to substitute "assets" for "corpus" and provides that withdrawals and transfers of such assets must be in accordance with the new C&M distribution statute, s. 497.2675, F.S. Additionally, the bill provides that the trustee may distribute "withdrawals" from the trust instead of "principal and income."
 - Section 8 of the bill amends s. 497.267, F.S., to substitute "withdrawals" from the C&M trust fund instead of "income."
- **Distributions from C&M Trusts/New Unitrust Option:** Section 9 of the bill creates s. 497.2675, F.S., as a comprehensive C&M trust distribution statute, which:
 - Creates definitions relating to the unitrust option:
 - Average fair market value,
 - Capital gain or capital loss,
 - Ordinary income,
 - Net ordinary income of the trust,
 - Net ordinary income trust distribution method,
 - Fair market value,
 - Income,
 - Unitrust amount and unitrust distribution,
 - Unitrust distribution percentage, and

¹⁴ *Id.* See ss. 497.266(4) and 497.458(5)(a), F.S., and permissible investment statute for the SBA, s. 215.47(1), F.S.

¹⁵ Lauren Moore, *Perpetual Care Roundtable*, AMERICAN CEMETERY, Jan. 2014, at p. 33 (on file with the Insurance & Banking Subcommittee staff).

¹⁶ *DFS Unitrust Analysis*, pp. 1, 7-9. Cemetery unitrusts may be used in Iowa beginning in 2016, while they have been authorized in Missouri in 2009 and in Tennessee in 2006. It appears unitrusts have largely been used in the long-term higher education and charitable foundation endowment trusts.

- Unitrust distribution method.
 - Establishes the net income approach as the “default trust distribution method” if cemetery licensee does not elect the unitrust distribution method,
 - Specifies grounds disqualifying cemeteries from receiving unitrust distributions,
 - Provides requirements and procedures for cemetery to apply to the Board to use, modify, or resume the unitrust method; Board approval criteria, duration of approval, and power to order discontinuation of the unitrust method,
 - Provides requirements for the timing of unitrust distributions,
 - Requires annual reporting by the C&M trustee, and
 - Provides rulemaking authority for the licensing authority to prescribe forms and procedures for applications to implement this section.
- *Deposit Requirements for Burial Rights Proceeds*: Currently, s. 497.268, F.S., requires each cemetery company to set aside and deposit in its C&M trust fund certain amounts or percentages from sales of burial rights, which include graves, mausoleums, columbaria, ossuary, or scattering gardens. For *burial rights*, the Act requires 10 percent of all payments to be deposited into the C&M trust fund, a \$25 deposit for *burial rights* provided without charge, and a minimum of \$25 per *grave* for every sale made after September 30, 1993. For *mausoleums or columbaria*, 10 percent of payments must be deposited into the C&M trust fund.¹⁷
 - However, because graves, mausoleums, and columbaria are all “burial rights” under the Act, Section 10 of the bill amends s. 497.268, F.S., to provide a consistent deposit requirement for these burial spaces and structures. As such, the bill requires 10 percent of all sales of burial rights to be deposited into the C&M trust fund, a \$25 minimum for each post-1993 sale of a burial right, and \$25 for each burial right provided without charge.
- *Annual Reporting for C&M Trusts*: Section 497.269, F.S., requires trustees of C&M trust funds to provide an “adequate financial report” to the DFS by April 1 every year, using forms and procedures specified by rule.
 - Section 11 of the bill amends this section to clarify that the annual report record the *fair market value* of the C&M trust fund, which is defined in new s. 497.2675(1)(f), F.S.

Preneed Contracts

A “preneed contract” is any arrangement or method, of which the provider of funeral merchandise or service has actual knowledge, whereby any person agrees to sell funeral merchandise or service in advance. Examples of burial or funeral merchandise are caskets, outer burial containers, urns, monuments, floral arrangements, and register books. A “burial service” includes any service offered or provided in connection with the final disposition, memorialization, interment, entombment, inurnment, or other disposition of human remains or cremated remains.¹⁸

Preneed sales are governed by part IV of the Act, which requires sellers of funeral merchandise or service to obtain a preneed license and also be licensed as a funeral establishment, cemetery company, direct disposal establishment, or monument establishment.¹⁹

The bill makes the following changes to the preneed provisions of the Act:

¹⁷ s. 497.005(7), F.S. A *grave space* is a space of ground in a cemetery intended to be used for the interment in the ground of human remains; a *mausoleum* is a structure or building that is substantially exposed above the ground and that is intended to be used for the entombment of human remains; and a *columbarium* is a structure or building that is substantially exposed above the ground and that is intended to be used for the inurnment of cremated remains. s. 497.005(37), (42), and (16), F.S.

¹⁸ s. 497.005(56), (6), and (7), F.S.

¹⁹ s. 497.452, F.S. The statute exempts certain cemeteries owned by religious institutions from preneed licensure.

- **Definitions:** Section 1 of the bill amends s. 497.005, F.S., to create definitions of “purchaser” and “beneficiary” for use in the context of death care service contracts between consumers and funeral homes and other preneed sellers. “Beneficiary” is defined as a natural person expressly identified in a preneed contract as the person for whom funeral merchandise or services are intended. “Purchaser” means a natural person who executes a preneed or an at-need contract for services or merchandise with a licensee.
- **Rulemaking Authority for Preneed Contracts Funded by Life Insurance:** Section 5 of the bill amends the Act’s rulemaking authority, s. 497.161, F.S., to provide authority for rules consistent with part IV of the Act (relating to preneed sales) and the Florida Insurance Code that establish conditions of use for insurance as a funding mechanism for preneed contracts. According to the Division, the intent of this change is to create clear rulemaking authority for current Board rule 69K-8.005, F.A.C., relating to preneed contracts funded by life insurance, because the current statutory authority may be subject to challenge. The rule was adopted in 1996, prior to the implementation of legislative changes to the Administrative Procedure Act that significantly restricted rulemaking to clear grants of rulemaking authority.²⁰
- **Repeal of Servicing Agent Exemption from Preneed Licensure:** In addition to authorizing sales and advertisement of preneed contracts, a preneed license is required in order to receive any funds for payment on a preneed contract. Currently, the license requirement for receipt of funds does not apply to state or national trust companies or banks or savings and loan associations with trust powers receiving any money in trust pursuant to the sale of a preneed contract. It also does not apply to any Florida corporation acting as a servicing agent that are 100 percent owned by persons licensed under part III of the Act (funeral directing, embalming, and related services), if:
 - No stockholder holds, owns, votes, or has proxies for more than 5 percent of the issued stock of such corporation,
 - The corporation has a blanket fidelity bond, covering all employees handling the funds, in the amount of \$50,000 or more issued by a licensed insurance carrier in this state, and
 - The corporation processes the funds directly to and from the trustee within the applicable time limits set forth in the Act.

However, this servicing agent exemption is not currently used and has been recommended for repeal by the industry. Section 20 of the bill deletes the servicing agent exemption from preneed licensure in s. 497.452(2)(c), F.S.

- **Preneed Contract Forms:** Currently, s. 497.454, F.S., requires preneed licensees to file preneed contract forms and related forms with the DFS for approval prior to use in order to guard against misleading contracts. The licensing authority cannot approve preneed contracts unless they meet certain criteria regarding content and format, including sequential prenumbering and specific disclosure regarding the preneed licensee’s ability to select trust funding or the financial responsibility alternative in s. 497.461, F.S. (surety bonding).²¹
 - Section 21 of the bill amends s. 497.454, F.S., to provide that the licensing authority may not approve any *electronic or paper* preneed contract that does not provide for sequential prenumbering. Additionally, because the bill repeals the financial responsibility alternative in s. 497.461, F.S., the bill also removes the licensee’s method of securing preneed contract proceeds as a required disclosure.
- **Preneed Funeral Contract Consumer Protection Trust Fund:** The Act permits, in certain instances, a claim to be filed against the Florida Consumer Protection Trust Fund (FCPTF) where a purchaser has previously paid for a preneed contract, and the seller of the preneed contract subsequently

²⁰ See s. 120.536, F.S. DFS Division of Funeral, Cemetery, and Consumer Services, *HB 473 Comments & Suggestions*, p. 7 (Nov. 17, 2015), on file with the Insurance & Banking Subcommittee staff.

²¹ s. 497.454, F.S.

goes out of business or becomes insolvent, and will not or cannot perform the preneed contract.²² The FCPTF is funded by varying portions of each preneed contract, remitted by preneed licensees; all moneys deposited, along with all accumulated *income*, are immune from liens, charges, judgments, and other creditors' claims and shall be used only for the express purposes authorized by the Act.

- Because the bill is repealing s. 497.461, F.S., regarding surety bonding, Section 22 of the bill amends s. 497.456, F.S., to remove a cross-reference to that statute. Additionally, the bill provides that the deposited moneys and accumulated *appreciation* (replacing the term "income") are to be used solely for purposes set forth by the Act.
- **Disposition of Preneed Proceeds:** The Act requires that minimum percentages of proceeds from preneed contract sales be deposited and under the control of an authorized trustee (i.e., state or national trust companies or banks or savings and loan associations with trust powers). The amounts to be deposited depend on the item sold in the contract. The statute also gives powers and duties to the trustee to invest, protect, and to distribute principal and income, subject to rule by the licensing authority. Section 23 of the bill:
 - Authorizes the Board to specify criteria, by rule, for the classification of items sold in a preneed contract,
 - Eliminates the method of determining wholesale cost, which industry has indicated is contract-driven and can result in overvaluation,
 - Replaces "principal and income" with "fair market value,"
 - Requires the trustee to submit annual reports with certain information to the DFS, as specified by rule,
 - Subjects the trustee to the prudent investor rule in s. 518.11, F.S., instead of the current SBA permissible investment statute in s. 215.47, F.S.,
 - Disallows the trustee from including life insurance policies or annuity contracts as investments or assets by or of the trust, and limits real estate assets to 25 percent of the trust,
 - Allows the trustee to allocate and divide capital gains and losses, and
 - Eliminates the licensee's power to revest title to trust assets subject to the alternative security provisions in ss. 497.461 and 497.462(2), F.S., which are being repealed in the bill.
- **Cancellation of Preneed Contracts:** Section 497.459, F.S., provides rescission rights, disclosures, and remedies for preneed contract purchasers. Subsection (6) provides that all preneed contracts are cancelable, as long as a preneed contract does not restrict any contract purchaser or a qualified applicant or recipient of certain social benefits from making her or his contract irrevocable.
 - An irrevocable contract is written only for people who are qualified applicants for, or recipients of, supplemental security income (SSI), temporary assistance under the WAGES program or Medicaid. Once the contract is signed, it cannot be canceled and refunded. It is a means for a person or family to set aside a portion of their assets for future burial and funeral services. The amount of the irrevocable contract will not be counted as an asset when the person applies for aid,²³ which protects the recipient from exceeding income eligibility thresholds and becoming disqualified from the public benefits.
 - In some instances, a purchaser enters into an irrevocable preneed contract for an amount in excess of what the heirs ultimately use for burial, internment, etc., after the purchaser dies. In cases of closed estates or very small estates that do not warrant full probate administration, the funeral home is left holding the remaining funds with no clear process of disposing of the funds that originated from SSI, Medicaid, or other specified public benefit.

²² DFS DIVISION OF FUNERAL, CEMETERY, & CONSUMER SERVICES, *Claims Against the Consumer Protection Trust Fund*, <http://www.myfloridacfo.com/Division/FuneralCemetery/Consumers/PreneedClaims.htm> (last viewed Nov. 24, 2015). Whether such a claim will be paid, and how much will be paid on such a claim, is controlled by s. 497.456, F.S., and rule 69K-10.002, Fla. Admin. Code.

²³ DFS DIVISION OF FUNERAL, CEMETERY & CONSUMER SERVICES, *Consumer Tips: Preneed Contracts*, at <http://www.myfloridacfo.com/Division/FuneralCemetery/Consumers/ConsumerFAQ.htm> (last viewed Nov. 25, 2015).

- Section 24 of the bill amends s. 497.459(6), F.S., to provide that preneed contracts cannot restrict any purchaser who is also the *beneficiary* and qualified applicant/recipient of benefit funds from making her or his contract irrevocable. Additionally, the bill clarifies that a preneed contract made irrevocable pursuant to this section cannot be canceled during the life or after the death of the contract purchaser or beneficiary.²⁴
 - This ensures that the financial eligibility for the specified public benefits remain with the person as long as they receive benefits.
 - Additionally, the bill requires unexpended monies spent on an irrevocable contract to be remitted to the Agency for Health Care Administration (AHCA) for deposit into the Medical Care Trust Fund after the beneficiary's final disposition.²⁵ This ensures that the state and federal governments recover their respective shares of the unexpended monies of the irrevocable contract.
- *Repeal of Surety Bonding & Letters of Credit as Security for Preneed Contracts:* All preneed contracts must be secured by one of the following, and must specify the method of security utilized by the company: (1) A trust account, (2) A letter of credit (LOC) or surety bonding, or (3) An individual insurance policy.

According to the DFS, trust funding and insurance funding are the long-term proven and safe methods for securing performance of preneed contracts. Since approximately 2004, there have been only two methods actually used by preneed licensees to secure performance of preneed contracts: (1) trust deposit of proceeds of the preneed contracts or (2) funding by life insurers licensed in Florida.²⁶

Section 497.461, F.S., allows additional surety bonding, "and other forms of security or insurance." Section 497.462(2), F.S., allows letters of credit as an alternative form of security. To the best of the Division's knowledge, these alternatives have not been used in recent years, and are vague, untested, subject to abuse, unnecessary, and potentially dangerous to consumers.

The letter of credit provision, s. 497.462(2), F.S., relates primarily to surety bonding of preneed sales. The Legislature has previously amended s. 497.462, F.S., by adding subsection (11), which effectively prohibited use of surety bonding under s. 497.462, F.S., for new preneed contracts written after December 31, 2004. It is believed that the Legislature intended to entirely prohibit use of s. 497.462(2), F.S., as to preneed contracts written after 2004, but by oversight, subsection (11) only refers to bonding.

The Division believes the LOC concept is far inferior to trust deposits and even surety bonding. The LOC concept utilizes a body of law the Division and Board have no expertise in. The idea of using a LOC to secure obligations that may not come due for decades is loaded with potential dangers in the Division's opinion. The LOC option has never been used, and deleting the concept is advisable in the Division's opinion.

As such, the Division recommends repealing these alternatives to trust deposits. Section 26 of the bill repeals s. 497.461, F.S., regarding surety bonding as an alternative to trust deposits. Section 27 of the bill contains a savings clause for surety bonds in force under this section as of July 1, 2016, but states that no additional preneed contracts shall be added under such surety bonds after July 1, 2016. Sections 28 and 29 of the bill likewise eliminate the letter of credit as an alternative to trust deposits in s. 497.462, F.S., and cross-references in s. 497.464(1), F.S.

²⁴ Section 1 of the bill creates definitions of "purchaser" and "beneficiary" in s. 497.005, F.S.

²⁵ Section 497.005(32), F.S., defines "final disposition" as the final disposal of a dead human body by specified means, excluding cremation. AHCA administers the Medical Care Trust Fund, which consists of federal grants and is used to provide health care services to individuals eligible for Medicaid and Medicare. s. 20.425(4)(a), F.S.

²⁶ DFS Division of Funeral, Cemetery, and Consumer Services, *HB 473 Comments & Suggestions*, pp. 24-25 (Nov. 17, 2015), on file with the Insurance & Banking Subcommittee staff.

- *Inactive Preneed Licensees:* If a preneed licensee elects to surrender his or her license or the licensing authority does not receive the required renewal application and fees, the licensee becomes inactive and is then prohibited from engaging in preneed sales with the public. Prior to becoming inactive, he or she must collect and deposit into trust all of the funds *paid toward* preneed contracts sold. Additionally, the licensing authority has rulemaking authority to review and investigate such inactive licensees to protect the preneed customers, including requiring the submission of unaudited or audited financial statements.
 - The bill amends s. 497.465, F.S., to provide that prior to inactive status, the licensee must deposit into the trust all of the funds *received* from preneed contracts. This change is intended to clarify that the licensee cannot retain any of the funds and must put them into the trust account in their entirety. Additionally, the bill removes the qualifier "unaudited or audited" from financial statements.

B. SECTION DIRECTORY:

- Section 1. Amends s. 497.005, F.S., relating to definitions.
- Section 2. Amends s. 497.141, F.S., relating to licensing; application procedures.
- Section 3. Amends s. 497.146, F.S., relating to licensing; address of record; changes; licensee responsibility.
- Section 4. Amends 497.152, F.S., relating to disciplinary grounds.
- Section 5. Amends s. 497.161, F.S., relating to other rulemaking provisions.
- Section 6. Amends s. 497.264, F.S., relating to license not assignable or transferable.
- Section 7. Amends s. 497.266, F.S., relating to care and maintenance trust fund; remedy of department for noncompliance.
- Section 8. Amends s. 497.267, F.S., relating to disposition of income of care and maintenance trust fund; notice to purchasers and depositors.
- Section 9. Creates s. 497.2675, F.S., relating to distributions from the care and maintenance trusts.
- Section 10. Amends s. 497.268, F.S., relating to care and maintenance trust fund, percentage of payments for burial rights to be deposited.
- Section 11. Amends s. 497.269, F.S., relating to care and maintenance trust fund; financial reports.
- Section 12. Amends s. 497.273, F.S., relating to cemetery companies; authorized functions.
- Section 13. Amends s. 497.274, F.S., relating to standards for grave spaces.
- Section 14. Amends s. 497.277, F.S., relating to other charges.
- Section 15. Amends s. 497.283, F.S., relating to prohibition on sale of personal property or services.
- Section 16. Amends s. 497.286, F.S., relating to owners to provide addresses; presumption of abandonment; abandonment procedures; sale of abandoned unused burial rights.
- Section 17. Amends s. 497.371, F.S., relating to embalmers; establishment of embalmer apprentice program.
- Section 18. Amends s. 497.372, F.S., relating to funeral directing; conduct constituting practice of funeral directing.
- Section 19. Amends s. 497.381, F.S., relating to solicitation of goods or services.
- Section 20. Amends s. 497.452, F.S., relating to preneed license required.
- Section 21. Amends s. 497.454, F.S., relating to approval of preneed contract and related forms.
- Section 22. Amends s. 497.456, F.S., relating to Preneed Funeral Contract Consumer Protection Trust Fund.
- Section 23. Amends s. 497.458, F.S., relating to disposition of proceeds received on contracts.
- Section 24. Amends s. 497.459, F.S., relating to cancellation of, or default on, preneed contracts.
- Section 25. Amends s. 497.460, F.S., relating to payment of funds upon death of named beneficiary.
- Section 26. Repeals s. 497.461, F.S., relating to surety bonding as alternative to trust deposit.
- Section 27. Provides a savings clause for the repeal of s. 497.461, F.S.
- Section 28. Amends s. 497.462, F.S., relating to other alternatives to deposits under s. 497.458, F.S.
- Section 29. Amends s. 497.464, F.S., relating to alternative preneed contracts.
- Section 30. Amends s. 497.465, F.S., relating to inactive, surrendered, and revoked preneed licensees.
- Section 31. Amends s. 497.601, F.S., relating to direct disposition; duties.

Section 32. Amends s. 497.607, F.S., relating to cremation; procedure required.
Section 33. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill's requirement that cemetery companies remit unexpended irrevocable preneed contract funds to the AHCA for deposit into the Medical Care Trust Fund after the beneficiary's final disposition has an indeterminate, yet positive impact on state government.

2. Expenditures:

According to the DFS, the bill will not result in increased costs. However, the bill has the potential to reduce some operational costs to the DFS, particularly the provisions relating to use of email for license renewal and other communications with licensees. The DFS projects an estimated recurring savings to be in the range of \$20,000 per year.²⁷

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The unitrust proposal may provide a benefit to cemetery licensees in the form of increased annual distributions to licensed cemeteries to defray cemetery care and maintenance expenses; however, the Division states there is too little experience among other state funeral and cemetery regulators with the concept to make specific projections. Also, the unitrust measure allows for less judicious use of the care and maintenance trust because funds may be spent based on fair market value as opposed to net income.

The requirement for annual trustee reports to the DFS may increase costs to the approximately 370 preneed licensees in the state. The costs would be in the form of increased fees charged by preneed trustees to preneed licensees. The DFS believes the cost will be relatively insignificant, because the trustees already have and provide the information to the preneed licensees. The DFS believes the recurring cost might be in the range of \$250 per licensee per year.²⁸

In addition, the bill provides the opportunity for the Board to allow an increase in transferal of burial rights fees above the current \$50 statutory cap. The impact to the private sector associated with the fee increase is indeterminate.

D. FISCAL COMMENTS:

None.

²⁷ Florida Department of Financial Services, Agency Analysis of 2016 House Bill 473, p.3 (Dec. 11, 2015).

²⁸ *Id.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the licensing authorities to adopt new rules regarding several aspects of the Act. In some instances, the bill merely provides clearer statutory authority for existing rules:

- Forms and procedures, including electronic reporting of data required relating to changes in licensees' information;
- Rules that are not inconsistent with part IV of the Act and the Insurance Code establishing conditions of use for insurance as a funding mechanism for preneed contracts;
- Timeframes for cemetery licensees to change their care and maintenance trust distribution method;
- Forms and procedures for applications and to implement the new unitrust statute, s. 497.2675, F.S.;
- Rules allowing for fees exceeding the current \$50 cap for transfers of burial rights;
- Rules specifying criteria for the classification of items sold in a preneed contract as services, merchandise, or cash advances; and
- Rules relating to the format and content of annual reports filed by trustees of preneed trust accounts, starting April 1, 2018.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 9 of the bill creates a definition of "fair market value" and "capital gain or loss," along with other new definitions in new s. 497.2675, F.S. These new definitions "apply [specifically] for purposes of care and maintenance trusts" (lines 322-323). However, "fair market value" appears in the bill in contexts other than C&M trusts, such as preneed contract funds that must be held in trust (see lines 912, 923, 943, and 1038). Similarly, "capital gains and losses" appears in a preneed statute (line 975). To ensure that "fair market value" and "capital gains and losses" are used consistently throughout the Act, these terms should be moved to the general definitions section, s. 497.005, F.S.

V. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 2, 2015, the Insurance & Banking Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by adopting the Senate companion, SB 854, in addition to the following changes that:

- Revised the definition of "purchaser";
- Included email notification requirements in two other provisions of the Act, ss. 497.146 and 497.264, F.S.;
- Moved unitrust-related definitions to the new unitrust statute, s. 497.2675, F.S., and included more detailed procedures and regulatory requirements for using the unitrust method;
- Authorized rulemaking for the Board to specify criteria for: burial rights transfer fees, the classification of items sold in a preneed contract;
- Clarified that trustees of preneed contract funds may not invest in life insurance policies or annuity contracts, and limited investments in real estate to 25% of the trust's assets;

- Required cemetery companies to remit unexpended monies paid on irrevocable preneed contracts to AHCA for deposit into the Medical Care Trust Fund after the beneficiary's final disposition;
- Clarified the savings clause for the repeal of the surety bonding alternative for preneed licenses (section 27 of the committee substitute);
- Removed section 28 of the bill as filed, which created an escheat procedure for certain preneed trust funds; and
- Clarified the cremation procedure statute, s. 497.607, F.S., to allow for a legally authorized person's declaration of intent and to specify that cremated remains are not property.

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

1 A bill to be entitled
2 An act relating to funeral, cemetery, and consumer
3 services; amending s. 497.005, F.S.; providing
4 definitions; amending s. 497.141, F.S.; revising
5 required information for licensure to include e-mail
6 addresses; requiring the Department of Financial
7 Services to include e-mail notification as a means to
8 administer the licensing process for specified
9 purposes; amending s. 497.146, F.S.; revising required
10 information for current licensees to include e-mail
11 notification; providing for rulemaking relating to
12 electronic reporting; amending s. 497.152, F.S.;
13 conforming provisions to changes made by the act;
14 prohibiting the Board of Funeral, Cemetery, and
15 Consumer Services from imposing disciplinary actions
16 when certain minor deficiencies are fully corrected
17 within a specified period; requiring the board to
18 provide criteria for identifying such deficiencies;
19 amending s. 497.161, F.S.; requiring the Division of
20 Funeral, Cemetery, and Consumer Services to authorize
21 specified rules for preneed contracts; amending s.
22 497.264, F.S.; requiring cemetery licensees to provide
23 e-mail address to the department; amending s. 497.266,
24 F.S.; conforming provisions to changes made by the
25 act; amending s. 497.267, F.S.; revising provisions
26 relating to the disposition of withdrawals from the

27 | care and maintenance trust fund; creating s. 497.2675,
 28 | F.S.; providing definitions; specifying a default
 29 | trust distribution method; specifying circumstances in
 30 | which a cemetery is not eligible to use the unitrust
 31 | distribution method; providing for unitrust
 32 | distribution method options and requirements;
 33 | providing eligibility for distributions; providing for
 34 | board authority to order discontinuance or
 35 | modification of the unitrust method; requiring annual
 36 | reports for the unitrust method; authorizing the board
 37 | to adopt certain rules; amending s. 497.268, F.S.;
 38 | conforming provisions; deleting a required deposit in
 39 | a cemetery company's care and maintenance trust fund
 40 | for mausoleums or columbaria; deleting the requirement
 41 | that capital gains taxes be paid from the trust
 42 | corpus; amending s. 497.269, F.S.; requiring a trustee
 43 | to annually furnish financial reports that record the
 44 | fair market value of the care and maintenance trust
 45 | fund; amending ss. 497.273 and 497.274, F.S.;
 46 | conforming provisions; amending s. 497.277, F.S.;
 47 | revising a limitation on the fee for transfer of
 48 | burial rights from one purchaser to another;
 49 | authorizing the board to determine the transfer fee;
 50 | amending ss. 497.283 and 497.286, F.S.; conforming
 51 | provisions; amending s. 497.371, F.S.; providing that
 52 | an applicant for the embalmer apprentice program may

53 not be licensed without a determination of character
 54 by the licensing authority; amending ss. 497.372,
 55 497.381, 497.454, and 497.456, F.S.; conforming
 56 provisions; conforming cross-references; amending s.
 57 497.452, F.S.; deleting an exception that prohibits a
 58 person from receiving specified funds without holding
 59 a valid preneed license; amending s. 497.458, F.S.;
 60 revising requirements relating to the disposition of
 61 proceeds on a preneed contract; authorizing the board
 62 to adopt rules to classify items sold in preneed
 63 contacts; requiring the trustee to furnish the
 64 department with an annual report regarding preneed
 65 licensee trust accounts beginning on a specified date;
 66 providing requirements for the annual report; revising
 67 which investments a trustee of a trust has the power
 68 to invest; deleting provisions related to the preneed
 69 licensee; amending s. 497.459, F.S.; providing that
 70 certain preneed contracts may not be cancelled during
 71 the life or after the death of the contract purchaser;
 72 providing for disposition of unexpended moneys paid on
 73 irrevocable contracts; amending s. 497.460, F.S.;
 74 conforming provisions; repealing s. 497.461, F.S.,
 75 relating to the authorization for a preneed licensee
 76 to elect surety bonding as an alternative to
 77 depositing funds into a trust; providing for
 78 applicability of the repeal of s. 497.461, F.S.;

79 | amending s. 497.462, F.S.; deleting provisions made
 80 | obsolete by the repeal of s. 497.461, F.S.; amending
 81 | s. 497.464, F.S.; conforming a cross-reference;
 82 | amending s. 497.465, F.S.; requiring an inactive
 83 | preneed licensee to deposit a specified amount of
 84 | funds received on certain preneed contracts into the
 85 | trust upon a specified time; amending ss. 497.601 and
 86 | 497.607, F.S.; specifying that cremated remains are
 87 | not property; requiring a division of cremated remains
 88 | to be consented to by certain persons; providing that
 89 | a dispute shall be resolved by a court of competent
 90 | jurisdiction; conforming provisions; providing an
 91 | effective date.

92 |

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

94 |

95 | Section 1. Subsections (5) through (61) and (62) through
 96 | (71) of section 497.005, Florida Statutes, are redesignated as
 97 | subsections (6) through (62) and (64) through (73),
 98 | respectively, and new subsections (5) and (63) are added to that
 99 | section to read:

100 | 497.005 Definitions.—As used in this chapter, the term:

101 | (5) "Beneficiary" means a natural person expressly
 102 | identified in a preneed contract as the individual for whom
 103 | funeral merchandise or services are intended.

104 | (63) "Purchaser" means a natural person who has executed

105 an at-need or preneed contract with a licensee.

106 Section 2. Subsections (2) and (11) of section 497.141,
107 Florida Statutes, are amended to read:

108 497.141 Licensing; general application procedures.—

109 (2) Any person desiring to be licensed shall apply to the
110 licensing authority in writing using such forms and procedures
111 as may be prescribed by rule. The application for licensure
112 shall include the applicant's social security number if the
113 applicant is a natural person; otherwise, the applicant's
114 federal tax identification number shall be included.

115 Notwithstanding any other provision of law, the department is
116 the sole authority for determining the forms and form contents
117 to be submitted for initial licensure and licensure renewal
118 application. Such forms and the information and materials
119 required by such forms may include, as appropriate,
120 demographics, education, work history, personal background,
121 criminal history, finances, business information, signature
122 notarization, performance periods, reciprocity, local government
123 approvals, supporting documentation, periodic reporting
124 requirements, fingerprint requirements, continuing education
125 requirements, business plans, character references, e-mail
126 addresses, and ongoing education monitoring. Such forms and the
127 information and materials required by such forms may also
128 include, to the extent such information or materials are not
129 already in the possession of the department or the board,
130 records or information as to complaints, inspections,

131 investigations, discipline, and bonding. The application shall
 132 be supplemented as needed to reflect any material change in any
 133 circumstance or condition stated in the application that takes
 134 place between the initial filing of the application and the
 135 final grant or denial of the license and that might affect the
 136 decision of the department or the board. After an application by
 137 a natural person for licensure under this chapter is approved,
 138 the licensing authority may require the successful applicant to
 139 provide a photograph of himself or herself for permanent
 140 lamination onto the license card to be issued to the applicant,
 141 pursuant to rules and fees adopted by the licensing authority.

142 (11) The department shall implement a system for
 143 administration of the overall licensing process, including e-
 144 mail notification for the processing and tracking of
 145 applications for licensure, the issuance of licenses approved by
 146 the board, the tracking of licenses issued, the administration
 147 of the license renewal process, and the collection and
 148 processing of fees related to those activities. The system may
 149 use staff and facilities of the department or the department may
 150 enter into a contract for all or any part of such system, upon
 151 such terms and conditions as the department deems advisable, and
 152 such contract may be with another government agency or a private
 153 business.

154 Section 3. Section 497.146, Florida Statutes, is amended
 155 to read:

156 497.146 Licensing; address of record; changes; licensee

157 responsibility.—Each licensee under this chapter is responsible
 158 for notifying the department in writing of the licensee's
 159 current e-mail address, business and residence mailing address,
 160 and the street address of the licensee's primary place of
 161 practice and shall notify the department ~~in writing~~ within 30
 162 days after any change in such information, in accordance with
 163 procedures and forms prescribed by rule. Notwithstanding any
 164 other provision of law, electronic notification service by
 165 ~~regular mail~~ to a licensee's last known e-mail address of record
 166 or preferred street address of record with the department
 167 constitutes adequate and sufficient notice to the licensee for
 168 any official communication to the licensee by the board or the
 169 department, except when other service is expressly required by
 170 this chapter. The department may adopt rules, forms, and
 171 procedures, including electronic reporting of all data required
 172 to be provided by this section. ~~Rules may be adopted~~
 173 ~~establishing forms and procedures for licensees to provide the~~
 174 ~~notice required by this section.~~

175 Section 4. Paragraphs (b) and (e) of subsection (8),
 176 paragraph (d) of subsection (12), paragraphs (b) and (c) of
 177 subsection (14), and paragraph (b) of subsection (15) of section
 178 497.152, Florida Statutes, are amended to read:

179 497.152 Disciplinary grounds.—This section sets forth
 180 conduct that is prohibited and that shall constitute grounds for
 181 denial of any application, imposition of discipline, or other
 182 enforcement action against the licensee or other person

183 committing such conduct. For purposes of this section, the
 184 requirements of this chapter include the requirements of rules
 185 adopted under authority of this chapter. No subsection heading
 186 in this section shall be interpreted as limiting the
 187 applicability of any paragraph within the subsection.

188 (8) TRANSPORT, CUSTODY, TREATMENT, OR DISINTERMENT OF
 189 HUMAN REMAINS.—

190 (b) Refusing to surrender promptly the custody of a dead
 191 human body upon the express order of the ~~person~~ legally
 192 authorized person to such person's ~~its~~ custody; however, this
 193 provision shall be subject to any state or local laws or rules
 194 governing custody or transportation of dead human bodies.

195 (e) Failing to obtain written authorization from a legally
 196 authorized person before ~~the family or next of kin of the~~
 197 ~~deceased prior to~~ entombment, interment, disinterment,
 198 disentombment, or disinurnment of the remains of any human
 199 being.

200 (12) DISCLOSURE REQUIREMENTS.—

201 (d) Failure by a funeral director to make full disclosure
 202 in the case of a funeral or direct disposition with regard to
 203 the use of funeral merchandise that is not to be disposed of
 204 with the body or failure to obtain written permission from a
 205 legally authorized person ~~the purchaser~~ regarding disposition of
 206 such merchandise.

207 (14) OBLIGATIONS REGARDING COMPLAINTS AND CLAIMS BY
 208 CUSTOMERS.—

209 (b) Committing or performing with such frequency as to
 210 indicate a general business practice any of the following:

211 1. Failing to acknowledge and act promptly upon
 212 communications from a licensee's customers and their
 213 representatives with respect to claims or complaints relating to
 214 the licensee's activities regulated by this chapter.

215 2. Denying claims or rejecting complaints received by a
 216 licensee from a customer or customer's representative, relating
 217 to the licensee's activities regulated by this chapter, without
 218 first conducting reasonable investigation based upon available
 219 information.

220 3. Attempting to settle a claim or complaint on the basis
 221 of a material document that was altered without notice to, or
 222 without the knowledge or consent of, the contract purchaser or a
 223 legally authorized person ~~her or his representative or legal~~
 224 ~~guardian.~~

225 4. Failing within a reasonable time to affirm or deny
 226 coverage of specified services or merchandise under a contract
 227 entered into by a licensee upon written request of the contract
 228 purchaser or a legally authorized person ~~her or his~~
 229 ~~representative or legal guardian.~~

230 5. Failing to promptly provide, in relation to a contract
 231 for funeral or burial merchandise or services entered into by
 232 the licensee or under the licensee's license, a reasonable
 233 explanation to the contract purchaser or a legally authorized
 234 person ~~her or his representative or legal guardian~~ of the

235 | licensee's basis for denying or rejecting all or any part of a
 236 | claim or complaint submitted.

237 | (c) Making a material misrepresentation to a contract
 238 | purchaser or a legally authorized person ~~her or his~~
 239 | ~~representative or legal guardian~~ for the purpose and with the
 240 | intent of effecting settlement of a claim or complaint or loss
 241 | under a prepaid contract on less favorable terms than those
 242 | provided in, and contemplated by, the prepaid contract.

243 |
 244 | For purposes of this subsection, the response of a customer
 245 | recorded by the customer on a customer satisfaction
 246 | questionnaire or survey form sent to the customer by the
 247 | licensee, and returned by the customer to the licensee, shall
 248 | not be deemed to be a complaint.

249 | (15) MISCELLANEOUS FINANCIAL MATTERS.—

250 | (b) Failing to timely remit as required by this chapter
 251 | the required amounts to any trust fund required by this chapter.
 252 | The board shall ~~may~~ by rule provide criteria for identifying
 253 | minor, nonwillful trust remittance deficiencies; and remittance
 254 | deficiencies falling within such criteria, if fully corrected
 255 | within 30 days after notice to the licensee by the department,
 256 | do ~~shall~~ not constitute grounds for a fine or other disciplinary
 257 | action.

258 | Section 5. Paragraph (g) is added to subsection (1) of
 259 | section 497.161, Florida Statutes, to read:

260 | 497.161 Other rulemaking provisions.—

261 (1) In addition to such other rules as are authorized or
 262 required under this chapter, the following additional rules, not
 263 inconsistent with this chapter, shall be authorized by the
 264 licensing authority.

265 (g) Rules, not inconsistent with part IV of this chapter
 266 and the Florida Insurance Code, establishing conditions of use
 267 for insurance as a funding mechanism for preneed contracts.

268 Section 6. Paragraphs (c) and (d) of subsection (2) of
 269 section 497.264, Florida Statutes, are amended to read:

270 497.264 License not assignable or transferable.—

271 (2) Any person or entity that seeks to purchase or
 272 otherwise acquire control of any cemetery licensed under this
 273 chapter shall first apply to the licensing authority and obtain
 274 approval of such purchase or change in control.

275 (c) For applications by a natural person, the application
 276 shall state the applicant's name, e-mail address, residence
 277 address, address of principal office or place of employment, and
 278 social security number.

279 (d) For applications by an entity, the application shall
 280 state the applicant's name, address of principal place of
 281 business or headquarters offices, the names and titles of all
 282 officers of the applicant, the e-mail address of each officer,
 283 the applicant's state of domicile and date of formation, and the
 284 applicant's federal tax identification number.

285 Section 7. Subsections (3) and (4) of section 497.266,
 286 Florida Statutes, are amended to read:

287 497.266 Care and maintenance trust fund; remedy of
 288 department for noncompliance.-

289 (3) A ~~No~~ person may not withdraw or transfer any portion
 290 of assets within the corpus of the care and maintenance trust
 291 fund, except as authorized by s. 497.2675, without first
 292 obtaining written consent from the licensing authority.

293 (4) The trustee of the trust established pursuant to this
 294 section may only invest in investments and loan trust funds, as
 295 prescribed in s. 497.458. The trustee shall take title to the
 296 property conveyed to the trust for the purposes of investing,
 297 protecting, and conserving it for the cemetery company;
 298 collecting income; and distributing withdrawals from the trust
 299 ~~the principal and income~~ as prescribed in this chapter. The
 300 cemetery company is prohibited from sharing in the discharge of
 301 the trustee's responsibilities under this subsection, except
 302 that the cemetery company may request the trustee to invest in
 303 tax-free investments.

304 Section 8. Section 497.267, Florida Statutes, is amended
 305 to read:

306 497.267 Disposition of withdrawals from the ~~income of~~ care
 307 and maintenance trust fund; notice to purchasers and
 308 depositors. Withdrawals from the ~~net income of the~~ care and
 309 maintenance trust fund shall be used solely for the care and
 310 maintenance of the cemetery, including maintenance of monuments,
 311 which maintenance may ~~shall~~ not be deemed to include the
 312 cleaning, refinishing, repairing, or replacement of monuments;

313 for reasonable costs of administering the care and maintenance;
314 and for reasonable costs of administering the trust fund. At the
315 time of making a sale or receiving an initial deposit, the
316 cemetery company shall deliver to the person to whom the sale is
317 made, or who makes a deposit, a written instrument which shall
318 specifically state the purposes for which withdrawals from the
319 ~~income of the~~ trust fund shall be used.

320 Section 9. Section 497.2675, Florida Statutes, is created
321 to read:

322 497.2675 Distributions from the care and maintenance
323 trusts.-

324 (1) DEFINITIONS.-In addition to definitions provided in s.
325 497.005, the following definitions shall apply for purposes of
326 care and maintenance trusts:

327 (a) "Average fair market value" means, as determined by
328 the trustee of a care and maintenance trust, the average of the
329 fair market values of assets held by the trust on January 1 of
330 the current year and January 1 of each of the 2 preceding years,
331 or for the entire term of the trust if there are less than 2
332 preceding years, and adjusted as follows:

333 1. If assets are added to the trust during the years used
334 to determine the average, the amount of each addition is added
335 to all years in which such addition is not included.

336 2. If assets are distributed from the trust during the
337 years used to determine the average, other than in satisfaction
338 of the unitrust amount, the amount of each distribution is

339 subtracted from all years in which such distribution is not
 340 included.

341 (b) "Capital gain" or "capital loss" means a change in the
 342 fair market value of a capital asset, such as investment or real
 343 estate, that gives the asset a different worth than the purchase
 344 price. A capital gain or loss may be realized or unrealized. A
 345 capital gain or loss is realized when the asset is sold.

346 (c) "Ordinary income" means interest, dividends, rents,
 347 and other amounts received by the trust as current returns on
 348 trust investments, but excluding realized or unrealized capital
 349 gains or losses; deposits to the trust required under this
 350 chapter and other contributions of principal to the trust; and
 351 amounts received as full or partial payment for the sale,
 352 transfer, or exchange of a trust asset.

353 (d) "Net ordinary income of the trust" means, as
 354 determined by the trustee of the care and maintenance trust, the
 355 annual ordinary income of the trust reduced by the annual amount
 356 of expenses of operating the trust, including trustee fees,
 357 appraisal fees, investment advisor fees, and accounting fees;
 358 and reduced further by the annual amount of income and other
 359 taxes, excluding capital gains taxes, paid or due in regard to
 360 the trust's ordinary income.

361 (e) "Net ordinary income trust distribution method" is the
 362 method of calculating the annual amount to be distributed to a
 363 cemetery licensee from its care and maintenance trust, in which
 364 method the annual net ordinary income of the trust is determined

365 by the trustee and that amount is distributed to the cemetery
 366 licensee.

367 (f) "Fair market value" means the fair market value of the
 368 assets held by the trust, reduced by all known noncontingent
 369 liabilities. The fair market value of trust assets that are not
 370 publicly traded on a stock or other regulated securities
 371 exchange shall be determined by written appraisal by a qualified
 372 independent public appraiser not affiliated with the cemetery
 373 licensee or its principals. Such an appraisal may not be relied
 374 upon by the trustee if it is not issued or reconfirmed in
 375 writing by the appraiser within 2 years before the date the
 376 appraisal is used by the trustee in the trustees fair market
 377 value determinations.

378 (g) "Income" means interest, dividends, rents, and other
 379 money that the trustee receives as current return from a
 380 principal asset, and which is not received as full or partial
 381 payment for the sale, transfer, or exchange of a trust asset.

382 (h) "Unitrust amount" or "unitrust distribution" means the
 383 amount distributable from the care and maintenance trust to the
 384 cemetery licensee owning the trust, as calculated using the
 385 unitrust distribution method.

386 (i) "Unitrust distribution percentage" is a percentage of
 387 at least 3 but not more than 5 percent, as specifically approved
 388 by the board for a particular cemetery licensee upon application
 389 by the licensee to receive a unitrust distribution from the
 390 licensee's care and maintenance trust. A unitrust distribution

391 percentage in excess of 5 percent shall not be authorized.

392 (j) "Unitrust distribution method" is the method of
 393 calculating the amount to be distributed to a cemetery licensee
 394 from its care and maintenance trust, where the average fair
 395 market value of the care and maintenance trust, or the preneed
 396 licensee's pro rata share of a master trust, is multiplied by a
 397 unitrust distribution percentage, and the resulting unitrust
 398 amount is distributed to the cemetery licensee.

399 (2) DEFAULT TRUST DISTRIBUTION METHOD.—Unless
 400 authorization for a unitrust distribution is approved by the
 401 board in accordance with this section, there may be distributed
 402 from a care and maintenance trust to a cemetery licensee only
 403 the net ordinary income of the trust. Such distribution shall be
 404 at such time as the trustee is able to determine the net
 405 ordinary income of the trust.

406 (3) CEMETERIES NOT ELIGIBLE FOR UNITRUST DISTRIBUTION.—

407 (a) A cemetery is not eligible to apply for or receive a
 408 unitrust distribution from its care and maintenance trust if a
 409 unitrust distribution would be materially inconsistent with the
 410 terms and conditions of the cemetery's bylaws or existing care
 411 and maintenance trust agreement document. A cemetery licensee
 412 operating under cemetery bylaws or a care and maintenance trust
 413 that specifies, or by fair implication indicates, that only the
 414 net ordinary income of the trust shall be distributed, and who
 415 desires to be able to receive a unitrust distribution from the
 416 trust, must apply to the board through the division, for

417 approval to amend or replace such bylaws or trust agreement to
 418 allow the cemetery licensee to seek a unitrust distribution from
 419 the trust. The board shall approve such application to amend the
 420 bylaws or trust agreements if the board finds that there are
 421 reasonable grounds to believe that approval would be in the best
 422 interests of the perpetual care of the cemetery, and under all
 423 the circumstances of the particular case, would be in the best
 424 interest of persons then owning interment spaces in the cemetery
 425 and the families of persons already interred in the cemetery.

426 (b) A cemetery may not be approved to receive or continue
 427 to receive a unitrust distribution from its care and maintenance
 428 trust if there is an uncorrected care and maintenance trust
 429 deficiency as determined by a final or pending examination
 430 report by the division.

431 (4) APPLICATION TO USE UNITRUST DISTRIBUTION METHOD.—

432 (a) Application requirements.—A licensed cemetery that is
 433 eligible for unitrust distribution under subsection (3) may
 434 apply to the board through the division for approval to use that
 435 method. The application must:

- 436 1. Be signed by an officer of the licensed cemetery.
- 437 2. State the cemetery's name, license number, and address.
- 438 3. Provide a copy of the cemetery's existing bylaws and
 439 the care and maintenance trust agreement.
- 440 4. If the applicant seeks approval of an amendment or
 441 replacement of its bylaws or care and maintenance trust
 442 agreement, provide a copy of the proposed amended or replacement

443 bylaws or care and maintenance trust agreement, identifying all
 444 material changes from the existing bylaws or care and
 445 maintenance trust agreement.

446 5. Provide a letter from, as applicable, the trustee or
 447 proposed trustee of the care and maintenance trust, signed and
 448 dated by a representative of the trustee, in which letter the
 449 trustee:

450 a. Advises the board that the trustee is able and willing
 451 to implement the unitrust distribution method as it relates to
 452 applicant's care and maintenance trust; and

453 b. Sets forth the trustee's average fair market value
 454 calculations and related and supporting data referenced in
 455 paragraph (1)(a).

456 6. Specify the unitrust distribution percentage for which
 457 the applicant seeks approval.

458 7. Provide copies of an annual report of the trustee of
 459 the cemetery's care and maintenance trust for each of the
 460 preceding 5 years or for each year the cemetery has been
 461 licensed, whichever period is shorter.

462 8. Certify to the board that all amounts required by this
 463 chapter have been deposited into the trust, that there have been
 464 no withdrawals from the trust in excess of those allowed under
 465 this chapter, to the best of the knowledge and belief of
 466 cemetery management, and that there is no unresolved division
 467 examination report asserting a deficiency in the care and
 468 maintenance trust.

469 9. Certify to the board that cemetery management has
 470 conducted, or caused to be conducted, and have reviewed an
 471 analysis of the proposed implementation of the unitrust
 472 distribution method as applied to the cemetery's care and
 473 maintenance trust, and, to the best of the knowledge and belief
 474 of the cemetery's management, implementation of the unitrust
 475 distribution method will not result in lower end-of-year care
 476 and maintenance trust principal balances than there would be
 477 under the net ordinary income trust distribution method.

478 (b) Approval criteria.—The board shall approve the
 479 application unless the board determines that the unitrust
 480 distribution method is likely to have a materially less
 481 favorable long term impact on the cemetery's care and
 482 maintenance trust for the perpetual care of the cemetery after
 483 the cemetery ceases active operations as compared to the net
 484 ordinary income trust distribution method.

485 (c) Duration of approval.—An approval to use the unitrust
 486 distribution shall continue indefinitely until the cemetery
 487 licensee applies to the board and is approved to modify its
 488 application of the unitrust distribution method, revert to the
 489 net ordinary income trust distribution method, or until the
 490 cemetery licensee is ordered by the board to modify or
 491 discontinue use of the unitrust distribution method.

492 (d) Temporary initial unitrust distribution percentage.—
 493 Four and one-half percent is the maximum unitrust distribution
 494 percentage that may be approved for the first 12 months of an

495 applicant's use of the unitrust distribution method. If the
 496 board, in the initial application proceeding, approved a
 497 unitrust distribution percentage higher than 4.5 percent, upon
 498 expiration of 12 months, the applicant may, without further
 499 application or proceedings, commence use of the higher approved
 500 unitrust distribution percentage.

501 (5) APPLICATION TO MODIFY UNITRUST DISTRIBUTION METHOD.—

502 (a) A cemetery licensee that is using the unitrust
 503 distribution method and wishes to decrease the unitrust
 504 distribution percentage used may do so without approval by the
 505 board. The licensee shall, within 30 days after the change,
 506 notify the division in a signed and dated written notice
 507 explaining the change, the effective date of the change, and the
 508 revised lower unitrust distribution percentage.

509 (b) A cemetery licensee that is using the unitrust
 510 distribution method and desires to increase the unitrust
 511 distribution percentage or otherwise materially modify its
 512 implementation of the unitrust distribution method must receive
 513 approval from the board before implementing such change. The
 514 board shall approve the application for change unless the board
 515 determines that approval would not be in the long term best
 516 interests of the cemetery's care and maintenance trust as a
 517 resource to provide for the perpetual care of the cemetery after
 518 the cemetery ceases active operations.

519 (6) REVERSION TO NET ORDINARY INCOME DISTRIBUTION METHOD.—

520 A cemetery licensee that is using the unitrust distribution

521 method and wishes to revert to the net ordinary income trust
 522 distribution method must receive approval from the board before
 523 implementing such change. The board shall approve such
 524 application unless it determines that approval would not be in
 525 the long term best interests of the cemetery's care and
 526 maintenance trust as a resource to provide for the perpetual
 527 care of the cemetery after the cemetery ceases active
 528 operations.

529 (7) APPLICATION TO RESUME THE UNITRUST DISTRIBUTION
 530 METHOD.—A cemetery licensee that has been approved to revert
 531 from the unitrust distribution method to the net ordinary income
 532 trust distribution method and wishes to resume use of the
 533 unitrust distribution method must receive approval from the
 534 board before implementing such change. The licensee must apply
 535 as described in subsection (4) and provide with the application
 536 a written explanation by the applicant of the history of and
 537 reasons for the past and proposed changes to the cemetery
 538 licensee's method of distribution from its care and maintenance
 539 trust. The board shall approve such change only if it determines
 540 that approval would clearly be in the long term best interests
 541 of the cemetery's care and maintenance trust as a resource to
 542 provide for the perpetual care of the cemetery after the
 543 cemetery ceases active operations.

544 (8) TIMING OF DISTRIBUTIONS UNDER UNITRUST DISTRIBUTION
 545 METHOD.—The unitrust distribution calculated pursuant to the
 546 unitrust distribution method as approved by the board for a

547 particular licensee shall be distributed to the preneed licensee
 548 in equal monthly or quarterly payments at the end of each month
 549 or quarter.

550 (9) DISTRIBUTION METHOD CHANGES TO COINCIDE WITH CALENDAR
 551 YEARS.—A cemetery licensee may not apply to change its care and
 552 maintenance trust distribution method more than once in any 36-
 553 month period. The board may, by rule, shorten or expand the 36-
 554 month period if it deems it advisable and in the best interests
 555 of care and maintenance trusts. A cemetery licensee may only use
 556 one method of calculating distributions from its care and
 557 maintenance trust in any one calendar year. Any change in care
 558 and maintenance trust distribution method shall take effect
 559 January 1 of the calendar year following approval of such change
 560 by the board.

561 (10) BOARD MAY ORDER DISCONTINUATION OR MODIFICATION OF
 562 UNITRUST DISTRIBUTION.—If, at any time, the board determines the
 563 use or continued use of the unitrust distribution method by the
 564 trust results in or is likely to result in a materially
 565 unfavorable long term impact on the cemetery's care and
 566 maintenance trust as a resource to provide for the perpetual
 567 care of the cemetery after the cemetery ceases active operations
 568 as compared to other available distribution options allowed
 569 under this section, the board may order the prospective
 570 modification of the unitrust distribution method as applied to
 571 the cemetery licensee or may order that the cemetery licensee
 572 revert to the net ordinary income trust distribution method.

573 (11) ANNUAL REPORTS.—A cemetery licensee using the
 574 unitrust distribution method shall cause the trustee of the care
 575 and maintenance trust each year to prepare and provide to the
 576 division a report as required by s. 497.269 and shall cause the
 577 trustee to provide the following information to the division:

578 (a) The net ordinary income of the trust for the calendar
 579 year being reported.

580 (b) The average fair market value calculations and related
 581 and supporting data referenced in paragraph (1)(a), as used in
 582 the most recent unitrust distribution to the cemetery licensee.

583 (12) RULEMAKING AUTHORITY.—The licensing authority may, by
 584 rule, prescribe forms and procedures for applications under and
 585 implementation of this section. Such rules may require the
 586 filing of additional financial or other information as the
 587 licensing authority deems needed for an informed decision by the
 588 board concerning the application.

589 Section 10. Paragraphs (a) and (b) of subsection (1) and
 590 subsection (2) of section 497.268, Florida Statutes, are amended
 591 to read:

592 497.268 Care and maintenance trust fund, percentage of
 593 payments for burial rights to be deposited.—

594 (1) Each cemetery company shall set aside and deposit in
 595 its care and maintenance trust fund the following percentages or
 596 amounts for all sums received from sales of burial rights:

597 (a) For burial rights, 10 percent of all payments
 598 received; however, for sales made after September 30, 1993, no

599 deposit shall be less than \$25 per burial right ~~grave~~. For each
 600 burial right which is provided without charge, the deposit to
 601 the fund shall be \$25.

602 ~~(b) For mausoleums or columbaria, 10 percent of payments~~
 603 ~~received.~~

604 (2) Deposits to the care and maintenance trust fund shall
 605 be made by the cemetery company not later than 30 days following
 606 the close of the calendar month in which any payment was
 607 received; however, when such payments are received in
 608 installments, the percentage of the installment payment placed
 609 in trust must be identical to the percentage which the payment
 610 received bears to the total cost for the burial rights. Trust
 611 income may be used to pay for all usual and customary services
 612 for the operation of a trust account, including, but not limited
 613 to: reasonable trustee and custodian fees, investment adviser
 614 fees, allocation fees, and taxes. If the net income is not
 615 sufficient to pay the fees and other expenses, the fees and
 616 other expenses shall be paid by the cemetery company. ~~Capital~~
 617 ~~gains taxes shall be paid from the corpus.~~

618 Section 11. Section 497.269, Florida Statutes, is amended
 619 to read:

620 497.269 Care and maintenance trust fund; financial
 621 reports.—On or before April 1 of each year, the trustee shall
 622 furnish adequate financial reports that record the fair market
 623 value with respect to the care and maintenance trust fund
 624 utilizing forms and procedures specified by rule. However, the

625 department may require the trustee to make such additional
 626 financial reports as it deems necessary. In order to ensure that
 627 the proper deposits to the trust fund have been made, the
 628 department shall examine the status of the trust fund of the
 629 company on a semiannual basis for the first 2 years of the trust
 630 fund's existence.

631 Section 12. Paragraph (b) of subsection (4) of section
 632 497.273, Florida Statutes, is amended to read:

633 497.273 Cemetery companies; authorized functions.—

634 (4) This chapter does not prohibit the interment or
 635 entombment of the inurned cremated animal remains of the
 636 decedent's pet or pets with the decedent's human remains or
 637 cremated human remains if:

638 (b) The interment or entombment with the inurned cremated
 639 animal remains is with the authorization of a ~~the decedent or~~
 640 ~~other~~ legally authorized person.

641 Section 13. Subsection (1) of section 497.274, Florida
 642 Statutes, is amended to read:

643 497.274 Standards for grave spaces.—

644 (1) A standard adult grave space shall measure at least 42
 645 inches in width and 96 inches in length, except for preinstalled
 646 vaults in designated areas. For interments, except cremated
 647 remains, the covering soil shall measure no less than 12 inches
 648 from the top of the outer burial container at time of interment,
 649 unless such level of soil is not physically possible. In any
 650 interment, a legally authorized person ~~the family or next of kin~~

651 may waive the 12-inch coverage minimum.

652 Section 14. Subsection (2) of section 497.277, Florida
653 Statutes, is amended to read:

654 497.277 Other charges.—Other than the fees for the sale of
655 burial rights, burial merchandise, and burial services, no other
656 fee may be directly or indirectly charged, contracted for, or
657 received by a cemetery company as a condition for a customer to
658 use any burial right, burial merchandise, or burial service,
659 except for:

660 (2) Charges paid for transferring burial rights from one
661 purchaser to another; however, no such fee may exceed \$50,
662 unless a higher fee is approved by rule of the board based on
663 the board's findings of average administrative costs for a
664 cemetery to transfer such burial rights.

665 Section 15. Paragraph (c) of subsection (2) of section
666 497.283, Florida Statutes, is amended to read:

667 497.283 Prohibition on sale of personal property or
668 services.—

669 (2)

670 (c) In lieu of delivery as required by paragraph (b), for
671 sales to cemetery companies and funeral establishments, and only
672 for such sales, the manufacturer of a permanent outer burial
673 receptacle which meets standards adopted by rule may elect, at
674 its discretion, to comply with the delivery requirements of this
675 section by annually submitting for approval pursuant to
676 procedures and forms as specified by rule, in writing, evidence

677 of the manufacturer's financial responsibility with the
 678 licensing authority for its review and approval. ~~The standards~~
 679 ~~and procedures to establish evidence of financial responsibility~~
 680 ~~shall be those in s. 497.461, with the manufacturer of permanent~~
 681 ~~outer burial receptacles which meet national industry standards~~
 682 ~~assuming the same rights and responsibilities as those of a~~
 683 ~~preneed licensee under s. 497.461.~~

684 Section 16. Subsection (3) of section 497.286, Florida
 685 Statutes, is amended to read:

686 497.286 Owners to provide addresses; presumption of
 687 abandonment; abandonment procedures; sale of abandoned unused
 688 burial rights.—

689 (3) Upon the occurrence of a presumption of abandonment as
 690 set forth in subsection (2), a cemetery may file with the
 691 department a certified notice attesting to the abandonment of
 692 the burial rights. The notice shall do the following:

693 (a) Describe the burial rights certified to have been
 694 abandoned;

695 (b) Set forth the name of the owner or owners of the
 696 burial rights, or if the owner is known to the cemetery to be
 697 deceased, then the names, if known to the cemetery, of such
 698 claimants as are heirs at law, next of kin, or specific devisees
 699 under the will of the owner or the legally authorized person;

700 (c) Detail the facts with respect to the failure of the
 701 owner or survivors as outlined in this section to keep the
 702 cemetery informed of the owner's address for a period of 50

703 consecutive years or more; and

704 (d) Certify that no burial right has been exercised which
 705 is held in common ownership with any abandoned burial rights as
 706 set forth in subsection (2).

707 Section 17. Section 497.371, Florida Statutes, is amended
 708 to read:

709 497.371 Embalmers; establishment of embalmer apprentice
 710 program.—The licensing authority adopts rules establishing an
 711 embalmer apprentice program. An embalmer apprentice may perform
 712 only those tasks, functions, and duties relating to embalming
 713 which are performed under the direct supervision of an embalmer
 714 who has an active, valid license under s. 497.368 or s. 497.369.
 715 An embalmer apprentice is ~~shall be~~ eligible to serve in an
 716 apprentice capacity for a period not to exceed 3 years as may be
 717 determined by licensing authority rule or for a period not to
 718 exceed 5 years if the apprentice is enrolled in and attending a
 719 course in mortuary science or funeral service education at any
 720 mortuary college or funeral service education college or school.
 721 An embalmer apprentice shall be issued a license ~~licensed~~ upon
 722 payment of a licensure fee as determined by licensing authority
 723 rule but not to exceed \$200. An applicant for the embalmer
 724 apprentice program may not be issued a license unless the
 725 licensing authority determines that the applicant is of good
 726 character and does not have a history of lack of trustworthiness
 727 or integrity in business or professional matters.

728 Section 18. Paragraph (b) of subsection (1) of section

729 497.372, Florida Statutes, is amended to read:

730 497.372 Funeral directing; conduct constituting practice
731 of funeral directing.—

732 (1) The practice of funeral directing shall be construed
733 to consist of the following functions, which may be performed
734 only by a licensed funeral director:

735 (b) Planning or arranging, on an at-need basis, the
736 details of funeral services, embalming, cremation, or other
737 services relating to the final disposition of human remains,
738 including the removal of such remains from the state, ~~with the~~
739 ~~family or friends of the decedent or any other person~~
740 ~~responsible for such services~~; setting the time of the services;
741 establishing the type of services to be rendered; acquiring the
742 services of the clergy; and obtaining vital information for the
743 filing of death certificates and obtaining of burial transit
744 permits.

745 Section 19. Subsection (4) of section 497.381, Florida
746 Statutes, is amended to read:

747 497.381 Solicitation of goods or services.—

748 (4) At-need solicitation of funeral merchandise or
749 services is prohibited. A ~~No~~ funeral director or direct disposer
750 or her or his agent or representative may not contact the
751 legally authorized person or family ~~or next of kin of a deceased~~
752 ~~person~~ to sell services or merchandise unless the funeral
753 director or direct disposer or her or his agent or
754 representative has been initially called or contacted by the

755 decendent's legally authorized person or family ~~or next of kin of~~
 756 ~~such person~~ and requested to provide her or his services or
 757 merchandise.

758 Section 20. Paragraph (c) of subsection (2) of section
 759 497.452, Florida Statutes, is amended to read:

760 497.452 Preneed license required.-

761 (2)

762 ~~(c) The provisions of paragraph (a) do not apply to any~~
 763 ~~Florida corporation existing under chapter 607 acting as a~~
 764 ~~servicing agent hereunder in which the stock of such corporation~~
 765 ~~is held by 100 or more persons licensed pursuant to part III of~~
 766 ~~this chapter, provided no one stockholder holds, owns, votes, or~~
 767 ~~has proxies for more than 5 percent of the issued stock of such~~
 768 ~~corporation; provided the corporation has a blanket fidelity~~
 769 ~~bond, covering all employees handling the funds, in the amount~~
 770 ~~of \$50,000 or more issued by a licensed insurance carrier in~~
 771 ~~this state; and provided the corporation processes the funds~~
 772 ~~directly to and from the trustee within the applicable time~~
 773 ~~limits set forth in this chapter. The department may require any~~
 774 ~~person claiming that the provisions of this paragraph exempt it~~
 775 ~~from the provisions of paragraph (a) to demonstrate to the~~
 776 ~~satisfaction of the department that it meets the requirements of~~
 777 ~~this paragraph.~~

778 Section 21. Subsections (1) and (3) of section 497.454,
 779 Florida Statutes, are amended to read:

780 497.454 Approval of preneed contract and related forms.-

781 (1) Preneed contract forms and related forms shall be
 782 filed with and approved by the licensing authority before ~~prior~~
 783 ~~to~~ use, pursuant to procedures specified by rule. The licensing
 784 authority may not approve any electronic or paper preneed
 785 contract ~~form~~ that does not provide for sequential prenumbering
 786 thereon.

787 ~~(3) Specific disclosure regarding the preneed licensee's~~
 788 ~~ability to select either trust funding or the financial~~
 789 ~~responsibility alternative as set forth in s. 497.461 in~~
 790 ~~connection with the receipt of preneed contract proceeds is~~
 791 ~~required in the preneed contract.~~

792 Section 22. Subsections (2), (7), and (8) of section
 793 497.456, Florida Statutes, are amended to read:

794 497.456 Preneed Funeral Contract Consumer Protection Trust
 795 Fund.—

796 (2) Within 60 days after the end of each calendar quarter,
 797 for each preneed contract written during the quarter and not
 798 canceled within 30 days after the date of the execution of the
 799 contract, each preneed licensee, whether funding preneed
 800 contracts by the sale of insurance or by establishing a trust
 801 pursuant to s. 497.458 or s. 497.464, shall remit the sum of
 802 \$2.50 for each preneed contract having a purchase price of
 803 \$1,500 or less, and the sum of \$5 for each preneed contract
 804 having a purchase price in excess of \$1,500; and each preneed
 805 licensee utilizing ~~s. 497.461~~ or s. 497.462 shall remit the sum
 806 of \$5 for each preneed contract having a purchase price of

807 \$1,500 or less, and the sum of \$10 for each preneed contract
 808 having a purchase price in excess of \$1,500.

809 (7) In any situation in which a delinquency proceeding has
 810 not commenced, the licensing authority may, in its discretion,
 811 use the trust fund for the purpose of providing restitution to
 812 any consumer, owner, or beneficiary of a preneed contract or
 813 similar regulated arrangement under this chapter entered into
 814 after June 30, 1977. If, after investigation, the licensing
 815 authority determines that a preneed licensee has breached a
 816 preneed contract by failing to provide benefits or an
 817 appropriate refund, or that a provider, who is a former preneed
 818 licensee or an establishment which has been regulated under this
 819 chapter, has sold a preneed contract and has failed to fulfill
 820 the arrangement or provide the appropriate refund, and such
 821 preneed licensee or provider does not provide or does not
 822 possess adequate funds to provide appropriate refunds, payments
 823 from the trust fund may be authorized by the licensing
 824 authority. In considering whether payments shall be made or when
 825 considering who will be responsible for such payments, the
 826 licensing authority shall consider whether the preneed licensee
 827 or previous provider has been acquired by a successor who is or
 828 should be responsible for the liabilities of the defaulting
 829 entity. With respect to preneed contracts funded by life
 830 insurance, payments from the fund shall be made: if the insurer
 831 is insolvent, but only to the extent that funds are not
 832 available through the liquidation proceeding of the insurer; or

833 | if the preneed licensee is unable to perform under the contract
 834 | and the insurance proceeds are not sufficient to cover the cost
 835 | of the merchandise and services contracted for. In no event
 836 | shall the licensing authority approve payments in excess of the
 837 | insurance policy limits unless it determines that at the time of
 838 | sale of the preneed contract, the insurance policy would have
 839 | paid for the services and merchandise contracted for. Such
 840 | monetary relief shall be in an amount as the licensing authority
 841 | may determine and shall be payable in such manner and upon such
 842 | conditions and terms as the licensing authority may prescribe.
 843 | However, with respect to preneed contracts to be funded pursuant
 844 | to s. 497.458, s. 497.459, ~~s. 497.461~~, or s. 497.462, any
 845 | restitution made pursuant to this subsection may ~~shall~~ not
 846 | exceed, as to any single contract or arrangement, the lesser of
 847 | the gross amount paid under the contract or 4 percent of the
 848 | uncommitted assets of the trust fund. With respect to preneed
 849 | contracts funded by life insurance policies, any restitution may
 850 | ~~shall~~ not exceed, as to any single contract or arrangement, the
 851 | lesser of the face amount of the policy, the actual cost of the
 852 | arrangement contracted for, or 4 percent of the uncommitted
 853 | assets of the trust fund. The total of all restitutions made to
 854 | all applicants under this subsection in a single fiscal year may
 855 | ~~shall~~ not exceed the greater of 30 percent of the uncommitted
 856 | assets of the trust fund as of the end of the most recent fiscal
 857 | year or \$120,000. The department may use moneys in the trust
 858 | fund to contract with independent vendors pursuant to chapter

859 287 to administer the requirements of this subsection.

860 (8) All moneys deposited in the Preneed Funeral Contract
 861 Consumer Protection Trust Fund together with all accumulated
 862 appreciation ~~income~~ shall be used only for the purposes
 863 expressly authorized by this chapter and may ~~shall~~ not be
 864 subject to any liens, charges, judgments, garnishments, or other
 865 creditor's claims against the preneed licensee, any trustee
 866 utilized by the preneed licensee, any company providing a surety
 867 bond as specified in this chapter, or any purchaser of a preneed
 868 contract. No preneed contract purchaser shall have any vested
 869 rights in the trust fund.

870 Section 23. Paragraphs (a), (b), (d), and (f) of
 871 subsection (1), paragraph (a) of subsection (3), subsection (4),
 872 paragraphs (a) and (c) of subsection (5), and subsections (6)
 873 through (9) of section 497.458, Florida Statutes, are amended,
 874 and a new paragraph (j) is added to subsection (1) of that
 875 section, to read:

876 497.458 Disposition of proceeds received on contracts.-

877 (1)

878 (a) Any person who is paid, collects, or receives funds
 879 under a preneed contract for funeral services or merchandise or
 880 burial services or merchandise shall deposit an amount at least
 881 equal to the sum of 70 percent of the purchase price collected
 882 for all services sold and facilities rented; 100 percent of the
 883 purchase price collected for all cash advance items sold; and 30
 884 percent of the purchase price collected ~~or 110 percent of the~~

885 ~~wholesale cost, whichever is greater,~~ for each item of
 886 merchandise sold. The board may, by rule, specify criteria for
 887 the classification of items sold in a preneed contract as
 888 services, merchandise, or cash advances.

889 ~~(b) The method of determining wholesale cost shall be~~
 890 ~~established by rule of the licensing authority and shall be~~
 891 ~~based upon the preneed licensee's stated wholesale cost for the~~
 892 ~~12-month period beginning July 1 during which the initial~~
 893 ~~deposit to the preneed trust fund for the preneed contract is~~
 894 ~~made.~~

895 ~~(c)(d)~~ The trustee shall take title to the property
 896 conveyed to the trust for the purpose of investing, protecting,
 897 and conserving it for the preneed licensee; collecting income;
 898 and distributing the fair market value ~~principal and income~~ as
 899 prescribed in this chapter. The preneed licensee is prohibited
 900 from sharing in the discharge of these responsibilities, except
 901 that the preneed licensee may request the trustee to invest in
 902 tax-free investments and may appoint an adviser to the trustee.
 903 The licensing authority may adopt rules limiting or otherwise
 904 specifying the degree to which the trustee may rely on the
 905 investment advice of an investment adviser appointed by the
 906 preneed licensee. The licensing authority may adopt rules
 907 limiting or prohibiting payment of fees by the trust to
 908 investment advisors that are employees or principals of the
 909 licensee to whom the trust fund relates.

910 ~~(d)(f)~~ The deposited funds shall be held in trust, both as

911 to principal and any change in fair market value ~~income earned~~
 912 thereon, and shall remain intact, except that the cost of the
 913 operation of the trust or trust account authorized by this
 914 section may be deducted from the income earned thereon.

915 (j) On or before April 1 of each year, beginning in 2018,
 916 the trustee shall furnish the department with an annual report
 917 regarding each preneed licensee trust account held by the
 918 trustee at any time during the previous calendar year. The
 919 report shall state the name and address of the trustee; the
 920 name, address, and license number of the licensee to whom the
 921 report relates; the trust account number; the beginning and
 922 ending trust balance; and as may be specified by department
 923 rule, a list of receipts showing the date and amount of any
 924 disbursement. The report must be signed by the trustee's account
 925 manager for the trust account. The department, by rule, shall
 926 specify the format in which the trustee shall submit the report
 927 and the procedures for submission.

928 (3) (a) The trustee shall make regular valuations of assets
 929 it holds in trust and provide a fair market value report of such
 930 valuations to the preneed licensee at least quarterly.

931 (4) The licensing authority may adopt rules exempting from
 932 the prohibition of paragraph (1) (g) ~~(1) (h)~~, pursuant to criteria
 933 established in such rule, the investment of trust funds in
 934 investments, such as widely and publicly traded stocks and
 935 bonds, notwithstanding that the licensee, its principals, or
 936 persons related by blood or marriage to the licensee or its

937 principals have an interest by investment in the same entity,
 938 where neither the licensee, its principals, or persons related
 939 by blood or marriage to the licensee or its principals have the
 940 ability to control the entity invested in, and it would be in
 941 the interest of the preneed contract holders whose contracts are
 942 secured by the trust funds to allow the investment.

943 (5) The trustee of the trust established pursuant to this
 944 section shall only have the power to:

945 (a) Invest in investments as prescribed in s. 518.11
 946 ~~215.47~~ and exercise the powers set forth in part VIII of chapter
 947 736, provided that life insurance policies or annuity contracts
 948 are not allowable investments or assets by or of the trust and
 949 that real estate does not comprise more than 25 percent of the
 950 trust assets; provided further that the licensing authority may
 951 by order require the trustee to liquidate or dispose of any
 952 investment within 30 days after such order, or within such other
 953 times as the order may direct. The licensing authority may issue
 954 such order if it determines that the investment violates any
 955 provision of this chapter or is not in the best interests of the
 956 preneed contract holders whose contracts are secured by the
 957 trust funds.

958 (c) Commingle the property of the trust with the property
 959 of any other trust established pursuant to this chapter and make
 960 corresponding allocations and divisions of assets, liabilities,
 961 income, ~~and~~ expenses, and capital gains and losses.

962 ~~(6) The preneed licensee, at her or his election, shall~~

963 ~~have the right and power, at any time, to revest in it title to~~
 964 ~~the trust assets, or its pro rata share thereof, provided it has~~
 965 ~~complied with s. 497.461.~~

966 ~~(7) Notwithstanding anything contained in this chapter to~~
 967 ~~the contrary, the preneed licensee, via its election to sell or~~
 968 ~~offer for sale preneed contracts subject to this section, shall~~
 969 ~~represent and warrant, and is hereby deemed to have done such,~~
 970 ~~to all federal and Florida taxing authorities, as well as to all~~
 971 ~~potential and actual preneed contract purchasers, that:~~

972 ~~(a) Section 497.461 is a viable option available to it at~~
 973 ~~any and all relevant times;~~

974 ~~(b) Section 497.462 is a viable option available to it at~~
 975 ~~any and all relevant times for contracts written prior to July~~
 976 ~~1, 2001, for funds not held in trust as of July 1, 2001, or~~

977 ~~(c) For any preneed licensee authorized to do business in~~
 978 ~~this state that has total bonded liability exceeding \$100~~
 979 ~~million as of July 1, 2001, s. 497.462 is a viable option to it~~
 980 ~~at any and all relevant times for contracts written prior to~~
 981 ~~December 31, 2004, for funds not held in trust as of July 1,~~
 982 ~~2001.~~

983 ~~(8) If in the preneed licensee's opinion it does not have~~
 984 ~~the ability to select the financial responsibility alternative~~
 985 ~~of s. 497.461 or s. 497.462, then the preneed licensee shall not~~
 986 ~~have the right to sell or solicit preneed contracts.~~

987 (6)(9) The amounts required to be placed in a trust by
 988 this section for contracts previously entered into shall be as

989 follows:

990 (a) For contracts entered into before October 1, 1993, the
 991 trust amounts as amended by s. 6, chapter 83-316, Laws of
 992 Florida, shall apply.

993 (b) For contracts entered into on or after October 1,
 994 1993, the trust amounts as amended by s. 98, chapter 93-399,
 995 Laws of Florida, shall apply.

996 Section 24. Paragraph (a) of subsection (6) of section
 997 497.459, Florida Statutes, is amended to read:

998 497.459 Cancellation of, or default on, preneed
 999 contracts.—

1000 (6) OTHER PROVISIONS.—

1001 (a) All preneed contracts are cancelable and revocable as
 1002 provided in this section, provided that a preneed contract does
 1003 not restrict any contract purchaser who is the beneficiary of
 1004 the preneed contract and who is a qualified applicant for, or a
 1005 recipient of, supplemental security income, temporary cash
 1006 assistance, or Medicaid from making her or his contract
 1007 irrevocable. A preneed contract that is made irrevocable
 1008 pursuant to this section may not be cancelled during the life or
 1009 after the death of the contract purchaser or beneficiary as
 1010 described in this section. Any unexpended moneys paid on an
 1011 irrevocable contract shall be remitted to the Agency for Health
 1012 Care Administration for deposit into the Medical Care Trust Fund
 1013 after final disposition of the beneficiary.

1014 Section 25. Section 497.460, Florida Statutes, is amended

1015 to read:

1016 497.460 Payment of funds upon death of named beneficiary.—
 1017 Disbursements of funds discharging any preneed contract
 1018 fulfilled after September 30, 1993, shall be made by the trustee
 1019 to the preneed licensee upon receipt of a certified copy of the
 1020 death certificate of the contract beneficiary or satisfactory
 1021 evidence as established by rule of the licensing authority that
 1022 the preneed contract has been performed in whole or in part.
 1023 However, if the contract is only partially performed, the
 1024 disbursement shall only cover the fair market value of that
 1025 portion of the contract performed. In the event of any contract
 1026 default by the contract purchaser, or in the event that the
 1027 funeral merchandise or service or burial merchandise or service
 1028 contracted for is not provided or is not desired by the legally
 1029 authorized person ~~heirs or personal representative of the~~
 1030 ~~contract beneficiary~~, the trustee shall return, within 30 days
 1031 after its receipt of a written request therefor, funds paid on
 1032 the contract to the preneed licensee or to its assigns, subject
 1033 to ~~the provisions of~~ s. 497.459.

1034 Section 26. Section 497.461, Florida Statutes, is
 1035 repealed.

1036 Section 27. The repeal of s. 497.461, Florida Statutes, by
 1037 this act does not apply to any surety bonds in force under s.
 1038 497.461 as of July 1, 2016, but no additional preneed contracts
 1039 shall be added under such surety bonds after July 1, 2016.

1040 Section 28. Subsections (3) through (11) of section

1041 497.462, Florida Statutes, are renumbered as subsections (2)
 1042 through (10), respectively, and present subsection (2),
 1043 paragraph (a) of subsection (3), and subsections (7) and (10) of
 1044 that section are amended, to read:

1045 497.462 Other alternatives to deposits under s. 497.458.—

1046 ~~(2) Upon prior approval by the licensing authority, the~~
 1047 ~~preneed licensee may file a letter of credit with the licensing~~
 1048 ~~authority in lieu of a surety bond. Such letter of credit must~~
 1049 ~~be in a form, and is subject to terms and conditions, prescribed~~
 1050 ~~by the board. It may be revoked only with the express approval~~
 1051 ~~of the licensing authority.~~

1052 (2)~~(3)~~(a) A buyer of preneed merchandise or services who
 1053 does not receive such services or merchandise due to the
 1054 economic failure, closing, or bankruptcy of the preneed licensee
 1055 must file a claim with the surety as a prerequisite to payment
 1056 of the claim and, if the claim is not paid, may bring an action
 1057 based on the bond and recover against the surety. ~~In the case of~~
 1058 ~~a letter of credit or cash deposit that has been filed with the~~
 1059 ~~licensing authority, the buyer may file a claim with the~~
 1060 ~~licensing authority.~~

1061 (6)~~(7)~~ Any preneed contract which promises future delivery
 1062 of merchandise at no cost constitutes a paid-up contract.
 1063 Merchandise which has been delivered is not covered by the
 1064 required performance bond ~~or letter of credit~~ even though the
 1065 contract is not completely paid. The preneed licensee may not
 1066 cancel a contract unless the purchaser is in default according

1067 to the terms of the contract and subject to the requirements of
 1068 s. 497.459. A contract sold, discounted, and transferred to a
 1069 third party constitutes a paid-up contract for the purposes of
 1070 the performance bond ~~or letter of credit.~~

1071 (9)~~(10)~~ The licensing authority may adopt forms and rules
 1072 necessary to implement this section, including, but not limited
 1073 to, rules which ensure that the surety bond provides ~~and line of~~
 1074 ~~credit provide~~ liability coverage for preneed merchandise and
 1075 services.

1076 Section 29. Paragraphs (c) through (g) of subsection (1)
 1077 of section 497.464, Florida Statutes, are amended to read:

1078 497.464 Alternative preneed contracts.—

1079 (1) Nothing in this chapter shall prevent the purchaser
 1080 and the preneed licensee from executing a preneed contract upon
 1081 the terms stated in this section. Such contracts shall be
 1082 subject to all provisions of this chapter except:

1083 ~~(e) Section 497.458(1), (3), and (6).~~

1084 (c)~~(d)~~ Section 497.459(1), (2), and (4).

1085 (d)~~(e)~~ Section 497.460.

1086 ~~(f) Section 497.461.~~

1087 (e)~~(g)~~ Section 497.462.

1088 Section 30. Subsection (2) and paragraph (c) of subsection
 1089 (9) of section 497.465, Florida Statutes, is amended to read:

1090 497.465 Inactive, surrendered, and revoked preneed
 1091 licensees.—

1092 (2) A preneed licensee shall cease all preneed sales to

1093 the public upon becoming inactive. Upon becoming inactive, the
 1094 preneed licensee shall ~~collect and~~ deposit into the trust all of
 1095 the funds received from ~~paid toward~~ preneed contracts sold
 1096 before ~~prior to~~ becoming inactive.

1097 (9) The licensing authority may adopt rules for the
 1098 implementation of this section, for the purpose of ensuring a
 1099 thorough review and investigation of the status and condition of
 1100 the preneed licensee's business affairs for the protection of
 1101 the licensee's preneed customers. Such rules may include:

1102 (c) Requirements for submission of ~~unaudited or audited~~
 1103 financial statements, as the licensing authority deems
 1104 advisable.

1105 Section 31. Paragraph (b) of subsection (1) of section
 1106 497.601, Florida Statutes, is amended to read:

1107 497.601 Direct disposition; duties.—

1108 (1) Those individuals licensed as direct disposers may
 1109 perform only those functions set forth below:

1110 (b) Secure pertinent information from a legally authorized
 1111 person ~~the decedent's next of kin~~ in order to complete the death
 1112 certificate and to file for the necessary permits for ~~direct~~
 1113 disposition.

1114 Section 32. Subsection (1) of section 497.607, Florida
 1115 Statutes, is amended, subsections (2), (3), and (4) are
 1116 renumbered as subsections (3), (4), and (5), respectively, and a
 1117 new subsection (2) is added to that section, to read:

1118 497.607 Cremation; procedure required.—

1119 (1) At the time of the arrangement for a cremation
 1120 performed by any person licensed pursuant to this chapter, the
 1121 legally authorized person contracting for cremation services
 1122 shall be required to designate her or his intentions with
 1123 respect to the disposition of the cremated remains of the
 1124 deceased in a signed declaration of intent which shall be
 1125 provided by and retained by the funeral or direct disposal
 1126 establishment. A cremation may not be performed until a legally
 1127 authorized person gives written authorization, which may include
 1128 the declaration of intent to dispose of the cremated remains,
 1129 for such cremation. The cremation must be performed within 48
 1130 hours after a specified time which has been agreed to in writing
 1131 by the person authorizing the cremation.

1132 (2) Cremated remains are not property, as defined in s.
 1133 731.201, and are not subject to ownership or court-ordered
 1134 partition. A division of cremated remains requires the consent
 1135 of the legally authorized person who approved the cremation or,
 1136 if the legally authorized person is the decedent, the next
 1137 legally authorized person pursuant to s. 497.005(40). A dispute
 1138 regarding the division of cremated remains shall be resolved by
 1139 a court of competent jurisdiction.

1140 Section 33. This act shall take effect July 1, 2016.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
 2 Appropriations Subcommittee
 3 Representative Roberson, K. offered the following:

Amendment (with title amendment)

Remove lines 652-664

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

11 Remove lines 46-49 and insert:
 12 conforming provisions;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 535 Building Codes
SPONSOR(S): Business & Professions Subcommittee; Eagle
TIED BILLS: IDEN./SIM. BILLS: SB 704

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	10 Y, 1 N, As CS	Whittier	Anstead
2) Government Operations Appropriations Subcommittee		White <i>CCW</i>	Topp <i>BPT</i>
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill makes the following changes to law:

- Makes several adjustments to the training and experience required to take the certification examinations for building code inspector, plans examiner, and building code administrator;
- Allows Category I liquefied petroleum gas dealers, liquefied petroleum gas installers, and specialty installers to disconnect and reconnect water lines in the servicing or replacement of existing water heaters;
- Exempts employees of apartment communities with 100 or more units from contractor licensing requirements if making minor repairs to existing electric water heaters or existing electric HVAC systems, if they meet certain training and experience criteria, and if the repair involves parts costing under \$500;
- Adds Division II contractors to the Florida Homeowners' Construction Recovery Fund section, which would allow homeowners to make a claim and receive restitution from the fund when they have been harmed by a Division II contractor, subject to certain requirements and financial caps;
- Exempts specific low-voltage landscape lighting from having to be installed by a licensed electrical contractor;
- Clarifies that portable pools used for swimming lessons under certain conditions are not subject to regulation;
- Provides funding for the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup and provides funding for Florida Fire Prevention Code informal interpretations;
- Restricts the Florida Building Code (Code) from requiring more than one fire service access elevator in residential buildings of a certain height, allows the creation of local boards to address conflicts between the Code and the Florida Fire Prevention Code (Fire Code), and adds new provisions to the Fire Code;
- Authorizes local building officials to issue phased permits for construction;
- Replaces advanced course provisions for Code training with Code-related training regarding the Florida Building Code Compliance and Mitigation Program and accreditation of courses related to the Code;
- Prohibits local governments from requiring payment of any additional fees, charges, or expenses associated with providing proof of licensure as a contractor, recording a contractor license, or providing or recording evidence of worker's compensation insurance coverage by a contractor;
- Adds Underwriters Laboratories, LLC, to the list of entities that are authorized to produce information on which product approvals are based, related to the Code;
- Exempts wi-fi smoke alarms and those that contain multiple sensors, such as those combined with carbon monoxide alarms, from the 10-year, nonremovable, nonreplaceable battery provision;
- The bill prohibits adopting mandatory blower door/air infiltration testing and mechanical ventilation device requirements into the 2014 Code and reverts to the 2010 Code;
- Reinstates a wind mitigation exemption for professional engineer certification of HVAC units being installed;
- Adds provisions to the Code regarding fire separation distance and roof overhang projections;
- Allows a specific energy rating index as an option for compliance with the energy code; and
- Creates the Calder Sloan Swimming Pool Electrical-Safety Task Force to study and report on specific standards, especially with regard to minimizing risks of electrocutions linked to swimming pools.

The bill has an insignificant negative fiscal impact on state government. The bill may have a negative fiscal impact on local governments. The bill provides an effective date of July 1, 2016.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0535b.GOAS.DOCX

DATE: 12/28/2015

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Florida Building Code and the Florida Building Commission

In 1974, Florida adopted a state minimum building code law requiring all local governments to adopt and enforce a building code that would ensure minimum standards for the public's health and safety. Four separate model codes were available that local governments could consider and adopt. In that system, the state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes as they desired.¹

In 1996, a study commission was appointed to review the system of local codes created by the 1974 law and to make recommendations for modernizing the entire system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and an enhanced oversight role for the state in local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Code), and that 1st edition replaced all local codes on March 1, 2002. In 2004, for the 2nd edition of the Code, the state adopted the International Code Council's I-Codes.² All subsequent Codes have been adopted utilizing the International Code Council I-Codes as the foundation code. The most recent Code is the 5th edition which is referred to as the 2014 Code. The 2014 Code went into effect June 30, 2015.³

The Florida Building Commission (FBC) was statutorily created to implement the Code. The FBC, which is housed within the Department of Business and Professional Regulation (DBPR), is a 27-member technical body responsible for the development, maintenance, and interpretation of the Code. The FBC also approves products for statewide acceptance. Members are appointed by the Governor and confirmed by the Senate and include design professionals, contractors, and government experts in the various disciplines covered by the Code.⁴

Most substantive issues before the FBC are vetted through a workgroup process where consensus recommendations are developed and submitted by appointed representative stakeholder groups in an open process with several opportunities for public input.

According to the FBC,

General consensus is a participatory process whereby, on matters of substance, the members strive for agreements which all of the members can accept, support, live with or agree not to oppose. In instances where, after vigorously exploring possible ways to enhance the members' support for the final decision on substantive decisions, and the Commission finds that 100 percent acceptance or support is not achievable, final decisions require at least 75 percent favorable vote of all members present and voting.⁵

¹ <http://www.myfloridalicense.com/dbpr/bcs/buildingcomm.html> (last visited Nov. 25, 2015).

² The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." The ICC publishes I-Codes: a complete set of model comprehensive, coordinated building safety and fire prevention codes, for all aspects of construction, that have been developed by ICC members. All fifty states have adopted the I-Codes.

³ <http://www.myfloridalicense.com/dbpr/bcs/buildingcomm.html> (last visited Nov. 25, 2015).

⁴ s. 553.74, F.S.

⁵ <http://www.myfloridalicense.com/dbpr/bcs/buildingcomm.html> (last visited Nov. 25, 2015).

Certifications for Building Code Inspectors, Plans Examiners, and Administrators (Section 1)

Present Situation

Building Code Inspector and Plans Examiner

In order to take the examination for building code inspector or plans examiner certifications, s. 468.609(2), F.S., provides that a person must be at least 18 years of age, be of good moral character, and meet one of the following eligibility requirements:

No.	Requirements
Option 1.	Demonstrates five years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought.
Option 2.	Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals four years, with at least one year of such total being experience in construction, building code inspection, or plans review.
Option 3.	Demonstrates a combination of technical education in the field of construction or a related field and experience which totals four years, with at least one year of such total being experience in construction, building code inspection, or plans review.
Option 4.	Currently holds a standard certificate as issued by the Florida Building Code Administrators and Inspectors Board (Board) or a firesafety inspector license issued pursuant to chapter 633, has a minimum of five years' verifiable full-time experience in inspection or plans review, and satisfactorily completes a building code inspector or plans examiner training program of not less than 200 hours in the certification category sought. The Board shall establish, by rule, criteria for the development and implementation of the training programs.
Option 5.	Demonstrates a combination of the completion of an approved training program in the field of building code inspection or plans review and a minimum of two years' experience in the field of building code inspection; plans review; fire code inspections and fire plans review of new buildings as a firesafety inspector; or construction. The approved training portion of this requirement shall include proof of satisfactory completion of a training program ⁶ of not less than 300 hours which is approved by the Board in the chosen category of building code inspection or plans review in the certification category sought with not less than 20 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificate holder.

Although individuals have been able to meet the above requirements for a single certification; it is difficult to earn additional certifications while employed as an inspector or plans examiner.

Effects of Proposed Changes

The bill makes the following major changes to the training and experience required to take the examination for building code inspector and plans examiner certification:

For Option 4, the bill reduces the number of years' experience in inspection or plans review from five to three years and lowers the hours requirement for the training program from 200 to 100 hours.

For Option 5, the bill lowers the hour requirements for the training program from 300 to 200 hours and limits the required hours of instruction from not less than 20 hours to at least 20 hours but not more than 30 hours.

⁶ The Board shall coordinate with the Building Officials Association of Florida, Inc., to establish, by rule, the development and implementation of the training program.

The bill adds the following sixth option for eligibility requirements to take the building code inspector or plans examiner certification examination:

No.	Requirements
Option 6.	<p>Currently holds a standard certificate issued by the Board or a firesafety inspector license issued pursuant to chapter 633 and:</p> <ul style="list-style-type: none"> • Has at least five years of verifiable full-time experience as an inspector or plans examiner in a standard certification category currently held or has a minimum of five years' verifiable full-time experience as a firesafety inspector licensed pursuant to chapter 633; and • Satisfactorily completes a building code inspector or plans examiner classroom training course or program that provides at least 200 but not more than 300 hours of training in the certification category sought, except for one-family and two-family dwelling training programs which are required to provide at least 500 but not more than 800 hours of training as prescribed by the Board. The Board shall establish, by rule, criteria for the development and implementation of classroom training courses and programs in each certification category.

Present Situation

Building Code Administrator

In order to take the examination for building code administrator certification, s. 468.609(3), F.S., provides that a person must be at least 18 years of age, be of good moral character, and meet of one of the following eligibility requirements:

No.	Requirements
Option 1.	Demonstrates 10 years' combined experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent, with at least five years of such experience in supervisory positions.
Option 2.	Demonstrates a combination of postsecondary education in the field of construction or related field, no more than five years of which may be applied, and experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent which totals 10 years, with at least five years of such total being experience in supervisory positions.

Effects of Proposed Changes

The bill makes the following adjustment to the training and experience required to take the examination for building code administrator certification:

For Option 2, the bill adds a requirement of at least 20 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder, in Board-approved courses not to exceed 30 hours.

Apartment Maintenance Employees (Section 6)

Present Situation

Part I of ch. 489, F.S., regulates licensed construction contractors and provides that it is "necessary in the interest of the public health, safety, and welfare to regulate the construction industry."⁷ Section 489.103, F.S., provides exemptions to Part I.

Section 489.103(9), F.S. (also referred to as the "Handyman Exemption"), provides an exemption to Part I for any work or operation of a casual, minor, or inconsequential nature in which the aggregate contract price for labor, materials, and all other items is less than \$1,000. The exemption does not apply:

- If the construction, repair, remodeling, or improvement is a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than \$1,000 for the purpose of evading Part I; or
- To a person who advertises that he or she is a contractor or otherwise represents that he or she is qualified to engage in contracting.

Effects of Proposed Changes

The bill adds an exemption to Part I for an employee of an apartment community or apartment community management company who makes minor repairs to existing electric water heaters or to existing electric heating, venting, and air-conditioning systems.

The following four conditions must be met if utilizing this exemption:

- The employee:
 - Does not hold himself or herself or his or her employer out to be licensed or qualified by a licensee;
 - Does not perform any acts, other than acts authorized by this exemption, that constitute contracting;
 - Receives compensation from and is under the supervision and control of an employer who deducts the FICA and withholding tax and who provides workers' compensation, as prescribed by law; and
 - Holds a current certificate for apartment maintenance technicians issued by the National Apartment Association and accredited by the American National Standards Institute. Requirements for obtaining a certificate for apartment maintenance technician must include at least:
 - One year of apartment or rental housing maintenance experience;
 - Successful completion of at least 90 hours of courses or online content that cover electrical maintenance and repair; plumbing maintenance and repair; heating, venting, or air-conditioning system maintenance and repair; appliance maintenance and repair; and interior and exterior maintenance and repair; and
 - Completion of all examination requirements.
- The equipment:
 - Is already installed on the property owned by the apartment community or managed by the apartment community management company;
 - Is not being modified except to replace components necessary to return the equipment to its original condition and the partial disassembly associated with the replacement;
 - Is a type of equipment commonly installed in similar locations; and
 - Is repaired with new parts that are functionally identical to the parts being replaced.

⁷ s. 489.101, F.S.

- An individual repair does not involve replacement parts that cost more than \$500. An individual repair may not be so extensive as to be a functional replacement of the electric water heater or the existing electric heating, venting, or air-conditioning system being repaired. Further, an individual repair may not be a part of a larger or major project that is divided for the purposes of evading the \$500 limit.
- The property owned by the apartment community or managed by the apartment community management company includes at least 100 apartments.

Propane Gas Water Heater Installations (Section 7)

Present Situation

Currently, natural gas utility employees have the authority under s. 489.105, F.S., to disconnect and reconnect water lines when servicing and replacing "existing" water heaters. Although natural gas and propane are piped in the same manner and have the same properties and pressures inside homes, the propane industry does not have the authority to disconnect and reconnect water lines and must contract with plumbers to start and complete this task. This creates additional costs for propane water heater customers. According to the Florida Natural Gas Association, the installers of natural gas and propane appliances have the same capabilities for their job duties. For example, currently there are three companies within the state that have natural gas and propane sides to their operations. Their employees can disconnect and reconnect water lines when servicing natural gas water heaters, but the same employees cannot do this when servicing propane water heaters.⁸

Effects of Proposed Changes

The bill extends the authority to disconnect and reconnect water lines in the servicing or replacement of an existing water heater to licensed Category I liquefied petroleum gas dealers, liquefied petroleum gas installers, and specialty installers.

Florida Homeowners' Construction Recovery Fund (Sections 9-13)

Present Situation

Florida Homeowners' Construction Recovery Fund and the Construction Industry Licensing Board

The Florida Homeowners' Construction Recovery Fund (fund) is created in s. 489.140, F.S., as a separate account in the Professional Regulation Trust Fund.

According to DBPR, the fund was created in 1993, after Hurricane Andrew, as a fund of last resort to compensate consumers who contracted for construction, repair, or improvement of their Florida residence and who suffered monetary damages due to the financial misconduct, abandonment, or fraudulent statement of the licensed contractor,⁹ financially responsible officer, or business organization licensed under ch. 489, F.S.¹⁰

The fund is financed by a 1.5 percent surcharge on all building permit fees associated with the enforcement of the Code.¹¹ The proceeds from the surcharge are allocated equally to the fund and support the operations of the Building Code Administrators and Inspectors Board.^{12, 13}

⁸ Email from Dale Calhoun, President of the Florida Natural Gas Association, RE: propane tank installations (Mar. 13, 2015).

⁹ Florida Department of Business and Professional Regulation, Agency Analysis of 2014 Senate Bill 1098 (Mar. 11, 2014).

¹⁰ s. 489.1402(1)(g), F.S.

¹¹ s. 468.631(1), F.S.

¹² *Id.*

¹³ In 2013, the Legislature gave DBPR the authority to transfer excess cash to the fund if it determines it is not needed to support the operation of the Building Code Administrators and Inspectors Board; however, DBPR may not transfer excess

A claimant must be a homeowner and the damage must have been caused by a Division I contractor.¹⁴ The fund is not permitted to compensate consumers who contracted with Division II contractors or to compensate consumers who suffered damages as a result of payments made in violation of the Florida Construction Lien Law under part I of ch. 713, F.S.

Division I contractors are listed in s. 489.105(3)(a)-(c), F.S., as the following:

• General contractors	• Residential contractors
• Building contractors	

Division II contractors are listed in s. 489.105(3)(d)-(q), F.S., as the following:

• Sheet metal contractors	• Residential pool/spa contractors
• Roofing contractors	• Swimming pool/spa servicing contractors
• Class A air-conditioning contractors	• Plumbing contractors
• Class B air-conditioning contractors	• Underground utility and excavation contractors
• Class C air-conditioning contractors	• Solar contractors
• Mechanical contractors	• Pollutant storage systems contractors
• Commercial pool/spa contractors	• Specialty contractors

Decisions regarding the fund are made by the Construction Industry Licensing Board which is housed within DBPR.

The Construction Industry Licensing Board (CILB) consists of 18 members who are responsible for licensing and regulating the construction industry in the state.¹⁵ The CILB is divided into Division I and Division II members following the definitions of Division I and Division II contractors respectively, with the jurisdiction falling to each division relative to their scope.¹⁶ Five members constitute a quorum for each division.

The CILB meets regularly to consider applications for licensure, to review disciplinary cases, and to conduct informal hearings related to licensure and discipline.¹⁷ It engages in rulemaking to implement the provisions set forth in the statutes and conducts other general business, as necessary.¹⁸

The CILB, with respect to actions for recovery from the fund, may "intervene, enter an appearance, file an answer, defend the action, or take any action it deems appropriate and may take recourse through any appropriate method of review" on behalf of the state.¹⁹ In accordance with DBPR rules, "The Board shall either authorize payment of the claim in full or in part, or deny the claim in full, by entry of a Final Order in accordance with s. 489.143, F.S. Action by the Board shall be considered final agency action."²⁰

Section 489.129, F.S., grants the CILB the authority to take actions against any certificateholder or registrant if the contractor, financially responsible officer, or business organization for which the contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying

cash that would exceed the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission pursuant to s. 216.181, F.S. See sect. 2, ch. 2013-187, Laws of Fla.

¹⁴ s. 489.1402(1)(c), (d), and (f), F.S.

¹⁵ s. 489.107, F.S.

¹⁶ s. 489.107(4)(c), F.S.

¹⁷ Florida Department of Business and Professional Regulation, Construction Industry Licensing Board, available at <http://www.myfloridalicense.com/DBPR/pro/cilb/index.html> (Last visited Nov. 23, 2015).

¹⁸ s. 489.108, F.S.

¹⁹ s. 489.142(1), F.S.

²⁰ Rule 61G4-21.004(7), F.A.C.

agent responsible under s. 489.1195, F.S., is found guilty of certain acts, including the acts that may qualify a claim to the fund. Specifically, the acts that may qualify a claim to the fund are financial misconduct, abandonment of the project, or fraudulent statement of the contractor²¹ and are described in s. 489.129(1)(g), (j), or (k), F.S. If the violation is not expressly based on s. 489.129(1)(g), (j), or (k), F.S., the claimant must demonstrate that the contractor engaged in activity that is described in those subsections.²²

Claims

The claimant must have obtained a final judgment, arbitration award, or Board-issued restitution order against the contractor for damages that are a direct result of a compensable violation. A claim for recovery must be made within one year after the conclusion of any civil, criminal, administrative action, or award in arbitration based on the act.²³

Pursuant to s. 489.143, F.S., each recovery claim is limited to both a per-claim maximum amount and a total lifetime per-contractor maximum. For contracts entered prior to July 1, 2004, the fund claims are limited to \$25,000 per claim with a total life time aggregate limit of \$250,000 per licensee.²⁴ For contracts entered after July 1, 2004, the per-claim payment limits are increased to \$50,000 with a total lifetime aggregate of \$500,000 per licensee.²⁵ Claims are paid in the order that they are filed.²⁶

The Board will not compensate claimants from the recovery fund for any of the following reasons.

- The claimant is a licensee who acted as the contractor;
- The claimant is the spouse of the judgment debtor or licensee or a personal representative of such spouse;
- The claim is based upon a construction contract in which the licensee was acting with respect to the property owned or controlled by the licensee;
- The claim is based upon a construction contract in which the contractor did not hold a valid and current license at the time of the construction contract;
- The claimant was associated in a business relationship with the licensee other than the contract at issue;
- When, after notice, the claimant has failed to provide documentation in support of the claims required by rule;
- Where the licensee has reached the aggregate limit; or
- The claimant has contracted for scope of work described in s. 489.105(3)(d)-(q), F.S. [Division II contractors].²⁷

The fund is also not permitted to compensate consumers who suffered damages as a result of payments made in violation of the Florida Construction Lien Law under part I of ch. 713, F.S.

Duty of Contractor to Give Notice of Fund

Any agreement or contract for the repair, restoration, improvement, or construction to residential real property must contain a statutorily mandated notification statement informing the consumer of their rights under the recovery fund, unless the total contract price is less than \$2,500.²⁸

²¹ Florida Department of Business and Professional Regulation, Agency Analysis of 2014 Senate Bill 1098 (Mar. 11, 2014).

²² Rule 61G4-21.003(3), F.A.C.

²³ Rule 61G4-21.003(5), F.A.C.

²⁴ s. 489.143(2) and (5), F.S.

²⁵ *Id.*

²⁶ s. 489.143(6), F.S.

²⁷ Rule 61G4-21.004(3), F.A.C.

²⁸ s. 489.1425, F.S.

Effects of Proposed Changes

Claims

The bill revises the law to include Division II contractors within the parameters of the fund. Specifically, it revises the statutory limits on recovery payments to include Division II contracts beginning January 1, 2017, for any contract entered into after July 1, 2016. The bill limits Division II claims to \$15,000 per claim with a \$150,000 lifetime maximum per licensee.

The bill removes the prohibition against paying consumer claims where the damages resulted from payments made in violation of the Florida Construction Lien Law for contracts entered into after July 1, 2016.

Duty of Contractor to Give Notice of Fund

The bill revises language for the notice that contractors must give to homeowners informing them of their rights under the recovery fund to advise that payments from the fund are up to a limited amount.

Low-Voltage Landscape Lighting (Section 14)

Present Situation

Chapter 489, Part II, regulates electrical and alarm system contractors. This regulation seeks to enable qualified persons to obtain licensure, while ensuring that applicants have sufficient technical experience in the applicable trade prior to licensure, are tested on technical and business matters, and upon licensure are made subject to disciplinary procedures and effective policing of the profession.²⁹

Section 489.503, F.S., provides exemptions to Part II for persons performing various tasks such as someone licensed as a fire protection system contractor while engaged in work as a fire protection system contractor, an employee monitoring an alarm system of a business, a lightning rod or related systems installer, etc.

Effects of Proposed Changes

The bill creates an exemption from the requirement to be a licensed electrical contractor for a person who installs low-voltage landscape lighting that contains a factory-installed electrical cord with a plug and does not require installation, wiring, or other modification to the electrical wiring of a structure.

Public Portable Swimming Pools (Sections 16 through 18)

Present Situation

The Florida Building Commission (FBC) has included standards for the construction of public swimming pools in the Code which are enforced by local building departments throughout the state. In 2012, the Legislature determined that local building entities would have jurisdiction over permitting, plan reviews, and inspections of public swimming pools and public bathing places and that the Department of Health (DOH) would continue to have jurisdiction over the operating permits for public swimming pools and public bathing places.³⁰

The Miami-Dade school district has operated a learn-to-swim program for over 20 years. One of the ways they provide swimming lessons is through the use of portable pools. The DOH recently advised

²⁹ s. 489.501, F.S.

³⁰ Ch. 2012-184, Laws of Fla.

the school district that using portable pools to provide swimming lessons do not meet DOH's operating criteria and the school district cannot use them for that purpose.³¹

Effects of Proposed Changes

The bill amends the definition of a private pool in s. 514.011, F.S., to include portable pools used exclusively for the purpose of providing swimming lessons or related instruction in support of an established "Learn to Swim" educational program sponsored or provided by a county school district as a private pool and provides that these pools shall not be regulated as public pools.

Florida Accessibility Code for Building Construction (Sections 19 and 22)

Present Situation

The 1993 Legislature created the Florida Americans with Disability Accessibility Implementation Act which incorporated the architectural accessibility requirements of the Americans with Disabilities Act of 1990.³² The Florida Accessibility Code for Building Construction contains scoping and technical requirements for accessibility to sites, facilities, buildings, and elements by individuals with disabilities. The requirements are to be applied during the design, construction, additions to, and alteration of sites, facilities, buildings, and elements.³³

Section 553.512, F.S., directs the FBC to provide criteria for granting individual modifications of, or exceptions from, the "literal requirements of this part upon a determination of unnecessary, unreasonable, or extreme hardship, provided such waivers shall not violate federal accessibility laws and regulations and shall be reviewed by the Accessibility Advisory Council."

The Accessibility Advisory Council consists of seven members, who are to be knowledgeable in the area of accessibility for persons with disabilities. The Secretary of DBPR is to appoint the following for the membership:

- A representative from the Advocacy Center for Persons with Disabilities, Inc.;
- A representative from the Division of Blind Services;
- A representative from the Division of Vocational Rehabilitation;
- A representative from a statewide organization representing the physically handicapped;
- A representative from the hearing impaired;
- A representative from the Florida Council of Handicapped Organizations; and
- A representative from the Paralyzed Veterans of America.

According to DBPR, the Florida Council of Handicapped Organizations no longer exists.³⁴

All Accessibility Advisory Council members are limited to two four-year terms and any member may be replaced by the Secretary if he or she has three unexcused absences from meetings. The members serve without compensation, but are entitled to reimbursement for per diem and travel expenses as provided by s. 112.061, F.S.

Section 553.775, F.S., provides procedures that may be invoked regarding interpretations of the Florida Accessibility Code for Building Construction, which include requiring the FBC to coordinate with the Building Officials Association of Florida, Inc., to designate panels of five members each to hear requests to review decisions of local building officials.

³¹ March 24, 2015, email on file with the Government Operations Appropriations Subcommittee.

³² Preface to the 2010 Florida Building Code, Accessibility.

³³ Section 101.1, of the 2012 Florida Accessibility Code for Building Construction.

³⁴ Correspondence from Department of Business and Professional Regulation to Mr. Warren H. Jernigan, President, Pensacola Pen Wheels Inc. Employ the Handicapped Council, Feb. 19, 2014.

Effects of Proposed Changes

The bill replaces the defunct Florida Council of Handicapped Organizations appointee category with Pensacola Pen Wheels Inc. Employ the Handicapped Council, which is

An advocacy group that strives to aid the disabled through improving quality of life, work placement, and community involvement. For over forty years the Pensacola-based group has led the disabled community by working together, growing together, and winning together. The organization focuses on ensuring accessibility for the disabled (ADA compliance, encouraging businesses and government organizations to improve their facilities to better accommodate the disabled).³⁵

The bill also reduces the review panels of five members each to one panel of seven members. Five of the members must be licensed as building code administrators, one member must be a licensed architect, and one member must be licensed as an engineer.

Building Code Compliance and Mitigation Program (Sections 20 and 25) and Code-Related Training (Sections 2, 3, 4, 5, 8 and 15)

Present Situation

Education and Training Requirements

The DBPR administers the Florida Building Code Compliance and Mitigation Program (program), which was created to develop, coordinate, and maintain education and outreach to persons who are required to comply with the Code and ensure consistent education, training, and communication of the Code's requirements, including, but not limited to, methods for mitigation of storm-related damage.³⁶ The program is geared toward persons licensed and employed in the design and construction industries. The services and materials under the program must be provided by a private, nonprofit corporation under contract with DBPR.³⁷

The education and training requirements of the program include maintaining a thorough knowledge of the Code, a thorough knowledge of Code compliance and enforcement, duties related to consumers, project completion, and compliance of design and construction to protect against consumer harm, storm damage, and other damage. The FBC establishes, via rules, the qualifications of accreditors and criteria for the accreditation of courses. Currently, the program requires advanced Code courses for each profession referenced in the Code.

Proponents of the bill state the following:

The advanced code course(s) was initiated when we first adopted a statewide uniform building code. It was mandated that all contractors and design professionals take the "advanced" code course. The various boards adopted the mandate as part of their rules and it became synonymous with any course that was "approved" by the FBC. It is now just a duplicative process in that you have to get a course approved by the FBC as an "advanced" course to access any of the training dollars through the Building A Safer Florida program. The same courses are approved individually by the various professional boards. It is a duplicative, costly process - you have to pay an accreditor to accredit the course, take it to the FBC Education Program Oversight Committee and then take it to the

³⁵ Email correspondence from staff of Representative Clay Ingram, Apr. 16, 2015.

³⁶ s. 553.841(2), F.S.

³⁷ s. 553.841(3), F.S.

full FBC for approval. The courses are the same whether they get a stamp of “advanced” or not.³⁸

Surcharge

Section 553.721, F.S., provides for the DBPR to collect a surcharge that is 1.5 percent of the permit fees associated with enforcement of the Code as defined by the uniform account criteria and specifically the uniform account code for building permits adopted for local government financial reporting. The minimum amount to be collected on any permit issued is \$2. The proceeds that are collected from the surcharge are remitted to DBPR and deposited in the Professional Regulation Trust Fund quarterly. These monies fund the Florida Building Code Compliance and Mitigation Program and the FBC.³⁹ Section 553.721, F.S., provides that the Florida Building Code Compliance and Mitigation Program is allocated \$925,000 from this fund each fiscal year.⁴⁰

Building Code System Uniform Implementation Evaluation Workgroup

The Building Code System Uniform Implementation Evaluation Workgroup was created on January 31, 2012, by the FBC and is composed of building industry stakeholders. Its objective was to evaluate the success of the FBC to implement a unified building code throughout the state.⁴¹

Fire Code Interpretation Committee

Section 633.212, F.S., provides legislative intent that the “Florida Fire Prevention Code (Fire Code) be interpreted by fire officials and local enforcement agencies in a manner that reasonably and cost-effectively protects the public safety, health, and welfare; ensures uniform interpretations throughout this state; and provides just and expeditious processes for resolving disputes regarding such interpretations.” Further, it is the intent of the Legislature that the Division of State Fire Marshal establish a Fire Code Interpretation Committee composed of seven members and seven alternates, equally representing each area of the state, to which a person can pose questions regarding the interpretation of the Fire Code provisions.⁴²

Each nonbinding interpretation of Fire Code provisions must be provided within 15 business days after receipt of a request for interpretation. The response period may be waived with the written consent of the party requesting the nonbinding interpretation and the State Fire Marshal. The interpretations are advisory only and nonbinding on the parties or the State Fire Marshal.^{43, 44}

Effects of Proposed Changes

Education and Training Requirements

The bill authorizes, rather than directs, DBPR to develop Code-related training, in place of advanced modules, for each profession when administering the Florida Building Code Compliance and Mitigation Program. The bill also removes the requirement that the FBC provide for the accreditation of courses related to the Code. When this requirement is removed, the Florida Building Code Compliance and

³⁸ Email from Kari Roth, representing the Building Industry, RE: advanced courses in Florida Building Code Compliance and Mitigation Program (Mar. 8, 2015).

³⁹ The Florida Building Code Compliance and Mitigation Program is established in s. 553.841, F.S.

⁴⁰ Funds used by DBPR as well as funds to be transferred to DOH shall be as prescribed in the annual General Appropriations Act.

⁴¹ Jeff A. Blair, *Building Code System Uniform Implementation Evaluation Workgroup Report to the Florida Building Commission*, p. 19 (Apr. 8, 2013).

⁴² s. 633.212(1), F.S.

⁴³ s. 633.212(3), F.S.

⁴⁴ The Division of State Fire Marshal may charge a fee, not to exceed \$150, for each request for a review or nonbinding interpretation.

Mitigation Program course providers will still be required to have their course reviewed and approved under the appropriate board that would be reviewing and approving the course for continuing education purposes.

Surcharge; Building Code System Uniform Implementation Evaluation Workgroup; and Fire Code Interpretation Committee

The bill provides funding from the existing funds of the Florida Building Code Compliance and Mitigation Program, not to exceed \$30,000 in Fiscal Year 2016-2017, for the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup. It also provides that funds collected from the surcharge also be used to fund Fire Code informal (nonbinding) interpretations, not to exceed \$15,000 each fiscal year.

The bill provides the State Fire Marshal with rule-making authority to address changes made concerning Fire Code informal interpretations.

Florida Building Code and the Florida Fire Prevention Code (Sections 21 and 22)

Present Situation

Section 553.73(11)(a), F.S., provides that,

In the event of a conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as applied to a specific project, the conflict shall be resolved by agreement between the local building code enforcement official and the local fire code enforcement official in favor of the requirement of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction.

Any decision made by the local fire official and the local building official may be appealed to a local administrative board designated by the municipality, county, or special district having firesafety responsibilities. If the decision of the local fire official and the local building official is to apply the provisions of either the Code or the Fire Code and the Life Safety Code, the board may not alter the decision unless the board determines that the application of such code is not reasonable.⁴⁵

If the decision of the local fire official and the local building official is to adopt an alternative to the codes, the local administrative board shall give due regard to the decision rendered by the local officials and may modify that decision if the administrative board adopts a better alternative, taking into consideration all relevant circumstances. In any case in which the local administrative board adopts alternatives to the decision rendered by the local fire official and the local building official, such alternatives shall provide an equivalent degree of lifesafety and an equivalent method of construction as the decision rendered by the local officials.⁴⁶

If the local building official and the local fire official are unable to agree on a resolution of the conflict between the Code and the Fire Code and the Life Safety Code, the local administrative board shall resolve the conflict in favor of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction.⁴⁷

⁴⁵ s. 553.73(11)(b), F.S.

⁴⁶ *Id.*

⁴⁷ s. 553.73(11)(c), F.S.

Prior to June 30, 2015, the Code required that high-rise buildings with occupied floors in excess of 120 feet above the lowest level of fire department vehicle access have at least one fire service access elevator.⁴⁸

On June 30, 2015, the 2014 Code went into effect. Included in the 2014 Code was the following requirement (including bolded, italicized emphasis):

403.6.1 Fire service access elevator. In buildings with an occupied floor more than 120 feet (36,576 mm) above the lowest level of fire department vehicle access, no fewer than two fire service access elevators, or all elevators, whichever is less, shall be provided in accordance with Section 3007. Each fire service access elevator shall have a capacity of not less than 3500 pounds (1588 kg).⁴⁹

In Special Session 2015-A, prior to the Code going into effect, the Legislature delayed the effective date of this provision until June 30, 2016.⁵⁰ See the *Special Session 2015-A* discussion on Page 18 of this analysis for further discussion of the Special Session provision.

Effects of Proposed Changes

The bill authorizes local boards that are created to address issues arising under the Code and the Fire Code to combine the appeals boards to create a single, local board having jurisdiction over matters arising under either or both codes. This combined board has the authority to grant alternatives or modifications but doesn't have the authority to waive the requirements of the Fire Code. The bill provides that in order to meet the quorum requirement, there must be at least one member of the board who is a fire protection contractor, a fire protection design professional, a fire department operations professional, or a Fire Code enforcement professional.

The bill prohibits the Code from requiring more than one fire service access elevator in residential occupancies where the highest occupiable floor is less than 420 feet above the level of fire service access. The remaining elevators must be provided with specified emergency operations.

The bill gives specific requirements for situations where fire service access elevators are required and where transient residential occupancies occur at floor levels above 420 feet above the level of fire service access.

Phased Permitting (Section 23)

Present Situation

Section 553.79, F.S., prohibits any person, firm, corporation, or governmental entity to construct, erect, alter, modify, repair, or demolish any building within the state without first obtaining a permit from the appropriate enforcing agency.⁵¹ Further, a permit may not be issued for any building construction, erection, alteration, modification, repair, or addition unless the applicant for such permit complies with the requirements for plan review established by the FBC within the Code. However, the Code shall set standards and criteria to authorize preliminary construction before completion of all building plans review, including, but not limited to, special permits for the foundation only.⁵²

⁴⁸ Section 403.6.1 of the 2010 Florida Building Code, Building.

⁴⁹ Section 403.6.1 of the 2014 Florida Building Code, Building.

⁵⁰ See 2015 SB 2502-A (Implementing Bill for General Appropriations Act).

⁵¹ s. 553.79(1), F.S.

⁵² s. 553.79(6), F.S.

Section 105.13, F.S. (phased permit approval), of the Code provides the following:

After submittal of the appropriate construction documents, the building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted. Corrections may be required to meet the requirements of the technical codes.

Effects of Proposed Changes

The bill provides that after an applicant submits the appropriate construction documents, the local building official may issue a phased permit. The holder of a phased permit for the foundation or other parts of a building or structure may proceed with permitted activities at the holder's own risk and without assurance that a master building permit for the entire structure will be granted. The building official may require corrections to the phased permit to meet the requirements of the technical codes.

Local Government Fees (Section 24)

Present Situation

Part I of ch. 489, F.S., regulates licensed construction contractors and provides that it is "necessary in the interest of the public health, safety, and welfare to regulate the construction industry."⁵³ Section 489.113(1), F.S., provides for individuals to become certified as a contractor in order to provide contracting services state-wide after the applicant meets licensure requirements and pays a fee. Likewise, those seeking to engage in contracting on other than a statewide basis may be registered, rather than certified, but must first submit a fee and file evidence of successful compliance with the local examination and licensure requirements for the geographical area for which the person wishes to be registered.⁵⁴

Section 553.80, F.S., provides that, except for construction regarding correctional and mental health facilities, elevators, storage facilities, educational institutions, and toll collection facilities,⁵⁵ each local government and each legally constituted enforcement district with statutory authority shall regulate building construction. Section 553.80(7), F.S., authorizes local governments to provide a schedule of consistent reasonable fees to be used solely for carrying out the local government's responsibilities in enforcing the Code. The basis for the fee structure must relate to the level of service provided by the local government.

Local governments have created fee schedules to be submitted by contractors at the time of application for a building permit. These fees include inspection fees, plan examination fees, site examination fees, building permit fees (based on square footage of the building), and various administrative fees including repermitting fees, time extension fees, reinspection fees, and licensure and worker's compensation recording fees.⁵⁶

⁵³ s. 489.101, F.S.

⁵⁴ s. 489.117(1), F.S.

⁵⁵ s. 553.80(1), F.S.

⁵⁶ General fee information obtained on the website of Pasco County, Florida, *Permitting Document, Forms and Fees*, found at <http://www.flvec.com/pasco/content/UriView?id=1529>.

Effects of Proposed Changes

The bill prohibits local governments from requiring payment of any additional fees, charges, or expenses associated with providing proof of licensure as a contractor, recording a contractor license, or providing, recording, or filing evidence of worker's compensation insurance coverage by a contractor.

Product Evaluation and Approval (Section 26)

Present Situation

The State Product Approval System provides manufacturers an opportunity to have building products approved for use in Florida by the FBC rather than seeking approval in each local jurisdiction where the product is used.⁵⁷ Section 553.842, F.S., directs the FBC to adopt rules to develop and implement a product evaluation and approval system that applies statewide to operate in coordination with the Code. The FBC may enter into contracts to provide for administration of the product evaluation and approval system. The product evaluation and approval system is to rely on national and international consensus standards, whenever adopted by the Code, for demonstrating compliance with Code standards. Other standards which meet or exceed established state requirements are also to be considered.

Section 553.842(8), F.S., authorizes the FBC to adopt rules to approve the following types of entities that produce information on which product approvals are based. The entities must comply with a nationally recognized standard demonstrating independence or no conflict of interest. The FBC is directed to specifically approve the following evaluation entities:⁵⁸

- The National Evaluation Service;
- The International Association of Plumbing and Mechanical Officials Evaluation Service;
- International Code Council Evaluation Services; and
- The Miami-Dade County Building Code Compliance Office Product Control Division.

Effects of Proposed Changes

The bill adds Underwriters Laboratories, LLC (commonly known as "UL"), an independent safety consulting and certification company,⁵⁹ to the list of entities that are authorized to produce information on which product approvals are based.

Windstorm Loss Mitigation (Section 27)

Present Situation

Section 553.844, F.S., requires the FBC to implement windstorm loss mitigation techniques into the Code to combat property damage associated with hurricanes. The code requires buildings located in wind-borne debris regions to be designed to withstand the minimum wind loads prescribed for that region.⁶⁰

In 2010, the Legislature provided that, notwithstanding other provisions of law, exposed mechanical equipment or appliances fastened on roofs or installed on the ground using rated stands, platforms,

⁵⁷ Florida Department of Business and Professional Regulation, Agency Analysis of 2016 SB 704 (Nov. 19, 2015).

⁵⁸ Architects and engineers licensed in this state are also approved to conduct product evaluations, as provided in s. 553.842(5), F.S.

⁵⁹ According to Underwriters Laboratories, LLC, "UL is a global independent safety science company with more than a century of expertise innovating safety solutions from the public adoption of electricity to new breakthroughs in sustainability, renewable energy and nanotechnology." <http://UL.com>, (last visited Nov. 23, 2015).

⁶⁰ Section 1609 of the 2014 Florida Building Code, Building.

curbs, or slabs are deemed to comply with wind resistance requirements of the 2007 Florida Building Code. The provision was set to expire on the effective date of the 2010 Code (March 15, 2012).⁶¹

In 2012, the Legislature added that further support or enclosure of the exposed mechanical equipment and appliances fastened on roofs or installed on the ground using rated stands, platforms, curbs, or slabs is not required. The provision was set to expire on the effective date of the most recent Code.⁶²

Effects of Proposed Changes

The bill removes the expiration date from s. 553.844, F.S., thereby reinstating the windstorm mitigation exemption from the requirements of the section discussed above and adds walls to the list of items installed on the ground.

Smoke Alarms in One-Family and Two-Family Homes (Section 28)

Present Situation

In relation to smoke alarms in one-family and two-family dwellings and townhomes, the Code provides that, "When alterations, repairs, or additions requiring a permit occur, or when one or more sleeping rooms are added or created in existing dwellings, the individual dwelling unit shall be equipped with smoke alarms located as required for new dwellings."⁶³

Section 553.883, F.S., requires owners of one-family and two-family dwellings and townhomes undergoing a repair, or a level 1 alteration as defined in the Code, to use a smoke alarm powered by a 10-year non-removable, non-replaceable battery in lieu of retrofitting the dwelling with a smoke alarm powered by the electrical system.

Effective January 1, 2015, each battery-powered smoke alarm that is installed or that replaces an existing battery-powered smoke alarm must be powered by a non-removable, non-replaceable battery that powers the alarm for a minimum of 10 years. These battery requirements do not apply to a fire alarm, smoke detector, smoke alarm, or ancillary component that is electronically connected as a part of a centrally monitored or supervised alarm system.

Effects of Proposed Changes

The bill adds the following exceptions to the smoke alarm battery requirement:

- An alarm that uses a low-power or radio frequency wireless communication signal; or
- An alarm that contains multiple sensors, such as a smoke alarm combined with a carbon monoxide alarm or other devices as the State Fire Marshal designates by rule.

Blower Door/Air Infiltration Tests and Mechanical Ventilation Devices (Section 29)

Present Situation

Blower Door/Air Infiltration Tests and Mechanical Ventilation Devices

Building contractors install certain features to intentionally ventilate and exhaust unwanted odors or combustion byproducts from a home—such as exhaust fans in the bathroom and above the stove. Unintentional air leakage can occur because of the construction techniques used and/or lack of

⁶¹ Florida Department of Business and Professional Regulation, *available at* http://www.floridabuilding.org/fbc/thecode/FBC_2009_1code_Supplement.htm (last visited Dec. 8, 2015).

⁶² The most recent Code is the 2014 code, which was effective June 30, 2015.

⁶³ Section R314.3.1 of the 2010 Florida Building Code, Residential.

attention to proper air sealing during construction. Air leakage can cause homes to be less energy efficient.⁶⁴

To identify and measure the cracks and holes present in a building's envelope, a "blower door test" or an air infiltration test is used which measures the airtightness of a building by changing the building's static pressure with respect to the outdoors and recording the amount of air flow required for that change. Results of the blower door test provide a standard measure of the leakage of a home, measured in cubic feet per minute of airflow which is then converted to air changes per hour so a home's leakage can be compared to standard recommendations for healthy and energy-efficient homes. While less leakage is typically considered better, a home that has very little leakage can also cause poor indoor air quality. In order to prevent poor indoor air quality caused by a house that does not have proper ventilation or is sealed too tight, contractors use mechanical ventilation devices to filter outside air through the house's HVAC system.⁶⁵

On June 30, 2015, the 2014 Code went into effect. Included in the 2014 Code was the requirement that a home be tested via a blower door/air infiltration test to demonstrate specific air infiltration levels. Also part of the 2014 Code was required installation of a mechanical ventilation device designed to filter outside air through an HVAC system under certain circumstances.

In Special Session 2015-A, prior to the Code going into effect, the Legislature delayed the effective date of these two provisions until June 30, 2016.⁶⁶

Special Session 2015-A

Section 553.73(7)(a), F.S., requires that the FBC update, by rule, the Code every three years. Section 633.202(4), F.S., requires the State Fire Marshal to update, by rule, the Fire Code every three years.

Section 120.541, F.S., requires a statement of estimated regulatory costs under certain circumstances when a department is proposing a rule and provides criteria for determining when these statements are necessary. Section 120.541(3), F.S., provides that if the adverse impact or regulatory costs of the rule exceed any of the criteria established in the section, the rule must be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature.

Exceptions to this requirement include the adoption of the following:

- Federal standards pursuant to s. 120.54(6), F.S.;
- Triennial updates of and amendments to the Code; and
- Triennial updates of and amendments to the Fire Code.

The 2015 General Appropriations Act, SB 2500-A, provided \$35,000 (Specific Appropriation 2250) to the Department of Economic Opportunity to conduct a study on the "regulatory compliance cost impact upon the effected elements of the construction of certain provisions" of the Code. The proviso language required that, at a minimum, the analysis should include estimates of the minimum and maximum:

- Incremental cost of compliance to the construction industry;
- Number of construction projects impacted; and
- Resulting increase in cost to the final purchaser of such construction projects.

⁶⁴ Florida Department of Agriculture and Consumer Services, available at <http://www.myfloridahomeenergy.com/help/library/contractors-certifications/testing-for-air-leakage/#sthash.CdEA11HA.dpbs> (last visited Nov. 30, 2015).

⁶⁵ *Id.*

⁶⁶ See 2015 SB 2502-A (Implementing Bill for General Appropriations Act).

The report was to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2015.

However, the funding and proviso related to this report was vetoed by Governor Scott on June 23, 2015. Although the Department of Economic Opportunity was directed by the vetoed language to perform the analysis, in accordance with s. 553.77(1)(b), F.S., the FBC has contracted with the University of Florida to conduct the study. The final study should be released in the late spring of 2016.

An interim report was submitted on November 13, 2015. The report stated that the focus of the study is to provide an assessment of the potential economic impacts of implementing three legislatively delayed requirements of the Florida Building Code, 5th Edition (2014): residential air leak testing, residential whole-house mechanical ventilation, and two fire service access elevators for applicable buildings. Work on the study has included fulfilling Institutional Review Board (IRB) requirements, background research, organizing and convening two industry advisory committees, developing and administering two online surveys, sending out surveys, and reviewing initial survey response data.

Effects of Proposed Changes

The bill prohibits adopting mandatory blower door/air infiltration testing and mechanical ventilation device requirements into the 2014 Code and reverts to the 2010 Code.

Florida Fire Prevention Code (Sections 30, 31, 32 and 33)

Present Situation

State law on fire prevention and control is provided in ch. 633, F.S. The Chief Financial Officer is designated as the State Fire Marshal, operating through the Division of the State Fire Marshal (division) within the Department of Financial Services.⁶⁷ Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College.

The State Fire Marshal is required to adopt the Fire Code by rule every three years. The Fire Code contains or references all firesafety laws and rules regarding public and private buildings that pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such firesafety laws and rules.⁶⁸

Effects of Proposed Changes

The bill adds the following provisions to the Fire Code:

- In all new high-rise and existing high-rise buildings, minimum radio signal strength for fire department communications shall be maintained at a level determined by the authority having jurisdiction.
 - Existing buildings may not be required to comply with minimum radio strength for fire department communications and two-way radio system enhancement communications as required by the Fire Code until January 1, 2022. However, by December 31, 2019, an existing building that is not in compliance with the requirements for minimum radio strength for fire department communications must initiate an application for an appropriate permit for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2022.

⁶⁷ s. 633.104, F.S.

⁶⁸ s. 633.202, F.S.

- Existing apartment buildings may not be required to comply until January 1, 2025. However, existing apartment buildings are required to initiate the appropriate permit for the required communications installation by December 31, 2022.
- Areas of refuge shall be provided when required by the Florida Building Code-Accessibility. Required portions of an area of refuge shall be accessible from the space they serve by an accessible means of egress.
- The home environment provisions enumerated in the most current edition of the codes adopted by the division may be applied to existing assisted living facilities, at the option of each facility, notwithstanding the edition of the codes applied at the time of construction.
- The fire official may consider the Fire Safety Evaluation System⁶⁹ as an acceptable tool to identify low cost alternatives. It is acceptable to use the Fire Safety Evaluation System for Board and Care Facilities using prompt evacuation capabilities parameter values on existing residential high-rise buildings.
- It is acceptable for a fire protection contractor licensed under ch. 633, F.S., to subcontract with companies providing advanced technical services for installing, servicing, and maintaining fire pump control panels and fire pump drivers. To ensure the integrity of the system and to protect the interests of the property owner, those providing technical support services for fire pump control panels and drivers must be under contract with a licensed fire protection contractor.

Calder Sloan Swimming Pool Electrical-Safety Task Force (Section 34)

Present Situation

DOH is responsible for the oversight and regulation of water quality and safety of certain swimming pools in Florida under ch. 514, F.S. Inspections and permitting for swimming pools are conducted by the county health departments. Sanitation and safety standards for public pools have been adopted by rule under Chapter 64E-9 of the Florida Administrative Code.

Current construction rules for public pools require that written approval must be received from DOH before construction can begin.⁷⁰ Plans are required to show the pool layout, tile markings, size of the pool ladder, gutter heights and, if night swimming is permitted, an engineer in Florida must provide certification that the underwater lighting meets the requirements of Rule 64E-9.006(2)(c)3 of the Florida Administrative Code, which sets the maximum lighting at 15 volts. The rule also permits all underwater lighting requirements to be waived if overhead lighting provides at least 15 foot candles of illumination at the pool water surface and wet pool deck.⁷¹

Electrical equipment and wiring must meet national standards relating to the grounding of pool components. The standards that are incorporated into the rule are those of the National Fire Protection Association 70, National Electrical Code (NEC), 2008 Edition, and with any applicable local code. As a part of the plan approval, the electrical contractor or electrical inspector must certify a pool's compliance, on a form designated by DOH.⁷²

The United States Consumer Product Union issued a Safety Alert in August 2012 recommending the installation of ground-fault circuit interrupter (GFCI) protections for pools, spas, and hot tubs for protection against electrocution hazards involving electrical circuits and underwater lighting circuits in and around pools, spas, and hot tubs.⁷³ The Safety Alert noted that pools older than 30 years may not have the proper GFCI protection as the NEC provisions for spas only became effective in 1981 and that

⁶⁹ This system is in NFPA 101A, Alternative Solutions to Life Safety, current edition, adopted by the State Fire Marshal.

⁷⁰ Rule 64E-9.005, F.A.C.

⁷¹ Rule 64E-9.006(2)(c)3, F.A.C.

⁷² Rule 64E-9.006(2)(d), F.A.C.

⁷³ U.S. Product Safety Commission, *Safety Alert, CPSC Document #5039* (Aug. 14, 2012), available at

<http://www.cpsc.gov/PageFiles/118868/5039.pdf> (last visited: Nov. 23, 2015).

"electrical incidents involving underwater pool lighting were more numerous than those involving any other consumer product used in or around pools, spas, and hot tubs."⁷⁴

Several news stories in South Florida in the past two years have also highlighted the issue. Three children were injured by electrical shocks in a Hialeah condominium community pool in April 2014. The building inspector's report found that the pool pump was not properly grounded.⁷⁵ During the same month in North Miami, a 7-year-old boy, Calder Sloan, died from electrocution in his family's North Miami swimming pool due to faulty wiring.⁷⁶

Effects of Proposed Changes

The bill establishes within the FBC the Calder Sloan Swimming Pool Electrical-Safety Task Force (Task Force), the purpose of which is to study standards on grounding, bonding, lighting, wiring, and all electrical aspects for safety in and around public and private swimming pools, especially with regard to minimizing risks of electrocutions linked to swimming pools.

The task force is to be composed of the Swimming Pool Committee and Electrical Technical Advisory Committee (both within the FBC) and is to be chaired by the Swimming Pool Contractor appointed to the FBC. The FBC will provide such staff, information, and other assistance as is reasonably necessary to assist the task force in carrying out its responsibilities.

The task force is directed to meet as often as necessary to fulfill its responsibilities, and meetings may be conducted by conference call, teleconferencing, or similar technology. The Task Force members are to serve without compensation.

The task force must submit a report on its findings, including recommended revisions to state law, if any, to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, 2016. The Task Force expires on December 31, 2016.

Fire Separation Distance and Roof Overhang Projections (Sections 35 and 36)

Present Situation

Pursuant to s. 553.73(7)(a), F.S., the FBC must update the Code every three years. When updating the Code, the FBC is required to use the most current version of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, the International Residential Code, and the international Electrical Code. These codes form the foundation codes of the updated Code.

Any amendments or modifications to the foundation codes found within the Code remain in effect only until the effective date of a new edition of the Code, every three years.⁷⁷ At that point, the amendments or modifications to the foundation codes are removed from the foundation code, unless the amendments or modifications are related to state agency regulations or are related to the wind-resistance design of buildings and structures within the high-velocity hurricane zone of Miami-Dade and Broward Counties, which are carried forward into the next edition of the Code.

⁷⁴ *Id.*

⁷⁵ Roger Lohse, *Shoddy Electrical Work Lead to 3 Kids' Injuries at a Pool in Hialeah, Policy Say*, LOCAL 10.COM, May 8, 2014, available at <http://www.local10.com/news/police-photos-show-shoddy-electrical-work-at-pool-that-caused-three-kids-to-be-shocked/25861796>. (last visited Nov. 23, 2015).

⁷⁶ Roger Lohse, *South Fla. Boy Electrocuted by Pool Light While Swimming*, LOCAL10.COM, April 17, 2014, available at <http://www.local10.com/news/south-fla-boy-electrocuted-by-pool-light-while-swimming/25538944> (last visited Nov. 23, 2015).

⁷⁷ s. 553.73(7)(g), F.S.

When a provision of the current Code is not part of the foundation codes, an industry member or another interested party must resubmit the provision to the FBC during the Code adoption process in order to be considered for the next edition of the Code.⁷⁸

Fire Separation Distance

With regard to fire safety, an external wall is a “special kind of wall that is different from ordinary internal walls, and may be different from fire walls and fire partitions. Within flame contact range, the external wall needs to function like a fire wall and cope with fire from both sides. Beyond flame contact range, but within radiation danger range, the external wall needs to cope with fire from inside and radiation on the outside.”⁷⁹ The risk of fire spreading from one building to another reduces as the distance between them increases.

In the 2014 Code, Fire Separation Distance was defined as:⁸⁰

- The distance measured from the building face to one of the following:
 - To the closest interior lot line;
 - To the centerline of a street, an alley or public way; or
 - To an imaginary line between two buildings on the lot.⁸¹

Roof Overhang Projections

A Florida-specific Code provision related to roof overhang projections was adopted by the FBC in the 2010 Code at the request of an industry member. Section R 302 Fire-Resistant Construction provides that “[c]onstruction, projections, openings, and penetrations of exterior walls of dwellings and accessory buildings shall comply with table R302.1.”

TABLE R302.1 EXTERIOR WALLS

EXTERIOR WALL ELEMENT		MINIMUM FIRE-RESISTANCE RATING	MINIMUM FIRE SEPARATION DISTANCE
Walls	(Fire-resistance rated)	1 hour-tested in accordance with ASTM E 119 or UL 263 with exposure from both sides	0 feet
	(Not fire-resistance rated)	0 hours	3 feet
Projections	(Fire-resistance rated)	1 hour on the underside	2 feet
	(Not fire-resistance rated)	0 hours	3 feet
Openings in walls	Not allowed	N/A	N/A
	Unlimited	0 hours	3 feet
Penetrations	All	Comply with Section R302.4	< 3 feet
		None required	3 feet

For SI: 1 foot = 304.8 mm.

N/A = Not Applicable.⁸²

A number of exceptions were provided for in the 2010 code, including one that provides:

⁷⁹ C.R. Barnett, *Fire Separation Between External Walls of Buildings, Fire Safety Science - Proceedings of the Second International Symposium*, International Association for Fire Safety Science, p. 841.

⁸⁰ Section R202 of the 2010 Florida Building Code, Residential.

⁸¹ The distance must be measured at right angles from the face of the wall.

⁸² Table R302.1, Exterior Walls, of the 2010 Florida Building Code, Residential.

Openings and roof overhang projections shall be permitted on the exterior wall of a building located on a zero lot line when the building exterior wall is separated from an adjacent building exterior wall by a distance of 6 feet or more, and the roof overhang projection is separated from an adjacent building projection by a distance of 4 feet or more, with 1 hour fire resistive construction on the underside of the overhang required, unless the separation between projections is 6 feet or more.⁸³

During the adoption process of the 2014 Code, the industry failed to request that the exception to the Fire-Resistant Construction be included in the updated Code. Because there was no request from the building industry to include the exception, the exception was not included when the 2014 Code became effective.

Effects of Proposed Changes

Fire Separation Distance

The bill directs the FBC to reinsert, within the 2014 Code, the Fire Separation Distance definition with a fourth option of measurement to include an imaginary line between two buildings when the exterior wall of one building is located on a zero lot line.

Roof Overhang Projections

The bill directs the FBC to insert, within the 2014 Code, a provision that permit openings and roof overhang projections on the exterior wall of a building located on a zero lot line when the building exterior wall is separated from an adjacent building exterior wall by a distance of six feet or more and the projections between that building and an adjacent building is four feet or more.

Energy Rating (Section 37)

Present Situation

The Energy Conservation volume of the Code prescribes a variety of energy efficiency and conservation requirements that buildings and homes must meet in order to comply with the Code. Currently, the International Code Council I-Codes codes, which are adopted triennially by the FBC as the foundation code for Florida, include an alternative Energy Rating Index that may be used as an option for meeting the energy conservation demands of the Code. The 2014 code does not include this option.

Effects of Proposed Changes

The bill directs the FBC to insert, within the 2014 Code, Energy Conservation volume, the Alternative Performance Path, Energy Rating Index of the 2015 International Energy Conservation Code as an option for demonstrating compliance with the Energy Conservation requirements of the code.

B. SECTION DIRECTORY:

Section 1. Amends s. 468.609, F.S., relating to certification examination requirements for building code inspectors, plans examiners, and building code administrators.

Section 2. Amends s. 468.627, F.S., conforming terminology.

Section 3. Amends s. 471.0195, F.S., conforming terminology.

Section 4. Amends s. 481.215, F.S., conforming terminology.

⁸³ Section R302.1 of the 2010 Florida Building Code, Residential.
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- Section 5.** Amends s. 481.313, F.S., conforming terminology.
- Section 6.** Amends s. 489.103, F.S., relating to exemptions from contracting requirements.
- Section 7.** Amends s. 489.105, F.S., relating to plumbing contractors.
- Section 8.** Amends s. 489.115, F.S., conforming terminology.
- Section 9.** Amends s. 489.1401, F.S., relating to the Florida Homeowners' Construction Recovery Fund.
- Section 10.** Amends s. 489.1402, F.S., amending definitions relating to the Florida Homeowners' Construction Recovery Fund.
- Section 11.** Amends s. 489.141, F.S., relating to claims against the Florida Homeowners' Construction Recovery Fund.
- Section 12.** Amends s. 489.1425, F.S., relating to notification provided by contractors regarding the recovery fund.
- Section 13.** Amends s. 489.143, F.S., relating to payments from the Florida Homeowners' Construction Recovery Fund.
- Section 14.** Amends s. 489.503, F.S., relating to an exemption for certain types of low-voltage landscape lighting.
- Section 15.** Amends s. 489.517, F.S., conforming terminology.
- Section 16.** Amends s. 514.011, F.S., relating to a definition of "private pool."
- Section 17.** Amends s. 514.0115, F.S., relating to exemptions from supervision or regulation of public swimming pools and public bathing facilities.
- Section 18.** Amends s. 514.031, F.S., relating to permits necessary to operate public swimming pool.
- Section 19.** Amends s. 553.512, F.S., relating to the Accessibility Advisory Council.
- Section 20.** Amends s. 553.721, F.S., relating to the Florida Building Code Compliance and Mitigation Program.
- Section 21.** Amends s. 553.73, F.S., relating to the Florida Building Code.
- Section 22.** Amends s. 553.775, F.S., relating to interpretations of the Florida Building Code and the Florida Accessibility Code for Building Construction.
- Section 23.** Amends s. 553.79, F.S., relating to phased permitting for construction.
- Section 24.** Amends s. 553.80, F.S., relating to local enforcement agencies and additional fees.
- Section 25.** Amends s. 553.841, F.S., relating to the Florida Building Code Compliance and Mitigation Program.
- Section 26.** Amends s. 553.842, F.S., relating to Florida Building Code-related product evaluation and approval.

- Section 27.** Revives, readopts, and amends s. 553.844, F.S., relating to windstorm loss mitigation.
- Section 28.** Amends s. 553.883, F.S., relating to smoke alarms in one- and two-family dwellings and townhomes.
- Section 29.** Amends s. 553.908, F.S., relating to blower door and air infiltration tests and mechanical ventilation devices.
- Section 30.** Amends s. 633.202, F.S., relating to the Florida Fire Prevention Code.
- Section 31.** Amends s. 633.206, F.S., relating to uniform firesafety standards.
- Section 32.** Amends s. 633.208, F.S., relating to minimum firesafety standards.
- Section 33.** Amends s. 633.336, F.S., relating to fire protection contracting.
- Section 34.** Creates the Calder Sloan Swimming Pool Electrical-Safety Task Force.
- Section 35.** Directs the Florida Building Commission to amend the Florida Building Code to define "fire separation distance."
- Section 36.** Directs the Florida Building Commission to amend the Florida Building Code to specify openings and roof overhang projection requirements.
- Section 37.** Directs the Florida Building Commission to adopt a specific energy rating index as an option for compliance with the Florida Building Code.
- Section 38.** Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

The Department of Business and Professional Regulation is authorized to collect a surcharge that is 1.5% of the permit fees associated with enforcement of the building code. The Florida Building Code Compliance and Mitigation Program receives \$925,000 annually from the surcharge. The bill provides up to \$15,000 in recurring funding from Florida Building Code Compliance and Mitigation Program to the State Fire Marshal in the Department of Financial Services. The bill also provides funding from the Florida Building Code Compliance and Mitigation Program, not to exceed \$30,000 in Fiscal Year 2016-2017, for the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup.

The Department of Business and Professional Regulation estimates a reduction in revenues related to application fees of \$5,000 annually, a corresponding reduction to the Service Charge to General Revenue of \$400 annually, and a recurring positive fiscal impact of \$22,000 from a reduction in expenditures from no longer needing a continuing course accreditation program administrator.⁸⁴

⁸⁴ Florida Department of Business and Professional Regulation, Agency Analysis of HB 535 (November 30, 2015)
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B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Unknown. Counties and municipalities that currently require a fee for recording a contracting license or workers' compensation insurance information will lose this source of revenue. It is not clear how many counties require these fees.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Homeowners who have been harmed by Division II contractors and receive restitution from the Florida Homeowners' Construction Recovery Fund will benefit from the bill.

Apartment owners with communities of 100 or more apartments who have employees make minor repairs to existing electric water heaters or existing electric HVAC systems may experience savings if they meet the requirements of and utilize the contractor licensing requirements exemption.

D. FISCAL COMMENTS:

The bill allows funds to be paid out of the Florida Homeowners' Construction Recovery Fund for claims related to Division II licensees. There are currently 41,954 Division I licenses and 28,320 licenses.⁸⁵ The amount of yearly recovery fund payments is limited by the amount of funding received from a 1.5% surcharge on building permit fees. Therefore, due to the funding limits, the inclusion of additional claims may extend the amount of time it takes to pay each individual claim.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Chapter 489, F.S., requires certification as a contractor for individuals wishing to engage in contracting statewide or registration as a contractor if the individual wishes only to engage in contracting in a specific locale, such as a county. Both registration and certification, including the fee paid for such, are preempted to the state. Additionally, prior to certifying or registering a contractor, the state requires an applicant to provide proof of workers' compensation insurance to the state, and requires that the insurance be maintained and updated with the Department in order to maintain the license's active status with the state. This licensing information and workers' compensation insurance information is readily available and may be obtained without charge from the Department.

Article VII, s. 18 of the Florida Constitution, prohibits the legislature from enacting a general law that reduces the authority that municipalities or counties have to raise revenues in the aggregate. Currently, at least one county collects a fee from contractors to record a contractor's certification or registration to practice contracting and to record proof of workers' compensation insurance coverage prior to permitting the contractor to engage in contracting in the county's jurisdiction. Any fee required by a local jurisdiction for recording a license or workers' compensation insurance is preempted by the state. The provision in the bill related to prohibiting local jurisdictions from charging a fee related to proof of certification or registration with the state is a clarification of current law because local jurisdictions were never authorized to charge these fees. Thus, it appears that the provision in the bill prohibiting the charging of fees in this area would not constitute a local mandate.

2. Other:

⁸⁵ Email from Department of Business and Professional Regulation staff on December 29, 2015.
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None.

B. RULE-MAKING AUTHORITY:

The bill provides the State Fire Marshal with rule-making authority to address changes made concerning Florida Fire Prevention Code informal interpretations.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 2, 2015, the Business & Professions Subcommittee adopted nine amendments and reported the bill favorably as a committee substitute. The amendments made the following changes to the bill:

- Exempts from contracting licensure requirements any employee of an apartment community or apartment community management company who makes minor repairs where the parts to make the repairs do not cost more than \$500 and requires that an individual repair may not be a part of a larger or major project that is divided for the purpose of evading this part or otherwise;
- Corrected two typographical errors;
- Prohibits local governments from requiring payment of any additional fees, charges, or expenses associated with providing proof of licensure as a contractor, recording a contractor license, or providing or recording evidence of worker's compensation insurance coverage by a contractor;
- Reinstates the wind mitigation exemption for professional engineer certification of HVAC units being installed;
- Removes from the bill the requirement that building code and fire prevention code changes that are identified in triennial studies be ratified by the Legislature;
- Requires the Florida Building Commission to amend the Florida Building Code to provide a definition for "fire separation distance;"
- Directs the Florida Building Commission to adopt a specific energy rating index as an option for compliance with the energy code; and
- Requires the Florida Building Commission to amend the Florida Building Code to provide that openings and roof overhang projections on zero lot lines are permitted when the exterior walls of adjacent buildings are 6 feet or more apart and the overhang projection is 4 feet or more from an adjacent building overhang.

The staff analysis is drafted to reflect the committee substitute.

1 A bill to be entitled
 2 An act relating to building codes; amending s.
 3 468.609, F.S.; revising the certification examination
 4 requirements for building code inspectors, plans
 5 examiners, and building code administrators; requiring
 6 the Florida Building Code Administrators and
 7 Inspectors Board to provide for issuance of certain
 8 provisional certificates; amending ss. 468.627,
 9 471.0195, 481.215, and 481.313, F.S.; requiring a
 10 licensee or certificateholder to undergo code-related
 11 training as part of his or her continuing education
 12 courses; amending s. 489.103, F.S.; providing an
 13 exemption for certain employees who make minor repairs
 14 to existing electric water heaters and to existing
 15 electric heating, venting, and air-conditioning
 16 systems under specified circumstances; amending s.
 17 489.105, F.S.; revising the definition of the term
 18 "plumbing contractor"; amending s. 489.115, F.S.;
 19 requiring a certificateholder or registrant to undergo
 20 code-related training as part of his or her continuing
 21 education requirements; amending s. 489.1401, F.S.;
 22 revising legislative intent with respect to the
 23 purpose of the Florida Homeowners' Construction
 24 Recovery Fund; providing legislative intent that
 25 Division II contractors set apart funds to participate
 26 in the fund; amending s. 489.1402, F.S.; revising

27 definitions; amending s. 489.141, F.S.; authorizing
 28 certain claimants to make a claim against the recovery
 29 fund for certain contracts entered into before a
 30 specified date; amending s. 489.1425, F.S.; revising a
 31 notification provided by contractors to certain
 32 residential property owners to state that payment from
 33 the recovery fund is limited; amending s. 489.143,
 34 F.S.; revising provisions concerning payments from the
 35 recovery fund; specifying claim amounts for certain
 36 contracts entered into before or after specified
 37 dates; providing aggregate caps for payments; amending
 38 s. 489.503, F.S.; exempting certain low-voltage
 39 landscape lighting from licensed electrical contractor
 40 installation requirements; amending s. 489.517, F.S.;
 41 requiring a certificateholder or registrant to undergo
 42 code-related training as part of his or her continuing
 43 education requirements; amending s. 514.011, F.S.;
 44 revising the definition of the term "private pool";
 45 amending s. 514.0115, F.S.; prohibiting a portable
 46 pool from being regulated as a public pool in certain
 47 circumstances; amending s. 514.031, F.S.; providing
 48 that a portable pool may not be used as a public pool
 49 unless it is exempt under s. 514.0115, F.S.; amending
 50 s. 553.512, F.S.; revising the membership of the
 51 Accessibility Advisory Council; amending s. 553.721,
 52 F.S.; directing the Florida Building Code Compliance

53 and Mitigation Program to fund, from existing
 54 resources, the recommendations made by the Building
 55 Code System Uniform Implementation Evaluation
 56 Workgroup; providing a limitation; requiring that a
 57 specified amount of funds from the surcharge be used
 58 to fund certain Florida Fire Prevention Code informal
 59 interpretations; requiring the State Fire Marshal to
 60 adopt specified rules; amending s. 553.73, F.S.;

61 authorizing local boards created to address specified
 62 issues to combine the appeals boards to create a
 63 single, local board; authorizing the local board to
 64 grant alternatives or modifications through specified
 65 procedures; requiring at least one member of a board
 66 to be a fire protection contractor, a fire protection
 67 design professional, a fire department operations
 68 professional, or a fire code enforcement professional
 69 in order to meet a specified quorum requirement;

70 authorizing the appeal to a local administrative board
 71 of specified decisions made by a local fire official;
 72 specifying the decisions of the local building
 73 official and the local fire official which are subject
 74 to review; prohibiting an agency or local government
 75 from requiring that existing mechanical equipment
 76 located on or above the surface of a roof be installed
 77 in compliance with the Florida Building Code under
 78 certain circumstances; prohibiting the Florida

79 Building Code from requiring more than one fire access
 80 elevator in certain buildings; prohibiting a 1-hour
 81 fire-rated fire service access elevator lobby from
 82 being required in certain circumstances; requiring a
 83 1-hour fire-related fire service access elevator lobby
 84 in certain circumstances; providing that the
 85 requirement for a second fire service access elevator
 86 is not considered a part of the Florida Building Code;
 87 amending s. 553.775, F.S.; revising membership on a
 88 panel that hears requests to review decisions of local
 89 building officials; amending s. 553.79, F.S.;
 90 authorizing a building official to issue a permit for
 91 the construction of the foundation or any other part
 92 of a building or structure before the construction
 93 documents for the whole building or structure have
 94 been submitted; providing that the holder of such
 95 permit shall begin building at the holder's own risk
 96 with the building operation and without assurance that
 97 a permit for the entire structure will be granted;
 98 amending s. 553.80, F.S.; prohibiting a local
 99 enforcement agency from charging additional fees
 100 related to the recording of a contractor's license or
 101 workers' compensation insurance; amending s. 553.841,
 102 F.S.; authorizing the Department of Business and
 103 Professional Regulation to maintain, update, develop,
 104 or cause to be developed code-related training and

105 education; removing provisions related to the
 106 development of advanced courses with respect to the
 107 Florida Building Code Compliance and Mitigation
 108 Program and the accreditation of courses related to
 109 the Florida Building Code; amending s. 553.842, F.S.;
 110 providing that Underwriters Laboratories, LLC, is an
 111 approved evaluation entity; reviving, readopting, and
 112 amending s. 553.844, F.S.; deleting an obsolete
 113 provision providing for expiration of requirements for
 114 the adoption of certain mitigation techniques by the
 115 Florida Building Commission within the Florida
 116 Building Code for certain structures and revising
 117 those requirements; amending s. 553.883, F.S.;
 118 exempting certain devices from certain smoke alarm
 119 battery requirements; amending s. 553.908, F.S.;
 120 restricting certain provisions of the Florida Building
 121 Code or law relating to air sealing and insulation
 122 from becoming effective; prohibiting certain
 123 governmental entities from requiring certain HVAC type
 124 tests in specific buildings; amending s. 633.202,
 125 F.S.; requiring all new high-rise and existing high-
 126 rise buildings to maintain a minimum radio signal
 127 strength for fire department communications; providing
 128 a transitory period for compliance; requiring existing
 129 buildings and existing apartment buildings that are
 130 not in compliance to initiate an application for an

131 appropriate permit by a specified date; requiring
 132 areas of refuge to be required as determined by the
 133 Florida Building Code, Accessibility; amending s.
 134 633.206, F.S.; providing that certain provisions may
 135 be applied to existing assisted living facilities
 136 notwithstanding the edition of the codes applied at
 137 the time of construction; amending s. 633.208, F.S.;
 138 authorizing fire officials to consider certain systems
 139 as acceptable systems when identifying low-cost
 140 alternatives; amending s. 633.336, F.S.; authorizing a
 141 licensed fire protection contractor to subcontract for
 142 advanced technical services under certain
 143 circumstances; creating the Calder Sloan Swimming Pool
 144 Electrical-Safety Task Force within the Florida
 145 Building Commission; specifying the purpose of the
 146 task force; requiring a report to the Governor and the
 147 Legislature by a specified date; providing for
 148 membership; requiring the Florida Building Commission
 149 to provide staff, information, and other assistance to
 150 the task force; providing that members of the task
 151 force serve without compensation; authorizing the task
 152 force to meet as often as necessary; providing for
 153 future repeal of the task force; requiring the Florida
 154 Building Commission to amend the Florida Building Code
 155 to define the term "fire separation distance," to
 156 specify openings and roof overhang projection

157 requirements, to adopt a specific energy rating index
 158 as an option for compliance, and to provide for
 159 Climate Zone indices; providing an effective date.

160

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

162

163 Section 1. Subsections (2), (3), and (7) of section
 164 468.609, Florida Statutes, are amended to read:

165 468.609 Administration of this part; standards for
 166 certification; additional categories of certification.-

167 (2) A person may take the examination for certification as
 168 a building code inspector or plans examiner pursuant to this
 169 part if the person:

170 (a) Is at least 18 years of age.

171 (b) Is of good moral character.

172 (c) Meets eligibility requirements according to one of the
 173 following criteria:

174 1. Demonstrates 5 years' combined experience in the field
 175 of construction or a related field, building code inspection, or
 176 plans review corresponding to the certification category sought;

177 2. Demonstrates a combination of postsecondary education
 178 in the field of construction or a related field and experience
 179 which totals 4 years, with at least 1 year of such total being
 180 experience in construction, building code inspection, or plans
 181 review;

182 3. Demonstrates a combination of technical education in

183 | the field of construction or a related field and experience
 184 | which totals 4 years, with at least 1 year of such total being
 185 | experience in construction, building code inspection, or plans
 186 | review;

187 | 4. Currently holds a standard certificate ~~as~~ issued by the
 188 | board, or a firesafety ~~fire safety~~ inspector license issued
 189 | pursuant to chapter 633, has a minimum of 3 5 years' verifiable
 190 | full-time experience in inspection or plan review, and has
 191 | satisfactorily completed ~~completes~~ a building code inspector or
 192 | plans examiner training program that provides at least 100 hours
 193 | but not more ~~of not less~~ than 200 hours of cross-training in the
 194 | certification category sought. The board shall establish by rule
 195 | criteria for the development and implementation of the training
 196 | programs. The board shall accept all classroom training offered
 197 | by an approved provider if the content substantially meets the
 198 | intent of the classroom component of the training program; ~~or~~

199 | 5. Demonstrates a combination of the completion of an
 200 | approved training program in the field of building code
 201 | inspection or plan review and a minimum of 2 years' experience
 202 | in the field of building code inspection, plan review, fire code
 203 | inspections and fire plans review of new buildings as a
 204 | firesafety inspector certified under s. 633.216, or
 205 | construction. The approved training portion of this requirement
 206 | shall include proof of satisfactory completion of a training
 207 | program that provides at least 200 hours but not more ~~of not~~
 208 | ~~less~~ than 300 hours of cross-training that ~~which~~ is approved by

209 | the board in the chosen category of building code inspection or
 210 | plan review in the certification category sought with at least
 211 | ~~not less than~~ 20 hours but not more than 30 hours of instruction
 212 | in state laws, rules, and ethics relating to professional
 213 | standards of practice, duties, and responsibilities of a
 214 | certificateholder. The board shall coordinate with the Building
 215 | Officials Association of Florida, Inc., to establish by rule the
 216 | development and implementation of the training program. However,
 217 | the board shall accept all classroom training offered by an
 218 | approved provider if the content substantially meets the intent
 219 | of the classroom component of the training program; or

220 | 6. Currently holds a standard certificate issued by the
 221 | board or a firesafety inspector license issued pursuant to
 222 | chapter 633 and:

223 | a. Has at least 5 years' verifiable full-time experience
 224 | as an inspector or plans examiner in a standard certification
 225 | category currently held or has a minimum of 5 years' verifiable
 226 | full-time experience as a firesafety inspector licensed pursuant
 227 | to chapter 633.

228 | b. Has satisfactorily completed a building code inspector
 229 | or plans examiner classroom training course or program that
 230 | provides at least 200 but not more than 300 hours in the
 231 | certification category sought, except for one-family and two-
 232 | family dwelling training programs, which are required to provide
 233 | at least 500 but not more than 800 hours of training as
 234 | prescribed by the board. The board shall establish by rule

235 criteria for the development and implementation of classroom
 236 training courses and programs in each certification category.

237 (3) A person may take the examination for certification as
 238 a building code administrator pursuant to this part if the
 239 person:

240 (a) Is at least 18 years of age.

241 (b) Is of good moral character.

242 (c) Meets eligibility requirements according to one of the
 243 following criteria:

244 1. Demonstrates 10 years' combined experience as an
 245 architect, engineer, plans examiner, building code inspector,
 246 registered or certified contractor, or construction
 247 superintendent, with at least 5 years of such experience in
 248 supervisory positions; or

249 2. Demonstrates a combination of postsecondary education
 250 in the field of construction or related field, no more than 5
 251 years of which may be applied, and experience as an architect,
 252 engineer, plans examiner, building code inspector, registered or
 253 certified contractor, or construction superintendent which
 254 totals 10 years, with at least 5 years of such total being
 255 experience in supervisory positions. In addition, the applicant
 256 must have completed training consisting of at least 20 hours,
 257 but not more than 30 hours, of instruction in state laws, rules,
 258 and ethics relating to the professional standards of practice,
 259 duties, and responsibilities of a certificateholder.

260 (7) (a) The board shall ~~may~~ provide for the issuance of

261 provisional certificates valid for 1 year, as specified by board
 262 rule, to any newly employed or promoted building code inspector
 263 or plans examiner who meets the eligibility requirements
 264 described in subsection (2) and any newly employed or promoted
 265 building code administrator who meets the eligibility
 266 requirements described in subsection (3). The provisional
 267 license may be renewed by the board for just cause; however, a
 268 provisional license is not valid for a period longer than 3
 269 years.

270 (b) A ~~No~~ building code administrator, plans examiner, or
 271 building code inspector may not have a provisional certificate
 272 extended beyond the specified period by renewal or otherwise.

273 (c) The board shall ~~may~~ provide for appropriate levels of
 274 provisional certificates and may issue these certificates with
 275 such special conditions or requirements relating to the place of
 276 employment of the person holding the certificate, the
 277 supervision of such person on a consulting or advisory basis, or
 278 other matters as the board may deem necessary to protect the
 279 public safety and health.

280 (d) A newly employed or hired person may perform the
 281 duties of a plans examiner or building code inspector for 120
 282 days if a provisional certificate application has been submitted
 283 if such person is under the direct supervision of a certified
 284 building code administrator who holds a standard certification
 285 and who has found such person qualified for a provisional
 286 certificate. Direct supervision and the determination of

287 | qualifications may also be provided by a building code
 288 | administrator who holds a limited or provisional certificate in
 289 | a county having a population of fewer than 75,000 and in a
 290 | municipality located within such county.

291 | Section 2. Subsection (5) of section 468.627, Florida
 292 | Statutes, is amended to read:

293 | 468.627 Application; examination; renewal; fees.—

294 | (5) The certificateholder shall provide proof, in a form
 295 | established by board rule, that the certificateholder has
 296 | completed at least 14 classroom hours of at least 50 minutes
 297 | each of continuing education courses during each biennium since
 298 | the issuance or renewal of the certificate, including code-
 299 | related training ~~the specialized or advanced coursework approved~~
 300 | ~~by the Florida Building Commission~~, as part of the building code
 301 | training program established pursuant to s. 553.841, appropriate
 302 | to the licensing category sought. A minimum of 3 of the required
 303 | 14 classroom hours must be on state law, rules, and ethics
 304 | relating to professional standards of practice, duties, and
 305 | responsibilities of the certificateholder. The board shall by
 306 | rule establish criteria for approval of continuing education
 307 | courses and providers, and may by rule establish criteria for
 308 | accepting alternative nonclassroom continuing education on an
 309 | hour-for-hour basis.

310 | Section 3. Section 471.0195, Florida Statutes, is amended
 311 | to read:

312 | 471.0195 Florida Building Code training for engineers.—All

313 | licensees actively participating in the design of engineering
 314 | works or systems in connection with buildings, structures, or
 315 | facilities and systems covered by the Florida Building Code
 316 | shall take continuing education courses and submit proof to the
 317 | board, at such times and in such manner as established by the
 318 | board by rule, that the licensee has completed any specialized
 319 | or code-related training ~~advanced courses~~ on any portion of the
 320 | Florida Building Code applicable to the licensee's area of
 321 | practice. The board shall record reported continuing education
 322 | courses on a system easily accessed by code enforcement
 323 | jurisdictions for evaluation when determining license status for
 324 | purposes of processing design documents. Local jurisdictions
 325 | shall be responsible for notifying the board when design
 326 | documents are submitted for building construction permits by
 327 | persons who are not in compliance with this section. The board
 328 | shall take appropriate action as provided by its rules when such
 329 | noncompliance is determined to exist.

330 | Section 4. Subsection (5) of section 481.215, Florida
 331 | Statutes, is amended to read:

332 | 481.215 Renewal of license.-

333 | (5) The board shall require, by rule adopted pursuant to
 334 | ss. 120.536(1) and 120.54, a specified number of hours in
 335 | specialized or code-related training ~~advanced courses, approved~~
 336 | ~~by the Florida Building Commission,~~ on any portion of the
 337 | Florida Building Code, adopted pursuant to part IV of chapter
 338 | 553, relating to the licensee's respective area of practice.

339 Section 5. Subsection (5) of section 481.313, Florida
 340 Statutes, is amended to read:

341 481.313 Renewal of license.—

342 (5) The board shall require, by rule adopted pursuant to
 343 ss. 120.536(1) and 120.54, a specified number of hours in
 344 specialized or code-related training ~~advanced courses, approved~~
 345 ~~by the Florida Building Commission,~~ on any portion of the
 346 Florida Building Code, adopted pursuant to part IV of chapter
 347 553, relating to the licensee's respective area of practice.

348 Section 6. Subsection (23) is added to section 489.103,
 349 Florida Statutes, to read:

350 489.103 Exemptions.—This part does not apply to:

351 (23) An employee of an apartment community or apartment
 352 community management company who makes minor repairs to existing
 353 electric water heaters or to existing electric heating, venting,
 354 and air-conditioning systems if:

355 (a) The employee:

356 1. Does not hold himself or herself or his or her employer
 357 out to be licensed or qualified by a licensee.

358 2. Does not perform any acts, other than acts authorized
 359 by this exemption, that constitute contracting.

360 3. Receives compensation from and is under the supervision
 361 and control of an employer who deducts the FICA and withholding
 362 tax and who provides workers' compensation, as prescribed by
 363 law.

364 4. Holds a current certificate for apartment maintenance

365 technicians issued by the National Apartment Association and
 366 accredited by the American National Standards Institute.
 367 Requirements for obtaining such certificate must include at
 368 least:

369 a. One year of apartment or rental housing maintenance
 370 experience.

371 b. Successful completion of at least 90 hours of courses
 372 or online content that covers electrical maintenance and repair;
 373 plumbing maintenance and repair; heating, venting, or air-
 374 conditioning system maintenance and repair; appliance
 375 maintenance and repair; and interior and exterior maintenance
 376 and repair.

377 c. Completion of all examination requirements.

378 (b) The equipment:

379 1. Is already installed on the property owned by the
 380 apartment community or managed by the apartment community
 381 management company.

382 2. Is not being modified except to replace components
 383 necessary to return the equipment to its original condition and
 384 the partial disassembly associated with the replacement.

385 3. Is a type of equipment commonly installed in similar
 386 locations.

387 4. Is repaired with new parts that are functionally
 388 identical to the parts being replaced.

389 (c) An individual repair does not involve replacement
 390 parts that cost more than \$500. An individual repair may not be

391 so extensive as to be a functional replacement of the electric
 392 water heater or the existing electric heating, venting, or air-
 393 conditioning system being repaired. For purposes of this
 394 paragraph, an individual repair must not be part of a larger or
 395 major project that is divided into parts to avoid this
 396 restriction.

397 (d) The property owned by the apartment community or
 398 managed by the apartment community management company includes
 399 at least 100 apartments.

400 Section 7. Paragraph (m) of subsection (3) of section
 401 489.105, Florida Statutes, is amended to read:

402 489.105 Definitions.—As used in this part:

403 (3) "Contractor" means the person who is qualified for,
 404 and is only responsible for, the project contracted for and
 405 means, except as exempted in this part, the person who, for
 406 compensation, undertakes to, submits a bid to, or does himself
 407 or herself or by others construct, repair, alter, remodel, add
 408 to, demolish, subtract from, or improve any building or
 409 structure, including related improvements to real estate, for
 410 others or for resale to others; and whose job scope is
 411 substantially similar to the job scope described in one of the
 412 paragraphs of this subsection. For the purposes of regulation
 413 under this part, the term "demolish" applies only to demolition
 414 of steel tanks more than 50 feet in height; towers more than 50
 415 feet in height; other structures more than 50 feet in height;
 416 and all buildings or residences. Contractors are subdivided into

417 two divisions, Division I, consisting of those contractors
 418 defined in paragraphs (a)-(c), and Division II, consisting of
 419 those contractors defined in paragraphs (d)-(q):

420 (m) "Plumbing contractor" means a contractor whose
 421 services are unlimited in the plumbing trade and includes
 422 contracting business consisting of the execution of contracts
 423 requiring the experience, financial means, knowledge, and skill
 424 to install, maintain, repair, alter, extend, or, if not
 425 prohibited by law, design plumbing. A plumbing contractor may
 426 install, maintain, repair, alter, extend, or, if not prohibited
 427 by law, design the following without obtaining an additional
 428 local regulatory license, certificate, or registration: sanitary
 429 drainage or storm drainage facilities, water and sewer plants
 430 and substations, venting systems, public or private water supply
 431 systems, septic tanks, drainage and supply wells, swimming pool
 432 piping, irrigation systems, and solar heating water systems and
 433 all appurtenances, apparatus, or equipment used in connection
 434 therewith, including boilers and pressure process piping and
 435 including the installation of water, natural gas, liquefied
 436 petroleum gas and related venting, and storm and sanitary sewer
 437 lines. The scope of work of the plumbing contractor also
 438 includes the design, if not prohibited by law, and installation,
 439 maintenance, repair, alteration, or extension of air-piping,
 440 vacuum line piping, oxygen line piping, nitrous oxide piping,
 441 and all related medical gas systems; fire line standpipes and
 442 fire sprinklers if authorized by law; ink and chemical lines;

443 fuel oil and gasoline piping and tank and pump installation,
 444 except bulk storage plants; and pneumatic control piping
 445 systems, all in a manner that complies with all plans,
 446 specifications, codes, laws, and regulations applicable. The
 447 scope of work of the plumbing contractor applies to private
 448 property and public property, including any excavation work
 449 incidental thereto, and includes the work of the specialty
 450 plumbing contractor. Such contractor shall subcontract, with a
 451 qualified contractor in the field concerned, all other work
 452 incidental to the work but which is specified as being the work
 453 of a trade other than that of a plumbing contractor. This
 454 definition does not limit the scope of work of any specialty
 455 contractor certified pursuant to s. 489.113(6), and does not
 456 require certification or registration under this part as a
 457 category I liquefied petroleum gas dealer, LP gas installer, or
 458 specialty installer who is licensed under chapter 527 or an ~~of~~
 459 ~~any~~ authorized employee of a public natural gas utility or of a
 460 private natural gas utility regulated by the Public Service
 461 Commission when disconnecting and reconnecting water lines in
 462 the servicing or replacement of an existing water heater. A
 463 plumbing contractor may perform drain cleaning and clearing and
 464 install or repair rainwater catchment systems; however, a
 465 mandatory licensing requirement is not established for the
 466 performance of these specific services.

467 Section 8. Paragraph (b) of subsection (4) of section
 468 489.115, Florida Statutes, is amended to read:

469 489.115 Certification and registration; endorsement;
 470 reciprocity; renewals; continuing education.-

471 (4)

472 (b)1. Each certificateholder or registrant shall provide
 473 proof, in a form established by rule of the board, that the
 474 certificateholder or registrant has completed at least 14
 475 classroom hours of at least 50 minutes each of continuing
 476 education courses during each biennium since the issuance or
 477 renewal of the certificate or registration. The board shall
 478 establish by rule that a portion of the required 14 hours must
 479 deal with the subject of workers' compensation, business
 480 practices, workplace safety, and, for applicable licensure
 481 categories, wind mitigation methodologies, and 1 hour of which
 482 must deal with laws and rules. The board shall by rule establish
 483 criteria for the approval of continuing education courses and
 484 providers, including requirements relating to the content of
 485 courses and standards for approval of providers, and may by rule
 486 establish criteria for accepting alternative nonclassroom
 487 continuing education on an hour-for-hour basis. The board shall
 488 prescribe by rule the continuing education, if any, which is
 489 required during the first biennium of initial licensure. A
 490 person who has been licensed for less than an entire biennium
 491 must not be required to complete the full 14 hours of continuing
 492 education.

493 2. In addition, the board may approve specialized
 494 continuing education courses on compliance with the wind

495 resistance provisions for one and two family dwellings contained
 496 in the Florida Building Code and any alternate methodologies for
 497 providing such wind resistance which have been approved for use
 498 by the Florida Building Commission. Division I
 499 certificateholders or registrants who demonstrate proficiency
 500 upon completion of such specialized courses may certify plans
 501 and specifications for one and two family dwellings to be in
 502 compliance with the code or alternate methodologies, as
 503 appropriate, except for dwellings located in floodways or
 504 coastal hazard areas as defined in ss. 60.3D and E of the
 505 National Flood Insurance Program.

506 3. The board shall require, by rule adopted pursuant to
 507 ss. 120.536(1) and 120.54, a specified number of hours in
 508 specialized or code-related training ~~advanced module courses,~~
 509 ~~approved by the Florida Building Commission,~~ on any portion of
 510 the Florida Building Code, adopted pursuant to part IV of
 511 chapter 553, relating to the contractor's respective discipline.

512 Section 9. Subsections (2) and (3) of section 489.1401,
 513 Florida Statutes, are amended to read:

514 489.1401 Legislative intent.—

515 (2) It is the intent of the Legislature that the sole
 516 purpose of the Florida Homeowners' Construction Recovery Fund is
 517 to compensate an ~~any~~ aggrieved claimant who contracted for the
 518 construction or improvement of the homeowner's residence located
 519 within this state and who has obtained a final judgment in a ~~any~~
 520 court of competent jurisdiction, was awarded restitution by the

521 Construction Industry Licensing Board, or received an award in
 522 arbitration against a licensee on grounds of financial
 523 mismanagement or misconduct, abandoning a construction project,
 524 or making a false statement with respect to a project. Such
 525 grievance must arise ~~and arising~~ directly out of a any
 526 transaction conducted when the judgment debtor was licensed and
 527 must involve an act performed ~~any of the activities~~ enumerated
 528 under s. 489.129(1)(g), (j) or (k) ~~on the homeowner's residence.~~

529 (3) It is the intent of the Legislature that Division I
 530 and Division II contractors set apart funds for the specific
 531 objective of participating in the fund.

532 Section 10. Paragraphs (d), (i), (k), and (l) of
 533 subsection (1) of section 489.1402, Florida Statutes, are
 534 amended to read:

535 489.1402 Homeowners' Construction Recovery Fund;
 536 definitions.—

537 (1) The following definitions apply to ss. 489.140-
 538 489.144:

539 (d) "Contractor" means a Division I or Division II
 540 contractor performing his or her respective services described
 541 in s. 489.105(3)(a)-(g) ~~489.105(3)(a)-(e)~~.

542 (i) "Residence" means a single-family residence, an
 543 individual residential condominium or cooperative unit, or a
 544 residential building containing not more than two residential
 545 units in which the owner contracting for the improvement is
 546 residing or will reside 6 months or more each calendar year upon

547 completion of the improvement.

548 (k) "Same transaction" means a contract, or a any series
 549 of contracts, between a claimant and a contractor or qualified
 550 business, when such contract or contracts involve the same
 551 property or contiguous properties and are entered into either at
 552 one time or serially.

553 (1) "Valid and current license," for the purpose of s.
 554 489.141(2)(d), means a any license issued pursuant to this part
 555 to a licensee, including a license in an active, inactive,
 556 delinquent, or suspended status.

557 Section 11. Subsections (1) and (2) of section 489.141,
 558 Florida Statutes, are amended to read:

559 489.141 Conditions for recovery; eligibility.—

560 (1) A ~~Any~~ claimant is eligible to seek recovery from the
 561 recovery fund after making ~~having made~~ a claim and exhausting
 562 the limits of any available bond, cash bond, surety, guarantee,
 563 warranty, letter of credit, or policy of insurance if, ~~provided~~
 564 ~~that~~ each of the following conditions is satisfied:

565 (a) The claimant has received a final judgment in a court
 566 of competent jurisdiction in this state or has received an award
 567 in arbitration or the Construction Industry Licensing Board has
 568 issued a final order directing the licensee to pay restitution
 569 to the claimant. The board may waive this requirement if:

- 570 1. The claimant is unable to secure a final judgment
- 571 against the licensee due to the death of the licensee; or
- 572 2. The claimant has sought to have assets involving the

573 transaction that gave rise to the claim removed from the
 574 bankruptcy proceedings so that the matter might be heard in a
 575 court of competent jurisdiction in this state and, after due
 576 diligence, the claimant is precluded by action of the bankruptcy
 577 court from securing a final judgment against the licensee.

578 (b) The judgment, award, or restitution is based upon a
 579 violation of s. 489.129(1)(g), (j), or (k) or s. 713.35.

580 (c) The violation was committed by a licensee.

581 (d) The judgment, award, or restitution order specifies
 582 the actual damages suffered as a consequence of such violation.

583 (e) The contract was executed and the violation occurred
 584 on or after July 1, 1993, and provided that:

585 1. The claimant has caused to be issued a writ of
 586 execution upon such judgment, and the officer executing the writ
 587 has made a return showing that no personal or real property of
 588 the judgment debtor or licensee liable to be levied upon in
 589 satisfaction of the judgment can be found or that the amount
 590 realized on the sale of the judgment debtor's or licensee's
 591 property pursuant to such execution was insufficient to satisfy
 592 the judgment;

593 2. If the claimant is unable to comply with subparagraph
 594 1. for a valid reason to be determined by the board, the
 595 claimant has made all reasonable searches and inquiries to
 596 ascertain whether the judgment debtor or licensee is possessed
 597 of real or personal property or other assets subject to being
 598 sold or applied in satisfaction of the judgment and by his or

599 her search has discovered no property or assets or has
 600 discovered property and assets and has taken all necessary
 601 action and proceedings for the application thereof to the
 602 judgment but the amount thereby realized was insufficient to
 603 satisfy the judgment; and

604 3. The claimant has made a diligent attempt, as defined by
 605 board rule, to collect the restitution awarded by the board.

606 (f) A claim for recovery is made within 1 year after the
 607 conclusion of any civil, criminal, or administrative action or
 608 award in arbitration based on the act. This paragraph applies to
 609 any claim filed with the board after October 1, 1998.

610 (g) Any amounts recovered by the claimant from the
 611 judgment debtor or licensee, or from any other source, have been
 612 applied to the damages awarded by the court or the amount of
 613 restitution ordered by the board.

614 (h) The claimant is not a person who is precluded by this
 615 act from making a claim for recovery.

616 (2) A claimant is not qualified to make a claim for
 617 recovery from the recovery fund, if:

618 (a) The claimant is the spouse of the judgment debtor or
 619 licensee or a personal representative of such spouse;

620 (b) The claimant is a licensee who acted as the contractor
 621 in the transaction that ~~which~~ is the subject of the claim;

622 (c) The claim is based upon a construction contract in
 623 which the licensee was acting with respect to the property owned
 624 or controlled by the licensee;

625 (d) The claim is based upon a construction contract in
 626 which the contractor did not hold a valid and current license at
 627 the time of the construction contract;

628 (e) The claimant was associated in a business relationship
 629 with the licensee other than the contract at issue; or

630 ~~(f) The claimant has suffered damages as the result of~~
 631 ~~making improper payments to a contractor as defined in part I of~~
 632 ~~chapter 713; or~~

633 (f)(g) The claimant had entered into a contract ~~has~~
 634 ~~contracted~~ with a licensee to perform a scope of work described
 635 in s. 489.105(3)(d)-(g) before July 1, 2016 ~~489.105(3)(d)-(p)~~.

636 Section 12. Subsection (1) of section 489.1425, Florida
 637 Statutes, is amended to read:

638 489.1425 Duty of contractor to notify residential property
 639 owner of recovery fund.—

640 (1) Each ~~Any~~ agreement or contract for repair,
 641 restoration, improvement, or construction to residential real
 642 property must contain a written statement explaining the
 643 consumer's rights under the recovery fund, except where the
 644 value of all labor and materials does not exceed \$2,500. The
 645 written statement must be substantially in the following form:

646

FLORIDA HOMEOWNERS' CONSTRUCTION
 RECOVERY FUND

648

649

650 PAYMENT, UP TO A LIMITED AMOUNT, MAY BE AVAILABLE FROM THE

651 FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY
 652 ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS
 653 FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED
 654 CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A
 655 CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD
 656 AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:

657

658 The statement must ~~shall~~ be immediately followed by the board's
 659 address and telephone number as established by board rule.

660 Section 13. Section 489.143, Florida Statutes, is amended
 661 to read:

662 489.143 Payment from the fund.—

663 (1) The fund shall be disbursed as provided in s. 489.141
 664 on a final order of the board.

665 (2) A ~~Any~~ claimant who meets all of the conditions
 666 prescribed in s. 489.141 may apply to the board to cause payment
 667 to be made to a claimant from the recovery fund in an amount
 668 equal to the judgment, award, or restitution order or \$25,000,
 669 whichever is less, or an amount equal to the unsatisfied portion
 670 of such person's judgment, award, or restitution order, but only
 671 to the extent and amount of actual damages suffered by the
 672 claimant, and only up to the maximum payment allowed for each
 673 respective Division I and Division II claim. Payment from the
 674 fund for other costs related to or pursuant to civil proceedings
 675 such as postjudgment interest, attorney ~~attorney's~~ fees, court
 676 costs, medical damages, and punitive damages is prohibited. The

677 recovery fund is not obligated to pay a ~~any~~ judgment, an award,
 678 or a restitution order, or any portion thereof, which is not
 679 expressly based on one of the grounds for recovery set forth in
 680 s. 489.141.

681 (3) Beginning January 1, 2005, for each Division I
 682 contract entered into after July 1, 2004, payment from the
 683 recovery fund is ~~shall be~~ subject to a \$50,000 maximum payment
 684 for each Division I claim. Beginning January 1, 2017, for each
 685 Division II contract entered into on or after July 1, 2016,
 686 payment from the recovery fund is subject to a \$15,000 maximum
 687 payment for each Division II claim.

688 (4)~~(3)~~ Upon receipt by a claimant under subsection (2) of
 689 payment from the recovery fund, the claimant shall assign his or
 690 her additional right, title, and interest in the judgment,
 691 award, or restitution order, to the extent of such payment, to
 692 the board, and thereupon the board shall be subrogated to the
 693 right, title, and interest of the claimant; and any amount
 694 subsequently recovered on the judgment, award, or restitution
 695 order, to the extent of the right, title, and interest of the
 696 board therein, shall be for the purpose of reimbursing the
 697 recovery fund.

698 (5)~~(4)~~ Payments for claims arising out of the same
 699 transaction shall be limited, in the aggregate, to the lesser of
 700 the judgment, award, or restitution order or the maximum payment
 701 allowed for a Division I or Division II claim, regardless of the
 702 number of claimants involved in the transaction.

703 (6)(5) For contracts entered into before July 1, 2004,
 704 payments for claims against any one licensee may ~~shall~~ not
 705 exceed, in the aggregate, \$100,000 annually, up to a total
 706 aggregate of \$250,000. For any claim approved by the board which
 707 is in excess of the annual cap, the amount in excess of \$100,000
 708 up to the total aggregate cap of \$250,000 is eligible for
 709 payment in the next and succeeding fiscal years, but only after
 710 all claims for the then-current calendar year have been paid.
 711 Payments may not exceed the aggregate annual or per claimant
 712 limits under law. Beginning January 1, 2005, for each Division I
 713 contract entered into after July 1, 2004, payment from the
 714 recovery fund is subject only to a total aggregate cap of
 715 \$500,000 for each Division I licensee. Beginning January 1,
 716 2017, for each Division II contract entered into on or after
 717 July 1, 2016, payment from the recovery fund is subject only to
 718 a total aggregate cap of \$150,000 for each Division II licensee.

719 (7)(6) Claims shall be paid in the order filed, up to the
 720 aggregate limits for each transaction and licensee and to the
 721 limits of the amount appropriated to pay claims against the fund
 722 ~~for the fiscal year in which the claims were filed.~~ Payments may
 723 not exceed the total aggregate cap per license or per claimant
 724 limits under this section.

725 (8)(7) If the annual appropriation is exhausted with
 726 claims pending, such claims shall be carried forward to the next
 727 fiscal year. Any moneys in excess of pending claims remaining in
 728 the recovery fund at the end of the fiscal year shall be paid as

729 provided in s. 468.631.

730 (9)~~(8)~~ Upon the payment of any amount from the recovery
 731 fund in settlement of a claim in satisfaction of a judgment,
 732 award, or restitution order against a licensee as described in
 733 s. 489.141, the license of such licensee shall be automatically
 734 suspended, without further administrative action, upon the date
 735 of payment from the fund. The license of such licensee may ~~shall~~
 736 not be reinstated until he or she has repaid in full, plus
 737 interest, the amount paid from the fund. A discharge of
 738 bankruptcy does not relieve a person from the penalties and
 739 disabilities provided in this section.

740 (10)~~(9)~~ A Any firm, a corporation, a partnership, or an
 741 association, or a ~~any~~ person acting in his or her individual
 742 capacity, who aids, abets, solicits, or conspires with another
 743 ~~any~~ person to knowingly present or cause to be presented a ~~any~~
 744 false or fraudulent claim for the payment of a loss under this
 745 act commits ~~is guilty of~~ a third-degree felony, punishable as
 746 provided in s. 775.082 or s. 775.084 and by a fine of up to ~~not~~
 747 ~~exceeding~~ \$30,000, unless the value of the fraud exceeds that
 748 amount, ~~\$30,000~~ in which event the fine may not exceed double
 749 the value of the fraud.

750 (11)~~(10)~~ Each payment ~~All payments~~ and disbursement
 751 ~~disbursements~~ from the recovery fund shall be made by the Chief
 752 Financial Officer upon a voucher signed by the secretary of the
 753 department or the secretary's designee.

754 Section 14. Subsection (24) is added to section 489.503,

755 Florida Statutes, to read:

756 489.503 Exemptions.—This part does not apply to:

757 (24) A person who installs low-voltage landscape lighting
 758 that contains a factory-installed electrical cord with plug that
 759 does not require installation, wiring, or other modification to
 760 the electrical wiring of a structure.

761 Section 15. Subsection (6) of section 489.517, Florida
 762 Statutes, is amended to read:

763 489.517 Renewal of certificate or registration; continuing
 764 education.—

765 (6) The board shall require, by rule adopted pursuant to
 766 ss. 120.536(1) and 120.54, a specialized number of hours in
 767 specialized or code-related training ~~advanced module courses,~~
 768 ~~approved by the Florida Building Commission,~~ on any portion of
 769 the Florida Building Code, adopted pursuant to part IV of
 770 chapter 553, relating to the contractor's respective discipline.

771 Section 16. Subsection (3) of section 514.011, Florida
 772 Statutes, is amended to read:

773 514.011 Definitions.—As used in this chapter:

774 (3) "Private pool" means a facility used only by an
 775 individual, family, or living unit members and their guests
 776 which does not serve any type of cooperative housing or joint
 777 tenancy of five or more living units. For purposes of the
 778 exemptions provided under s. 514.0115, the term includes a
 779 portable pool used exclusively for providing swimming lessons or
 780 related instruction in support of an established educational

781 program sponsored or provided by a county school district.

782 Section 17. Subsection (3) of section 514.0115, Florida
783 Statutes, is amended to read:

784 514.0115 Exemptions from supervision or regulation;
785 variances.—

786 (3) A private pool used for instructional purposes in
787 swimming may ~~shall~~ not be regulated as a public pool. A portable
788 pool used for instructional purposes or to further an approved
789 educational program may not be regulated as a public pool.

790 Section 18. Subsection (5) of section 514.031, Florida
791 Statutes, is amended to read:

792 514.031 Permit necessary to operate public swimming pool.—

793 (5) An owner or operator of a public swimming pool,
794 including, but not limited to, a spa, wading, or special purpose
795 pool, to which admittance is obtained by membership for a fee
796 shall post in a prominent location within the facility the most
797 recent pool inspection report issued by the department
798 pertaining to the health and safety conditions of such facility.
799 The report shall be legible and readily accessible to members or
800 potential members. The department shall adopt rules to enforce
801 this subsection. A portable pool may not be used as a public
802 pool unless it is exempt under s. 514.0115.

803 Section 19. Subsection (2) of section 553.512, Florida
804 Statutes, is amended to read:

805 553.512 Modifications and waivers; advisory council.—

806 (2) The Accessibility Advisory Council shall consist of

807 the following seven members, who shall be knowledgeable in the
 808 area of accessibility for persons with disabilities. The
 809 Secretary of Business and Professional Regulation shall appoint
 810 the following: a representative from the Advocacy Center for
 811 Persons with Disabilities, Inc.; a representative from the
 812 Division of Blind Services; a representative from the Division
 813 of Vocational Rehabilitation; a representative from a statewide
 814 organization representing the physically handicapped; a
 815 representative from the hearing impaired; a representative from
 816 the Pensacola Pen Wheels Inc. Employ the Handicapped Council
 817 ~~President, Florida Council of Handicapped Organizations~~; and a
 818 representative of the Paralyzed Veterans of America. The terms
 819 for the first three council members appointed subsequent to
 820 October 1, 1991, shall be for 4 years, the terms for the next
 821 two council members appointed shall be for 3 years, and the
 822 terms for the next two members shall be for 2 years. Thereafter,
 823 all council member appointments shall be for terms of 4 years.
 824 No council member shall serve more than two 4-year terms
 825 subsequent to October 1, 1991. Any member of the council may be
 826 replaced by the secretary upon three unexcused absences. Upon
 827 application made in the form provided, an individual waiver or
 828 modification may be granted by the commission so long as such
 829 modification or waiver is not in conflict with more stringent
 830 standards provided in another chapter.

831 Section 20. Section 553.721, Florida Statutes, is amended
 832 to read:

833 553.721 Surcharge.—In order for the Department of Business
 834 and Professional Regulation to administer and carry out the
 835 purposes of this part and related activities, there is created a
 836 surcharge, to be assessed at the rate of 1.5 percent of the
 837 permit fees associated with enforcement of the Florida Building
 838 Code as defined by the uniform account criteria and specifically
 839 the uniform account code for building permits adopted for local
 840 government financial reporting pursuant to s. 218.32. The
 841 minimum amount collected on any permit issued shall be \$2. The
 842 unit of government responsible for collecting a permit fee
 843 pursuant to s. 125.56(4) or s. 166.201 shall collect the
 844 surcharge and electronically remit the funds collected to the
 845 department on a quarterly calendar basis for the preceding
 846 quarter and continuing each third month thereafter. The unit of
 847 government shall retain 10 percent of the surcharge collected to
 848 fund the participation of building departments in the national
 849 and state building code adoption processes and to provide
 850 education related to enforcement of the Florida Building Code.
 851 All funds remitted to the department pursuant to this section
 852 shall be deposited in the Professional Regulation Trust Fund.
 853 Funds collected from the surcharge shall be allocated to fund
 854 the Florida Building Commission and the Florida Building Code
 855 Compliance and Mitigation Program under s. 553.841. Funds
 856 allocated to the Florida Building Code Compliance and Mitigation
 857 Program shall be \$925,000 each fiscal year. The Florida Building
 858 Code Compliance and Mitigation Program shall fund the

859 recommendations made by the Building Code System Uniform
 860 Implementation Evaluation Workgroup, dated April 8, 2013, from
 861 existing resources, not to exceed \$30,000 in the 2016-2017
 862 fiscal year. Funds collected from the surcharge shall also be
 863 used to fund Florida Fire Prevention Code informal
 864 interpretations managed by the State Fire Marshal and shall be
 865 limited to \$15,000 each fiscal year. The State Fire Marshal
 866 shall adopt rules to address the implementation and expenditure
 867 of the funds allocated to fund the Florida Fire Prevention Code
 868 informal interpretations under this section. The funds collected
 869 from the surcharge may not be used to fund research on
 870 techniques for mitigation of radon in existing buildings. Funds
 871 used by the department as well as funds to be transferred to the
 872 Department of Health and the State Fire Marshal shall be as
 873 prescribed in the annual General Appropriations Act. The
 874 department shall adopt rules governing the collection and
 875 remittance of surcharges pursuant to chapter 120.

876 Section 21. Subsections (11) and (15) of section 553.73,
 877 Florida Statutes, are amended, and subsection (19) is added to
 878 that section, to read:

879 553.73 Florida Building Code.—

880 (11) (a) In the event of a conflict between the Florida
 881 Building Code and the Florida Fire Prevention Code and the Life
 882 Safety Code as applied to a specific project, the conflict shall
 883 be resolved by agreement between the local building code
 884 enforcement official and the local fire code enforcement

885 official in favor of the requirement of the code which offers
 886 the greatest degree of lifesafety or alternatives which would
 887 provide an equivalent degree of lifesafety and an equivalent
 888 method of construction. Local boards created to address issues
 889 arising under the Florida Building Code or the Florida Fire
 890 Prevention Code may combine the appeals boards to create a
 891 single, local board having jurisdiction over matters arising
 892 under either code or both codes. The combined local appeals
 893 board may grant alternatives or modifications through procedures
 894 outlined in NFPA 1, Section 1.4, but may not waive the
 895 requirements of the Florida Fire Prevention Code. To meet the
 896 quorum requirement for convening the combined local appeals
 897 board, at least one member of the board who is a fire protection
 898 contractor, a fire protection design professional, a fire
 899 department operations professional, or a fire code enforcement
 900 professional must be present.

901 (b) Any decision made by the local fire official regarding
 902 application, interpretation, or enforcement of the Florida Fire
 903 Prevention Code, by ~~and~~ the local building official regarding
 904 application, interpretation, or enforcement of the Florida
 905 Building Code, or the appropriate application of either code or
 906 both codes in the case of a conflict between the codes may be
 907 appealed to a local administrative board designated by the
 908 municipality, county, or special district having firesafety
 909 responsibilities. If the decision of the local fire official and
 910 the local building official is to apply the provisions of either

911 the Florida Building Code or the Florida Fire Prevention Code
 912 and the Life Safety Code, the board may not alter the decision
 913 unless the board determines that the application of such code is
 914 not reasonable. If the decision of the local fire official and
 915 the local building official is to adopt an alternative to the
 916 codes, the local administrative board shall give due regard to
 917 the decision rendered by the local officials and may modify that
 918 decision if the administrative board adopts a better
 919 alternative, taking into consideration all relevant
 920 circumstances. In any case in which the local administrative
 921 board adopts alternatives to the decision rendered by the local
 922 fire official and the local building official, such alternatives
 923 shall provide an equivalent degree of lifesafety and an
 924 equivalent method of construction as the decision rendered by
 925 the local officials.

926 (c) If the local building official and the local fire
 927 official are unable to agree on a resolution of the conflict
 928 between the Florida Building Code and the Florida Fire
 929 Prevention Code and the Life Safety Code, the local
 930 administrative board shall resolve the conflict in favor of the
 931 code which offers the greatest degree of lifesafety or
 932 alternatives which would provide an equivalent degree of
 933 lifesafety and an equivalent method of construction.

934 (d) All decisions of the local administrative board, or,
 935 if none exists, ~~the decisions of~~ the local building official and
 936 the local fire official in regard to the application,

937 enforcement, or interpretation of the Florida Fire Prevention
 938 Code, or conflicts between the Florida Fire Prevention Code and
 939 the Florida Building Code, are subject to review by a joint
 940 committee composed of members of the Florida Building Commission
 941 and the Fire Code Advisory Council. If the joint committee is
 942 unable to resolve conflicts between the codes as applied to a
 943 specific project, the matter shall be resolved pursuant to ~~the~~
 944 ~~provisions of~~ paragraph (1)(d). Decisions of the local
 945 administrative board related solely to the Florida Building Code
 946 are subject to review as set forth in s. 553.775.

947 (e) The local administrative board shall, to the greatest
 948 extent possible, be composed of members with expertise in
 949 building construction and firesafety standards.

950 (f) All decisions of the local building official and local
 951 fire official and all decisions of the administrative board
 952 shall be in writing and shall be binding upon a person but do
 953 not limit the authority of the State Fire Marshal or the Florida
 954 Building Commission pursuant to paragraph (1)(d) and ss. 633.104
 955 and 633.228. Decisions of general application shall be indexed
 956 by building and fire code sections and shall be available for
 957 inspection during normal business hours.

958 (15) An agency or local government may not require that
 959 existing mechanical equipment located on or above the surface of
 960 a roof be installed in compliance with the requirements of the
 961 Florida Building Code except during reroofing when the equipment
 962 is being replaced or moved ~~during reroofing~~ and is not in

963 compliance with the provisions of the Florida Building Code
 964 relating to roof-mounted mechanical units.

965 (19) The Florida Building Code may not require more than
 966 one fire service access elevator in a residential occupancy
 967 where the highest occupiable floor is less than 420 feet above
 968 the level of fire service access and all remaining elevators are
 969 provided with Phase I and II emergency operations. Where fire
 970 service access elevators are required, the code may not require
 971 a 1-hour fire-rated fire service access elevator lobby with
 972 direct access from the fire service access elevators if the fire
 973 service access elevators open into an exit access corridor that
 974 is at least 150 square feet with the exception of door openings;
 975 is no less than 6 feet wide for its entire length; and has a
 976 minimum 1-hour fire rating with three-quarter hour fire and
 977 smoke rated openings and if, and during a fire event, the fire
 978 service access elevators are pressurized and floor-to-floor
 979 smoke control is provided. However, where transient residential
 980 occupancies occur at floor levels above 420 feet above the level
 981 of fire service access, a 1-hour fire-rated fire service access
 982 elevator lobby with direct access from the fire service access
 983 elevators is required. The requirement for a second fire service
 984 access elevator is not considered a part of the Florida Building
 985 Code and therefore does not take effect until July 1, 2017.

986 Section 22. Paragraph (c) of subsection (3) of section
 987 553.775, Florida Statutes, is amended to read:

988 553.775 Interpretations.—

989 (3) The following procedures may be invoked regarding
 990 interpretations of the Florida Building Code or the Florida
 991 Accessibility Code for Building Construction:

992 (c) The commission shall review decisions of local
 993 building officials and local enforcement agencies regarding
 994 interpretations of the Florida Building Code or the Florida
 995 Accessibility Code for Building Construction after the local
 996 board of appeals has considered the decision, if such board
 997 exists, and if such appeals process is concluded within 25
 998 business days.

999 1. The commission shall coordinate with the Building
 1000 Officials Association of Florida, Inc., to designate a panel
 1001 ~~panels~~ composed of seven ~~five~~ members to hear requests to review
 1002 decisions of local building officials. Five ~~The~~ members must be
 1003 licensed as building code administrators under part XII of
 1004 chapter 468, one member must be licensed as an architect under
 1005 chapter 481, and one member must be licensed as an engineer
 1006 under chapter 471. Each member ~~and~~ must have experience
 1007 interpreting or ~~and~~ enforcing provisions of the Florida Building
 1008 Code and the Florida Accessibility Code for Building
 1009 Construction.

1010 2. Requests to review a decision of a local building
 1011 official interpreting provisions of the Florida Building Code or
 1012 the Florida Accessibility Code for Building Construction may be
 1013 initiated by any substantially affected person, including an
 1014 owner or builder subject to a decision of a local building

1015 official or an association of owners or builders having members
 1016 who are subject to a decision of a local building official. In
 1017 order to initiate review, the substantially affected person must
 1018 file a petition with the commission. The commission shall adopt
 1019 a form for the petition, which shall be published on the
 1020 Building Code Information System. The form shall, at a minimum,
 1021 require the following:

1022 a. The name and address of the county or municipality in
 1023 which provisions of the Florida Building Code or the Florida
 1024 Accessibility Code for Building Construction are being
 1025 interpreted.

1026 b. The name and address of the local building official who
 1027 has made the interpretation being appealed.

1028 c. The name, address, and telephone number of the
 1029 petitioner; the name, address, and telephone number of the
 1030 petitioner's representative, if any; and an explanation of how
 1031 the petitioner's substantial interests are being affected by the
 1032 local interpretation of the Florida Building Code or the Florida
 1033 Accessibility Code for Building Construction.

1034 d. A statement of the provisions of the Florida Building
 1035 Code or the Florida Accessibility Code for Building Construction
 1036 which are being interpreted by the local building official.

1037 e. A statement of the interpretation given to provisions
 1038 of the Florida Building Code or the Florida Accessibility Code
 1039 for Building Construction by the local building official and the
 1040 manner in which the interpretation was rendered.

1041 f. A statement of the interpretation that the petitioner
 1042 contends should be given to the provisions of the Florida
 1043 Building Code or the Florida Accessibility Code for Building
 1044 Construction and a statement supporting the petitioner's
 1045 interpretation.

1046 g. Space for the local building official to respond in
 1047 writing. The space shall, at a minimum, require the local
 1048 building official to respond by providing a statement admitting
 1049 or denying the statements contained in the petition and a
 1050 statement of the interpretation of the provisions of the Florida
 1051 Building Code or the Florida Accessibility Code for Building
 1052 Construction which the local jurisdiction or the local building
 1053 official contends is correct, including the basis for the
 1054 interpretation.

1055 3. The petitioner shall submit the petition to the local
 1056 building official, who shall place the date of receipt on the
 1057 petition. The local building official shall respond to the
 1058 petition in accordance with the form and shall return the
 1059 petition along with his or her response to the petitioner within
 1060 5 days after receipt, exclusive of Saturdays, Sundays, and legal
 1061 holidays. The petitioner may file the petition with the
 1062 commission at any time after the local building official
 1063 provides a response. If no response is provided by the local
 1064 building official, the petitioner may file the petition with the
 1065 commission 10 days after submission of the petition to the local
 1066 building official and shall note that the local building

1067 | official did not respond.

1068 | 4. Upon receipt of a petition that meets the requirements
 1069 | of subparagraph 2., the commission shall immediately provide
 1070 | copies of the petition to the a panel, and the commission shall
 1071 | publish the petition, including any response submitted by the
 1072 | local building official, on the Building Code Information System
 1073 | in a manner that allows interested persons to address the issues
 1074 | by posting comments.

1075 | 5. The panel shall conduct proceedings as necessary to
 1076 | resolve the issues; shall give due regard to the petitions, the
 1077 | response, and to comments posed on the Building Code Information
 1078 | System; and shall issue an interpretation regarding the
 1079 | provisions of the Florida Building Code or the Florida
 1080 | Accessibility Code for Building Construction within 21 days
 1081 | after the filing of the petition. The panel shall render a
 1082 | determination based upon the Florida Building Code or the
 1083 | Florida Accessibility Code for Building Construction or, if the
 1084 | code is ambiguous, the intent of the code. The panel's
 1085 | interpretation shall be provided to the commission, which shall
 1086 | publish the interpretation on the Building Code Information
 1087 | System and in the Florida Administrative Register. The
 1088 | interpretation shall be considered an interpretation entered by
 1089 | the commission, and shall be binding upon the parties and upon
 1090 | all jurisdictions subject to the Florida Building Code or the
 1091 | Florida Accessibility Code for Building Construction, unless it
 1092 | is superseded by a declaratory statement issued by the Florida

1093 Building Commission or by a final order entered after an appeal
 1094 proceeding conducted in accordance with subparagraph 7.

1095 6. It is the intent of the Legislature that review
 1096 proceedings be completed within 21 days after the date that a
 1097 petition seeking review is filed with the commission, and the
 1098 time periods set forth in this paragraph may be waived only upon
 1099 consent of all parties.

1100 7. Any substantially affected person may appeal an
 1101 interpretation rendered by the ~~a hearing officer~~ panel by filing
 1102 a petition with the commission. Such appeals shall be initiated
 1103 in accordance with chapter 120 and the uniform rules of
 1104 procedure and must be filed within 30 days after publication of
 1105 the interpretation on the Building Code Information System or in
 1106 the Florida Administrative Register. Hearings shall be conducted
 1107 pursuant to chapter 120 and the uniform rules of procedure.
 1108 Decisions of the commission are subject to judicial review
 1109 pursuant to s. 120.68. The final order of the commission is
 1110 binding upon the parties and upon all jurisdictions subject to
 1111 the Florida Building Code or the Florida Accessibility Code for
 1112 Building Construction.

1113 8. The burden of proof in any proceeding initiated in
 1114 accordance with subparagraph 7. is on the party who initiated
 1115 the appeal.

1116 9. In any review proceeding initiated in accordance with
 1117 this paragraph, including any proceeding initiated in accordance
 1118 with subparagraph 7., the fact that an owner or builder has

1119 | proceeded with construction may not be grounds for determining
 1120 | an issue to be moot if the issue is one that is likely to arise
 1121 | in the future.

1122 |

1123 | This paragraph provides the exclusive remedy for addressing
 1124 | requests to review local interpretations of the Florida Building
 1125 | Code or the Florida Accessibility Code for Building Construction
 1126 | and appeals from review proceedings.

1127 | Section 23. Subsection (6) of section 553.79, Florida
 1128 | Statutes, is amended to read:

1129 | 553.79 Permits; applications; issuance; inspections.—

1130 | (6) A permit may not be issued for any building
 1131 | construction, erection, alteration, modification, repair, or
 1132 | addition unless the applicant for such permit complies with the
 1133 | requirements for plan review established by the Florida Building
 1134 | Commission within the Florida Building Code. However, the code
 1135 | shall set standards and criteria to authorize preliminary
 1136 | construction before completion of all building plans review,
 1137 | including, but not limited to, special permits for the
 1138 | foundation only, and such standards shall take effect concurrent
 1139 | with the first effective date of the Florida Building Code.

1140 | After submittal of the appropriate construction documents, the
 1141 | building official may issue a permit for the construction of
 1142 | foundations or any other part of a building or structure before
 1143 | the construction documents for the whole building or structure
 1144 | have been submitted. The holder of such permit for the

1145 foundation or other parts of a building or structure shall
 1146 proceed at the holder's own risk and without assurance that a
 1147 permit for the entire structure will be granted. Corrections may
 1148 be required to meet the requirements of the technical codes.

1149 Section 24. Paragraph (d) is added to subsection (7) of
 1150 section 553.80, Florida Statutes, to read:

1151 553.80 Enforcement.—

1152 (7) The governing bodies of local governments may provide
 1153 a schedule of reasonable fees, as authorized by s. 125.56(2) or
 1154 s. 166.222 and this section, for enforcing this part. These
 1155 fees, and any fines or investment earnings related to the fees,
 1156 shall be used solely for carrying out the local government's
 1157 responsibilities in enforcing the Florida Building Code. When
 1158 providing a schedule of reasonable fees, the total estimated
 1159 annual revenue derived from fees, and the fines and investment
 1160 earnings related to the fees, may not exceed the total estimated
 1161 annual costs of allowable activities. Any unexpended balances
 1162 shall be carried forward to future years for allowable
 1163 activities or shall be refunded at the discretion of the local
 1164 government. The basis for a fee structure for allowable
 1165 activities shall relate to the level of service provided by the
 1166 local government and shall include consideration for refunding
 1167 fees due to reduced services based on services provided as
 1168 prescribed by s. 553.791, but not provided by the local
 1169 government. Fees charged shall be consistently applied.

1170 (d) The local enforcement agency may not require the

1171 payment of any additional fees, charges, or expenses associated
 1172 with:

1173 1. Providing proof of licensure pursuant to this chapter;

1174 2. Recording or filing a license issued pursuant to this
 1175 chapter; or

1176 3. Providing, recording, or filing evidence of workers'
 1177 compensation insurance coverage as required by chapter 440.

1178 Section 25. Subsections (4) and (7) of section 553.841,
 1179 Florida Statutes, are amended to read:

1180 553.841 Building code compliance and mitigation program.—

1181 (4) In administering the Florida Building Code Compliance
 1182 and Mitigation Program, the department may ~~shall~~ maintain,
 1183 update, develop, or cause to be developed code-related training
 1184 and education ~~advanced modules designed~~ for use by each
 1185 profession.

1186 ~~(7) The Florida Building Commission shall provide by rule~~
 1187 ~~for the accreditation of courses related to the Florida Building~~
 1188 ~~Code by accreditors approved by the commission. The commission~~
 1189 ~~shall establish qualifications of accreditors and criteria for~~
 1190 ~~the accreditation of courses by rule. The commission may revoke~~
 1191 ~~the accreditation of a course by an accreditor if the~~
 1192 ~~accreditation is demonstrated to violate this part or the rules~~
 1193 ~~of the commission.~~

1194 Section 26. Paragraph (a) of subsection (8) of section
 1195 553.842, Florida Statutes, is amended to read:

1196 553.842 Product evaluation and approval.—

1197 (8) The commission may adopt rules to approve the
 1198 following types of entities that produce information on which
 1199 product approvals are based. All of the following entities,
 1200 including engineers and architects, must comply with a
 1201 nationally recognized standard demonstrating independence or no
 1202 conflict of interest:

1203 (a) Evaluation entities approved pursuant to this
 1204 paragraph. The commission shall specifically approve the
 1205 National Evaluation Service, the International Association of
 1206 Plumbing and Mechanical Officials Evaluation Service, the
 1207 International Code Council Evaluation Services, Underwriters
 1208 Laboratories, LLC, and the Miami-Dade County Building Code
 1209 Compliance Office Product Control Division. Architects and
 1210 engineers licensed in this state are also approved to conduct
 1211 product evaluations as provided in subsection (5).

1212 Section 27. Subsection (4) of section 553.844, Florida
 1213 Statutes, is revived, readopted, and amended to read:

1214 553.844 Windstorm loss mitigation; requirements for roofs
 1215 and opening protection.—

1216 (4) Notwithstanding the provisions of this section,
 1217 exposed mechanical equipment or appliances fastened to a roof or
 1218 installed on the ground in compliance with the code using rated
 1219 stands, platforms, curbs, slabs, walls, or other means are
 1220 deemed to comply with the wind resistance requirements of the
 1221 2007 Florida Building Code, as amended. Further support or
 1222 enclosure of such mechanical equipment or appliances is not

1223 required by a state or local official having authority to
 1224 enforce the Florida Building Code. ~~This subsection expires on~~
 1225 ~~the effective date of the 2013 Florida Building Code.~~

1226 Section 28. Section 553.883, Florida Statutes, is amended
 1227 to read:

1228 553.883 Smoke alarms in one-family and two-family
 1229 dwellings and townhomes.—One-family and two-family dwellings and
 1230 townhomes undergoing a repair, or a level 1 alteration as
 1231 defined in the Florida Building Code, may use smoke alarms
 1232 powered by 10-year nonremovable, nonreplaceable batteries in
 1233 lieu of retrofitting such dwelling with smoke alarms powered by
 1234 the dwelling's electrical system. Effective January 1, 2015, a
 1235 battery-powered smoke alarm that is newly installed or replaces
 1236 an existing battery-powered smoke alarm must be powered by a
 1237 nonremovable, nonreplaceable battery that powers the alarm for
 1238 at least 10 years. The battery requirements of this section do
 1239 not apply to a fire alarm, smoke detector, smoke alarm, or
 1240 ancillary component that is electronically connected as a part
 1241 of a centrally monitored or supervised alarm system; or that
 1242 uses a low-power, radio frequency wireless communication signal;
 1243 or that contains multiple sensors, such as a smoke alarm
 1244 combined with a carbon monoxide alarm or other devices as the
 1245 State Fire Marshal designates by rule.

1246 Section 29. Section 553.908, Florida Statutes, is amended
 1247 to read:

1248 553.908 Inspection.—Before construction or renovation is

1249 completed, the local enforcement agency shall inspect buildings
 1250 for compliance with the standards of this part. Notwithstanding
 1251 any other provision of the code or law, effective July 1, 2016,
 1252 section R402.4.1 of the Florida Building Code, 5th Edition
 1253 (2014) Energy Conservation, which became effective on June 30,
 1254 2015, shall cease to be effective. Instead, section 402.4.2 of
 1255 the 2010 Florida Building Code, Energy Conservation, relating to
 1256 air sealing and insulation, in effect before June 30, 2015,
 1257 shall govern and become applicable and effective on June 30,
 1258 2016, and thereafter. Additionally, a state or local enforcement
 1259 agency or code official may not require any type of mandatory
 1260 blower door test or air infiltration test to determine specific
 1261 air infiltration levels or air leakage rates in a residential
 1262 building or dwelling unit and may not require the installation
 1263 of any mechanical ventilation devices designed to filter outside
 1264 air through an HVAC system as a condition of a permit or to
 1265 determine compliance with the code. However, if section R402.4.1
 1266 of the Florida Building Code, 5th Edition (2014) Energy
 1267 Conservation, is voluntarily used, the local enforcement agency
 1268 shall inspect the construction or renovation for compliance with
 1269 that section.

1270 Section 30. Subsections (17) and (18) are added to section
 1271 633.202, Florida Statutes, to read:

1272 633.202 Florida Fire Prevention Code.—

1273 (17) The authority having jurisdiction shall determine the
 1274 minimum radio signal strength for fire department communications

1275 in all new high-rise and existing high-rise buildings. Existing
 1276 buildings are not required to comply with minimum radio strength
 1277 for fire department communications and two-way radio system
 1278 enhancement communications as required by the Florida Fire
 1279 Prevention Code until January 1, 2022. However, by December 31,
 1280 2019, an existing building that is not in compliance with the
 1281 requirements for minimum radio strength for fire department
 1282 communications must apply for an appropriate permit for the
 1283 required installation with the local government agency having
 1284 jurisdiction and must demonstrate that the building will become
 1285 compliant by January 1, 2022. Existing apartment buildings are
 1286 not required to comply until January 1, 2025. However, existing
 1287 apartment buildings are required to apply for the appropriate
 1288 permit for the required communications installation by December
 1289 31, 2022.

1290 (18) Areas of refuge shall be provided if required by the
 1291 Florida Building Code, Accessibility. Required portions of an
 1292 area of refuge shall be accessible from the space they serve by
 1293 an accessible means of egress.

1294 Section 31. Subsection (5) is added to section 633.206,
 1295 Florida Statutes, to read:

1296 633.206 Uniform firesafety standards—The Legislature
 1297 hereby determines that to protect the public health, safety, and
 1298 welfare it is necessary to provide for firesafety standards
 1299 governing the construction and utilization of certain buildings
 1300 and structures. The Legislature further determines that certain

1301 buildings or structures, due to their specialized use or to the
 1302 special characteristics of the person utilizing or occupying
 1303 these buildings or structures, should be subject to firesafety
 1304 standards reflecting these special needs as may be appropriate.

1305 (5) The home environment provisions in the most current
 1306 edition of the codes adopted by the division may be applied to
 1307 existing assisted living facilities, at the option of each
 1308 facility, notwithstanding the edition of the codes applied at
 1309 the time of construction.

1310 Section 32. Subsection (5) of section 633.208, Florida
 1311 Statutes, is amended to read:

1312 633.208 Minimum firesafety standards.—

1313 (5) With regard to existing buildings, the Legislature
 1314 recognizes that it is not always practical to apply any or all
 1315 of the provisions of the Florida Fire Prevention Code and that
 1316 physical limitations may require disproportionate effort or
 1317 expense with little increase in fire or life safety. Before
 1318 ~~Prior to~~ applying the minimum firesafety code to an existing
 1319 building, the local fire official shall determine whether ~~that~~ a
 1320 threat to lifesafety or property exists. If a threat to
 1321 lifesafety or property exists, the fire official shall apply the
 1322 applicable firesafety code for existing buildings to the extent
 1323 practical to ensure ~~assure~~ a reasonable degree of lifesafety and
 1324 safety of property or the fire official shall fashion a
 1325 reasonable alternative that ~~which~~ affords an equivalent degree
 1326 of lifesafety and safety of property. The local fire official

1327 may consider the fire safety evaluation systems found in NFPA
 1328 101A, Guide on Alternative Solutions to Life Safety, adopted by
 1329 the State Fire Marshal, as acceptable systems for the
 1330 identification of low-cost, reasonable alternatives. It is
 1331 acceptable to use the Fire Safety Evaluation System for Board
 1332 and Care Facilities using prompt evacuation capabilities
 1333 parameter values on existing residential high-rise buildings.

1334 The decision of the local fire official may be appealed to the
 1335 local administrative board described in s. 553.73.

1336 Section 33. Section 633.336, Florida Statutes, is amended
 1337 to read:

1338 633.336 Contracting without certificate prohibited;
 1339 violations; penalty.—

1340 (1) It is unlawful for any organization or individual to
 1341 engage in the business of layout, fabrication, installation,
 1342 inspection, alteration, repair, or service of a fire protection
 1343 system, other than a preengineered system, act in the capacity
 1344 of a fire protection contractor, or advertise itself as being a
 1345 fire protection contractor without having been duly certified
 1346 and holding a valid and existing certificate, except as
 1347 hereinafter provided. The holder of a certificate used to
 1348 qualify an organization must be a full-time employee of the
 1349 qualified organization or business. A certificateholder who is
 1350 employed by more than one fire protection contractor during the
 1351 same time is deemed not to be a full-time employee of either
 1352 contractor. The State Fire Marshal shall revoke, for a period

1353 determined by the State Fire Marshal, the certificate of a
 1354 certificateholder who allows the use of the certificate to
 1355 qualify a company of which the certificateholder is not a full-
 1356 time employee. A contractor who maintains more than one place of
 1357 business must employ a certificateholder at each location. This
 1358 subsection does not prohibit an employee acting on behalf of
 1359 governmental entities from inspecting and enforcing firesafety
 1360 codes, provided such employee is certified under s. 633.216.

1361 (2) A fire protection contractor certified under this
 1362 chapter may not:

1363 (a) Enter into a written or oral agreement to authorize,
 1364 or otherwise knowingly allow, a contractor who is not certified
 1365 under this chapter to engage in the business of, or act in the
 1366 capacity of, a fire protection contractor.

1367 (b) Apply for or obtain a construction permit for fire
 1368 protection work unless the fire protection contractor or the
 1369 business organization qualified by the fire protection
 1370 contractor has contracted to conduct the work specified in the
 1371 application for the permit.

1372 (3) The Legislature recognizes that special expertise is
 1373 required for fire pump control panels and maintenance of
 1374 electric and diesel pump drivers and that it is not economically
 1375 feasible for all contractors to employ these experts full-time
 1376 whose work may be limited. It is therefore deemed acceptable for
 1377 a fire protection contractor licensed under chapter 633 to
 1378 subcontract with companies providing advanced technical services

1379 for the installation, servicing, and maintenance of fire pump
 1380 control panels and pump drivers. To ensure the integrity of the
 1381 system and to protect the interests of the property owner, those
 1382 providing technical support services for fire pump control
 1383 panels and pump drivers must be under contract with a licensed
 1384 fire protection contractor.

1385 (4)(3) A person who violates any provision of this act or
 1386 commits any of the acts constituting cause for disciplinary
 1387 action as herein set forth commits a misdemeanor of the second
 1388 degree, punishable as provided in s. 775.082 or s. 775.083.

1389 (5)(4) In addition to the penalties provided in subsection
 1390 (4) (3), a fire protection contractor certified under this
 1391 chapter who violates any provision of this section or who
 1392 commits any act constituting cause for disciplinary action is
 1393 subject to suspension or revocation of the certificate and
 1394 administrative fines pursuant to s. 633.338.

1395 Section 34. The Calder Sloan Swimming Pool Electrical-
 1396 Safety Task Force.-There is established within the Florida
 1397 Building Commission the Calder Sloan Swimming Pool Electrical-
 1398 Safety Task Force.

1399 (1) The purpose of the task force is to study standards on
 1400 grounding, bonding, lighting, wiring, and all electrical aspects
 1401 for safety in and around public and private swimming pools,
 1402 especially with regard to minimizing risks of electrocutions
 1403 linked to swimming pools. The task force shall submit a report
 1404 of its findings, including recommended revisions to state law,

1405 if any, to the Governor, the President of the Senate, and the
 1406 Speaker of the House of Representatives by November 1, 2016.

1407 (2) The task force shall consist of the swimming pool and
 1408 electrical technical advisory committees of the Florida Building
 1409 Commission.

1410 (3) The task force shall be chaired by the swimming pool
 1411 contractor appointed to the Florida Building Commission pursuant
 1412 to s. 553.74, Florida Statutes.

1413 (4) The Florida Building Commission shall provide such
 1414 staff, information, and other assistance as is reasonably
 1415 necessary to assist the task force in carrying out its
 1416 responsibilities.

1417 (5) Members of the task force shall serve without
 1418 compensation.

1419 (6) The task force shall meet as often as necessary to
 1420 fulfill its responsibilities. Meetings may be conducted by
 1421 conference call, teleconferencing, or similar technology.

1422 (7) This section expires December 31, 2016.

1423 Section 35. The Florida Building Commission shall define
 1424 the term "fire separation distance" in Chapter 2, Definitions,
 1425 of the Florida Building Code, 5th Edition (2014) Residential, as
 1426 follows:

1427

1428 "FIRE SEPARATION DISTANCE. The distance measured from the
 1429 building face to one of the following:

1430 1. To the closest interior lot line;

- 1431 2. To the centerline of a street, an alley, or a public way;
 1432 3. To an imaginary line between two buildings on the lot; or
 1433 4. To an imaginary line between two buildings when the exterior
 1434 wall of one building is located on a zero lot line.

1435

1436 The distance shall be measured at a right angle from the face of
 1437 the wall."

1438 Section 36. The Florida Building Commission shall amend
 1439 the Florida Building Code, 5th Edition (2014) Residential, to
 1440 allow openings and roof overhang projections on the exterior
 1441 wall of a building located on a zero lot line, when the building
 1442 exterior wall is separated from an adjacent building exterior
 1443 wall by a distance of 6 feet or more and the roof overhang
 1444 projection is separated from an adjacent building projection by
 1445 a distance of 4 feet or more, with 1-hour fire-resistive
 1446 construction on the underside of the overhang required, unless
 1447 the separation between projections is 6 feet or more.

1448 Section 37. The Florida Building Commission shall adopt
 1449 into the Florida Building Code, 5th Edition (2014) Energy
 1450 Conservation, the following:

1451

1452 "Section 406 relating to the Alternative Performance Path,
 1453 Energy Rating Index of the 2015 International Energy
 1454 Conservation Code (IECC) may be used as an option for
 1455 demonstrating compliance with the Florida Building Code, Energy
 1456 Conservation. TABLE R406.4 MAXIMUM ENERGY RATING INDEX shall

CS/HB 535

2016

1457 reflect the following energy rating index: for Climate Zone 1,
1458 an index of 65; for Climate Zone 2, an index of 65."

1459 Section 38. This act shall take effect July 1, 2016.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
 2 Appropriations Subcommittee
 3 Representative Eagle offered the following:
 4

Amendment (with title amendment)

6 Between lines 1422 and 1423, insert:

7 Section 35. Construction Industry Workforce Task Force.-

8 (1) The Construction Industry Workforce Task Force is
 9 created within the University of Florida Rinker School of
 10 Construction. The goals of the task force are to:

11 (a) Address the critical shortage of individuals trained
 12 in building construction and inspection.

13 (b) Develop a consensus path for training the next
 14 generation of construction workers in the state.

15 (c) Determine the causes for the current shortage of a
 16 trained construction industry work force and address the impact
 17 of the shortages on the recovery of the real estate market.

Amendment No. 1

- 18 (d) Review current methods and resources available for
19 construction training.
- 20 (e) Review the state of construction training available in
21 K-12 schools.
- 22 (f) Address training issues relating to building code
23 inspectors to increase the number of qualified inspectors.
- 24 (2) The task force shall consist of 19 members. Except as
25 otherwise specified, each member shall be chosen by the
26 association that he or she represents, as follows:
- 27 (a) A member of the House of Representatives appointed by
28 the Speaker of the House of Representatives.
- 29 (b) A member of the Senate appointed by the President of
30 the Senate.
- 31 (c) A member representing the Florida Associated General
32 Contractors Council.
- 33 (d) A member representing the Associated Builders and
34 Contractors of Florida.
- 35 (e) A member representing the Florida Home Builders
36 Association.
- 37 (f) A member representing the Florida Fire Sprinkler
38 Association.
- 39 (g) A member representing the Florida Roofing, Sheet Metal
40 and Air Conditioning Contractors Association.
- 41 (h) A member representing the Florida Refrigeration and
42 Air Conditioning Contractors Association.

Amendment No. 1

43 (i) A member representing the Florida Plumbing-Heating-
44 Cooling Contractors Association.

45 (j) A member representing the Florida Swimming Pool
46 Association.

47 (k) A member representing the National Utility Contractors
48 Association of Florida.

49 (l) A member representing the Florida Concrete and
50 Products Association.

51 (m) A member representing the Alarm Association of
52 Florida.

53 (n) A member representing the Independent Electrical
54 Contractors.

55 (o) A member representing the Florida AFL-CIO.

56 (p) A member representing the Building Officials
57 Association of Florida.

58 (q) A member representing the Asphalt Contractors
59 Association of Florida.

60 (r) A member representing the American Fire Sprinkler
61 Association-Florida Chapter.

62 (s) The chair of the Florida Building Commission.

63 (3) The task force shall elect a chair from among its
64 members.

65 (4) The University of Florida Rinker School of
66 Construction shall provide such assistance as is reasonably
67 necessary to assist the task force in carrying out its
68 responsibilities.

Amendment No. 1

69 (5) Members of the task force are entitled to receive
70 reimbursement for per diem and travel expenses pursuant to s.
71 112.061, Florida Statutes.

72 (6) The task force shall meet as often as necessary to
73 fulfill its responsibilities but not fewer than three times. The
74 first meeting must be held no later than September 1, 2016.
75 Meetings may be conducted by conference call, teleconferencing,
76 or similar technology.

77 (7) The task force shall submit a final report to the
78 Governor, the President of the Senate, and the Speaker of the
79 House of Representatives by February 1, 2017.

80 (8) The Department of Business and Professional Regulation
81 shall provide \$50,000 from funds available for the Florida
82 Building Code Compliance and Mitigation Program under s.
83 553.841(5), Florida Statutes, to the University of Florida
84 Rinker School of Construction for purposes of implementing this
85 section.

86 (9) This section expires July 1, 2017.

87

88

89

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

90

Remove line 153 and insert:

91

expiration of the task force; creating the

92

Construction Industry Workforce Task Force within the

93

University of Florida Rinker School of Construction;

94

specifying the goals of the task force; providing for

Amendment No. 1

95 membership; requiring the University of Florida Rinker
96 School of Construction to provide assistance to the
97 task force; providing that members of the task force
98 may receive per diem and travel expenses; providing
99 for meetings; requiring a report to the Governor and
100 Legislature by a specified date; providing an
101 appropriation from specified funds available to the
102 Department of Business and Professional Regulation;
103 providing for expiration of the task force; requiring
104 the Florida

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 579 Municipal Power Regulation
SPONSOR(S): Energy & Utilities Subcommittee; Mayfield and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 840

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	6 Y, 5 N, As CS	Keating	Keating
2) Government Operations Appropriations Subcommittee		White <i>CCW</i>	Topp <i>BDT</i>
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Florida Municipal Power Agency (FMPA) was created in 1978 through a series of interlocal agreements under s. 163.01, F.S., to provide wholesale electrical power supply to municipal electric utilities. FMPA is currently owned by 31 municipalities. Through various joint electrical power supply projects, it supplies all of the electrical power needs of 13 member utilities (through its All-Requirements Project) and some of the power needs for seven other member utilities. FMPA member utilities that do not participate in power supply projects may use other FMPA services, including training.

FMPA is governed by a Board of Directors, with one Board member appointed by each member municipality. The Board decides all issues concerning each of FMPA's power supply projects. The All-Requirements Project is governed by an Executive Committee that reports to the Board. Each municipality that participates in the All-Requirements Project appoints a member to the Executive Committee. Through public meetings of these governing bodies, FMPA establishes a budget and the rate structures applicable to its electrical power supply projects.

Pursuant to proviso language accompanying a specific appropriation in the Fiscal Year 2014-2015 General Appropriations Act, FMPA was subject to a full operational audit by the State of Florida Auditor General. The audit report was completed in March 2015 and produced fifteen findings and recommendations related to FMPA's operations.

The bill requires that any entity created under s. 163.01, F.S., that supplies electricity to member municipalities must annually submit independently prepared financial statements for each individual generating asset to its member municipalities and to the Public Service Commission. The bill further provides that only an elected official of a member municipality may be appointed to serve on the governing body of such an entity. Each current appointee that is not an elected official may continue to serve until expiration of his or her term but no later than July 1, 2018. These provisions appear to apply only to FMPA, as it is the only entity created under s. 163.01, F.S., to supply electricity to member municipalities.

The bill does not appear to impact state or local government revenues or expenditures.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Municipal Power Agency

In 1978, the Florida Municipal Power Agency (FMPA) was created through a series of interlocal agreements under s. 163.01, F.S., to provide wholesale power supply to municipal electric utilities. FMPA is currently owned by 31 municipalities.¹ Through various joint power supply projects², it supplies all of the electrical power needs of 13 member utilities (referred to as "All-Requirements Project" or "ARP" members) and some of the power needs for seven other member utilities.³ Through these projects, FMPA members maintain ownership interests in various electrical power plants throughout Florida.⁴ FMPA manages the transmission of electrical power over facilities owned by FMPA or its ARP members.⁵ FMPA also manages a "power pool" that includes the generating resources of its All-Requirements Project, Lakeland Electric, and Orlando Utilities Commission.⁶ According to its website, FMPA provides economies of scale in electrical power generation, allowing its members, through coordination of their individual power needs, to utilize larger, more efficient power plants and to diversify their power sources.⁷ FMPA members that do not participate in power supply projects may use other FMPA services, including training.⁸

FMPA is governed by a Board of Directors, with one Board member appointed by each member municipality. The Board decides all issues concerning each of FMPA's power supply projects except the All-Requirements Project. The ARP is governed by an Executive Committee. Each member municipality of the ARP appoints one Executive Committee member. The Board is responsible for approving the rate structures for all non-ARP projects, and the Executive Committee is responsible for approving the rate structure for the ARP project.⁹ As required by law, the Board and Executive Committee must conduct their public business, including rate-setting and budgeting, in open, public meetings after providing reasonable notice.^{10,11} A financial audit of FMPA is conducted annually by an independent auditor and is filed with the state.¹²

¹ Currently, FMPA serves the following municipalities: Alachua, Bartow, Blountstown, Bushnell, Chattahoochee, Clewiston, Fort Meade, Fort Pierce, Gainesville, Green Cove Springs, Havana, Homestead, Jacksonville Beach, Key West, Kissimmee, Lake Worth, Lakeland, Leesburg, Moore Haven, Mount Dora, New Smyrna Beach, Newberry, Ocala, Orlando, Quincy, St. Cloud, Starke, Vero Beach, Wauchula, Williston, and Winter Park. FLORIDA MUNICIPAL POWER AGENCY, *Members*, <http://fmpa.com/about/members/> (last visited January 5, 2016).

² Section 361.12, F.S., authorizes any electric utility, or any organization, association, or separate legal entity whose membership consists only of electric utilities, to join with any other such entity to finance, acquire, construct, manage, operate, or own an electric power supply project for the joint generation or transmission of electrical energy, or both. Further, section 361.13, F.S., authorizes any such entity to purchase capacity or energy, or both, in an agreed upon quantity from any project in which the purchaser has an ownership interest.

³ FLORIDA MUNICIPAL POWER AGENCY, *Energy Overview*, <http://fmpa.com/energy/overview-2/> (last visited January 5, 2016). For a list of the projects and the cities participating in each project, see FLORIDA MUNICIPAL POWER AGENCY, *Projects*, <http://fmpa.com/energy/projects/> (last visited January 5, 2016).

⁴ FLORIDA MUNICIPAL POWER AGENCY, *Plants*, <http://fmpa.com/energy/plants/> (last visited January 5, 2016).

⁵ FLORIDA MUNICIPAL POWER AGENCY, *Transmission*, <http://fmpa.com/energy/transmission/> (last visited January 5, 2016).

⁶ FLORIDA MUNICIPAL POWER AGENCY, *Power Pool*, <http://fmpa.com/energy/power-pool/> (last visited January 5, 2016).

⁷ FLORIDA MUNICIPAL POWER AGENCY, *About Overview*, <http://fmpa.com/about/overview/> (last visited January 5, 2016).

⁸ State of Florida Auditor General, *Operational Audit of Florida Municipal Power Agency, Report No. 2015-165*, March 2015, at p.3.

⁹ *Id.*

¹⁰ Article I, section 24 of the Florida Constitution requires, among other things, that all meetings of any collegial body of a county or municipality at which public business is to be transacted must be open and noticed to the public. Section 286.011(1), F.S., implements this provision and applies it to any board or commissions of any political subdivision of the state, which includes boards formed by interlocal agreement. See 84-16, Fla. Op. Att'y Gen. (1984).

Pursuant to proviso language accompanying a specific appropriation in the Fiscal Year 2014-2015 General Appropriations Act¹³, the State of Florida Auditor General was directed to retain subject matter experts to conduct a full audit of any entity created under s. 361.10, F.S.¹⁴ The audit was required to analyze all revenues, expenditures, administrative costs, bond agreements, contracts, and employment records and to provide a complete review of the rates of such entities. Under this direction, the Auditor General retained consultants and conducted an operational audit of FMPA and submitted its final audit report to the Speaker of the House of Representatives and the President of the Senate in March 2015.¹⁵ The audit report produced fifteen findings and recommendations related to FMPA's hedging activities, investments, personnel and payroll administration, procurement practices, ARP contract provisions, and information technology practices. The audit report was presented to the Joint Legislative Auditing Committee on March 30, 2015, with a follow-up discussion on October 5, 2015.¹⁶

Regulation of Wholesale Power Sales

The Federal Energy Regulatory Commission (FERC) has exclusive authority to regulate rates for certain wholesale transmission and power sales.¹⁷ However, FERC is not authorized to regulate rates for such wholesale sales by any political subdivision of a state or any rural electric cooperative.¹⁸ Accordingly, FMPA's rates and rate structure are not regulated by FERC. The Public Service Commission does not regulate wholesale transmission and power sales.¹⁹

Effect of Proposed Changes

The bill requires that any entity created under s. 163.01, F.S., that supplies electricity to member municipalities must annually submit an independently prepared financial statement for each individual generating asset to its member municipalities and to the Public Service Commission. This provision appears to apply only to FMPA, as it is the only entity created under s. 163.01, F.S., that supplies electricity to member municipalities.

The bill requires that these financial statements include the following:

- A balance sheet that reflects assets and liabilities associated with each generation asset, including the plant in service, accumulated additions and removals, net plant, depreciation, operations and maintenance expenses, allocations, and any other material asset and liability categories.

¹¹ In addition to public notice, FMPA states that it provides call-in numbers to allow public participation by phone and includes an opportunity for public comment at each meeting. FMPA also states that it uses a "two-read" practice under which significant business or policy decisions are brought to the Board or Executive Committee as an information item at one meeting then brought forward for action at a second meeting, allowing additional time for public notice and discussion.

¹² State of Florida Auditor General, *Operational Audit of Florida Municipal Power Agency, Report No. 2015-165*, March 2015 at 36 (Exhibit C, FMPA Management Response).

¹³ Specific Appropriation 2685, Fiscal Year 2014-2015 General Appropriations Act, Ch. 2014-51, Laws of Fla.

¹⁴ The reference in the appropriation to section 361.10, F.S., was likely misplaced. That section does not authorize the creation of any type of entity. Rather, it authorizes various types of existing utility entities to participate in joint electrical power supply projects.

¹⁵ State of Florida Auditor General, *Operational Audit of Florida Municipal Power Agency, Report No. 2015-165*, March 2015. The Auditor General did not audit any other entities that participate in joint electrical power supply projects authorized by s. 361.10, F.S.

¹⁶ At the October 5, 2015, meeting of the Joint Legislative Auditing Committee, FMPA indicated that it had addressed 10 of the 15 audit report findings and anticipated addressing the remaining findings by the end of 2015. FMPA committed to provide the committee with progress reports every 60 days until each of the audit report's findings have been addressed. The committee indicated that it may conduct additional meetings to discuss FMPA's progress.

¹⁷ 16 U.S.C. §824.

¹⁸ 16 U.S.C. §824(f).

¹⁹ In *Lee County Electric Cooperative, Inc. v. Jacobs*, 820 So. 2d 297 (Fla. 2001), the Florida Supreme Court upheld an order of the Public Service Commission determining that it lacked jurisdiction over the wholesale rate structure of a rural electric cooperative.

- An income statement that reflects each generation asset's operational and financial activities for the reporting period, including revenues, expenses, gains, and losses, with gains or losses from hedging activities associated with the generation asset to be separately itemized.
- A statement of cash flows that identifies changes in the generation asset's cash flows during the reporting period.
- A statement of the current fair market value for each generation asset,²⁰ which must include the overall fair market value of the generation asset as a whole and each member municipality's equity position net of the entity's debt, based on the current fair market generation asset value. This statement must also include, after considering the market value of the generation assets, the "net return of equity or the cost to exit the entity" for each member municipality.

The bill does not require the PSC or any member municipality to take any specific action after receiving a financial statement pursuant to this provision.

The bill further provides that only an elected official of a municipality may be appointed to serve on the governing body of an entity created under s. 163.01, F.S., to supply electricity to member municipalities. The bill provides that a current member of such a governing body who is not an elected official may continue to serve until expiration of his or her term but no later than July 1, 2018. This provision appears to apply only to FMPA, as it is the only entity created under s. 163.01, F.S., to supply electricity to member municipalities.

B. SECTION DIRECTORY:

Section 1. Creates s. 163.01(19), F.S., establishing financial reporting requirements for certain entities created under s. 163.01, F.S., and requiring that the governing bodies of such entities consist solely of elected officials.

Section 2. Provides an effective date of July 1, 2016.

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.

²⁰ The bill provides that current fair market value shall be determined assuming the price that a willing buyer would pay a willing seller for the generation asset, with neither party being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts, and assuming all risk of ownership, loss, and decommissioning, as applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

FMPA may incur costs to comply with the financial reporting requirements imposed by the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2016, the Energy & Utilities Subcommittee adopted an amendment to the bill and reported the bill favorably as a committee substitute. The amendment removed provisions that required the Public Counsel to participate in FMPA rate-setting proceedings and removed provisions that defined FMPA as a public utility for purposes of regulation by the PSC. This analysis reflects the committee substitute.

1 A bill to be entitled
 2 An act relating to municipal power regulation;
 3 amending s. 163.01, F.S.; requiring certain entities
 4 created under the Interlocal Cooperation Act of 1969
 5 to submit independently prepared financial statements
 6 for certain electric power projects to specified
 7 public entities; providing statement requirements;
 8 providing eligibility requirements for membership on
 9 the governing body of certain entities created under
 10 the Interlocal Cooperation Act of 1969; providing an
 11 effective date.

12
 13 WHEREAS, The Florida Municipal Power Agency is a joint-use
 14 action agency created pursuant to a series of interlocal
 15 agreements with the state's municipalities to finance, acquire,
 16 contract, manage, and operate its own electric power projects or
 17 jointly accomplish the same purposes with other public or
 18 private utilities, and

19 WHEREAS, the Florida Municipal Power Agency is governed by
 20 a board of directors, consisting of one board member from each
 21 member municipality, which decides all issues concerning each
 22 project except for the "All-Requirements" power supply project,
 23 and

24 WHEREAS, the All-Requirements power supply project is
 25 governed by an executive committee, with each All-Requirements
 26 project member municipality that purchases power from the

27 project appointing one executive committee member, and
 28 WHEREAS, the Auditor General conducted an operational audit
 29 of the Florida Municipal Power Agency and released Report No.
 30 2015-165 to the Joint Legislative Auditing Committee on March
 31 30, 2015, which included findings and recommendations, and
 32 WHEREAS, the Auditor General found many of the Florida
 33 Municipal Power Agency's hedging activities to be inconsistent
 34 with other joint-use action agencies, leading to net losses of
 35 \$247.6 million over the past 12 fiscal years, and
 36 WHEREAS, the Auditor General concluded that several of the
 37 Florida Municipal Power Agency's personnel and payroll
 38 administration activities may negatively affect future rates,
 39 including the Chief Executive Officer's employment contract that
 40 provides severance pay and lifetime benefits even if employment
 41 is terminated for cause, and
 42 WHEREAS, the Florida Municipal Power Agency did not
 43 consistently follow its own procurement and competitive
 44 selection policies, one of which may increase the cost of future
 45 bond issues, and
 46 WHEREAS, the Florida Municipal Power Agency's All-
 47 Requirements project agreement to curtail peak-shaving
 48 activities is primarily voluntary, relies on self-reporting, and
 49 contains no penalties for noncompliance, and
 50 WHEREAS, certain All-Requirements project contract
 51 provisions relating to the withdrawal of members are ambiguous,
 52 use a fixed discount rate rather than one based on current

53 capital costs, and do not provide for independent verification
 54 by a withdrawing member, and

55 WHEREAS, even though the Florida Municipal Power Agency is
 56 a governmental entity, many of the laws that apply to local
 57 governments do not apply to the agency, and

58 WHEREAS, the Florida Municipal Power Agency is not subject
 59 to any rate-setting authority, including by the Public Service
 60 Commission, and

61 WHEREAS, there exists a need to promote transparency and
 62 consistency and to increase public understanding and confidence
 63 in the operation of the Florida Municipal Power Agency by the
 64 member municipalities and the public, including those electric
 65 ratepayers who are not residents of the municipality supplying
 66 electric power but who are subject to a municipality that is
 67 receiving power from the agency, NOW, THEREFORE,

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

70
 71 Section 1. Subsection (19) is added to section 163.01,
 72 Florida Statutes, to read:

73 163.01 Florida Interlocal Cooperation Act of 1969.—

74 (19) (a) Any entity created pursuant to this section that
 75 supplies electricity through an interlocal agreement to its
 76 member municipalities shall annually submit to the Public
 77 Service Commission and each member municipality that
 78 participates in the electric power project an independently

79 prepared financial statement for each individual generation
 80 asset. The financial statement must include:
 81 1. A balance sheet that reflects assets and liabilities
 82 associated with each generation asset, including the plant in
 83 service, accumulated additions and removals, net plant,
 84 depreciation, operations and maintenance expenses, allocations,
 85 and any other material asset and liability categories.
 86 2. An income statement that reflects each generation
 87 asset's operational and financial activities for the reporting
 88 period, including revenues, expenses, gains, and losses. Any
 89 gains or losses from hedging activities associated with the
 90 generation asset shall be separately itemized.
 91 3. A statement of cash flows that identifies changes in
 92 the generation asset's cash flows during the reporting period.
 93 4. The current fair market value for each generation
 94 asset. The current fair market value shall be determined
 95 assuming the price that a willing buyer would pay a willing
 96 seller for the generation asset, with neither party being under
 97 any compulsion to buy or sell and both having reasonable
 98 knowledge of relevant facts, and assuming all risk of ownership,
 99 loss, and decommissioning, as applicable. The current fair
 100 market value statement shall include the overall fair market
 101 value of the generation asset as a whole and each member
 102 municipality's equity position net of the entity's debt, based
 103 on the current fair market generation asset value. The current
 104 fair market value statement shall include, after considering the

105 market value of the generation assets, the net return of equity
 106 or the cost to exit the entity for each member municipality.

107 (b) To serve as a member of the governing body of an
 108 entity created pursuant to this section for the purpose of
 109 supplying electricity to its member municipalities, each member
 110 of the governing body must be an elected official from one of
 111 the entity's member municipalities. Current members of a
 112 governing body of such an entity who are not elected officials
 113 may continue to serve until expiration of their terms but no
 114 later than July 1, 2018.

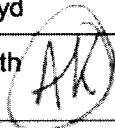

115 Section 2. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 613 Workers' Compensation System Administration

SPONSOR(S): Sullivan

TIED BILLS: IDEN./SIM. BILLS: SB 986

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	9 Y, 3 N	Lloyd	Luczynski
2) Government Operations Appropriations Subcommittee		Keith 	Topp 
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The workers' compensation law requires an employer to obtain coverage for their "employees" that provides for lost income and all medically necessary remedial treatment, attendance, and care resulting from work related injuries and occupational diseases. The Division of Workers' Compensation within the Department of Financial Services (DFS) provides regulatory oversight of the system. The DFS' responsibilities include enforcing employer compliance with coverage requirements, administration of the workers' compensation health care delivery system, collecting system data, and assisting injured workers regarding their benefits and rights.

The bill contains a variety of changes to the workers' compensation law. The changes relate to employer compliance and coverage responsibilities, DFS powers and duties, resolution of medical issues, repeal of an underutilized program, and elimination of certain fees. Issues addressed include:

- Changing the status of non-construction industry limited liability company (LLC) members to allow them to "opt-in" to the workers' compensation system, instead of their current status that allows them to "opt-out";
- Providing for a 25 percent penalty credit for certain employers;
- Establishing a deadline for employers to file certain documentation to receive a penalty reduction;
- Reducing the imputed payroll multiplier related to penalty calculations from 2 times to 1.5 times the statewide average weekly wage;
- Allowing employers to notify their insurers of their employee's coverage exemption, rather than requiring that a copy of the exemption be provided;
- Eliminating a 3-day response requirement applicable to employer held exemption information;
- Removing the requirement that construction employers maintain written exemption acknowledgements;
- Deleting a requirement that exemption revocations be filed by mail only;
- Removing unnecessary information from the exemption application;
- Relieving employers of the obligation to notify the DFS by telephone or telegraph within 24 hours of any work related death and relying instead on other existing reporting requirements;
- Removing insurers and employers from the medical reimbursement dispute provision since they meet their adjustment, disallowance and provider violation reporting duties through other provisions of law;
- Eliminating fees collected by the DFS related to new insurer registrations and Special Disability Trust Fund notices of claim and proofs of claim;
- Allowing a Judge of Compensation Claims to designate an expert medical examiner of their choosing, rather than only those that are certified by the DFS; and
- Eliminating the Preferred Worker Program, which has not been used in over ten years.

The bill is expected to have a significant negative fiscal impact on state revenues deposited into the Workers' Compensation Administration Trust Fund (WCATF) of approximately \$2.0 million due to the elimination of certain fees, a change in the imputed payroll multiplier from 2 to 1.5 times the statewide average weekly wage, and a 25 percent penalty credit provided to employers meeting requirements set forth in the bill. However, the DFS estimates that the fiscal year-end balance of the WCATF (including the impact of HB 613) will maintain a positive surplus cash balance of: \$161.1 million in FY 2016-17, \$162.4 million in FY 2017-18, and \$163.7 million in FY 2018-19. It has no impact on state expenditures and no impact on local governments. It has an indeterminate positive impact on the private sector.

The bill is effective October 1, 2016.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0613b.GOAS.DOCX

DATE: 1/15/2016

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background – Workers' Compensation

The workers' compensation law¹ requires employers² to obtain coverage for work related injuries and occupational diseases. The required coverage must provide injured "employees"³ all medically necessary remedial treatment, attendance, and care; including medicines, medical supplies, durable medical equipment, and prosthetics.⁴ Employers must also provide compensation for lost income when the injury causes the employee to miss more than seven days of work.⁵ The Division of Workers' Compensation within the Department of Financial Services (DFS) provides regulatory oversight of the system. The DFS' responsibilities include enforcing employer compliance with coverage requirements,⁶ administration of the workers' compensation health care delivery system,⁷ collecting system data,⁸ and assisting injured workers⁹ with accessing benefits and understanding their rights.¹⁰

Current Situation – Employer Failure to Comply with Coverage Requirements

Whether an employer is required to have workers' compensation insurance depends upon the employer's industry (i.e., construction, non-construction, or agricultural) and the number of employees. The coverage thresholds are as follows:

- Construction – one or more "employees;"
- Non-construction – four or more "employees;" and
- Agricultural – six or more regular employees and/or 12 or more seasonal employees who work for more than 30 days.

Employers may obtain coverage by purchasing a workers' compensation insurance policy from an insurer; purchasing coverage from the Workers' Compensation Joint Underwriting Association (for employers that are unable to purchase a workers' compensation insurance policy from an authorized insurance company); or qualifying as a self-insurer.¹¹

¹ ch. 440, F.S.

² "Employer" means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person. "Employer" also includes employment agencies, employee leasing companies, and similar agents who provide employees to other persons. s. 440.02(16), F.S. The most common exception to this is non-construction industry employers with fewer than four employees. There are a number of other exceptions, exclusions, and exemptions that affect whether an employer must provide workers' compensation coverage generally or to a particular individual. See s. 440.02(15)–(17), F.S.

³ s. 440.02(15), F.S. Generally, the term "employee" means any person who receives remuneration from an employer for the performance of any work or service while engaged in any employment under any appointment or contract for hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes, but is not limited to, aliens and minors. s. 440.02(15)(a), F.S. However, there are numerous statutory inclusions and exclusions that determine whether a particular individual is an "employee" for purposes of the workers' compensation law.

⁴ s. 440.13(2)(a), F.S.

⁵ s. 440.12(1), F.S.

⁶ s. 440.107(3), F.S.

⁷ s. 440.13, F.S.

⁸ Many information filing and reporting requirements occur throughout ch. 440, F.S. The primary employee, employer, and insurer reporting requirements are located in s. 440.185, F.S. The DFS may collect information electronically. s. 440.593, F.S.

⁹ The terms "injured employee" and "injured worker" are used interchangeably throughout ch. 440, F.S., in relation to individuals claiming or receiving workers' compensation benefits. However, neither term is expressly defined in the workers' compensation law. Since the term "injured employee" implies a continuing employment relationship that may not in fact exist following an injury, this analysis will use the term "injured worker" exclusively, but it is intended to mean both "injured employee" and "injured worker" wherever it is used, unless the context or law requires otherwise. The term "injured employee" is not same as "employee." The former denotes one who is claiming benefits following an injury, while the latter denotes one who may be subject to the coverage requirements of the workers' compensation law, depending upon the circumstances of their employment and nature of their employer.

¹⁰ s. 440.191, F.S.

¹¹ ss. 440.38, F.S. and 627.311(5)(a), F.S.

Stop-Work Orders and Business Records Requests/Responses

If an employer fails to comply with coverage requirements, the DFS must issue a stop-work order (SWO) within 72 hours of the DFS determining employer non-compliance.¹² Non-compliance includes the failure of an employer to answer a written business records request within ten days of the request; however, requests for documentation of a coverage exemption must be answered within three days.¹³ SWOs require the employer to cease business operations. The SWO remains in effect until the DFS issues an order releasing the stop-work order. Additionally, employers are assessed penalties equal to two times what the employer would have paid in workers' compensation premiums for all periods of non-compliance during the preceding two-year period or \$1,000, whichever is greater.¹⁴ SWOs are issued for the following violations:

- failure to obtain workers' compensation insurance;
- materially understating or concealing payroll;
- materially misrepresenting or concealing employee duties to avoid paying the proper premium;
- materially concealing information pertinent to the calculation of an experience modification factor;¹⁵ and
- failure to produce business records in a timely manner.

In fiscal year 2014-2015, the DFS issued 2,727 SWOs with approximately \$52.4 million in penalties to employers that violated the coverage requirements.¹⁶

Avoiding Work Stoppage and Minimizing Penalties

There are several ways for a non-compliant employer to mitigate the impact of a DFS finding of non-compliance on their business operations. First, if the employer comes into compliance after initiation of an investigation, but before they are ordered to stop work, an SWO is not issued. Instead, if penalties are required by law, the DFS will only levy penalties. In that case, the penalties are levied via an Order of Penalty Assessment (OPA).¹⁷ This permits the employer to avoid the work stoppage due to an SWO, while also achieving compliance. This also provides the employer an opportunity to reduce their potential penalty. If the employer has never received an SWO before, the employer may receive a credit against the penalty equal to the amount of the initial payment of workers' compensation premium resulting from them achieving compliance following the initiation of the DFS investigation.¹⁸

Imputation of Payroll for Penalty Purposes

Sometimes, an employer will either lack required payroll information or will ignore the DFS' business records request. In that instance, the DFS will issue an SWO; however, they will lack sufficient documentation to calculate the penalty. Subsection 440.107(7), F.S., provides a means for the DFS to impute the employer's payroll for penalty purposes.

¹² s. 440.107(7)(a), F.S.

¹³ s. 440.05(11), F.S.

¹⁴ s. 440.107(7)(d), F.S.

¹⁵ An experience modification factor is a multiplier that the insurer applies to the premium calculation. It increases or decreases the employer's premium based upon their claims history. If the employer has a positive claims history (i.e., fewer claims or claim costs than statistically expected) they will receive a discount when the experience modification factor is applied to their standard premium. If they have a negative claims history (i.e., more claims or claim costs than statistically expected) they will receive a higher premium when the factor is applied.

¹⁶ Florida Department of Financial Services, *Division of Workers' Compensation 2015 Results & Accomplishments Report*, at 2, available at <http://www.myfloridacfo.com/Division/WC/PublicationsFormsManualsReports/Reports/AnnualReportWC2015.pdf>. The DFS reports that they are able to collect between 25 percent and 35 percent of the penalties they assess. Florida Department of Financial Services, Agency Analysis of 2016 House Bill 613, p. 6 (Dec. 8, 2015).

¹⁷ In fiscal year 2014-2015, the DFS issued 256 OPAs levying about \$3.1 million in penalties when an employer came into compliance with the coverage requirements prior to the issuance of an SWO. *Id.*, at 4.

¹⁸ s. 440.107(7)(d)1., F.S.

The imputed payroll under the law is twice the statewide average weekly wage (SAWW)¹⁹ for each individual that the employer failed to cover. Depending on the circumstances of a particular case, the DFS may have to impute payroll for all of the employees for the entire two-year period or the DFS may only have to impute payroll for one or more employees for a small portion of the two-year period. It depends upon the quality and availability of the employer's records.

When the DFS power to impute payroll was added to the law in 2003, it was set at one and one-half times the SAWW. It was increased to twice the SAWW in 2014. The DFS suggests that this can lead to "exorbitant penalty amounts that do not correlate with the violation committed by the employer."²⁰ The DFS imputed payroll against the employer in 1,584 cases in fiscal year 2014-2015.²¹

Effect of the Bill

The bill removes the three day response requirement applicable to exemption information held by the employer since the DFS maintains these records online. Also, the bill reduces the imputed payroll multiplier from twice the SAWW and returns it to the pre-2014 level of one and one-half times the SAWW.

The bill adds two new eligibility requirements to the existing penalty credit for achieving compliance after the initiation of an investigation and adds a second penalty credit. The bill requires non-compliant employers to document their purchase of coverage to the DFS within 28 days of the SWO or OPA to qualify for the reduction in penalty and requires that the employer has never before received an SWO or OPA, rather than just an SWO. The bill creates another penalty credit for non-compliant employers who have never previously received an SWO or OPA. If they maintain business records consistent with the requirements of s. 440.107(5), F.S.,²² and timely respond to the written DFS business records requests (a 10-day response requirement), the DFS must reduce their penalty by 25 percent.

Current Situation – Members of a Limited Liability Company and Workers' Compensation Coverage Requirements

For purposes of workers' compensation coverage requirements, a member²³ of a limited liability company (LLC)²⁴ is an "employee." As an "employee," the LLC member must be covered whenever workers' compensation is required to be provided by the LLC. An LLC member that owns at least 10 percent of the LLC may apply to the DFS for a coverage exemption that removes them from the insurer's premium calculation.²⁵ Individuals who elect an exemption are not considered "employees," for premium calculation purposes, and are not eligible to receive workers' compensation benefits if they suffer a workplace injury. The DFS maintains an online database of exemption holders.²⁶ The DFS reports that of the 367 non-construction LLCs that received an SWO in fiscal year 2014-2015, 32

¹⁹ The statewide average weekly wage is determined by the DFS pursuant to s. 440.12(2), F.S.

²⁰ Email from Andrew Sabolic, Assistant Director of the Division of Workers' Compensation, Department of Financial Services, Re: data requests for system admin bill (Jan. 6, 2016).

²¹ *Id.*
²² Section 440.107(5), F.S., requires the DFS to adopt rules specifying the business records that the employer must maintain. Rule 69L-6.015, F.A.C., contains these requirements.

²³ One becomes a member of an LLC as an initial member, upon the organization of the LLC, or subsequent to the LLC's organization. A person becomes a member after organization pursuant to the LLC's operating agreement, as a result of a merger, interest exchange, conversion, or domestication under ss. 605.1001-605.1072, F.S., as applicable, upon consent of all members, or as provided in s. 605.0701(3), F.S. (per consent of transferees to avoid dissolution of LLC pending distribution). s. 605.0401, F.S. "A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company." s. 605.0401(4), F.S.

²⁴ Limited liability companies are organized under ch. 605, F.S. The Florida Department of State reports that there are 889,327 active LLCs, updated as of Oct. 9, 2015. FLORIDA DEPARTMENT OF STATE, DIVISION OF CORPORATIONS, *Yearly Statistics*, http://www.sunbiz.org/corp_stat.html (last visited Jan. 15, 2016). It is unknown how many of those are involved in the relevant industries, i.e., construction, non-construction and agricultural. Also, each of LLC has an unknown number of members.

²⁵ s. 440.02(9) and (15)(b)1., F.S. LLC members with 10 percent or more ownership of the LLC are defined as "corporate officers" for purposes of workers' compensation coverage. "Corporate officers" are permitted to elect a coverage exemption.

²⁶ FLORIDA DEPARTMENT OF FINANCIAL SERVICES, *Division of Workers' Compensation Proof of Coverage Search Page*, <https://apps8.fldfs.com/proofofcoverage/Search.aspx> (last visited Jan. 15, 2016). Filter search by "Exemption Holder Name" or "Exemption Holder SSN."

achieved compliance when one or more LLC members obtained exemptions.²⁷ The DFS reports that the number of non-construction exemption applications processed by them more than tripled from fiscal year 2010-2011 to fiscal year 2014-2015.²⁸ The DFS attributes this increase to the availability of exemptions to non-construction LLC members.²⁹

The availability of coverage exemptions may determine whether the employer has to obtain workers' compensation coverage because coverage exemptions might reduce the number of "employees" below the coverage threshold for the applicable industry.³⁰ However, there is a limitation on the number of coverage exemptions applicable to LLCs. For construction LLCs, there is an express limitation on the number of coverage exemptions. Up to three construction LLC members can be exempt from the coverage requirement.³¹ For non-construction LLCs, there is no express limitation. However, the 10 percent ownership requirement for exemption eligibility results in no more than 10 LLC members being able to be exempt.

Effect of the Bill

The bill removes non-construction industry LLC members from the definition of "employee." Accordingly, the LLC members are no longer subject to the coverage requirement or permitted to claim an exemption from coverage. Also, the non-construction LLC would no longer be limited to a specific number of members who would be outside of the coverage requirement (the current maximum is 10 LLC members on account of the 10 percent ownership threshold). Since ch. 605, F.S., sets a low threshold for LLC member qualification,³² there will be no limit on the number of individuals that a non-construction LLC could remove from the coverage requirement for those individuals who are appointed as an LLC member. The bill allows any non-construction LLC member, regardless of ownership percentage, to "opt-in" to the workers' compensation system through an election of coverage³³ that they may file with the DFS.

Current Situation – Medical Reimbursement Disputes

The DFS is responsible for resolving medical reimbursement disputes between health care providers and insurers³⁴ or employers.³⁵ Health care providers, insurers, and employers have 45 days from receipt of notice of disallowance or adjustment of payment from an insurer to file a reimbursement dispute petition with the DFS. Insurers have 30 days from receipt of the provider's petition to submit all documentation substantiating the insurer's disallowance or adjustment to the DFS; otherwise they waive all objections to the petition. The DFS has 120 days from receipt of all documentation to issue a

²⁷ Email from Andrew Sabolic, Assistant Director of the Division of Workers' Compensation, Department of Financial Services. Re: data requests for system admin bill (Jan. 5, 2016). An additional 30 non-construction LLCs achieved compliance by purchasing coverage for four employees. Some portion of these may have been related to non-exempt LLC members falling within the definition of "employee," which would result in an SWO.

²⁸ In fiscal year 2010-2011, the DFS processed 11,448 non-construction exemption applications. This increased to 36,496 applications processed in fiscal year 2014-2015. Email from Andrew Sabolic, Assistant Director of the Division of Workers' Compensation, Department of Financial Services, Re: data requests for system admin bill (Jan. 5, 2016).

²⁹ Florida Department of Financial Services, *Division of Workers' Compensation 2015 Results & Accomplishments Report*, at 6, available at <http://www.myfloridacfo.com/Division/WC/PublicationsFormsManualsReports/Reports/AnnualReportWC2015.pdf>.

³⁰ Despite an individual electing employee status, whether the employer is required to obtain workers' compensation coverage is still dependent upon whether the employer has the threshold number of employees. The threshold number is one employee for construction employers, four or more employees for non-construction employers, and six or more regular employees and/or 12 or more seasonal employees who work for more than 30 days for agricultural employers. s. 440.02(15)-(17), F.S.

³¹ See footnote 25, previous page.

³² See footnote 23, previous page.

³³ s. 440.02(15)(c)1., F.S.

³⁴ The terms "carrier" and "insurer" are commonly used interchangeably within the context of the workers' compensation law. In fact, the definition of "insurer" expressly includes the term "carrier." s. 440.02(38), F.S. "Carrier" means any person or fund authorized under s. 440.38 to insure under this chapter and includes a self-insurer, and a commercial self-insurance fund authorized under s. 624.462. s. 440.02(4), F.S. While this analysis uses the term "insurer" in this instance to maintain internal consistency, the portion of the bill described strikes the term "carrier" from statute.

³⁵ s. 440.13(7), F.S.

written determination. The DFS's determination is subject to the hearing provisions of the Administrative Procedures Act.³⁶

Insurers are required to report all instances of health care provider overutilization to the DFS.³⁷ The DFS has implemented rules formalizing the procedure for reporting alleged provider violations.³⁸ Any interested person can report an alleged provider violation through this procedure, too. Additionally, the DFS collects adjustment information for all reported workers' compensation medical bills. When the insurer properly codes and reports their adjustments and reimbursement decisions, the DFS can use their electronic database to identify alleged overutilization. Insurer compliance with electronic bill reporting requirements satisfies their statutory obligation to report all instances of overutilization.³⁹ The inclusion of insurers and employers in the medical reimbursement dispute provision can lead to confusion over the correct method for insurer or employer reporting of alleged provider violations and insurer reporting of medical overutilization issues.

Effect of the Bill

The bill removes insurers and employers from the provision allowing the filing of a medical reimbursement dispute over the disallowance or adjustment of a medical payment. Accordingly, only health care providers will be permitted to file petitions for resolution of medical billing disputes. Insurers and employers will continue to meet their statutory reporting obligations through required data filing and elective violation reports described above.

Current Situation – Expert Medical Advisors and the Judges of Compensation Claims

The Office of the Judges of Compensation Claims is responsible for resolving workers' compensation benefit disputes.⁴⁰ A Judge of Compensation Claims (JCC) receives medical evidence and testimony in the course of administering their assigned cases. Whenever there is a conflict in medical evidence or medical opinion, the JCC must appoint an Expert Medical Advisor (EMA) to address the conflict.⁴¹ EMAs are certified by the DFS.⁴²

Certification as an EMA requires specialized workers' compensation training or experience and medical board certification or eligibility. The DFS is also required to "consider the qualifications, training, impartiality, and commitment of the health care provider to the provision of quality medical care at a reasonable cost."⁴³ Currently, there are 153 EMAs certified by the DFS.⁴⁴ The procedures that an EMA must abide by and the party responsible for the cost of the EMA's services are established by statute.⁴⁵

The JCCs often have difficulty finding an eligible EMA to assist them with a case. This often occurs because there are too few EMAs in a particular specialty or the EMAs present in the local area of the injured worker have a conflict in participating in the matter because they have previously treated the injured worker or consulted in their care. When this occurs, the JCC identifies a willing provider with the appropriate qualifications and submits their information to the DFS for certification. Since the JCC has already considered the prospective EMA's qualifications, there is little benefit in going through the additional burden and delay of submitting the prospective EMA to the DFS for certification.

³⁶ ch. 120, F.S.

³⁷ s. 440.13(6), F.S.

³⁸ Chapter 69L-34, F.A.C.

³⁹ Rule 69L-34.002, F.A.C.

⁴⁰ s. 440.192, F.S.

⁴¹ s. 440.25(4)(d), F.S.

⁴² s. 440.13(9)(a), F.S.

⁴³ Id.

⁴⁴ FLORIDA DEPARTMENT OF FINANCIAL SERVICES, *Florida Division of Workers' Compensation Expert Medical Advisor List*, <https://apps.fldfs.com/provider/> (last visited Jan. 15, 2016).

⁴⁵ s. 440.13(9), F.S.

Effect of the bill

The bill allows a JCC to designate an EMA of their choosing, rather than only those that are certified as EMAs by the DFS. EMAs, whether certified by the DFS or designated by the JCC, will continue to be subject to the existing procedural requirements of statute.

Current Situation – Preferred Worker Program

In 1994, the Legislature created the Preferred Worker Program.⁴⁶ The program encourages the employment of certain disabled individuals by reimbursing an employer for the workers' compensation premium related to a "preferred worker." Under the program, a "preferred worker" is one that cannot return to their prior job due to a permanent impairment resulting from a workers' compensation injury or occupational disease. The preferred worker documents their status to the employer by applying for and receiving an identity card from the Department of Education. Subsequent to hiring a preferred worker, an employer can claim reimbursement for three years of workers' compensation premium associated with the preferred worker from the DFS via the Special Disability Trust Fund.⁴⁷

The program has experienced a small number of claims and has not made any program reimbursements in over a decade. The DFS reports that the program paid seven claims totaling \$15,915.33 since the beginning of the program. The DFS last issued a reimbursement under the program in 2002.⁴⁸

Effect of the Bill

The bill eliminates the Preferred Worker Program. This should have no impact on workers or employers given the lack of program activity.

Miscellaneous

The bill also makes the following changes:

- Deletes a requirement that exemption holders revoke their exemptions by mail. This will allow electronic revocations.⁴⁹ Since the DFS maintains an online exemption application and record review system, the DFS could add online revocation requests to their system.
- Removes the requirement that exemption applicants provide their Federal Tax Identification Number when filing an electronic application for exemption with the DFS.⁵⁰ The Internal Revenue Service does not issue Federal Tax Identification Numbers to individuals; rather, they are issued to businesses. The Federal Tax Identification Number of the applicant's employer will still be collected.
- Changes a requirement that employers provide their insurer with copies of their employee's certificate of exemption, instead the employer will notify the insurer of the exemptions.⁵¹ Since the DFS maintains online exemption information, the insurer can still verify the exemption without needing a copy of the certificate of exemption.

⁴⁶ s. 440.49(8), F.S., and Chapter 69L-11, F.A.C.

⁴⁷ s. 440.49, F.S. The Special Disability Trust Fund (SDTF) is Florida's "Second Injury Fund." The SDTF reimburses self-insured employers and insurers for the excess workers' compensation benefits associated with an injured worker that was injured on the job and then had a second injury or re-injury. For a variety of reasons, in 1997, the SDTF was "cut-off" and limited to claims for second injuries occurring before Jan. 1, 1998. The SDTF continues to reimburse qualifying claims. In fiscal year 2014-2015, the SDTF disbursed reimbursements of about \$63.7 million and received 1,228 reimbursement requests. Florida Department of Financial Services, *Division of Workers' Compensation 2015 Results & Accomplishments Report*, at 33, available at <http://www.myfloridacfo.com/Division/WC/PublicationsFormsManualsReports/Reports/AnnualReportWC2015.pdf>.

⁴⁸ Florida Department of Financial Services, Agency Analysis of 2016 House Bill 613, p. 2 (Dec. 8, 2015).

⁴⁹ s. 440.05(1), (2), and (5), F.S. DFS reports that 2,314 exemption holders filed voluntary revocations in fiscal year 2014-2015. Email from Andrew Sabolic, Assistant Director of the Division of Workers' Compensation, Department of Financial Services, Re: data requests for system admin bill (Jan. 6, 2016).

⁵⁰ s. 440.05(3), F.S.

⁵¹ Id.

- Removes a requirement that construction employers maintain written exemption acknowledgements by their corporate officers that hold an exemption certificate.⁵²
- Removes a requirement that employers notify the DFS by telephone or telegraph within 24 hours of any work related death.⁵³ This relates to a defunct process whereby the DFS had a role in workplace safety investigations. However, the DFS' former workplace safety role is preempted to the federal government and implemented by the Occupational Safety and Health Administration. The DFS will continue to receive reports of death through an existing employer reporting requirement.⁵⁴
- Eliminates the following fees collected by the DFS:
 - New insurer registration fee – the law requires the DFS to collect \$100 from every new workers' compensation insurer that registers with the DFS.⁵⁵ New insurers will continue to register with the DFS as a workers' compensation insurer, except without the fee. The DFS reports that four new registrations were received in fiscal year 2014-2015.⁵⁶
 - Special Disability Trust Fund (SDTF):
 - Notice of Claim Fee – every claim against the SDTF must be initiated with a notice of claim. The notice must include a \$250 fee.⁵⁷
 - Proof of Claim Fee – an insurer that files a claim against the SDTF must file certain documents to perfect their claim. If the required documents are not filed in concert with their notice of claim, they must file a proof of claim, which must include a \$500 fee.⁵⁸

Insurers will continue to be allowed to file notices of claim and proofs of claim. The SDTF received no notices of claim or proofs of claim in fiscal year 2013-2014 and one notice of claim in fiscal year 2014-2015.⁵⁹
- Revises multiple cross-references to conform to changes made by the bill.
- Makes edits to statute unrelated to the substantive provisions of the bill consistent with House Bill Drafting protocols.

B. SECTION DIRECTORY:

Section 1. Amends s. 440.02, F.S., to revise definitions.

Section 2. Amends s. 440.021, F.S., to conform a cross-reference.

Section 3. Amends s. 440.05, F.S., relating to election of exemption; revocation of election; notice; certification.

Section 4. Amends s. 440.107, F.S., relating to stop-work orders and penalties assessed.

Section 5. Amends s. 440.13, F.S., relating to medical services reimbursement disputes and expert medical advisors.

Section 6. Amends s. 440.185, F.S., relating to required death notifications.

Section 7. Amends s. 440.42, F.S., to conform a cross-reference.

Section 8. Amends s. 440.49, F.S., relating to the Preferred Worker Program and Special Disability Trust Fund notice of claim and proof of claim fees.

Section 9. Amends s. 440.50, F.S., to conform a cross-reference.

⁵² s. 440.05(10), F.S.

⁵³ s. 440.185(3), F.S.

⁵⁴ s. 440.185(2), F.S.

⁵⁵ s. 440.52(1), F.S.

⁵⁶ Email from Andrew Sabolic, Assistant Director of the Division of Workers' Compensation, Department of Financial Services. Re: data requests for system admin bill (Jan. 5, 2016).

⁵⁷ s. 440.49(7) and (8), F.S.

⁵⁸ Id.

⁵⁹ AMI Risk Consultants, Inc., *State of Florida Special Disability Trust Fund Actuarial Review as of June 30, 2015*, at 5, available at http://www.myfloridacfo.com/Division/WC/pdf/State-of-Florida-Disability-Trust-Fund_2015_FINAL_09-10-15.pdf.

Section 10. Amends s. 440.52, F.S., relating to the insurer registration fee.

Section 11. Amends s. 624.4626, F.S., to conform a cross-reference.

Section 12. Provides an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The DFS estimates a \$2,000,000 loss of revenue to the Workers' Compensation Administration Trust Fund (WCATF) due to the availability of the proposed 25 percent penalty credit and the change in the imputed payroll multiplier from 2 to 1.5 times the statewide average weekly wage. This estimate considers the worst case scenario of potentially collected penalty revenue. The DFS indicates that this may represent an approximate two percent reduction in WCATF revenue based upon experienced penalty collection rates.⁶⁰ The revenue projections also include a corresponding reduction in the Service Charge to General Revenue of approximately \$160,000 annually.

Workers' Compensation Administration Trust Fund			
	FY 2016-17	FY 2017-18	FY 2018-19
Beginning Balance	159,901,026	161,138,843	162,390,343
Estimated Revenue	88,995,769	89,011,969	89,028,332
Impact of HB 613	(2,000,000)	(2,000,000)	(2,000,000)
TOTAL Revenue	246,896,795	248,150,812	249,418,675
Estimated Expenditures	(85,757,952)	(85,760,469)	(85,763,032)
Estimated Year-end Balance	161,138,843	162,390,343	163,655,643

In addition, the DFS estimates a loss of combined trust fund revenue to the Special Disability Trust Fund (SDTF) and the WCATF of approximately \$1,500 due to the elimination of fees as provided in the bill. The DFS reports for fiscal year 2014-15, the collection of \$400 in new insurer registration fees, which are deposited into the WCATF.⁶¹ The June 30, 2015 actuarial review of the SDTF indicated one filing for a notice or proof of claim relating to the Preferred Worker Program, with \$0 revenue collections for filing fees as of June 30, 2015.⁶² The DFS indicates that the fees eliminated by the bill are likely to have an insignificant impact on state trust fund revenues.

2. Expenditures:

None.

⁶⁰ Email correspondence with The Department of Financial Services (Jan. 20, 2016) on file with the Government Operations Appropriations Subcommittee.

⁶¹ Email from Andrew Sabolic, Assistant Director of the Division of Workers' Compensation, Department of Financial Services. Re: data requests for system admin bill (Jan. 5, 2016).

⁶² State of Florida Special Disability Trust Fund Actuarial Review can be found here:

http://www.myfloridacfo.com/division/wc/pdf/State-of-Florida-Disability-Trust-Fund_2015_FINAL_09-10-15.pdf

(Last accessed Jan. 19, 2016)

STORAGE NAME: h0613b.GOAS.DOCX

DATE: 1/15/2016

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is likely to have a positive impact on the private sector since it eliminates a number of burdensome requirements and facilitates use of online resources maintained by the DFS. It also provides opportunities to non-compliant employers to reduce penalties while incentivizing compliance with the law.

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:

The bill removes the requirement that Judges of Compensation Claims use DFS certified Expert Medical Advisors (EMAs) to resolve conflicts in medical evidence or medical opinion; rather, the Judges will use "Expert Medical Advisors" that may not be DFS certified EMAs. While s. 440.13(9)(a), F.S., specifies certain requirements and considerations to be used by the DFS for certification and recertification of EMAs; however, these would no longer apply to the Expert Medical Advisors selected by the Judges. No alternative criteria or guidance is provided concerning selection or qualification of Expert Medical Advisors to be used by the Judges in resolving workers' compensation benefit disputes.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to workers' compensation system
 3 administration; amending s. 440.02, F.S.; revising
 4 definitions; amending s. 440.021, F.S.; conforming a
 5 cross-reference; amending s. 440.05, F.S.; requiring
 6 members of limited liability companies to submit
 7 specified notices; deleting a required item to be
 8 listed on a notice of election to be exempt; revising
 9 specified rules regarding the maintenance of business
 10 records by an officer of a corporation; removing the
 11 requirement that the Department of Financial Services
 12 issue a specified stop-work order; amending s.
 13 440.107, F.S.; requiring that the department allow an
 14 employer who has not previously been issued an order
 15 of penalty assessment to receive a specified credit to
 16 be applied to the penalty; prohibiting the application
 17 of a specified credit unless the employer provides
 18 specified documentation and proof of payment to the
 19 department within a specified period; requiring the
 20 department to reduce the final assessed penalty by a
 21 specified percentage for employers who have not been
 22 previously issued a stop-work order or order of
 23 penalty assessment; revising the penalty calculation
 24 for the imputed weekly payroll for an employee;
 25 amending s. 440.13, F.S.; eliminating the
 26 certification requirements when an expert medical

27 | advisor is selected by a judge of compensation claims;
 28 | amending s. 440.185, F.S.; deleting the requirement
 29 | that employers notify the department within 24 hours
 30 | of any injury resulting in death; amending s. 440.42,
 31 | F.S.; conforming a cross-reference; amending s.
 32 | 440.49, F.S.; revising definitions; revising the
 33 | requirements for filing a claim; deleting the
 34 | preferred worker program; deleting the notification
 35 | fees on certain filed claims which supplement the
 36 | Special Disability Trust Fund; conforming cross-
 37 | references; amending s. 440.50, F.S.; conforming
 38 | cross-references; amending s. 440.52, F.S.; deleting a
 39 | fee for certain registration of insurance carriers;
 40 | amending s. 624.4626, F.S.; conforming a cross-
 41 | reference; providing an effective date.

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

Section 1. Subsection (9) and paragraph (c) of subsection
 (15) of section 440.02, Florida Statutes, are amended to read:
 440.02 Definitions.—When used in this chapter, unless the
 context clearly requires otherwise, the following terms shall
 have the following meanings:
 (9) "Corporate officer" or "officer of a corporation"
 means any person who fills an office provided for in the
 corporate charter or articles of incorporation filed with the

53 | Division of Corporations of the Department of State or as
 54 | authorized or required under part I of chapter 607. For persons
 55 | engaged in the construction industry, the term "officer of a
 56 | corporation" includes a member owning at least 10 percent of a
 57 | limited liability company as defined in and organized pursuant
 58 | to chapter 605.

59 | (15)

60 | (c) "Employee" includes:

61 | 1. A sole proprietor, a member of a limited liability
 62 | company, or a partner who is not engaged in the construction
 63 | industry, devotes full time to the proprietorship, limited
 64 | liability company, or partnership, and elects to be included in
 65 | the definition of employee by filing notice thereof as provided
 66 | in s. 440.05.

67 | 2. All persons who are being paid by a construction
 68 | contractor as a subcontractor, unless the subcontractor has
 69 | validly elected an exemption as permitted by this chapter, or
 70 | has otherwise secured the payment of compensation coverage as a
 71 | subcontractor, consistent with s. 440.10, for work performed by
 72 | or as a subcontractor.

73 | 3. An independent contractor working or performing
 74 | services in the construction industry.

75 | 4. A sole proprietor who engages in the construction
 76 | industry and a partner or partnership that is engaged in the
 77 | construction industry.

78 | Section 2. Section 440.021, Florida Statutes, is amended

79 | to read:

80 | 440.021 Exemption of workers' compensation from chapter
 81 | 120.—Workers' compensation adjudications by judges of
 82 | compensation claims are exempt from chapter 120, and no judge of
 83 | compensation claims shall be considered an agency or a part
 84 | thereof. Communications of the result of investigations by the
 85 | department pursuant to s. 440.185(3) ~~s. 440.185(4)~~ are exempt
 86 | from chapter 120. In all instances in which the department
 87 | institutes action to collect a penalty or interest which may be
 88 | due pursuant to this chapter, the penalty or interest shall be
 89 | assessed without hearing, and the party against which such
 90 | penalty or interest is assessed shall be given written notice of
 91 | such assessment and shall have the right to protest within 20
 92 | days of such notice. Upon receipt of a timely notice of protest
 93 | and after such investigation as may be necessary, the department
 94 | shall, if it agrees with such protest, notify the protesting
 95 | party that the assessment has been revoked. If the department
 96 | does not agree with the protest, it shall refer the matter to
 97 | the judge of compensation claims for determination pursuant to
 98 | s. 440.25(2)-(5). Such action of the department is exempt from
 99 | the provisions of chapter 120.

100 | Section 3. Subsections (1), (2), (3), (5), (10), and (11)
 101 | of section 440.05, Florida Statutes, are amended to read:

102 | 440.05 Election of exemption; revocation of election;
 103 | notice; certification.—

104 | (1) Each corporate officer who elects not to accept the

105 provisions of this chapter or who, after electing such
 106 exemption, revokes that exemption shall submit mail to the
 107 department ~~in Tallahassee~~ notice to such effect in accordance
 108 with a form to be prescribed by the department.

109 (2) Each sole proprietor, member of a limited liability
 110 company, or partner who elects to be included in the definition
 111 of "employee" or who, after such election, revokes that election
 112 must submit mail to the department ~~in Tallahassee~~ notice to such
 113 effect, in accordance with a form to be prescribed by the
 114 department.

115 (3) ~~Each officer of a corporation who is engaged in the~~
 116 ~~construction industry and who elects an exemption from this~~
 117 ~~chapter or who, after electing such exemption, revokes that~~
 118 ~~exemption must submit a notice to such effect to the department~~
 119 ~~on a form prescribed by the department.~~ The notice of election
 120 to be exempt must be electronically submitted to the department
 121 by the officer of a corporation who is allowed to claim an
 122 exemption as provided by this chapter and must list the name,
 123 ~~federal tax identification number~~, date of birth, driver license
 124 number or Florida identification card number, and all certified
 125 or registered licenses issued pursuant to chapter 489 held by
 126 the person seeking the exemption, the registration number of the
 127 corporation filed with the Division of Corporations of the
 128 Department of State, and the percentage of ownership evidencing
 129 the required ownership under this chapter. The notice of
 130 election to be exempt must identify each corporation that

131 | employs the person electing the exemption and must list the
 132 | social security number or federal tax identification number of
 133 | each such employer and the additional documentation required by
 134 | this section. In addition, the notice of election to be exempt
 135 | must provide that the officer electing an exemption is not
 136 | entitled to benefits under this chapter, must provide that the
 137 | election does not exceed exemption limits for officers provided
 138 | in s. 440.02, and must certify that any employees of the
 139 | corporation whose officer elects an exemption are covered by
 140 | workers' compensation insurance. Upon receipt of the notice of
 141 | the election to be exempt, receipt of all application fees, and
 142 | a determination by the department that the notice meets the
 143 | requirements of this subsection, the department shall issue a
 144 | certification of the election to the officer, unless the
 145 | department determines that the information contained in the
 146 | notice is invalid. The department shall revoke a certificate of
 147 | election to be exempt from coverage upon a determination by the
 148 | department that the person does not meet the requirements for
 149 | exemption or that the information contained in the notice of
 150 | election to be exempt is invalid. The certificate of election
 151 | must list the name of the corporation listed in the request for
 152 | exemption. A new certificate of election must be obtained each
 153 | time the person is employed by a new or different corporation
 154 | that is not listed on the certificate of election. A notice ~~copy~~
 155 | of the certificate of election must be sent to each workers'
 156 | compensation carrier identified in the request for exemption.

157 Upon filing a notice of revocation of election, an officer who
158 is a subcontractor or an officer of a corporate subcontractor
159 must notify her or his contractor. Upon revocation of a
160 certificate of election of exemption by the department, the
161 department shall notify the workers' compensation carriers
162 identified in the request for exemption.

163 (5) A notice given under subsection (1), subsection (2),
164 or subsection (3) shall become effective when issued by the
165 department or 30 days after it ~~an application for an exemption~~
166 is received by the department, whichever occurs first. However,
167 if an accident or occupational disease occurs less than 30 days
168 after the effective date of the insurance policy under which the
169 payment of compensation is secured or the date the employer
170 qualified as a self-insurer, such notice is effective as of
171 12:01 a.m. of the day following the date it is submitted ~~mailed~~
172 to the department ~~in Tallahassee~~.

173 (10) Each officer of a corporation who is actively engaged
174 in the construction industry and who elects an exemption from
175 this chapter shall maintain business records as specified by the
176 department by rule, ~~which rules must include the provision that~~
177 ~~any corporation with exempt officers engaged in the construction~~
178 ~~industry must maintain written statements of those exempted~~
179 ~~persons affirmatively acknowledging each such individual's~~
180 ~~exempt status.~~

181 (11) Any corporate officer permitted by this chapter to
182 claim an exemption must be listed on the records of this state's

183 Secretary of State, Division of Corporations, as a corporate
 184 officer. ~~The department shall issue a stop work order under s.~~
 185 ~~440.107(7) to any corporation who employs a person who claims to~~
 186 ~~be exempt as a corporate officer but who fails or refuses to~~
 187 ~~produce the documents required under this subsection to the~~
 188 ~~department within 3 business days after the request is made.~~

189 Section 4. Paragraphs (d) and (e) of subsection (7) of
 190 section 440.107, Florida Statutes, are amended to read:

191 440.107 Department powers to enforce employer compliance
 192 with coverage requirements.-

193 (7)

194 (d)1. In addition to any penalty, stop-work order, or
 195 injunction, the department shall assess against any employer who
 196 has failed to secure the payment of compensation as required by
 197 this chapter a penalty equal to 2 times the amount the employer
 198 would have paid in premium when applying approved manual rates
 199 to the employer's payroll during periods for which it failed to
 200 secure the payment of workers' compensation required by this
 201 chapter within the preceding 2-year period or \$1,000, whichever
 202 is greater.

203 a. For employers who have not been previously issued a
 204 stop-work order or order of penalty assessment, the department
 205 must allow the employer to receive a credit for the initial
 206 payment of the estimated annual workers' compensation policy
 207 premium, as determined by the carrier, to be applied to the
 208 penalty. Before applying the credit to the penalty, the employer

209 must provide the department with documentation reflecting that
 210 the employer has secured the payment of compensation pursuant to
 211 s. 440.38 and proof of payment to the carrier. In order for the
 212 department to apply a credit for an employer that has secured
 213 workers' compensation for leased employees by entering into an
 214 employee leasing contract with a licensed employee leasing
 215 company, the employer must provide the department with a written
 216 confirmation, by a representative from the employee leasing
 217 company, of the dollar or percentage amount attributable to the
 218 initial estimated workers' compensation expense for leased
 219 employees, and proof of payment to the employee leasing company.
 220 The credit may not be applied unless the employer provides the
 221 documentation and proof of payment to the department within 28
 222 days after service of the stop-work order or first order of
 223 penalty assessment upon the employer.

224 b. For employers who have not been previously issued a
 225 stop-work order or order of penalty assessment, the department
 226 must reduce the final assessed penalty by 25 percent if the
 227 employer has complied with administrative rules adopted pursuant
 228 to subsection (5) and has provided such business records to the
 229 department within 10 business days after the employer's receipt
 230 of the written request to produce business records.

231 c. The \$1,000 penalty shall be assessed against the
 232 employer even if the calculated penalty after the credit and 25
 233 percent reduction have ~~has~~ been applied is less than \$1,000.

234 2. Any subsequent violation within 5 years after the most

235 recent violation shall, in addition to the penalties set forth
 236 in this subsection, be deemed a knowing act within the meaning
 237 of s. 440.105.

238 (e) When an employer fails to provide business records
 239 sufficient to enable the department to determine the employer's
 240 payroll for the period requested for the calculation of the
 241 penalty provided in paragraph (d), for penalty calculation
 242 purposes, the imputed weekly payroll for each employee,
 243 corporate officer, sole proprietor, or partner shall be the
 244 statewide average weekly wage as defined in s. 440.12(2)
 245 multiplied by 1.5 ~~2~~.

246 Section 5. Paragraph (a) of subsection (7) and paragraphs
 247 (a) and (f) of subsection (9) of section 440.13, Florida
 248 Statutes, are amended to read:

249 440.13 Medical services and supplies; penalty for
 250 violations; limitations.—

251 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.—

252 (a) Any health care provider, ~~carrier, or employer~~ who
 253 elects to contest the disallowance or adjustment of payment by a
 254 carrier under subsection (6) must, within 45 days after receipt
 255 of notice of disallowance or adjustment of payment, petition the
 256 department to resolve the dispute. The petitioner must serve a
 257 copy of the petition on the carrier and on all affected parties
 258 by certified mail. The petition must be accompanied by all
 259 documents and records that support the allegations contained in
 260 the petition. Failure of a petitioner to submit such

261 | documentation to the department results in dismissal of the
 262 | petition.

263 | (9) EXPERT MEDICAL ADVISORS.—

264 | (a) The department shall certify expert medical advisors
 265 | in each specialty to assist the department ~~and the judges of~~
 266 | ~~compensation claims~~ within the advisor's area of expertise as
 267 | provided in this section. The department shall, in a manner
 268 | prescribed by rule, in certifying, recertifying, or decertifying
 269 | an expert medical advisor, consider the qualifications,
 270 | training, impartiality, and commitment of the health care
 271 | provider to the provision of quality medical care at a
 272 | reasonable cost. As a prerequisite for certification or
 273 | recertification, the department shall require, at a minimum,
 274 | that an expert medical advisor have specialized workers'
 275 | compensation training or experience under the workers'
 276 | compensation system of this state and board certification or
 277 | board eligibility.

278 | (f) If the department or a judge of compensation claims
 279 | orders the services of an ~~a certified~~ expert medical advisor to
 280 | resolve a dispute under this section, the party requesting such
 281 | examination must compensate the advisor for his or her time in
 282 | accordance with a schedule adopted by the department. If the
 283 | employee prevails in a dispute as determined in an order by a
 284 | judge of compensation claims based upon the expert medical
 285 | advisor's findings, the employer or carrier shall pay for the
 286 | costs of such expert medical advisor. If a judge of compensation

287 claims, upon his or her motion, finds that an expert medical
 288 advisor is needed to resolve the dispute, the carrier must
 289 compensate the advisor for his or her time in accordance with a
 290 schedule adopted by the department. The department may assess a
 291 penalty not to exceed \$500 against any carrier that fails to
 292 timely compensate an advisor in accordance with this section.

293 Section 6. Subsection (3) of section 440.185, Florida
 294 Statutes, is amended to read:

295 440.185 Notice of injury or death; reports; penalties for
 296 violations.-

297 ~~(3) In addition to the requirements of subsection (2), the~~
 298 ~~employer shall notify the department within 24 hours by~~
 299 ~~telephone or telegraph of any injury resulting in death.~~
 300 ~~However, this special notice shall not be required when death~~
 301 ~~results subsequent to the submission to the department of a~~
 302 ~~previous report of the injury pursuant to subsection (2).~~

303 Section 7. Subsection (3) of section 440.42, Florida
 304 Statutes, is amended to read:

305 440.42 Insurance policies; liability.-

306 (3) No contract or policy of insurance issued by a carrier
 307 under this chapter shall expire or be canceled until at least 30
 308 days have elapsed after a notice of cancellation has been sent
 309 to the department and to the employer in accordance with the
 310 provisions of s. 440.185(6) ~~s. 440.185(7)~~. For cancellation due
 311 to nonpayment of premium, the insurer shall mail notification to
 312 the employer at least 10 days prior to the effective date of the

313 cancellation. However, when duplicate or dual coverage exists by
 314 reason of two different carriers having issued policies of
 315 insurance to the same employer securing the same liability, it
 316 shall be presumed that only that policy with the later effective
 317 date shall be in force and that the earlier policy terminated
 318 upon the effective date of the latter. In the event that both
 319 policies carry the same effective date, one of the policies may
 320 be canceled instanter upon filing a notice of cancellation with
 321 the department and serving a copy thereof upon the employer in
 322 such manner as the department prescribes by rule. The department
 323 may by rule prescribe the content of the notice of retroactive
 324 cancellation and specify the time, place, and manner in which
 325 the notice of cancellation is to be served.

326 Section 8. Paragraph (b) of subsection (2), paragraph (c)
 327 of subsection (4), paragraph (c) of subsection (6), paragraphs
 328 (c) and (d) of subsection (7), subsection (8), and paragraph (d)
 329 of subsection (9) of section 440.49, Florida Statutes, are
 330 amended to read:

331 440.49 Limitation of liability for subsequent injury
 332 through Special Disability Trust Fund.-

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

334 ~~(b) "Preferred worker" means a worker who, because of a~~
 335 ~~permanent impairment resulting from a compensable injury or~~
 336 ~~occupational disease, is unable to return to the worker's~~
 337 ~~regular employment.~~

338

339 In addition to the definitions contained in this subsection, the
 340 department may by rule prescribe definitions that are necessary
 341 for the effective administration of this section.

342 (4) PERMANENT IMPAIRMENT OR PERMANENT TOTAL DISABILITY,
 343 TEMPORARY BENEFITS, MEDICAL BENEFITS, OR ATTENDANT CARE AFTER
 344 OTHER PHYSICAL IMPAIRMENT.—

345 (c) Temporary compensation and medical benefits;
 346 aggravation or acceleration of preexisting condition or
 347 circumstantial causation.—If an employee who has a preexisting
 348 permanent physical impairment experiences an aggravation or
 349 acceleration of the preexisting permanent physical impairment as
 350 a result of an injury or occupational disease arising out of and
 351 in the course of her or his employment, or suffers an injury as
 352 a result of a merger as defined in paragraph (2) (b) ~~(2) (e)~~, the
 353 employer shall provide all benefits provided by this chapter,
 354 but, subject to the limitations specified in subsection (7), the
 355 employer shall be reimbursed by the Special Disability Trust
 356 Fund created by subsection (9) for 50 percent of its payments
 357 for temporary, medical, and attendant care benefits.

358 (6) EMPLOYER KNOWLEDGE, EFFECT ON REIMBURSEMENT.—

359 (c) An employer's or carrier's right to apportionment or
 360 deduction pursuant to ss. 440.02(1), 440.15(5)(b), and
 361 440.151(1)(c) does not preclude reimbursement from such fund,
 362 except when the merger comes within the definition of paragraph
 363 (2) (b) ~~(2) (e)~~ and such apportionment or deduction relieves the
 364 employer or carrier from providing the materially and

365 substantially greater permanent disability benefits otherwise
 366 contemplated in those paragraphs.

367 (7) REIMBURSEMENT OF EMPLOYER.—

368 (c) A proof of claim must be filed on each notice of claim
 369 on file as of June 30, 1997, within 1 year after July 1, 1997,
 370 or the right to reimbursement of the claim shall be barred. A
 371 notice of claim on file on or before June 30, 1997, may be
 372 withdrawn and refiled if, at the time refiled, the notice of
 373 claim remains within the limitation period specified in
 374 paragraph (a). Such refileing shall not toll, extend, or
 375 otherwise alter in any way the limitation period applicable to
 376 the withdrawn and subsequently refiled notice of claim. ~~Each~~
 377 ~~proof of claim filed shall be accompanied by a proof of claim~~
 378 ~~fee as provided in paragraph (9)(d).~~ The Special Disability
 379 Trust Fund shall, within 120 days after receipt of the proof of
 380 claim, serve notice of the acceptance of the claim for
 381 reimbursement. This paragraph shall apply to all claims
 382 notwithstanding the provisions of subsection (12).

383 (d) ~~Each notice of claim filed or refiled on or after July~~
 384 ~~1, 1997, must be accompanied by a notification fee as provided~~
 385 ~~in paragraph (9)(d).~~ A proof of claim must be filed within 1
 386 year after the date the notice of claim is filed or refiled,
 387 ~~accompanied by a proof of claim fee as provided in paragraph~~
 388 ~~(9)(d),~~ or the claim shall be barred. ~~The notification fee shall~~
 389 ~~be waived if both the notice of claim and proof of claim are~~
 390 ~~submitted together as a single filing.~~ The Special Disability

391 Trust Fund shall, within 180 days after receipt of the proof of
 392 claim, serve notice of the acceptance of the claim for
 393 reimbursement. This paragraph shall apply to all claims
 394 notwithstanding the provisions of subsection (12).

395 ~~(8) PREFERRED WORKER PROGRAM. The Department of Education~~
 396 ~~or administrator shall issue identity cards to preferred workers~~
 397 ~~upon request by qualified employees and the Department of~~
 398 ~~Financial Services shall reimburse an employer, from the Special~~
 399 ~~Disability Trust Fund, for the cost of workers' compensation~~
 400 ~~premium related to the preferred workers payroll for up to 3~~
 401 ~~years of continuous employment upon satisfactory evidence of~~
 402 ~~placement and issuance of payroll and classification records and~~
 403 ~~upon the employee's certification of employment. The Department~~
 404 ~~of Financial Services and the Department of Education may by~~
 405 ~~rule prescribe definitions, forms, and procedures for the~~
 406 ~~administration of the preferred worker program. The Department~~
 407 ~~of Education may by rule prescribe the schedule for submission~~
 408 ~~of forms for participation in the program.~~

409 (8)(9) SPECIAL DISABILITY TRUST FUND.-

410 ~~(d) The Special Disability Trust Fund shall be~~
 411 ~~supplemented by a \$250 notification fee on each notice of claim~~
 412 ~~filed or refiled after July 1, 1997, and a \$500 fee on each~~
 413 ~~proof of claim filed in accordance with subsection (7). Revenues~~
 414 ~~from the fee shall be deposited into the Special Disability~~
 415 ~~Trust Fund and are exempt from the deduction required by s.~~
 416 ~~215.20. The fees provided in this paragraph shall not be imposed~~

417 ~~upon any insurer which is in receivership with the department.~~

418 Section 9. Paragraph (b) of subsection (1) of section
419 440.50, Florida Statutes, is amended to read:

420 440.50 Workers' Compensation Administration Trust Fund.—

421 (1)

422 (b) The department is authorized to transfer as a loan an
423 amount not in excess of \$250,000 from such special fund to the
424 Special Disability Trust Fund established by s. 440.49(8) ~~s.~~
425 ~~440.49(9)~~, which amount shall be repaid to the ~~said~~ special fund
426 in annual payments equal to not less than 10 percent of moneys
427 received for the ~~such~~ Special Disability Trust Fund.

428 Section 10. Subsection (1) of section 440.52, Florida
429 Statutes, is amended to read:

430 440.52 Registration of insurance carriers; notice of
431 cancellation or expiration of policy; suspension or revocation
432 of authority.—

433 (1) Each insurance carrier who desires to write workers'
434 ~~such~~ compensation insurance in compliance with this chapter
435 shall be required, before writing such insurance, to register
436 with the department ~~and pay a registration fee of \$100. This~~
437 ~~shall be deposited by the department in the fund created by s.~~
438 ~~440.50.~~

439 Section 11. Subsection (2) of section 624.4626, Florida
440 Statutes, is amended to read:

441 624.4626 Electric cooperative self-insurance fund.—

442 (2) A self-insurance fund that meets the requirements of

443 | this section is subject to the assessments set forth in ss.
 444 | 440.49(8) ~~ss. 440.49(9)~~, 440.51(1), and 624.4621(7), but is not
 445 | subject to any other provision of s. 624.4621 and is not
 446 | required to file any report with the department under s.
 447 | 440.38(2)(b) which is uniquely required of group self-insurer
 448 | funds qualified under s. 624.4621.

449 | Section 12. This act shall take effect October 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 657 Foster Family Appreciation Week
SPONSOR(S): Albritton
TIED BILLS: IDEN./SIM. BILLS: SB 860

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	10 Y, 0 N	Ives	Brazzell
2) Government Operations Appropriations Subcommittee		White CCW	Topp BDT
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Foster families provide care for children in the child welfare system who have suffered abuse, abandonment, or neglect. To honor their work, foster families are recognized in the state by government agencies, community-based care organizations, and community partners. These entities hold events throughout the year to promote awareness of the contributions made by foster families. Foster families are further recognized during National Foster Care Month, when community-based care agencies, in partnership with the Department of Children and Families, participate in events such as social media campaigns, awareness walks, and honorary banquets.

The bill creates s. 683.333, F.S., designating the second week of February as "Foster Family Appreciation Week." During this week, the Department of Children and Families, local governments, and other agencies are encouraged to sponsor events to promote awareness of the contributions made by foster families to the state.

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

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

Child Welfare System

The child welfare system identifies families whose children are in danger of suffering or have suffered abuse, abandonment, or neglect and works with those families to address the problems that are endangering children. If the problems cannot be ameliorated, the child welfare system finds other caregivers for children, such as relative and non-relative caregivers, foster families, or adoptive families.¹

Foster Care

A licensed foster home is identified when placement with a relative or non-relative caregiver is not possible. This type of setting is intended to provide a temporary, safe place to live until a child can be reunited with his or her family, an adoptive family is identified, or other permanency is achieved.² Section 409.175(2)(e), F.S., defines a "family foster home" as a private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. Such homes include emergency shelter family homes and specialized foster homes for children with special needs. A family foster home does not include a person who cares for a child of a friend for a period not to exceed 90 days, a relative who cares for a child and does not receive reimbursement for such care from the state or federal government, or an adoptive home which has been approved by the department or by a licensed child-placing agency for children placed for adoption.³

As of June 1, 2015, there were 21,946 dependent children in out-of-home care. Of this figure, 28 percent were in family foster care and three percent were in therapeutic foster care. According to the department's Florida Safe Families Network (FSFN), there were approximately 3,400 beds available as of January 1, 2015. The majority of children (61%) in family foster care are five years old and younger, with placement for teenagers an ongoing challenge.⁴ According to the Florida Governor's Office of Adoption and Child Protection, 27.25 percent of children adopted from the state's child welfare system in Fiscal Year (FY) 2013-14 were adopted by foster parents.⁵

Foster Parent Qualifications

In order to qualify as a potential foster parent, an individual must:⁶

- Attend an orientation;
- Complete 20 to 30 hours of foster parent training;
- Have a child abuse and criminal background check;
- Participate in a home inspection; and
- Participate in a home study to review readiness for fostering.

¹ See s. 39.001(1), F.S.

² OPPAGA, Florida's Child Welfare System: Out-of-Home-Care, November 2015 (on file with committee staff).

³ S. 409.175(2)(e), F.S.

⁴ *Supra*, FN 2.

⁵ Florida Governor's Office of Adoption and Child Protection, 2014 Annual Report, available at http://www.flgov.com/wp-content/uploads/childadvocacy/OACP_2014_FINAL.pdf, p. 51. (last visited December 11, 2015).

⁶ Department of Children of Families, How Do I Become A Foster Parent?, available at <http://www.myflfamilies.com/service-programs/foster-care/how-do-i> (last visited December 11, 2015).

The recruitment, training, and licensing of foster parents is conducted by 18 community-based care agencies that maintain contracts with the Department of Children and Families.⁷ Families are licensed to care for up to five children, including foster parents' biological and adopted children. Foster parents are responsible for the care and well-being of the child, including maintaining their health, safety, and best interests and encouraging emotional and developmental growth.⁸ Following placement, a foster child is closely monitored by a case worker, who provides support and additional training related to special needs.⁹

Section 409.145(2)(a), F.S., specifies the roles and responsibilities of foster parents:¹⁰

- Participate in the development of the child's case plan and assist in implementing the case plan;
- Complete all training needed to improve skills in parenting a child who has experienced trauma;
- Respect and support the child's ties to members of his or her biological family and assist with maintaining allowable visitation;
- Effectively advocate for the child;
- Participate fully in the child's medical, psychological, and dental care as the caregiver would for his or her biological child;
- Support the child's educational success by participating in activities and meetings associated with the child's school;
- Work in partnership with other stakeholders to obtain and maintain records that are important to the child's well-being;
- Ensure that children between the ages of 13 and 17 learn and master independent living skills;
- Ensure that the child is aware of the requirements and benefits of the Road-to-Independence Program; and
- Work to enable the child to establish and maintain naturally occurring mentoring relationships.

Foster Parent Compensation

The FY 2015-2016 room and board rates paid to foster parents are:¹¹

- \$439.30 monthly for children 0-5 years of age.
- \$450.56 monthly for children 6-12 years of age.
- \$527.36 monthly for children 13-21 years of age.¹²

According to s. 409.145(4)(a), F.S., foster parents shall receive an annual cost of living increase. Additionally, the board rate amount may be increased upon agreement between the department, the community-based care lead agency, and the foster parent.¹³ These rates do not include medical and behavioral health needs, which are covered by Medicaid. In addition, the amount of the basic monthly payment is before any deductions for income of the child.¹⁴

⁷ Department of Children and Families, *Fostering in Florida*, available at <http://www.myflfamilies.com/service-programs/foster-care/fostering> (last visited December 11, 2015).

⁸ *Supra*, FN 2.

⁹ OurKids, *How Foster Care Works*, available at <http://fosteringourkids.org/how-foster-care-works/> (last visited December 11, 2015).

¹⁰ *Supra*, FN 2.

¹¹ Department of Children and Families, *2015 Foster Parent Cost of Living Allowance Increase*, available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0ahUKEwibvYWM9tvJAhVLSSYKHTpaCLIQFqgoMAI&url=http%3A%2F%2Fcenterforchildwelfare.fmhi.usf.edu%2Fkb%2Fpolicymemos%2F2015FP-COLA-Increase123114.pdf&usg=AFQjCNHgcCnIYcm4T8u-s4LbDko_CADi5A&bvm=bv.109910813,d.eWE (Last visited December 14, 2015).

¹² Family foster parents receive this monthly room and board rate through the child reaching age 21.

¹³ Section 409.145(4)(c), F.S.

¹⁴ *Supra*, FN 2.

Recognition of Foster Families

A number of entities currently provide recognition of foster families within Florida. These include:

- Governor's Office of Adoption and Child Protection, through attendance at prayer breakfasts that encourage members of the faith community to consider becoming foster parents.¹⁵
- Department of Children and Families, by highlighting foster parents and youth on the department's blog during National Foster Care Month in May.¹⁶
- Florida State Foster/Adoptive Parent Association, by participating in events during National Foster Care Month and by hosting an annual conference for foster parents and teens.¹⁷
- Community-based care agencies, by working closely with individuals and businesses in their communities to hold celebratory events that recognize the contributions of foster families.¹⁸
- Community partners, churches, businesses, and non-profit organizations, which offer resources and support to foster families that allow children to succeed.¹⁹

National Foster Care Month, observed under a presidential proclamation, was first recognized in 1988. The month is designed to acknowledge foster parents, family members, volunteers, mentors, policymakers, child welfare professionals, and other members of the community who help children and youth in foster care find permanent homes and connections.²⁰ In observance of the month, community-based care agencies, in partnership with the Department of Children and Families, hold large events to further recruitment, promote awareness, attract media attention, and receive local government recognition.²¹ Efforts on behalf of the agencies consist of social media campaigns, awareness walks, honorary banquets, and appreciation dinners.²²

Effect of Proposed Changes

The bill creates s. 683.333, F.S., designating the second week of February as "Foster Family Appreciation Week." During this week, the Department of Children and Families, local governments, and other agencies are encouraged to sponsor events to promote awareness of the contributions made by foster families to the state.

¹⁵ *Supra*, FN 5.

¹⁶ Department of Children and Families, The Department of Children and Families Celebrates National Foster Care Month, May 2014, *available at* <http://www.myflfamilies.com/press-release/department-children-and-families-celebrates-national-foster-care-month> (last visited December 14, 2015).

¹⁷ Florida State Foster/Adoptive Parent Association, About FSFAPA, *available at* <http://floridafapa.org/about-fsfapa/> (last visited December 14, 2015).

¹⁸ Department of Children and Families, Support Fostering, *available at* <http://www.myflfamilies.com/service-programs/foster-care/support-fostering> (last visited December 14, 2015).

¹⁹ *Supra*, FN 7.

²⁰ U.S. Department of Health and Human Services, National Foster Care Month 2015, *available at* <https://www.childwelfare.gov/fostercaremonth/more/about/> (last visited December 14, 2015).

²¹ Email from Victoria Zepp, Executive Director, Florida Coalition for Children, RE: HB 657, (12/2/15, on file with committee staff).

²² Banquet and social media campaign, hosted by Partnership for Strong Families CBC, *available at* http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwj3NGKv9vJAhWJ4yYKHQeeBUwQFggcMAA&url=http%3A%2F%2Fwww.pfsf.org%2Fwp-content%2Fuploads%2F05-11-15-National-Foster-Care-Month.pdf&usq=AFQjCNFU3K_F2FKjC20Gbgda2TMeMrD1rQ (last visited December 14, 2015); Duffels for Kids Walk, hosted by FSFAPA and CBCs, *available at* <http://floridafapa.org/event/2016-duffels4kids-walk/> (last visited December 14, 2015); Foster parent appreciation dinner, poolside picnic, and garden party hosted by Devereux CBC, *available at* http://www.devereux.org/site/PageServer?pagename=cbc_foster_parents_resources (last visited December 14, 2015); Foster Parent Appreciation Reception, hosted by ChildNet CBC, *available at* http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0ahUKEwjPpPHezNTJAhUBYSYKHTQ6BCcQFggoMAI&url=http%3A%2F%2Fwww.pfsf.org%2Fwp-content%2Fuploads%2F05-11-15-National-Foster-Care-Month.pdf&usq=AFQjCNFU3K_F2FKjC20Gbgda2TMeMrD1rQ (last visited December 14, 2015).

B. SECTION DIRECTORY:

Section 1: Creates s. 683.333, F.S., relating to the designation of the second week of February as "Foster Family Appreciation Week."

Section 2: Provides that the act will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to 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

1 A bill to be entitled
 2 An act relating to foster families; creating s.
 3 683.333, F.S.; designating the second week of February
 4 of each year as "Foster Family Appreciation Week";
 5 providing an effective date.

6
 7 WHEREAS, the family is the very foundation of our
 8 communities, state, and country, and

9 WHEREAS, parents serve as a child's primary source of love,
 10 attachment, identity, self-esteem, and support, and

11 WHEREAS, foster parents open their homes and hearts to
 12 children whose families are in crisis and play a vital role in
 13 helping children heal, reconnect, grow, and flourish, and

14 WHEREAS, foster parents are professional parents and full
 15 partners in the commitment to ensuring the well-being of
 16 children in foster care, and

17 WHEREAS, many of the children adopted in this state have
 18 been provided a permanent home by their foster parents, and

19 WHEREAS, foster parents play a critical role in the Quality
 20 Parenting Initiative, which places a priority on quality
 21 parenting, putting the needs of children first, advocating for
 22 children in their care, and supporting and mentoring birth
 23 families, and

24 WHEREAS, in this state, more than 6,000 children and youth
 25 in foster care have a safe, secure, and stable family foster
 26 home, and

27 WHEREAS, compassionate individuals, faith-based
 28 communities, and public and private organizations work to
 29 increase public awareness of the enduring and valuable
 30 contributions of foster parents and the needs of children in
 31 foster care, and

32 WHEREAS, those families who are able to serve as foster
 33 parents should be wholeheartedly encouraged to do so, and

34 WHEREAS, the Governor's Office of Adoption and Child
 35 Protection, the Legislature, the Department of Children and
 36 Families, community-based care lead agencies, the guardian ad
 37 litem program, the Florida State Foster/Adoptive Parent
 38 Association, and state and local agencies and organizations all
 39 provide support for foster families, and

40 WHEREAS, to continue to commend and support foster families
 41 in the years ahead, the people of this state are called upon to
 42 recognize the positive impact that foster parents have on
 43 children in foster care and to consider providing a loving,
 44 supportive home for children in need by becoming foster parents,
 45 NOW, THEREFORE,

46

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

48

49 Section 1. Section 683.333, Florida Statutes, is created
 50 to read:

51

683.333 Foster Family Appreciation Week.—

52

(1) The second week of February of each year, beginning in


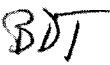
53 2016, is designated as "Foster Family Appreciation Week" to
 54 recognize the enduring and invaluable contributions that foster
 55 parents provide to the children in their care and, thus, to the
 56 future of this state.

57 (2) The Department of Children and Families, local
 58 governments, and other agencies are encouraged to sponsor events
 59 to promote awareness of the contributions made by foster
 60 families to the vitality of the state.

61 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 717 Consumer Credit
SPONSOR(S): Insurance & Banking Subcommittee; Burgess
TIED BILLS: IDEN./SIM. BILLS: CS/SB 626

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	10 Y, 1 N, As CS	Bauer	Luczynski
2) Government Operations Appropriations Subcommittee		Keith 	Topp 
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

In 2006, Congress enacted the federal Military Lending Act (MLA) to provide protections to military personnel on active duty for more than 30 days, active National Guard or Reserve personnel, and their dependents from certain closed-end "consumer credit" products (tax refund anticipation loans, payday loans, and auto title loans with certain terms). The MLA protections, which have been implemented by the U.S. Department of Defense (DoD) by rule and are enforceable by various federal financial regulatory agencies, include:

- A 36 percent cap on military annual percentage rate, or MAPR;
- Written and oral disclosures;
- A ban on rollovers and refinancing, unless the new loan results in more favorable terms for the borrower;
- A ban on mandatory waivers of consumer protection laws, including the Servicemembers Civil Relief Act (which protects servicemembers from being sued while on active duty), and a ban on mandatory arbitration; and
- A ban on prepayment penalties and mandatory allotments (i.e., automatic payroll deductions used to repay the loan).

At the state level, various loan products such as payday, title, and consumer finance loans are regulated by the Office of Financial Regulation (OFR), which also charters and supervises state financial institutions such as banks and credit unions. These lenders are required by the Financial Institutions Codes and chs. 516, 537, and 560, F.S., to be licensed by the OFR and to comply with interest or annual percentage rate caps, disclosure requirements, and other provisions.

Due to the MLA's narrow definition of "consumer credit," many lending abuses against the military and their dependents have continued. In response, the DoD amended its MLA regulation this year to significantly expand the definition of "consumer credit," thus subjecting a greater class of loan products to the MLA's requirements, and to enhance some of the protections. The amended MLA regulation became effective on October 1, 2015, with various delayed compliance deadlines.

The bill authorizes the OFR to enforce the MLA and the MLA regulations at the state level by authorizing the OFR to take administrative action against state financial institutions, deferred presentment providers (payday lenders), consumer finance lenders, and title lenders for violations of the MLA and the MLA regulations.

The bill has an indeterminate, yet positive impact to state revenues and a potentially negative impact on state expenditures. According to the OFR, enforcement provisions of the bill will require additional workload that is not currently being performed. The OFR indicates that the additional workload will require the need for two full-time equivalent positions with associated salary rate of 87,016 and \$126,132 recurring funds from the Regulatory Trust Fund to implement provisions of the bill. The bill does not have a fiscal impact on local government. The bill exposes certain consumer lenders in this state to additional penalties and fines; however, it may have a positive impact on service members and their dependents who engage in consumer credit transactions in Florida.

The bill provides an effective date of October 3, 2016.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0717b.GOAS.DOCX

DATE: 1/15/2016

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Consumer Debt and the Military

In 2006, Congress requested that the U.S. Department of Defense (DoD) conduct a study on the impact of predatory lending on the U.S. military.¹ The 2006 DoD report included: short-term loans (such as payday, auto title, and tax refund anticipation loans) and installment loans (such as unsecured loans targeting military personnel and rent-to-own loan products) in its findings on predatory lending practices. The DoD concluded that the report shared the following characteristics:

- Predatory lending practices targeted young, financially inexperienced borrowers with bank accounts and steady jobs, but with small savings, flawed credit, or high debt; in addition, predatory lenders did not consider the borrowers' ability to repay.
- Predatory lenders targeted military personnel through proximity (around military bases) or through the use of affinity marketing techniques, especially through the internet.
- Predatory loans typically involve high fees or interest rates which circumvent state and federal limits, and also result in "debt traps" through refinancing and loan flipping.²

The 2006 DoD report noted that predatory lending negatively impacts servicemembers and their families by undermining military readiness and morale, and adds to the cost of an all-volunteer fighting force.³ While the DoD noted its own efforts to educate, counsel, and assist servicemembers from predatory lending practices, it noted that it cannot prevent predatory lending without assistance from both state and federal legislatures and enforcement agencies. Specifically, the DoD opined that the most effective state protections combine strict usury limits and vigorous enforcement.⁴

The DoD made several recommendations to Congress, including a 36 percent federal ceiling on annual percentage rate (APR), uniform price disclosures, prohibitions on mandatory arbitration, and a prohibition on lenders from making loans to servicemembers that violate consumer protections laws of the state in which their base is located.⁵

Federal Military Lending Act of 2006

Following the DoD's report and recommendations, in 2006 Congress enacted the Military Lending Act (MLA) to provide protections to military personnel on active duty for more than 30 days, active National Guard or Reserve personnel, and their dependents from certain "consumer credit" products.⁶ The MLA protections, which are enforceable by various federal financial regulators,⁷ include:

¹ Section 579 of the National Defense Authorization Act (FY 2006).

² U.S. DEPARTMENT OF DEFENSE, *Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* (Aug. 9, 2006), on file with the Insurance & Banking Subcommittee staff.

³ *Id.* at p. 53.

⁴ *Id.* at pp. 46-48.

⁵ *Id.* at pp. 50-52.

⁶ H.R. 5122, Section 670 of the John Warner National Defense Authorization Act of 2007; codified at 10 U.S.C. § 987. Covered dependents include the spouse, child in specified situations, parent or parent-in-law, and an unmarried person for whom the covered servicemember has legal custody. 10 U.S.C. § 987(i)(2); 10 U.S.C. § 1072(2).

⁷ In addition to providing civil remedies to aggrieved servicemembers and their dependents, the MLA is enforceable by the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the CFPB, the Federal Trade Commission, and other specified agencies. 10 U.S.C. § 986(f)(6).

- A 36 percent cap on military annual percentage rate, or MAPR (which includes interest, fees, credit service and renewal charges, credit insurance premiums, and other fees for credit-related products sold in connection with the loan);
- Written and oral disclosures;
- A ban on rollovers and refinancing, unless the new loan results in more favorable terms for the borrower;
- A ban on mandatory waivers of consumer protection laws, including the Servicemembers Civil Relief Act (which protects servicemembers from being sued while on active duty), and a ban on mandatory arbitration; and
- A ban on prepayment penalties and mandatory allotments (i.e., automatic payroll deductions used to repay the loan).

The DoD's regulation implementing the MLA currently defines the types of loans subject to these protections as only:

- Closed-end payday loans up to \$2,000 and with a term of 91 days or fewer;
- Closed-end auto title loans with a term of 181 days or fewer; and
- Closed-end tax refund anticipation loans.

However, the current MLA regulation specifically excludes many other loan products from the definition of "consumer credit," including residential mortgages, home equity lines of credit, loans to finance the purchase or lease of motor vehicles, credit cards, overdraft loans, military installment loans, and all forms of open-end credit.⁸

2015 MLA Amendments

Following the enactment of the MLA, several organizations, including the DoD, acknowledged some of the shortcomings of the MLA, particularly its narrow definition of "consumer credit" that allowed lenders to structure their loan products to circumvent the MLA⁹:

- A 2012 report by the Consumer Federation of America found that while the MLA was largely successful in curbing abusive lending to the military, the narrow definition of "consumer credit," allowed loopholes for problematic credit products to be exploited, including bank credit products (similar to payday lending) that were excluded from the MLA regulation, resulting in uneven enforcement by state and federal regulators.¹⁰
- The Consumer Financial Protection Bureau (CFPB), created by Congress in 2010, began its supervision of payday lenders in 2012.
 - In 2013, the CFPB concluded that payday loans cannot be defined simply as closed-end loans where the principal and interest are due the next payday (generally, within two weeks to a month). Payday loans can be of longer duration, be structured as open-end credit, and incorporate installment payments.¹¹

⁸ 32 C.F.R. § 232.3(2).

⁹ Hanging Chen, *What Military Families Need to Know About High-Cost Lenders*, PROPUBLICA (Oct. 9, 2014), <http://www.propublica.org/article/what-military-families-need-to-know-about-high-cost-lenders>; Herb Weisbaum, *Military Lending Act 'Loopholes' Are Costing Troops Money*, NBCNEWS (Jan. 14, 2015), at <http://www.nbcnews.com/business/personal-finance/military-lending-act-loopholes-are-costing-troops-money-n282961>.

¹⁰ Jean Ann Fox, *The Military Lending Act Five Years Later*, CONSUMER FEDERATION OF AMERICA (May 29, 2012), <http://consumerfed.org/pdfs/Studies.MilitaryLendingAct.5.29.12.pdf>.

¹¹ CONSUMER FINANCIAL PROTECTION BUREAU, *Payday Loans and Deposit Advance Products* (Apr. 24, 2013), at http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

- The CFPB's first enforcement action against a payday lender also included findings that the lender overcharged servicemembers and their families, in violation of the MLA's 36 percent APR cap.¹²
- In 2014, the Consumer Financial Protection Bureau (CFPB) issued a report on high-cost credit and the military, citing several examples illustrating how consumer credit products can be structured to fall outside the scope of the current MLA, such as contracting for payday loans greater than 91 days or auto loans greater than 181 days.¹³
- In 2013, Congress requested that the DoD determine whether the MLA regulation should be enhanced to protect covered borrowers from "continuing and evolving predatory lending practices."¹⁴ In April 2014, the DoD issued a report noting significant concerns about the loopholes in state policy and marketplace changes that have blurred the differences between payday, auto title, and installment loans.¹⁵

In July 2015, the DoD amended the MLA regulation to broaden the coverage of MLA protections by expanding the definition of "consumer credit." The new MLA regulation eliminates the "closed-end" qualifier of consumer credit, and the limitation that consumer credit means only payday loans, vehicle title loans, and tax refund anticipation loans of certain duration. Instead, the MLA regulation will mean any "credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is (I) subject to a finance charge; or (II) payable by a written agreement in more than four installments." The new MLA regulation still excludes residential mortgages and auto finance loans.¹⁶ However, this new definition is more consistent with credit that is subject to the federal Truth in Lending Act (TILA), although the MAPR requires inclusion of some fees or charges that are not considered finance charges under the TILA regulation, Reg Z.¹⁷

Additionally, the new MLA regulation permits creditors to use two methods to ascertain whether a consumer is a covered borrower for purposes of the regulation's protections. Under the final rule, creditors are granted a safe harbor if they use either or both of the two methods -- the MLA database (maintained by the DoD) or consumer reports from a nationwide consumer credit reporting agency -- to verify borrower status and comply with recordkeeping requirements. Creditors are allowed to rely on the initial covered borrower check for up to 60 days after a firm offer of credit is extended to the borrower.

The new MLA regulation became effective on October 1, 2015; however, compliance is required for consumer credit transactions that begin or are established on or after October 3, 2016. The regulation provides a limited delayed compliance deadline of October 3, 2017 for credit card accounts, which may be extended by the DoD until October 3, 2018.¹⁸

The DoD acknowledged that the amended MLA regulation will not entirely eliminate financial distress among servicemembers; however, the DoD expects that the new regulation should reduce negative credit reporting consequences to servicemembers, improve their capacity to manage and pay debts,

¹² CONSUMER FINANCIAL PROTECTION BUREAU, *Consent Order In the Matter of: Cash America International, Inc.* (Nov. 20, 2013), at http://files.consumerfinance.gov/f/201311_cfpb_cashamerica_consent-order.pdf.

¹³ CONSUMER FINANCIAL PROTECTION BUREAU, *The Extension of High-Cost Credit to Servicemembers and Their Families* (Dec. 2014), at: http://files.consumerfinance.gov/f/201412_cfpb_the-extension-of-high-cost-credit-to-servicemembers-and-their-families.pdf.

¹⁴ H.R. 4319, National Defense Authorization Act for FY 2013.

¹⁵ U.S. DEPARTMENT OF DEFENSE, *Report: Enhancement of Protections on Consumer Credit for Members of the Armed Forces and Their Dependents* (Apr. 2014), on file with the Insurance & Banking Subcommittee staff.

¹⁶ 32 C.F.R. § 232.3(f).

¹⁷ The purpose of TILA (which applies to all borrowers, not just servicemembers) is to promote the informed use of credit through "a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him." TILA and Reg Z requires the calculation and disclosure of Annual Percentage Rate (APR) for all "consumer loans," which include mortgage loans, home equity lines of credit, reverse mortgages, open-credit, certain student loans, and installment loans. 15 U.S.C. §§ 1601(a), 1604-1606. TILA is codified at 15 U.S.C. §1601 *et seq.*, as implemented by Reg Z, 12 C.F.R. pt. 226.

¹⁸ 32 C.F.R. § 232.13.

and improve military readiness and servicemember retention (through reduced involuntary separations due to revoked security clearances).¹⁹

MLA and State Regulation of Consumer Credit

While the MLA generally does not preempt state law (except to the extent of any inconsistency, and allows states to provide additional protections to borrowers), the MLA does prohibit states from authorizing creditors to violate any state APR, interest cap, or other state consumer lending protections in relation to a borrower who is a servicemember or dependent.²⁰

Below is an overview of current Florida laws regulating consumer credit, applicable to all consumers in Florida, which are enforced by the Office of Financial Regulation (OFR). Currently, none of these laws specifically authorize the OFR to take administrative action for lending practices specifically against a servicemember or a servicemember's dependents.

Regulation of State Financial Institutions

The OFR's Division of Financial Institutions charters and regulates depository entities that engage in financial institution business in Florida in accordance with the Florida Financial Institutions Codes (Codes).²¹ State-chartered financial institutions include banks, trust companies, credit unions, international banking entities, capital stock associations, and savings banks.²² The OFR may examine, investigate, and take disciplinary actions against state-chartered financial institutions for violation of the codes, including the imposition of a *cease and desist order* pursuant to s. 655.033, F.S., an injunction pursuant to s. 655.034, F.S., removal of a financial institution-affiliated party pursuant to s. 655.037, F.S., and imposition of administrative fines pursuant to s. 655.041, F.S.

Regulation of State Non-Depository Lenders

In addition, the OFR's Division of Consumer Finance is responsible for the licensing and regulation of *non-depository* financial service entities and individuals, and conducts examinations and compliance investigations for licensed entities to determine compliance with Florida law. The OFR's Division of Consumer Finance has regulatory authority over other small consumer loans authorized under ch. 520 (retail installment sellers), ch. 537 (title loans), and part IV of ch. 560 (deferred presentment or payday loans), F.S.:

- **Deferred Presentment Providers (Payday Lenders)**

A "money services business" (MSB) is generally any person who acts as a payment instrument seller, foreign currency exchanger, check casher, or money transmitter. If an MSB is located in or does business in Florida, or into this state from outside of Florida or the U.S., the MSB must be licensed with the OFR pursuant to the Money Services Businesses Act (ch. 560, F.S.).²³

An MSB licensed under Part II or Part III of ch. 560, F.S., may also file a declaration of intent with the OFR to conduct business as a deferred presentment provider (also known as a payday lender) pursuant to Part IV of ch. 560, F.S. A deferred presentment transaction (or payday loan) is a type of loan where a person exchanges a check, like a paycheck, up to \$500 in exchange for currency or a payment instrument (e.g., electronic funds transfer, check, or money order)

¹⁹ Limitation on Terms of Consumer Credit Extended to Service Members and Dependents: Final Rule, 80 Fed. Reg. 43,560, 43,599-43,600 (Jul. 22, 2015) (to be codified at 32 C.F.R. pt. 232).

²⁰ 10 U.S.C. § 987(d)(2).

²¹ chs. 655, 657, 658, 660, 663, 665, and 667, F.S.

²² The OFR does not regulate financial institutions chartered under federal law or under other states' laws. Regardless of charter type, every financial institution has a primary federal regulator (the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, or the Office of the Comptroller of the Currency).

²³ ss. 560.103(22) and 560.125(1), F.S.

and the lender agrees to hold the check for a specified period of time before depositing or redeeming the check. Repayment terms range from a minimum of 7 days to a maximum of 31 days. The maximum allowable fees are 10 percent of the currency or payment instrument provided, as well as a verification fee of up to \$5 per transaction. For each transaction, the deferred presentment provider must comply with the disclosure requirements of Regulation Z. Borrowers may have only one active payday loan at a time, but may secure a new loan 24 hours after paying off the original loan.²⁴

- Consumer Finance Lenders

The Florida Consumer Finance Act (ch. 516, F.S.) sets forth licensing and loan contract requirements for consumer finance lenders in Florida. Ch. 516, F.S., sets forth maximum interest rates for *consumer finance loans*, which are loans of money, credit, goods, or a provision of a line of credit, in an amount or to a value of \$25,000 or less at an interest rate greater than 18 percent per annum.²⁵ Consumer finance loans may be secured or unsecured. The maximum allowable interest rates on consumer finance loans are tiered and capped based on a range of principal within each tier:

- 30 percent per year, computed on the first \$3,000 of the principal amount,
- 24 percent per year on that part of principal between \$3,001 and \$4,000, and
- 18 percent per year on that part of principal between \$4,001 and \$25,000.

These principal amounts are the same as the financed amounts determined by the Federal Truth-in-Lending Act (TILA), and Regulation Z (Reg Z) of the Board of Governors of the Federal Reserve System.²⁶ The maximum interest rates and finance charges under ch. 516, F.S., are computed on a simple-interest basis, and not a compounding or other basis. The APR for all loans under ch. 516, F.S., may equal, but cannot exceed, the APR for the loan as required to be computed and disclosed by TILA and Reg Z.²⁷ In addition to the applicable interest described above, consumer finance lenders may also charge borrowers certain charges and fees, such as a credit check up to \$25, a bad check charge of up to \$20, and any insurance premiums.²⁸

- Title Lenders

The Florida Title Loan Act (ch. 537, F.S.), sets forth licensing and loan contract requirements for title loan lenders in Florida. A title lender provides loans secured through transfer of a motor vehicle certificate of title, with the loan amount dependent on the vehicle's value. Title lenders charge tiered interest rates according to principal amount, similar to consumer finance loans under ch. 516, F.S. The maturity date of a title loan is 30 days after the agreement date, but the loan can be extended for one or more 30-day periods by mutual consent of the lender and the borrower.²⁹ Unlike consumer finance lenders, title lenders are prohibited from selling or charging for any type of insurance in connection with a title loan.³⁰

Effect of the Bill

The bill amends the following provisions to authorize the OFR to take administrative action (denial, suspension, revocation of licensure or registration, or imposition of fines) for a violation of the MLA or the MLA regulation:

²⁴ s. 560.404, F.S.

²⁵ s. 516.01(2), F.S.

²⁶ s. 560.031(1), F.S.

²⁷ s. 560.031(2), F.S.

²⁸ s. 516.031(3), F.S.

²⁹ s. 537.011(3), F.S.

³⁰ s. 537.013(1)(h), F.S.

- Section 516.07, F.S., relating to the OFR's administrative authority over consumer finance lenders,
- Section 537.013, F.S., relating to the OFR's administrative authority over title lenders, and
- Section 560.114, F.S., relating to the OFR's administrative authority over money services businesses in connection with a deferred presentment transaction.

The bill also creates s. 655.035, F.S., to authorize the OFR to investigate financial institution entities or any person for violations of the MLA or MLA regulations, and authorizes the OFR to initiate a proceeding under its cease and desist, injunctive, removal, or administrative fines authority in the Codes.

The bill provides that it applies to a consumer credit transaction or account for consumer credit established on or after October 3, 2016, except it does not apply to a credit card account exempted under 32 C.F.R. s. 232.13(c) until the exemption expires.

B. SECTION DIRECTORY:

Section 1. Amends s. 516.07, F.S., regarding grounds for denial of license or for disciplinary action.

Section 2. Amends s. 537.013, F.S., relating to prohibited acts.

Section 3. Amends s. 560.114, F.S., relating to disciplinary actions; penalties.

Section 4. Creates s. 655.035, F.S., relating to military lending.

Section 5. Provides a statement of applicability.

Section 6. Provides an effective date of October 3, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. The amount of fines that the OFR would collect through enforcement of the MLA as a result of provisions in the bill is unknown.

2. Expenditures:

According to the OFR's Division of Consumer Finance, enforcement provisions of the bill will require additional workload that is not currently being performed. The OFR indicates that the additional workload will require the need for two full-time equivalent positions with associated salary rate of 87,016 and \$126,132 recurring funds from the Regulatory Trust Fund to implement provisions of the bill.³¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

³¹ Florida Office of Financial Regulation, Agency Analysis of 2016 House Bill 717, p. 4 (Nov. 30, 2015). The OFR is self-supporting in that all of its operating revenues are derived from its regulated individuals and entities. Currently, application fees and other regulatory fees and fines collected by the Division of Consumer Finance are deposited into the Regulatory Trust Fund. See ss. 516.03(1); 537.004(10); 560.1092, F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. The bill exposes certain consumer lenders in this state to additional penalties and fines. However, it may have a positive impact on servicemembers and their dependents who engage in consumer credit transactions in Florida.

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 provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 13, 2016, the Insurance & Banking Subcommittee considered and adopted one amendment and reported the bill favorably as a committee substitute. The amendment made the bill identical to its Senate companion, CS/SB 626, and clarified the OFR's administrative authority in the Codes over financial institution entities that violate the MLA or MLA regulations.

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

1 A bill to be entitled
 2 An act relating to consumer credit; amending s.
 3 516.07, F.S.; authorizing the Office of Financial
 4 Regulation to deny a license or take disciplinary
 5 action against a person who violates the Military
 6 Lending Act or the regulations adopted under that act
 7 in connection with a consumer finance loan under the
 8 Florida Consumer Finance Act; amending s. 537.013,
 9 F.S.; prohibiting a title loan lender or its agent or
 10 employee from violating the Military Lending Act or
 11 the regulations adopted under that act; amending s.
 12 560.114, F.S.; authorizing the office to take
 13 disciplinary action or deny a license of a money
 14 services business, authorized vendor, or affiliated
 15 party in connection with a deferred presentment
 16 transaction for violating the Military Lending Act or
 17 the regulations adopted under that act; creating s.
 18 655.035, F.S.; authorizing the office to conduct an
 19 investigation to determine whether a person is
 20 violating the Military Lending Act or the regulations
 21 adopted under that act; authorizing the office to seek
 22 specified remedies for such violations; providing
 23 applicability; providing an effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:
 26

27 Section 1. Paragraph (q) is added to subsection (1) of
28 section 516.07, Florida Statutes, to read:

29 516.07 Grounds for denial of license or for disciplinary
30 action.—

31 (1) The following acts are violations of this chapter and
32 constitute grounds for denial of an application for a license to
33 make consumer finance loans and grounds for any of the
34 disciplinary actions specified in subsection (2):

35 (q) Violating any provision of the Military Lending Act,
36 10 U.S.C. s. 987, or the regulations adopted under that act in
37 32 C.F.R. part 232, in connection with a consumer finance loan
38 made under this chapter.

39 Section 2. Paragraph (o) is added to subsection (1) of
40 section 537.013, Florida Statutes, to read:

41 537.013 Prohibited acts.—

42 (1) A title loan lender, or any agent or employee of a
43 title loan lender, shall not:

44 (o) Violate any provision of the Military Lending Act, 10
45 U.S.C. s. 987, or the regulations adopted under that act in 32
46 C.F.R. part 232, in connection with a title loan made under this
47 chapter.

48 Section 3. Paragraph (cc) is added to subsection (1) of
49 section 560.114, Florida Statutes, to read:

50 560.114 Disciplinary actions; penalties.—

51 (1) The following actions by a money services business,
52 authorized vendor, or affiliated party constitute grounds for

53 the issuance of a cease and desist order; the issuance of a
 54 removal order; the denial, suspension, or revocation of a
 55 license; or taking any other action within the authority of the
 56 office pursuant to this chapter:

57 (cc) Violating any provision of the Military Lending Act,
 58 10 U.S.C. s. 987, or the regulations adopted under that act in
 59 32 C.F.R. part 232, in connection with a deferred presentment
 60 transaction conducted under part IV of this chapter.

61 Section 4. Section 655.035, Florida Statutes, is created
 62 to read:

63 655.035 Military lending.—Pursuant to s. 655.032, the
 64 office may conduct an investigation that it deems necessary to
 65 determine whether a financial institution, a subsidiary, a
 66 service corporation, an affiliate, or other person is engaging
 67 in or has engaged in conduct that violates any provision of the
 68 Military Lending Act, 10 U.S.C. s. 987, or the regulations
 69 adopted under that act in 32 C.F.R. part 232. If the office has
 70 reason to believe that a person has violated any such provision
 71 or regulation, the office may initiate a proceeding against such
 72 person in accordance with s. 655.033, s. 655.034, s. 655.037, or
 73 s. 655.041.

74 Section 5. This act applies to a consumer credit
 75 transaction or account for consumer credit established on or
 76 after October 3, 2016, except it does not apply to a credit card
 77 account exempted under 32 C.F.R. s. 232.13(c) until the
 78 exemption expires.


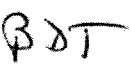
CS/HB 717

2016

79 | Section 6. This act shall take effect October 3, 2016. |

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 817 Merger and Acquisition Brokers
SPONSOR(S): Insurance & Banking Subcommittee; Raulerson
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 286

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 0 N, As CS	Bauer	Luczynski
2) Government Operations Appropriations Subcommittee		Keith 	Topp 
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

A sale of a privately held company can be structured as an asset sale or a stock sale, depending on the needs and circumstances of the buyer and seller. Generally, an *asset sale* is the sale of individual assets and liabilities, such as equipment, fixtures, leaseholds, goodwill, trade secrets, and inventory, without a transfer of title or ownership of the business. On the other hand, a buyer acquires ownership in the business in a *stock sale* through a purchase of shareholders' stock. Due to complex taxation, liability, and operational considerations involved in asset or stock sales, buyers and sellers often utilize the services of "merger and acquisition brokers" (M&A brokers), in addition to professional services by attorneys and accountants, to assist in the valuation, contract negotiation, and transitional aspects of a sale.

While the sale of a company's *assets* is not a securities transaction, a sale or exchange of a company's *stock* is a securities transaction, and thus triggers the application of state and federal securities laws, requiring registration of both the securities and the broker-dealer with the U.S. Securities & Exchange Commission (SEC) and the state securities regulator, unless applicable exemptions are available. In Florida, the securities regulator is the Office of Financial Regulation (OFR), which enforces the Florida Securities and Investor Protection Act (ch. 517, F.S., "the Act"). Currently, M&A brokers engaging in stock sales must be registered at both state and federal levels as a broker-dealer.

Registration of M&A securities and M&A brokers and ongoing regulatory compliance can entail significant costs that are passed onto the buyers and sellers of privately held companies. In response to industry efforts to enhance small business capital formation and to reduce regulatory burdens, the SEC and a national securities regulator association have recently developed guidelines and criteria for exempting the M&A broker from federal and state broker-dealer registration.

The bill amends the Act to create state-level transactional and broker exemptions for securities transactions conducted by an M&A broker. If certain conditions are met, brokers operating exclusively as M&A brokers utilizing the M&A transactional exemption will not have to register with the OFR. The bill also defines "control person," "eligible privately held company," "merger and acquisition broker," "public shell company," and sets forth grounds disqualifying an M&A broker from the broker exemption.

The bill has an insignificant negative fiscal impact on the General Revenue Fund due to the elimination of M&A broker registration fees. The OFR estimates that ten currently registered M&A brokers will meet the exemption requirements of the bill, representing a loss of approximately \$2,000 in revenue that would be deposited into the General Revenue Fund. The bill does not have a fiscal impact on local government. The bill may have a positive impact on the private sector by reducing regulatory burdens and costs on M&A brokers and the buyers and sellers of eligible privately held companies who use the services of M&A brokers.

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Merger & Acquisition Brokers

When a privately held business is sold, the sale can be structured as either an asset sale or a stock sale, depending on the parties' negotiated agreement. Generally, an *asset sale* is the sale of individual assets and liabilities, such as equipment, fixtures, leaseholds, goodwill, trade secrets, and inventory, without a transfer of title or ownership of the business. On the other hand, a buyer acquires ownership in the business in a *stock sale* through a purchase of shareholders' stock. Generally, buyers prefer asset sales and sellers prefer stock sales, for a number of taxation and liability reasons.¹

Because taxation and liability are primary considerations in the sale and purchase of privately held businesses, both owners and prospective buyers of small-cap and mid-cap companies often seek, in addition to legal and accounting advice, the assistance of professional business brokerage advice from "merger and acquisition brokers" (M&A brokers). Such business brokerage services may include:

- Business valuation and financial modeling;
- Soliciting or marketing, locating, and screening potential buyers and sellers;
- Advising a buyer or seller with contract negotiation and execution;
- Due diligence; and
- Assistance with transitional changes in ownership and control, such as human resources and intellectual property.

While the sale of a company's *assets* is not a securities transaction, a sale or exchange of a company's *stock* for compensation is a securities transaction² and thus triggers the application of state and federal securities law, requiring registration of both the securities and the M&A broker with the U.S. Securities & Exchange Commission (SEC) and applicable state securities regulators, unless an applicable exemption is available. As discussed in further detail below, state and federal securities laws and regulations are designed to govern the offer, sale, distribution, and trading of securities and to regulate the market participants in those transactions in order to protect the investing public. While some exemptions currently exist to provide regulatory relief to smaller businesses, none specifically exempt M&A brokers serving smaller businesses and thus require them to register, regardless of the size, scope, or frequency of their business brokerage activities.

According to the bill's proponents, initial costs of broker registration and ongoing compliance can be significant – an estimated \$150,000 initially and more than \$75,000 annually. These regulatory costs are passed on to the small business buyers and sellers who use the services of an M&A broker.³ In 2005, an American Bar Association task force on private placement broker-dealers issued a report noting that the regulatory model was lengthy, costly, and not "right-sized" for M&A brokers who only effect several M&A transactions a year and otherwise do not hold customer funds or securities.⁴

¹ ALLIED BUSINESS GROUP, *Asset Sale vs. Stock Sale: What's the Difference?*, at <http://www.alliedbizgroup.com/resources/publications/asset-sale-vs-stock-sale.html> (last visited Dec. 18, 2015).

² 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. 15 U.S.C. § 77b(a)(1) and s. 517.021(22), F.S.

³ ALLIANCE OF MERGER & ACQUISITION ADVISORS AND INTERNATIONAL BUSINESS BROKERS ASSOCIATION, *S. 1923 and H.R. 2274: Highlights and History* (Aug. 20, 2014), on file with the Insurance & Banking Subcommittee staff.

⁴ AMERICAN BAR ASSOCIATION, *Report and Recommendation of the Task Force on Private Placement Broker-Dealers* (Jun. 20, 2005), at: <http://www.sec.gov/info/smallbus/2009gforum/abareport062005.pdf>.

Federal Securities Regulation

The federal Securities Act of 1933 ("33 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 is available.⁵ 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.⁶ Once a company is registered under the '33 Act or becomes publicly traded, it becomes subject to periodic reporting requirements under the federal Securities Exchange Act of 1934 ('34 Act), which also requires registration of market participants like broker-dealers and exchanges.⁷

Generally, any person acting as "broker" or "dealer" as defined in the '34 Act must be registered with the SEC and join a self-regulatory organization (SRO), the Financial Industry Regulatory Authority (FINRA), a national securities exchange, or both. The '34 Act broadly defines "broker" as "any person engaged in the business of effecting transactions in securities for the account of others," which the SEC has interpreted to include involvement in any of the key aspects of a securities transaction, including solicitation, negotiation, and execution.⁸ In addition, broker-dealers must also comply with state registration requirements.

Federal Regulatory Policy on M&A Brokers

In 2014, the SEC issued a no-action letter that defined "M&A brokers" and outlined the activities that could be conducted and transactions that could be effected without requiring federal registration with the SEC. The SEC opined that it would not require M&A brokers to be registered as broker-dealers with the SEC when the M&A broker was a broker "... engaged in the business of effecting securities transactions solely in connection with the transfer of ownership and control of a privately-held company through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving securities or assets of the company to a buyer that will actively operate the company or the business conducted with the assets of the company." Prior to the release of this no-action letter, it was unclear when an M&A broker had to be registered with the SEC, often resulting in some sectors engaging in unregistered activity.⁹

The SEC no-action letter applies only to federal registration requirements of the '34 Act. Other provisions of the federal securities laws, including the anti-fraud provisions, continue to apply to these transactions.¹⁰ In addition, bills have been introduced in Congress in recent years to exempt certain M&A brokers from federal registration requirements, although none have passed both houses.¹¹

⁵ 15 U.S.C. §§ 77a-77aa.

⁶ U.S. SECURITIES AND EXCHANGE COMMISSION, *The Laws That Govern the Securities Industry*, <http://www.sec.gov/about/laws.shtml> (last visited Jan. 19, 2016).

⁷ *Id.*

⁸ 15 U.S.C. §§ 78c(4) and 78o. U.S. SECURITIES AND EXCHANGE COMMISSION, *Guide to Broker-Dealer Registration*, <http://www.sec.gov/divisions/marketreg/bdguide.htm#II> (last visited Jan. 19, 2016).

⁹ U.S. SECURITIES AND EXCHANGE COMMISSION, *No-Action Letter Re: M&A Brokers* (Jan. 31, 2014; revised Feb. 4, 2014), <http://www.sec.gov/divisions/marketreg/mr-noaction/2014/ma-brokers-013114.pdf>. The request for the SEC no-action letter cited the 2005 ABA task force report (see footnote 4, *supra*), which discussed the "gray market" and potential liability for violations of securities laws for individuals who raise funds for small businesses or engage in M&A activities on a commission basis.

¹⁰ A SEC no-action letter only expresses the SEC staff's enforcement position on a requesting individual or entity's particular facts and circumstances. It does not have the force of law or adopted regulations. See U.S. SECURITIES AND EXCHANGE COMMISSION, *No-Action Letters*, at <http://www.sec.gov/answers/noaction.htm> (last visited Jan. 19, 2016).

¹¹ Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act, H.R. 686 and S. 1010, 114th Cong. (2015) and H.R. 2274 and S. 1923, 113th Cong. (2014). These and similar bills apply only to federal registration and would not preempt state registration laws.

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.¹² 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 ch. 69W, Florida Administrative Code.¹³

As mentioned above, brokers engaged in interstate commerce must be federally registered and must also register with the state in which the broker has an office or engages in business with the state. The Act prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR as a broker, or they are specifically exempted.¹⁴ State broker registration requires completion of a registration form, submission of fingerprints for state and federal criminal background checks, minimum net capital requirements, payment of registration fees, and a review by the OFR to determine the applicant's fitness for registration in accordance with the Act.¹⁵

Additionally, all securities in Florida must be registered with the OFR unless they meet one of the transactional exemptions in ss. 517.051 or 517.061, F.S., or are federally covered (i.e., under the exclusive jurisdiction of the SEC).¹⁶ It is important to note that exempt securities are still subject to the Act's anti-fraud and boiler room provisions.¹⁷

Currently, the Act contains two transactional exemptions for certain merger transactions:

- Mergers where two corporations have \$500,000 or more in assets and where the sale price is \$50,000 or more, are transactions that qualify for a securities registration exemption under s. 517.061(8), F.S.
- Similarly, mergers approved by the vote of the security holders are transactions that qualify for a securities registration exemption under s. 517.061(9), F.S.

Brokers who facilitate transactions through one of these two exemptions are currently exempt from registration pursuant to s. 517.12(3), F.S. 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.¹⁸ Civil remedies under the act include rescission and damages.¹⁹ 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. However, there is no blanket M&A broker exemption in the Act.

¹² U.S. SECURITIES AND EXCHANGE COMMISSION, *Blue Sky Laws*, <http://www.sec.gov/answers/bluesky.htm> (last visited Dec. 18, 2015).

¹³ 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.

¹⁴ s. 517.12, F.S.

¹⁵ *Id.* and s. 517.161, F.S.

¹⁶ 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 federally registered.

¹⁷ s. 517.061; see ss. 517.301, 517.311, and 517.312, F.S.

¹⁸ s. 517.302(1), F.S.

¹⁹ s. 517.211(3)-(5), F.S.

State Securities Regulators' Model Rule - M&A Broker Exemption

Since at least 2012, California, South Dakota, Texas, and Utah have adopted limited broker-dealer or transactional exemptions for M&A transactions.²⁰ In September 2015, the North American Securities Administrators Association (NASAA), adopted a model rule, which provides a uniform approach to state-level securities regulation and provides an exemption for M&A brokers if certain conditions are met.²¹

Effect of the Bill

The bill provides a transactional exemption for the offer or sale of securities of an eligible privately held company through a registered dealer or through an M&A broker, if certain conditions are met. The bill also exempts the M&A broker from registration with the OFR if certain conditions are met.

The bill provides that an *M&A broker* is any broker (defined as meaning the same as "dealer" in the Act)²² and any person associated with a broker engaged in the business of effectuating securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether that broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company. Further, the bill provides that the broker must receive written assurances from the control person with the largest percentage of ownership (for both the buyer and seller) that:

- After completion of the transaction, any person who acquires securities or assets of the eligible privately held company will be a control person of that company or for the business conducted with the eligible privately held company's assets.
 - The bill defines the term "*control person*" as an individual or certain entity that possesses the power to direct the management or policies of a company through ownership of securities, by contract, or otherwise. The bill also lists grounds for presuming control.
- Any person that is offered securities in exchange for the eligible privately held company's securities or assets will receive financial statements of the issuer of the securities offered in the exchange, prior to becoming legally bound to complete the transaction.

An *eligible privately held company* means a company that meets the following requirements:

- The company does not have any class of securities which is registered or required to be registered with the SEC or the OFR, or for which the company is required to report with the SEC; and
- In the fiscal year immediately preceding the fiscal year during which the M&A broker begins to provide services for the securities transaction, the company has earnings before interest, taxes, depreciation, and amortization (EBITDA) of less than \$25 million or has gross revenues of less than \$250 million. On July 1, 2016, and every 5 years thereafter, each dollar amount shall be adjusted for inflation through certain calculations.

To provide protections for buyers and sellers, the bill provides several grounds for disqualifying M&A brokers from the exemption (and thus requiring registration) if he or she:

- Receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties.

²⁰ On file with the Insurance & Banking Subcommittee staff.

²¹ The NASAA is a voluntary association whose membership consists of 67 state, provincial, and territorial securities regulators/administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. The NASAA's Model Rule, *Exempting Certain Merger & Acquisition Brokers from Registration*, was adopted Sept. 29, 2015: <http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/07/MA-Broker-Model-Rule-adopted-Sept.-29-2015.pdf>.

²² s. 517.021(6), F.S. (definition of "dealer").

- Engages on behalf of an issuer in a public offering of securities which are required to be registered with the SEC or the OFR, or for which the issuer is required to file certain documents pursuant to 15 U.S.C. s. 78o(d).
- Engages on behalf of any party in a transaction involving a *public shell company*, which the bill defines as a company (that at the time of a transaction with an eligible privately held company) that:
 - Holds federally or state registered securities, or is required to file or report to the SEC under 15 U.S.C. s. 78o(d);
 - Has nominal or no operations; and
 - Has nominal or no assets, assets consisting solely of cash and cash equivalents, or assets consisting of any amounts of cash and cash equivalents and nominal other assets.
- Is subject to certain federal securities administrative actions:
 - Suspension or revocation of registration or being the subject to a final order under the '34 Act [15 U.S.C. § 78o(b)(4) and (b)(4)(H)];
 - Statutory disqualification with respect to membership, participation, or association with a SRO, under the '34 Act [15 U.S.C. § 78c(a)(39)]; or
 - Felony and "bad boy" disqualifications under 17 C.F.R. § 230.506.

As with other exemptions in the Act, the bill's exemption does not preclude the OFR from investigating and prosecuting cases involving fraud, false representations, and other prohibited practices in ss. 517.301, 517.311, and 517.312, F.S. However, because the M&A exemption covers a business transaction (i.e., the offer or sale of securities of privately held companies rather than the offer or sale of securities to the general public), the OFR has indicated that the covered transaction does not implicate significant investor protection concerns.²³

B. SECTION DIRECTORY:

Section 1. Amends s. 517.061, F.S., relating to exempt transactions.

Section 2. Amends s. 517.12, F.S., relating to registration of dealers, associated persons, intermediaries, and investment advisers.

Section 3. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has an insignificant fiscal impact on revenues deposited into the General Revenue Fund. According to the OFR, approximately ten M&A brokers are currently registered as a Securities/Broker dealer. Exempting these M&A brokers from the \$200 registration fee will result in approximately \$2,000 in lost revenue to the General Revenue Fund.²⁴

2. Expenditures:

According to the OFR, the bill has an indeterminate impact on state government expenditures. However, the OFR indicates that any expenditure caused by the effects of the bill can be absorbed within existing resources.²⁵

²³ Office of Financial Regulation, Agency Analysis of 2016 House Bill 817, pp. 2-3 (Dec. 29, 2015).

²⁴ Email correspondence with the Office of Financial Regulation (Jan. 19, 2016) on file with the Government Operations Appropriations Subcommittee.

²⁵ *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on the private sector by reducing regulatory burdens and costs on M&A brokers, as well as on the buyers and sellers of privately held eligible companies who use the services of M&A brokers in Florida.

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 provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 13, 2016, the Insurance & Banking Subcommittee considered and adopted one strike-all amendment and reported the bill favorably as a committee substitute. The amendment made the bill consistent with the Act and the NASAA Model Rule, and made the bill identical to its Senate companion, CS/SB 286.

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

1 A bill to be entitled
 2 An act relating to merger and acquisition brokers;
 3 amending s. 517.061, F.S.; providing an exemption from
 4 certain requirements for the registration with the
 5 Office of Financial Regulation of a specified offer or
 6 sale of securities; amending s. 517.12, F.S.;
 7 providing definitions; requiring a merger and
 8 acquisition broker to receive certain written
 9 assurances from a specified person before completion
 10 of specified securities transactions; providing an
 11 exemption from certain requirements for the
 12 registration with the office of a merger and
 13 acquisition broker under certain circumstances;
 14 specifying disqualifying conditions for the exemption;
 15 providing an effective date.

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

18
 19 Section 1. Subsection (22) is added to section 517.061,
 20 Florida Statutes, to read:

21 517.061 Exempt transactions.—Except as otherwise provided
 22 in s. 517.0611 for a transaction listed in subsection (21), the
 23 exemption for each transaction listed below is self-executing
 24 and does not require any filing with the office before claiming
 25 the exemption. Any person who claims entitlement to any of the
 26 exemptions bears the burden of proving such entitlement in any

27 proceeding brought under this chapter. The registration
 28 provisions of s. 517.07 do not apply to any of the following
 29 transactions; however, such transactions are subject to the
 30 provisions of ss. 517.301, 517.311, and 517.312:

31 (22) The offer or sale of securities, solely in connection
 32 with the transfer of ownership of an eligible privately held
 33 company, through a merger and acquisition broker in accordance
 34 with s. 517.12(22).

35 Section 2. Subsection (22) is added to section 517.12,
 36 Florida Statutes, to read:

37 517.12 Registration of dealers, associated persons,
 38 intermediaries, and investment advisers.-

39 (22) (a) As used in this subsection, the term:

40 1. "Broker" has the same meaning as the term "dealer" as
 41 defined in s. 517.021.

42 2. "Control person" means an individual or entity that
 43 possesses the power, directly or indirectly, to direct the
 44 management or policies of a company through ownership of
 45 securities, by contract, or otherwise. A person is presumed to
 46 be a control person of a company if, with respect to a
 47 particular company, the person:

48 a. Is a director, general partner, member, or manager of a
 49 limited liability company, or is an officer who exercises
 50 executive responsibility or has a similar status or function;

51 b. Has the power to vote 20 percent or more of a class of
 52 voting securities or has the power to sell or direct the sale of

53 | 20 percent or more of a class of voting securities; or

54 | c. In the case of a partnership or limited liability
 55 | company, may receive upon dissolution, or has contributed, 20
 56 | percent or more of the capital.

57 | 3. "Eligible privately held company" means a company that
 58 | meets all of the following conditions:

59 | a. The company does not have any class of securities which
 60 | is registered, or which is required to be registered, with the
 61 | United States Securities and Exchange Commission under the
 62 | Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., or
 63 | with the office under s. 517.07, or for which the company files,
 64 | or is required to file, summary and periodic information,
 65 | documents, and reports under s. 15(d) of the Securities Exchange
 66 | Act of 1934, 15 U.S.C. s. 78o(d).

67 | b. In the fiscal year immediately preceding the fiscal
 68 | year during which the merger and acquisition broker begins to
 69 | provide services for the securities transaction, the company, in
 70 | accordance with its historical financial accounting records, had
 71 | earnings before interest, taxes, depreciation, and amortization
 72 | of less than \$25 million or had gross revenues of less than \$250
 73 | million. On July 1, 2016, and every 5 years thereafter, each
 74 | dollar amount in this sub-subparagraph shall be adjusted by
 75 | dividing the annual value of the Employment Cost Index for wages
 76 | and salaries for private industry workers, or any successor
 77 | index, as published by the Bureau of Labor Statistics, for the
 78 | calendar year preceding the calendar year in which the

79 adjustment is being made, by the annual value of such index or
80 successor index for the calendar year ending December 31, 2012,
81 and multiplying such dollar amount by the quotient obtained.
82 Each dollar amount determined under this sub-subparagraph shall
83 be rounded to the nearest multiple of \$100,000.

84 4. "Merger and acquisition broker" means any broker and
85 any person associated with a broker engaged in the business of
86 effecting securities transactions solely in connection with the
87 transfer of ownership of an eligible privately held company,
88 regardless of whether that broker acts on behalf of a seller or
89 buyer, through the purchase, sale, exchange, issuance,
90 repurchase, or redemption of, or a business combination
91 involving, securities or assets of the eligible privately held
92 company.

93 5. "Public shell company" means a company that, at the
94 time of a transaction with an eligible privately held company:

95 a. Has any class of securities which is registered, or
96 which is required to be registered, with the United States
97 Securities and Exchange Commission under the Securities Exchange
98 Act of 1934, 15 U.S.C. ss. 78a et seq., or with the office under
99 s. 517.07, or for which the company files, or is required to
100 file, summary and periodic information, documents, and reports
101 under s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C.
102 s. 78o(d);

103 b. Has nominal or no operations; and

104 c. Has nominal assets or no assets, assets consisting

105 solely of cash and cash equivalents, or assets consisting of any
 106 amount of cash and cash equivalents and nominal other assets.

107 (b) Before completion of any securities transaction
 108 described in s. 517.061(22), a merger and acquisition broker
 109 must receive written assurances from the control person with the
 110 largest percentage of ownership for both the buyer and seller
 111 engaged in the transaction that:

112 1. After the transaction is completed, any person who
 113 acquires securities or assets of the eligible privately held
 114 company, acting alone or in concert, will be a control person of
 115 the eligible privately held company or will be a control person
 116 for the business conducted with the assets of the eligible
 117 privately held company; and

118 2. If any person is offered securities in exchange for
 119 securities or assets of the eligible privately held company,
 120 such person will, before becoming legally bound to complete the
 121 transaction, receive or be given reasonable access to the most
 122 recent year-end financial statements of the issuer of the
 123 securities offered in exchange. The most recent year-end
 124 financial statements shall be customarily prepared by the
 125 issuer's management in the normal course of operations. If the
 126 financial statements of the issuer are audited, reviewed, or
 127 compiled, the most recent year-end financial statements must
 128 include any related statement by the independent certified
 129 public accountant; a balance sheet dated not more than 120 days
 130 before the date of the exchange offer; and information

131 pertaining to the management, business, and results of
 132 operations for the period covered by the foregoing financial
 133 statements, and material loss contingencies of the issuer.

134 (c) A merger and acquisition broker engaged in a
 135 transaction exempt under s. 517.061(22) is exempt from
 136 registration under this section unless the merger and
 137 acquisition broker:

138 1. Directly or indirectly, in connection with the transfer
 139 of ownership of an eligible privately held company, receives,
 140 holds, transmits, or has custody of the funds or securities to
 141 be exchanged by the parties to the transaction;

142 2. Engages on behalf of an issuer in a public offering of
 143 any class of securities which is registered, or which is
 144 required to be registered, with the United States Securities and
 145 Exchange Commission under the Securities Exchange Act of 1934,
 146 15 U.S.C. ss. 78a et seq., or with the office under s. 517.07;
 147 or for which the issuer files, or is required to file, periodic
 148 information, documents, and reports under s. 15(d) of the
 149 Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d);

150 3. Engages on behalf of any party in a transaction
 151 involving a public shell company;

152 4. Is subject to a suspension or revocation of
 153 registration under s. 15(b)(4) of the Securities Exchange Act of
 154 1934, 15 U.S.C. s. 78o(b)(4);

155 5. Is subject to a statutory disqualification described in
 156 s. 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. s.

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157 | 78c(a)(39);

158 | 6. Is subject to a disqualification under United States
159 | Securities and Exchange Commission Rule 506(d), 17 C.F.R. s.
160 | 230.506(d); or

161 | 7. Is subject to a final order described in s. 15(b)(4)(H)
162 | of the Securities Exchange Act of 1934, 15 U.S.C. s.

163 | 78o(b)(4)(H).

164 | Section 3. This act shall take effect July 1, 2016.