Regulatory Affairs Committee

Thursday, February 4, 2016
1:00 PM
Sumner Hall (404 HOB)

MEETING PACKET

Steve Crisafulli
Speaker

Jose Diaz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Regulatory Affairs Committee

Start Date and Time: Thursday, February 04, 2016 01:00 pm

End Date and Time: Thursday, February 04, 2016 03:00 pm

Location: Sumner Hall (404 HOB)

Duration: 2.00 hrs

Consideration of the following bill(s):

CS/CS/HB 467 Insurance Guaranty Association Assessments by Finance & Tax Committee, Insurance & Banking Subcommittee, Broxson
CS/CS/HB 473 Funeral, Cemetery, and Consumer Services by Government Operations Appropriations Subcommittee, Insurance & Banking Subcommittee, Roberson, K.
CS/CS/HB 491 Water and Wastewater by Finance & Tax Committee, Energy & Utilities Subcommittee, Smith
CS/HB 559 Self-Service Storage Facilities by Business & Professions Subcommittee, La Rosa
CS/HB 577 Liability Insurance Coverage by Insurance & Banking Subcommittee, Lee
HB 613 Workers' Compensation System Administration by Sullivan
CS/HB 691 Retail Sale of Dextromethorphan by Business & Professions Subcommittee, Broxson
CS/HB 717 Consumer Credit by Insurance & Banking Subcommittee, Burgess
CS/HB 817 Mergers and Acquisitions Brokers by Insurance & Banking Subcommittee, Raulerson
CS/HB 931 Operations of Citizens Property Insurance Corporation by Insurance & Banking Subcommittee, Passidomo, Rodríguez, J.
CS/HB 1233 Federal Home Loan Banks by Insurance & Banking Subcommittee, Stevenson
HB 1433 Martin County by Magar

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Wednesday, February 3, 2016.

By request of the Chair, all Regulatory Affairs Committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Wednesday, February 3, 2016.

NOTICE FINALIZED on 02/02/2016 4:13PM by Ellinor.Martha

The Florida House of Representatives

Regulatory Affairs Committee

Steve Crisafulli
Speaker

Jose Diaz
Chair

AGENDA

February 4, 2016
404 HOB 1:00 PM – 3:00 PM

I. Call to Order and Roll Call

II. CS/CS/HB 467 by *Finance & Tax Committee*; *Insurance & Banking Subcommittee; Rep. Broxson*
Insurance Guaranty Association Assessments

III. CS/CS/HB 473 by *Government Operations Appropriations Subcommittee, Insurance & Banking Subcommittee; Rep. K. Roberson*
Funeral, Cemetery, and Consumer Services

IV. CS/CS/HB 491 by *Finance & Tax Committee; Energy & Utilities Subcommittee; Rep. Smith*
Water and Wastewater

V. CS/HB 559 by *Business & Professions Subcommittee; Rep. La Rosa*
Self-Service Storage Facilities

VI. CS/HB 577 by *Insurance & Banking Subcommittee; Rep. Lee*
Liability Insurance Coverage

VII. HB 613 by *Rep. Sullivan*
Workers' Compensation System Administration

VIII. CS/HB 691 by *Business & Professions Subcommittee; Rep. Broxson*
Retail Sale of Dextromethorphan

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

IX. CS/HB 717 by *Insurance & Banking Subcommittee; Rep. Burgess*
Consumer Credit

X. CS/HB 817 by *Insurance & Banking Subcommittee; Rep. Raulerson*
Mergers and Acquisitions Brokers

XI. CS/HB 931 by *Insurance & Banking Subcommittee; Reps. Passidomo and J. Rodriguez*
Operations of Citizens Property Insurance Corporation

XII. CS/HB 1233 by *Insurance & Banking Subcommittee; Rep. Stevenson*
Federal Home Loan Banks

XIII. HB 1433 by *Rep. Magar*
Martin County

XIV. ADJOURNMENT

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 467 Insurance Guaranty Association Assessments
SPONSOR(S): Finance & Tax Committee; Insurance & Banking Subcommittee; Broxson
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 828

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Lloyd	Luczynski
2) Finance & Tax Committee	14 Y, 0 N, As CS	Pewitt	Langston
3) Regulatory Affairs Committee		Lloyd	Hamon

SUMMARY ANALYSIS

The Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) services workers' compensation claims by injured workers in this state against insolvent workers' compensation insurers and self-insurance funds. The FWCIGA is obligated to pay eligible injured workers 100 percent of their workers' compensation benefits. The FWCIGA reports that they are currently servicing 45 open insolvent insurer estates with 433 open claims.

The FWCIGA is funded through the liquidation of insolvent insurers and assessments on workers' compensation insurance companies and self-insurance funds. The Department of Financial Services (DFS), upon certification by the FWCIGA, may order an assessment to collect necessary funds. The assessment is payable 30 days following written notice to the insurers. Insurers are required to pay the assessment in advance of recovering it from their insureds. The assessment is capped for insurers at 2 percent of the net direct written premium for the previous calendar year and at 1.5 percent for self-insurance funds. There has not been an assessment since 2005.

If levied, the assessment is built into rates approved by the Office of Insurance Regulation (OIR) and collected as part of the premiums paid by the insured. Being part of premiums paid, they are subject to a 1.75 percent premium tax. This is unique among the various guaranty association assessments authorized by statute.

Revisions to the FWCIGA assessment process proposed by the bill include:

- Shifting order authority and recommendations related to insurer financial conditions from DFS to OIR.
- Increasing the assessment cap for self-insurance funds from 1.5 percent of direct written premium to 2 percent.
- Changing the assessment cap from 2 percent of the prior year's net direct written premium to that of the calendar year of the assessment.
- Establishing two assessment payment methods, as follows:
  - Single assessment payment – in this method, the insurer pays the assessment and then recovers it through policy surcharges. It is subject to an end of period reconciliation and a possible corrective payment.
  - Installment method – in this method, the insurer collects the surcharges and then remits them to the FWCIGA quarterly to fund the assessment in an ongoing manner.
- Changing the assessment recovery process from a component of premium to a policy surcharge. Surcharges begin 90 days after the FWCIGA certifies the need for an assessment and are collected at a uniform rate on new and renewed policies issued and in force during the 12 months beginning the calendar quarter after the order is issued. Insurers would not be liable for uncollectible surcharges.
- Exempting assessments from the insurance premium tax.

The bill does not impact local or state government revenue. It has positive and negative impacts on the private sector.

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Workers' Compensation Insurance Guaranty Association

In 1997, the Legislature passed the Florida Workers' Compensation Insurance Guaranty Association Act.[1] It combined the Florida Self-Insurance Fund Guaranty Association[2] and the workers' compensation account[3] of the Florida Insurance Guaranty Association. The Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)[4] services workers' compensation claims against insolvent[5] workers' compensation insurers[6] and self-insurance funds.[7] The FWCIGA is obligated to pay eligible injured workers 100 percent of their workers' compensation benefits, however, employer claims for return of unearned premium are limited to $50,000.[8] The FWCIGA reports that they are currently servicing 45 open insolvent insurer estates with 433 open claims.[9]

FWCIGA Assessments

The FWCIGA is funded through the liquidation of insolvent insurers, including a portion of the estates of insolvent insurers coming from insolvencies that occur in other states. If these funds are insufficient to service claims, the Department of Financial Services (DFS),[10] upon certification by the FWCIGA, may order an assessment to collect necessary funds from insurers and self-insurance funds writing workers' compensation coverage in the state.[11] Following its creation, the FWCIGA sought and received assessment orders from the DFS each year from 1998 through 2005. There has not been an assessment since 2005.[12]

Assessments are based on the full policy premium value of the direct written premiums for workers' compensation issued in the state by the subject insurer or self-insurance fund, without consideration of discounts or credits. This puts each insurer and self-insurer on par for assessment purposes, since some insurers issue large deductible policies and use various discounts to adjust the amount of premiums charged to employers and self-insurance fund coverage is not priced in the same way as insurers. The assessment is distributed based on the share of direct written premium issued in the

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[1] ch. 631, Part V, F.S. (1997).
[2] ch. 631, Part V, F.S. (1996).
[3] s. 631.55(2)(a), F.S. (1996).
[4] The FWCIGA is administered by a board of directors. The board is made up of the following 11 members: the Insurance Consumer Advocate (or their designee), one designee of the Chief Financial Officer, six persons selected by private carriers from among the top 20 workers' compensation insurers (two of whom represent foreign insurers authorized to write in the state), two persons selected by the self-insurance funds, and one person with commercial insurance experience appointed by the Governor. The board elects its chair and members may be removed by the Governor for cause. Members serve four year terms and may be reappointed. If a member is associated with an insurer that becomes insolvent, they are terminated from the board as of the date of the related insolvency. s. 631.912, F.S.
[5] "Insolvent insurer" means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review. s. 631.904(4), F.S.
[6] "Insurer" means an insurance carrier or self-insurance fund authorized to insure under chapter 440. For purposes of this act, "insurer" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, or an individual self-insurer as defined in s. 440.385. s. 631.904(5), F.S.
[7] "Self-insurance fund" means a group self-insurance fund authorized under s. 624.4621, a commercial self-insurance fund writing workers' compensation insurance authorized under s. 624.462, or an assessable mutual insurer authorized under s. 628.6011. For purposes of this act, the term "self-insurance fund" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, an independent educational institution self-insurance fund as defined in s. 624.4623, an electric cooperative self-insurance fund as described in s. 624.4626, or an individual self-insurer as defined in s. 440.385. s. 631.904(6), F.S.
[8] s. 631.913(1), F.S.
[9] FLORIDA WORKERS' COMPENSATION INSURANCE GUARANTY ASSOCIATION, *Reports*, http://fwciga.org/reports (last visited Nov. 15, 2015).
[10] The DFS is responsible for regulating certain insurance activities under the Insurance Code, such as eligibility and conduct of insurance agents and agencies, regulation of workers' compensation benefits and compliance, and policing fraud.
[11] s. 631.914, F.S.
[12] FLORIDA WORKERS' COMPENSATION INSURANCE GUARANTY ASSOCIATION, *Assessments*, http://fwciga.org/assessments (last visited Nov. 15, 2015).

previous calendar year. The assessment is capped in relation to net direct written premium for the previous calendar year; it cannot exceed 2 percent for insurers or 1.5 percent for self-insurance funds. However, if the assessment is insufficient to meet the funding need of the FWCIGA, an additional assessment of up to 1.5 percent of the net direct written premium for the previous calendar year can be ordered by the DFS, upon certification of the FWCIGA. Insurers are entitled to receive 30 days written notice prior to an assessment becoming due and payable;[13] however, the FWCIGA may allow an insurer to pay the assessment quarterly.[14]

If levied, FWCIGA assessments are a component of the workers' compensation rate approved by the Office of Insurance Regulation (OIR).[15, 16] This is unique among the various guaranty association assessments authorized by statute.[17] To maintain workers' compensation rates that are neither inadequate nor excessive, the assessment is a factor that the OIR must take into account when ordering rates and a mid-year rate filing may be made within 90 days after insurers are notified of the assessment.[18] Since, the assessment is built into the rate, and therefore the premium collected by the insurer, the value of the assessment is subject to the state's insurance premium tax.[19]

The FWCIGA may exempt an insurer from an assessment if, in the opinion of the DFS, the assessment would compromise the solvency of the insurer. Similarly, the FWCIGA may defer all or part of an assessment applicable to a particular insurer if, in the opinion of the DFS, the assessment would endanger an insurer's ability to meet its contractual obligations.[20]

Insurance Premium Tax

Florida requires insurance companies to pay tax on:[21]

- Insurance premiums;
- Premiums for title insurance;
- Assessments, including membership fees, policy fees, and gross deposits received from subscribers to reciprocal or interinsurance agreements; and
- Annuity premiums or considerations.

Florida applies the premium tax to premiums written in Florida at the following rates:[22]

- 1.75 percent of premiums for:
  - Gross property and casualty,[23] less reinsurance and returned premiums;
  - Life;
  - Accident and health; and
  - Prepaid limited health.

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[13] s. 631.914(1)(a), F.S.
[14] s. 631.914(2)(c), F.S.
[15] s. 631.914(1)(b), F.S.
[16] The OIR, which is overseen by the Financial Services Commission, has responsibilities concerning insurance regulation related to licensing insurance companies, solvency, ratemaking, and market conduct, among other things.
[17] There are three other similar guaranty assessments authorized by statute. They benefit the Florida Insurance Guaranty Association (s. 631.57, F.S.), the Florida Life and Health Insurance Guaranty Association (s. 631.718, F.S.), and the Florida Health Maintenance Organization Consumer Assistance Plan (s. 631.819, F.S.).
[18] If a mid-year filing is made and the entirety of the rate change requested is equal to the difference between the previous assessment and the new one, the rate filing is deemed approved. s. 631.914(1)(c), F.S.
[19] s. 624.509, F.S.
[20] s. 631.914(2), F.S. If an assessment is deferred in relation to a particular self-insurance fund, the fund must immediately levy an assessment against its members in an amount sufficient to fund the FWCIGA assessment.
[21] s. 624.509(1), F.S.
[22] ss. 624.46226, 624.4625, 624.475, 624.509(1), and 627.357, F.S.; *see also* FLORIDA REVENUE ESTIMATING CONFERENCE, *2015 Florida Tax Handbook*, http://www.edr.state.fl.us/Content/revenues/reports/tax-handbook/index.cfm (last visited Nov. 16, 2015).
[23] Workers' compensation insurance is casualty insurance. s. 624.605(1)(c), F.S.

- 1.6 percent of premiums for:
  - Commercial self-insurance;
  - Group self-insurance;
  - Medical malpractice self-insurance; and
  - Assessable mutual insurance.

- 1 percent of premiums for annuities.

The law authorizes numerous insurance premium tax credits and deductions that allow insurance companies to reduce their premium tax liability.[24] The state distributes revenue from the insurance premium tax to the General Revenue Fund.[25]

FWCIGA assessments are a component of the approved workers' compensation rate[26] and are collected by insurers as part of taxable premium. They are taxed at 1.75 percent.

Effect of the bill

The bill shifts the authority to order assessments and opine on the financial condition of the subject insurers from the DFS to the OIR.

The assessment would be limited to 2 percent of the insurer's net direct written premium in any given calendar year, rather than the previous year's net direct written premium. Also, the bill increases the cap for self-insurance funds from 1.5 percent of net direct written premium to 2 percent. The change in the base from the previous year to current calendar year accommodates changing levels of premium volume insurers write from year to year and includes insurers in assessment participation if they are writing premiums during the assessment period, but did not the previous year.

The bill creates two methods for the FWCIGA to use for collecting assessments. FWCIGA is given sole discretion to choose which method will be used to fund the assessment. The two methods are as follows:

- Single payment, subject to true-up (pay and recover) – under this method, the insurer pays the assessment to the FWCIGA and then recovers its payment from its insureds through policy surcharges. The assessment payment is due and payable no earlier than 30 days following written notice of the assessment order. The insurer is required to submit a reconciliation report within 120 days following the end of the 12 month assessment recovery period showing the amount initially paid and the amount of the surcharge collected. This results in a "true-up" of the actual assessment amount due to the FWCIGA and an additional payment by the insurer, if the initial calculation and payment was too low, or a credit against future FWCIGA assessments, if the initial calculation and payment was too high. For accounting purposes, the billed surcharges are a receivable and an asset for the purposes of the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles Number 4[27] and would be recorded separately from liabilities for OIR reports.

[24] Credit for payments to the Municipal Firefighters' Pension Fund (s. 175.141, F.S.) and Municipal Police Officers' Retirement Fund (s. 185.12, F.S.); Corporate Income Tax Credit (s. 624.509(4), F.S.); Florida Employees' Salary Credit (s. 624.509(5), F.S.); New Markets Tax Credit (s. 288.9916, F.S.); Capital Investment Tax Credit (s. 220.191, F.S.); Community Contribution Tax Credit (s. 624.5105, F.S.); Child Care Tax Credit (s. 624.5107, F.S.); Credit for Contributions to Scholarship-Funding Organizations (s. 624.51055, F.S.); Credit for Workers' Compensation Assessments (440.51, F.S.); and Credit for Florida Life and Health Insurance Guaranty Association Assessments (s. 631.72, F.S.).
[25] s. 624.509(3), F.S.
[26] s. 631.914(1)(b) and (c), F.S.
[27] NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS & THE CENTER FOR INSURANCE POLICY AND RESEARCH, *Statutory Accounting Principles*, http://www.naic.org/cipr_topics/topic_statutory_accounting_principles.htm (last visited Nov. 15, 2015).

- Installment (collect and remit) – under this method, the insurer would bill the insured for the surcharge as policies are written and remit the collected surcharges to the FWCIGA quarterly. The insurer is not required to advance funds to the FWCIGA.

Under both methods, collection of surcharges begins 90 days after the FWCIGA certifies the need for an assessment to the OIR. Insurers are required to collect the surcharge quarterly at a uniform rate for policies issued and in force during the 12 month period beginning the first day of the calendar quarter following the issuance of the order. The insurer is not liable for uncollectible surcharges.

The bill changes the FWCIGA assessment recovery from a component of the workers' compensation rates approved by the OIR to a surcharge per policy. It specifically provides that the surcharges collected to recover insurer paid FWCIGA assessments are not premium and not subject to the premium tax. However, failure of an insured to pay the surcharge is treated as the non-payment of premium, which could result in policy cancellation.

The bill provides that only insurers may be assessed by the FWCIGA. It also provides that a policyholder is not given a cause of action regarding FWCIGA assessments or related surcharges.

B. SECTION DIRECTORY:

Section 1: Amends s. 631.914, F.S., relating to assessments.

Section 2: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   On December 4, 2015, the Revenue Estimating Conference adopted an estimate that this bill would not impact state or local revenue.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the OIR,[28] certain changes to workers' compensation forms would be required in response to the bill causing workers' compensation insurers to revise and refile all of their forms for approval by the OIR. Large deductible programs would also have to be revised and refiled for OIR for approval.

[28] Office of Insurance Regulation, Agency Analysis of 2016 House Bill 467 (Nov. 13, 2015).

In regard to the payment of assessment and collection of surcharges, the bill has a positive impact on insurers by allowing them to avoid the loss of investment opportunities whenever the installment method is chosen by the FWCIGA.

D. FISCAL COMMENTS:

While the OIR predicts that workers' compensation insurers will have to refile all of their forms and large deductible plans for OIR approval, the OIR has not provided an estimate of the fiscal impact this could have on the state.

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 establishes billed surcharges as an asset for statutory accounting purposes, but it does not revise the definition of "assets" that is generally applicable to insurers under s. 625.012, F.S. Revising s. 625.012(15), F.S., would improve consistency between the statutes.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 18, 2015, the Insurance & Banking Subcommittee considered the bill, adopted one amendment and reported the bill favorably with a committee substitute. The amendment revised certain terms and restructures two sentences to accurately achieve the purpose of the bill and improve clarity. It also made a provision of the bill regarding uncollectible assessment related surcharges under the installment method applicable to both proposed assessment methods.

On January 14, 2016, the Finance & Tax Committee considered the bill, adopted one amendment, and reported the bill favorably with a committee substitute. The amendment clarified the policies to which a surcharge may be applied and made some structural changes to the language.

This analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to insurance guaranty association assessments; amending s. 631.914, F.S.; requiring the Office of Insurance Regulation to levy assessments for certain purposes; revising and providing requirements for the levy of assessments; requiring insurers and self-insurance funds to report certain premiums; requiring insurers to collect policy surcharges and pay assessments to the association; revising requirements for reporting premium for assessment calculations; revising and providing requirements and limitations for remittance of assessments to the association; providing an effective date.

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

Section 1. Section 631.914, Florida Statutes, is amended to read:

631.914 Assessments.—

(1)(a) To the extent necessary to secure the funds for the payment of covered claims, and also to pay the reasonable costs to administer the same, the Office of Insurance Regulation ~~department~~, upon certification by the board, shall levy assessments on each insurer initially estimated in the proportion that the insurer's net direct written premiums in this state bears to the total of said net direct written

premiums received in this state by all such workers' compensation insurers for the preceding calendar year. Assessments levied against insurers and self-insurance funds pursuant to this paragraph must be computed and levied on the basis of the full policy premium value on the net direct written premium amount as set forth in the state for workers' compensation insurance without consideration of any applicable discount or credit for deductibles. Insurers and self-insurance funds must report premiums in compliance with this paragraph. Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan of operation and paragraph (d). ~~The board shall give each insurer so assessed at least 30 days' written notice of the date the assessment is due and payable.~~ Each assessment shall be a uniform percentage applicable to the net direct written premiums of each insurer writing workers' compensation insurance.

~~1. Beginning July 1, 1997,~~ Assessments levied against insurers and~~, other than~~ self-insurance funds~~,~~ shall not exceed in any calendar year more than 2 percent of that insurer's net direct written premiums in this state for workers' compensation insurance ~~during the calendar year next preceding the date of such assessments~~.

(b) Member insurers shall collect surcharges at a uniform percentage rate on new and renewal policies issued and effective during the 12-month period beginning January 1, April 1, July 1, or October 1, whichever is the first day of the following

calendar quarter as specified in an order issued by the office directing insurers to pay an assessment to the association. The surcharge may not begin until 90 days after the board of directors certifies the assessment.

~~2. Beginning July 1, 1997, assessments levied against self-insurance funds shall not exceed in any calendar year more than 1.50 percent of that self-insurance fund's net direct written premiums in this state for workers' compensation insurance during the calendar year next preceding the date of such assessments.~~

~~3. Beginning July 1, 2003, assessments levied against insurers and self-insurance funds pursuant to this paragraph are computed and levied on the basis of the full policy premium value on the net direct premiums written in the state for workers' compensation insurance during the calendar year next preceding the date of the assessment without taking into account any applicable discount or credit for deductibles. Insurers and self-insurance funds must report premiums in compliance with this subparagraph.~~

~~(b) Assessments shall be included as an appropriate factor in the making of rates.~~

(c)~~1. Effective July 1, 1999,~~ If assessments otherwise authorized in paragraph (a) are insufficient to make all payments on reimbursements then owing to claimants in a calendar year, then upon certification by the board, the office ~~department~~ shall levy additional assessments of up to 1.5

percent of the insurer's net direct written premiums in this state ~~during the calendar year next preceding the date of such assessments against insurers to secure the necessary funds~~.

(d) The association may use an installment method to require the insurer to remit the assessment as premium is written or may require the insurer to remit the assessment to the association before collecting the policyholder surcharge. If the assessment is remitted before the surcharge is collected, the assessment remitted must be based on an estimate of the assessment due based on the proportion of each insurer's net direct written premium in this state for the preceding calendar year as described in paragraph (a) and adjusted following the end of the 12-month period during which the assessment is levied.

1. If the association elects to use the installment method, the office may, in the order levying the assessment on insurers, specify that the assessment is due and payable quarterly as premium is written throughout the assessment year. Insurers shall collect surcharges at a uniform percentage rate specified by order as described in paragraph (b). Insurers are not required to advance funds if the association and the office elect to use the installment option. Assessments levied under this subparagraph are paid after policy surcharges are collected, and the recognition of assets is based on actual premium written offset by the obligation to the association.

2. If the association elects to require insurers to remit

the assessment before surcharging the policyholder, the following shall apply:

a. The levy order shall provide each insurer so assessed at least 30 days written notice of the date the initial assessment payment is due and payable by the insurer.

b. Insurers shall collect surcharges at a uniform percentage rate specified by the order, as described in paragraph (b).

c. Assessments levied under this subparagraph are paid before policy surcharges are billed and result in a receivable for policy surcharges to be billed in the future. The amount of billed surcharges, to the extent it is likely that it will be realized, meets the definition of an admissible asset as specified in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4. The asset shall be established and recorded separately from the liability. If an insurer is unable to fully recoup the amount of the assessment, the amount recorded as an asset shall be reduced to the amount reasonably expected to be recouped.

3. Insurers must submit a reconciliation report to the association within 120 days after the end of the 12-month assessment period and annually thereafter for a period of 3 years. The report must indicate the amount of the initial payment or installment payments made to the association and the amount of written premium pursuant to paragraph (a) for the assessment year. If the insurer's reconciled assessment

obligation is more than the amount paid to the association, the insurer shall pay the excess surcharges collected to the association. If the insurer's reconciled assessment obligation is less than the initial amount paid to the association, the association shall credit the insurer that amount against future assessments.

(2) Assessments levied under this section are not premium and are not subject to any premium tax, fees, or commissions. Insurers shall treat the failure of an insured to pay assessment-related surcharges as a failure to pay premium. An insurer is not liable for any uncollectible assessment-related surcharges.

(3) Assessments levied under this section may only be levied upon insurers. This section does not create a cause of action by a policyholder with respect to the levying of an assessment or a policyholder's duty to pay assessment-related surcharges.

~~2. To assure that insurers paying assessments levied under this paragraph continue to charge rates that are neither inadequate nor excessive, each insurer that is to be assessed pursuant to this paragraph, or a licensed rating organization to which the insurer subscribes, may make, within 90 days after being notified of such assessments, a rate filing for workers' compensation coverage pursuant to ss. 627.072 and 627.091. If the filing reflects a percentage rate change equal to the difference between the rate of such assessment and the rate of~~

~~the previous year's assessment under this paragraph, the filing shall consist of a certification so stating and shall be deemed approved when made. Any rate change of a different percentage shall be subject to the standards and procedures of ss. 627.072 and 627.091.~~

(4)~~(2)~~(a) The board may exempt any insurer from an assessment if, in the opinion of the office ~~department~~, an assessment would result in such insurer's financial statement reflecting an amount of capital or surplus less than the minimum amount required by any jurisdiction in which the insurer is authorized to transact insurance.

(b) The board may temporarily defer, in whole or in part, assessments against an insurer if, in the opinion of the office ~~department~~, payment of the assessment would endanger the ability of the insurer to fulfill its contractual obligations. In the case of a self-insurance fund, the trustees of the fund determined to be endangered must immediately levy an assessment upon the members of that self-insurance fund in an amount sufficient to pay the assessments to the corporation.

(c) The board may allow an insurer to pay an assessment on a quarterly basis.

Section 2. This act shall take effect July 1, 2016.

Regulatory Affairs Committee

CS/CS/HB 467 by Rep. Broxson
Insurance Guaranty Association Assessments

AMENDMENT SUMMARY
February 4, 2016

Amendment 1 by Rep. Broxson (Line 135): The amendment requires the Florida Workers' Compensation Insurance Guaranty Association to return assessment overpayments to insurers, rather than crediting them against future assessments.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 467 (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	_____	

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Broxson offered the following:

Amendment

Remove lines 135-136 and insert:

association shall return the overpayment to the insurer.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 473 Funeral, Cemetery, and Consumer Services
SPONSOR(S): Government Operations Appropriations Subcommittee; Insurance & Banking Subcommittee; Roberson and Others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/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	12 Y, 0 N, As CS	Keith	Topp
3) Regulatory Affairs Committee		Bauer	Hamon

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;
- 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.

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

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 persons[4] 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 15 – 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 18 – 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 24 – s. 497.460, F.S., regarding the disbursement of funds paid on defaulted or unperformed preneed contracts.
- Section 30 – 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 31 – 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.

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.[9] Accordingly, section 14 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.;
- 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 16 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.

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[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] 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.*"

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 17 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.[10] 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.[11] 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.[12] As such, cemetery owners have an economic incentive to invest their C&M trust funds to maximize payments of current 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).[13]

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:

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[10] s. 497.262, F.S.

[11] 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.

[12] 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.

[13] *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.

- 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.[14]

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).[15]

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
        - 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

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

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.[16]
    - 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.[17]

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.[18]

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

- *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

[16] 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.
[17] s. 497.005(56), (6), and (7), F.S.
[18] s. 497.452, F.S. The statute exempts certain cemeteries owned by religious institutions from preneed licensure.

legislative changes to the Administrative Procedure Act that significantly restricted rulemaking to clear grants of rulemaking authority.[19]

- *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 19 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).[20]
    - Section 20 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 goes out of business or becomes insolvent, and will not or cannot perform the preneed contract.[21] 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 21 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.

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[19] *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.

[20] s. 497.454, F.S.

[21] 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.

- *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 22 of the bill amends s. 497.458, F.S., to:
    - Authorize the Board to specify criteria, by rule, for the classification of items sold in a preneed contract;
    - Eliminate the method of determining wholesale cost, which industry has indicated is contract-driven and can result in overvaluation;
    - Replace "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,[22] 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.
    - Section 23 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.[23]
        - 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.[24] This ensures that

[22] 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).
[23] Section 1 of the bill creates definitions of "purchaser" and "beneficiary" in s. 497.005, F.S.
[24] 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.

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.[25]

  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 25 of the bill repeals s. 497.461, F.S., regarding surety bonding as an alternative to trust deposits. Section 26 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 27 and 28 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.

- *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.
  - Section 29 of 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.

[25] 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.

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. 497.283, F.S., relating to prohibition on sale of personal property or services.
Section 15. Amends s. 497.286, F.S., relating to owners to provide addresses; presumption of abandonment; abandonment procedures; sale of abandoned unused burial rights.
Section 16. Amends s. 497.371, F.S., relating to embalmers; establishment of embalmer apprentice program.
Section 17. Amends s. 497.372, F.S., relating to funeral directing; conduct constituting practice of funeral directing.
Section 18. Amends s. 497.381, F.S., relating to solicitation of goods or services.
Section 19. Amends s. 497.452, F.S., relating to preneed license required.
Section 20. Amends s. 497.454, F.S., relating to approval of preneed contract and related forms.
Section 21. Amends s. 497.456, F.S., relating to Preneed Funeral Contract Consumer Protection Trust Fund.
Section 22. Amends s. 497.458, F.S., relating to disposition of proceeds received on contracts.
Section 23. Amends s. 497.459, F.S., relating to cancellation of, or default on, preneed contracts.
Section 24. Amends s. 497.460, F.S., relating to payment of funds upon death of named beneficiary.
Section 25. Repeals s. 497.461, F.S., relating to surety bonding as alternative to trust deposit.
Section 26. Provides a savings clause for the repeal of s. 497.461, F.S.
Section 27. Amends s. 497.462, F.S., relating to other alternatives to deposits under s. 497.458, F.S.
Section 28. Amends s. 497.464, F.S., relating to alternative preneed contracts.
Section 29. Amends s. 497.465, F.S., relating to inactive, surrendered, and revoked preneed licensees.
Section 30. Amends s. 497.601, F.S., relating to direct disposition; duties.
Section 31. Amends s. 497.607, F.S., relating to cremation; procedure required.
Section 32. 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.[26]

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.

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.[27]

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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;

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

- 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 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.

On January 28, 2016, the Government Operations Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed a section of the bill relating to fee's associated with the transfer of burial rights.

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

A bill to be entitled

An act relating to funeral, cemetery, and consumer services; amending s. 497.005, F.S.; providing definitions; amending s. 497.141, F.S.; revising required information for licensure to include e-mail addresses; requiring the Department of Financial Services to include e-mail notification as a means to administer the licensing process for specified purposes; amending s. 497.146, F.S.; revising required information for current licensees to include e-mail notification; providing for rulemaking relating to electronic reporting; amending s. 497.152, F.S.; conforming provisions to changes made by the act; prohibiting the Board of Funeral, Cemetery, and Consumer Services from imposing disciplinary actions when certain minor deficiencies are fully corrected within a specified period; requiring the board to provide criteria for identifying such deficiencies; amending s. 497.161, F.S.; requiring the Division of Funeral, Cemetery, and Consumer Services to authorize specified rules for preneed contracts; amending s. 497.264, F.S.; requiring cemetery licensees to provide e-mail address to the department; amending s. 497.266, F.S.; conforming provisions to changes made by the act; amending s. 497.267, F.S.; revising provisions relating to the disposition of withdrawals from the

care and maintenance trust fund; creating s. 497.2675, F.S.; providing definitions; specifying a default trust distribution method; specifying circumstances in which a cemetery is not eligible to use the unitrust distribution method; providing for unitrust distribution method options and requirements; providing eligibility for distributions; providing for board authority to order discontinuance or modification of the unitrust method; requiring annual reports for the unitrust method; authorizing the board to adopt certain rules; amending s. 497.268, F.S.; conforming provisions; deleting a required deposit in a cemetery company's care and maintenance trust fund for mausoleums or columbaria; deleting the requirement that capital gains taxes be paid from the trust corpus; amending s. 497.269, F.S.; requiring a trustee to annually furnish financial reports that record the fair market value of the care and maintenance trust fund; amending ss. 497.273 and 497.274, F.S.; conforming provisions; amending ss. 497.283 and 497.286, F.S.; conforming provisions; amending s. 497.371, F.S.; providing that an applicant for the embalmer apprentice program may not be licensed without a determination of character by the licensing authority; amending ss. 497.372, 497.381, 497.454, and 497.456, F.S.; conforming provisions; conforming

cross-references; amending s. 497.452, F.S.; deleting an exception that prohibits a person from receiving specified funds without holding a valid preneed license; amending s. 497.458, F.S.; revising requirements relating to the disposition of proceeds on a preneed contract; authorizing the board to adopt rules to classify items sold in preneed contacts; requiring the trustee to furnish the department with an annual report regarding preneed licensee trust accounts beginning on a specified date; providing requirements for the annual report; revising which investments a trustee of a trust has the power to invest; deleting provisions related to the preneed licensee; amending s. 497.459, F.S.; providing that certain preneed contracts may not be cancelled during the life or after the death of the contract purchaser; providing for disposition of unexpended moneys paid on irrevocable contracts; amending s. 497.460, F.S.; conforming provisions; repealing s. 497.461, F.S., relating to the authorization for a preneed licensee to elect surety bonding as an alternative to depositing funds into a trust; providing for applicability of the repeal of s. 497.461, F.S.; amending s. 497.462, F.S.; deleting provisions made obsolete by the repeal of s. 497.461, F.S.; amending s. 497.464, F.S.; conforming a cross-reference;

amending s. 497.465, F.S.; requiring an inactive preneed licensee to deposit a specified amount of funds received on certain preneed contracts into the trust upon a specified time; amending ss. 497.601 and 497.607, F.S.; specifying that cremated remains are not property; requiring a division of cremated remains to be consented to by certain persons; providing that a dispute shall be resolved by a court of competent jurisdiction; conforming provisions; providing an effective date.

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

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

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

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

(63) "Purchaser" means a natural person who has executed an at-need or preneed contract with a licensee.

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

497.141 Licensing; general application procedures.—

(2) Any person desiring to be licensed shall apply to the licensing authority in writing using such forms and procedures as may be prescribed by rule. The application for licensure shall include the applicant's social security number if the applicant is a natural person; otherwise, the applicant's federal tax identification number shall be included. Notwithstanding any other provision of law, the department is the sole authority for determining the forms and form contents to be submitted for initial licensure and licensure renewal application. Such forms and the information and materials required by such forms may include, as appropriate, demographics, education, work history, personal background, criminal history, finances, business information, signature notarization, performance periods, reciprocity, local government approvals, supporting documentation, periodic reporting requirements, fingerprint requirements, continuing education requirements, business plans, character references, e-mail addresses, and ongoing education monitoring. Such forms and the information and materials required by such forms may also include, to the extent such information or materials are not already in the possession of the department or the board, records or information as to complaints, inspections, investigations, discipline, and bonding. The application shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application that takes

place between the initial filing of the application and the final grant or denial of the license and that might affect the decision of the department or the board. After an application by a natural person for licensure under this chapter is approved, the licensing authority may require the successful applicant to provide a photograph of himself or herself for permanent lamination onto the license card to be issued to the applicant, pursuant to rules and fees adopted by the licensing authority.

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

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

497.146 Licensing; address of record; changes; licensee responsibility.—Each licensee under this chapter is responsible for notifying the department in writing of the licensee's current e-mail address, business and residence mailing address,

and the street address of the licensee's primary place of practice and shall notify the department ~~in writing~~ within 30 days after any change in such information, in accordance with procedures and forms prescribed by rule. Notwithstanding any other provision of law, electronic notification ~~service by regular mail~~ to a licensee's last known e-mail address of record or preferred street address of record with the department constitutes adequate and sufficient notice to the licensee for any official communication to the licensee by the board or the department, except when other service is expressly required by this chapter. The department may adopt rules, forms, and procedures, including electronic reporting of all data required to be provided by this section. ~~Rules may be adopted establishing forms and procedures for licensees to provide the notice required by this section.~~

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

497.152 Disciplinary grounds.—This section sets forth conduct that is prohibited and that shall constitute grounds for denial of any application, imposition of discipline, or other enforcement action against the licensee or other person committing such conduct. For purposes of this section, the requirements of this chapter include the requirements of rules adopted under authority of this chapter. No subsection heading

in this section shall be interpreted as limiting the applicability of any paragraph within the subsection.

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

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

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

(12) DISCLOSURE REQUIREMENTS.—

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

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

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

1. Failing to acknowledge and act promptly upon

communications from a licensee's customers and their representatives with respect to claims or complaints relating to the licensee's activities regulated by this chapter.

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

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

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

5. Failing to promptly provide, in relation to a contract for funeral or burial merchandise or services entered into by the licensee or under the licensee's license, a reasonable explanation to the contract purchaser or a legally authorized person ~~her or his representative or legal guardian~~ of the licensee's basis for denying or rejecting all or any part of a claim or complaint submitted.

(c) Making a material misrepresentation to a contract

purchaser or a legally authorized person ~~her or his representative or legal guardian~~ for the purpose and with the intent of effecting settlement of a claim or complaint or loss under a prepaid contract on less favorable terms than those provided in, and contemplated by, the prepaid contract.

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

(15) MISCELLANEOUS FINANCIAL MATTERS.—

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

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

497.161 Other rulemaking provisions.—

(1) In addition to such other rules as are authorized or required under this chapter, the following additional rules, not inconsistent with this chapter, shall be authorized by the

licensing authority.

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

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

497.264 License not assignable or transferable.—

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

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

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

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

497.266 Care and maintenance trust fund; remedy of department for noncompliance.—

(3) A ~~No~~ person may not withdraw or transfer any portion

of assets within ~~the corpus of~~ the care and maintenance trust fund, except as authorized by s. 497.2675, without first obtaining written consent from the licensing authority.

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

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

497.267 Disposition of withdrawals from the ~~income of~~ care and maintenance trust fund; notice to purchasers and depositors.—Withdrawals from the ~~net income of the~~ care and maintenance trust fund shall be used solely for the care and maintenance of the cemetery, including maintenance of monuments, which maintenance may ~~shall~~ not be deemed to include the cleaning, refinishing, repairing, or replacement of monuments; for reasonable costs of administering the care and maintenance; and for reasonable costs of administering the trust fund. At the time of making a sale or receiving an initial deposit, the

cemetery company shall deliver to the person to whom the sale is made, or who makes a deposit, a written instrument which shall specifically state the purposes for which withdrawals from the ~~income of the~~ trust fund shall be used.

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

497.2675 Distributions from the care and maintenance trusts.—

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

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

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

2. If assets are distributed from the trust during the years used to determine the average, other than in satisfaction of the unitrust amount, the amount of each distribution is subtracted from all years in which such distribution is not included.

(b) "Capital gain" or "capital loss" means a change in the

fair market value of a capital asset, such as investment or real estate, that gives the asset a different worth than the purchase price. A capital gain or loss may be realized or unrealized. A capital gain or loss is realized when the asset is sold.

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

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

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

(f) "Fair market value" means the fair market value of the

assets held by the trust, reduced by all known noncontingent liabilities. The fair market value of trust assets that are not publicly traded on a stock or other regulated securities exchange shall be determined by written appraisal by a qualified independent public appraiser not affiliated with the cemetery licensee or its principals. Such an appraisal may not be relied upon by the trustee if it is not issued or reconfirmed in writing by the appraiser within 2 years before the date the appraisal is used by the trustee in the trustees fair market value determinations.

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

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

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

(j) "Unitrust distribution method" is the method of calculating the amount to be distributed to a cemetery licensee

from its care and maintenance trust, where the average fair market value of the care and maintenance trust, or the preneed licensee's pro rata share of a master trust, is multiplied by a unitrust distribution percentage, and the resulting unitrust amount is distributed to the cemetery licensee.

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

(3) CEMETERIES NOT ELIGIBLE FOR UNITRUST DISTRIBUTION.—

(a) A cemetery is not eligible to apply for or receive a unitrust distribution from its care and maintenance trust if a unitrust distribution would be materially inconsistent with the terms and conditions of the cemetery's bylaws or existing care and maintenance trust agreement document. A cemetery licensee operating under cemetery bylaws or a care and maintenance trust that specifies, or by fair implication indicates, that only the net ordinary income of the trust shall be distributed, and who desires to be able to receive a unitrust distribution from the trust, must apply to the board through the division, for approval to amend or replace such bylaws or trust agreement to allow the cemetery licensee to seek a unitrust distribution from the trust. The board shall approve such application to amend the

bylaws or trust agreements if the board finds that there are reasonable grounds to believe that approval would be in the best interests of the perpetual care of the cemetery, and under all the circumstances of the particular case, would be in the best interest of persons then owning interment spaces in the cemetery and the families of persons already interred in the cemetery.

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

(4) APPLICATION TO USE UNITRUST DISTRIBUTION METHOD.—

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

1. Be signed by an officer of the licensed cemetery.

2. State the cemetery's name, license number, and address.

3. Provide a copy of the cemetery's existing bylaws and the care and maintenance trust agreement.

4. If the applicant seeks approval of an amendment or replacement of its bylaws or care and maintenance trust agreement, provide a copy of the proposed amended or replacement bylaws or care and maintenance trust agreement, identifying all material changes from the existing bylaws or care and maintenance trust agreement.

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

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

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

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

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

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

9. Certify to the board that cemetery management has conducted, or caused to be conducted, and have reviewed an analysis of the proposed implementation of the unitrust

distribution method as applied to the cemetery's care and maintenance trust, and, to the best of the knowledge and belief of the cemetery's management, implementation of the unitrust distribution method will not result in lower end-of-year care and maintenance trust principal balances than there would be under the net ordinary income trust distribution method.

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

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

(d) Temporary initial unitrust distribution percentage.—Four and one-half percent is the maximum unitrust distribution percentage that may be approved for the first 12 months of an applicant's use of the unitrust distribution method. If the board, in the initial application proceeding, approved a unitrust distribution percentage higher than 4.5 percent, upon

expiration of 12 months, the applicant may, without further application or proceedings, commence use of the higher approved unitrust distribution percentage.

(5) APPLICATION TO MODIFY UNITRUST DISTRIBUTION METHOD.—

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

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

(6) REVERSION TO NET ORDINARY INCOME DISTRIBUTION METHOD.—A cemetery licensee that is using the unitrust distribution method and wishes to revert to the net ordinary income trust distribution method must receive approval from the board before implementing such change. The board shall approve such

application unless it determines that approval would not be in the long term best interests of the cemetery's care and maintenance trust as a resource to provide for the perpetual care of the cemetery after the cemetery ceases active operations.

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

(8) TIMING OF DISTRIBUTIONS UNDER UNITRUST DISTRIBUTION METHOD.—The unitrust distribution calculated pursuant to the unitrust distribution method as approved by the board for a particular licensee shall be distributed to the preneed licensee in equal monthly or quarterly payments at the end of each month or quarter.

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

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

(11) ANNUAL REPORTS.—A cemetery licensee using the unitrust distribution method shall cause the trustee of the care and maintenance trust each year to prepare and provide to the

division a report as required by s. 497.269 and shall cause the trustee to provide the following information to the division:

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

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

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

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

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

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

(a) For burial rights, 10 percent of all payments received; however, for sales made after September 30, 1993, no deposit shall be less than $25 per burial right ~~grave~~. For each burial right which is provided without charge, the deposit to the fund shall be $25.

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

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

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

497.269 Care and maintenance trust fund; financial reports.—On or before April 1 of each year, the trustee shall furnish adequate financial reports <u>that record the fair market value</u> with respect to the care and maintenance trust fund utilizing forms and procedures specified by rule. However, the department may require the trustee to make such additional financial reports as it deems necessary. In order to ensure that the proper deposits to the trust fund have been made, the

department shall examine the status of the trust fund of the company on a semiannual basis for the first 2 years of the trust fund's existence.

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

497.273 Cemetery companies; authorized functions.—

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

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

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

497.274 Standards for grave spaces.—

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

Section 14. Paragraph (c) of subsection (2) of section 497.283, Florida Statutes, is amended to read:

497.283 Prohibition on sale of personal property or services.—

(2)

(c) In lieu of delivery as required by paragraph (b), for sales to cemetery companies and funeral establishments, and only for such sales, the manufacturer of a permanent outer burial receptacle which meets standards adopted by rule may elect, at its discretion, to comply with the delivery requirements of this section by annually submitting for approval pursuant to procedures and forms as specified by rule, in writing, evidence of the manufacturer's financial responsibility with the licensing authority for its review and approval. ~~The standards and procedures to establish evidence of financial responsibility shall be those in s. 497.461, with the manufacturer of permanent outer burial receptacles which meet national industry standards assuming the same rights and responsibilities as those of a preneed licensee under s. 497.461.~~

Section 15. Subsection (3) of section 497.286, Florida Statutes, is amended to read:

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

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

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

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

(c) Detail the facts with respect to the failure of the owner or survivors as outlined in this section to keep the cemetery informed of the owner's address for a period of 50 consecutive years or more; and

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

Section 16. Section 497.371, Florida Statutes, is amended to read:

497.371 Embalmers; establishment of embalmer apprentice program.—The licensing authority adopts rules establishing an embalmer apprentice program. An embalmer apprentice may perform only those tasks, functions, and duties relating to embalming which are performed under the direct supervision of an embalmer who has an active, valid license under s. 497.368 or s. 497.369. An embalmer apprentice is ~~shall be~~ eligible to serve in an apprentice capacity for a period not to exceed 3 years as may be determined by licensing authority rule or for a period not to exceed 5 years if the apprentice is enrolled in and attending a

course in mortuary science or funeral service education at any mortuary college or funeral service education college or school. An embalmer apprentice shall be issued a license ~~licensed~~ upon payment of a licensure fee as determined by licensing authority rule but not to exceed $200. An applicant for the embalmer apprentice program may not be issued a license unless the licensing authority determines that the applicant is of good character and does not have a history of lack of trustworthiness or integrity in business or professional matters.

Section 17. Paragraph (b) of subsection (1) of section 497.372, Florida Statutes, is amended to read:

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

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

(b) 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, including the removal of such remains from the state~~, with the family or friends of the decedent or any other person responsible for such services~~; setting the time of the services; establishing the type of services to be rendered; acquiring the services of the clergy; and obtaining vital information for the filing of death certificates and obtaining of burial transit permits.

Section 18. Subsection (4) of section 497.381, Florida Statutes, is amended to read:

497.381 Solicitation of goods or services.—

(4) At-need solicitation of funeral merchandise or services is prohibited. A ~~No~~ funeral director or direct disposer or her or his agent or representative may not contact the legally authorized person or family ~~or next of kin of a deceased person~~ to sell services or merchandise unless the funeral director or direct disposer or her or his agent or representative has been initially called or contacted by the decedent's legally authorized person or family ~~or next of kin of such person~~ and requested to provide her or his services or merchandise.

Section 19. Paragraph (c) of subsection (2) of section 497.452, Florida Statutes, is amended to read:

497.452 Preneed license required.—

(2)

~~(c) The provisions of paragraph (a) do not apply to any Florida corporation existing under chapter 607 acting as a servicing agent hereunder in which the stock of such corporation is held by 100 or more persons licensed pursuant to part III of this chapter, provided no one stockholder holds, owns, votes, or has proxies for more than 5 percent of the issued stock of such corporation; provided 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 provided the corporation processes the funds directly to and from the trustee within the applicable time limits set forth in this chapter. The department may require any person claiming that the provisions of this paragraph exempt it from the provisions of paragraph (a) to demonstrate to the satisfaction of the department that it meets the requirements of this paragraph.~~

Section 20. Subsections (1) and (3) of section 497.454, Florida Statutes, are amended to read:

497.454 Approval of preneed contract and related forms.—

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

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

Section 21. Subsections (2), (7), and (8) of section 497.456, Florida Statutes, are amended to read:

497.456 Preneed Funeral Contract Consumer Protection Trust Fund.—

(2) Within 60 days after the end of each calendar quarter,

for each preneed contract written during the quarter and not canceled within 30 days after the date of the execution of the contract, each preneed licensee, whether funding preneed contracts by the sale of insurance or by establishing a trust pursuant to s. 497.458 or s. 497.464, shall remit the sum of $2.50 for each preneed contract having a purchase price of $1,500 or less, and the sum of $5 for each preneed contract having a purchase price in excess of $1,500; and each preneed licensee utilizing ~~s. 497.461 or~~ s. 497.462 shall remit the sum of $5 for each preneed contract having a purchase price of $1,500 or less, and the sum of $10 for each preneed contract having a purchase price in excess of $1,500.

(7) In any situation in which a delinquency proceeding has not commenced, the licensing authority may, in its discretion, use the trust fund for the purpose of providing restitution to any consumer, owner, or beneficiary of a preneed contract or similar regulated arrangement under this chapter entered into after June 30, 1977. If, after investigation, the licensing authority determines that a preneed licensee has breached a preneed contract by failing to provide benefits or an appropriate refund, or that a provider, who is a former preneed licensee or an establishment which has been regulated under this chapter, has sold a preneed contract and has failed to fulfill the arrangement or provide the appropriate refund, and such preneed licensee or provider does not provide or does not possess adequate funds to provide appropriate refunds, payments

from the trust fund may be authorized by the licensing authority. In considering whether payments shall be made or when considering who will be responsible for such payments, the licensing authority shall consider whether the preneed licensee or previous provider has been acquired by a successor who is or should be responsible for the liabilities of the defaulting entity. With respect to preneed contracts funded by life insurance, payments from the fund shall be made: if the insurer is insolvent, but only to the extent that funds are not available through the liquidation proceeding of the insurer; or if the preneed licensee is unable to perform under the contract and the insurance proceeds are not sufficient to cover the cost of the merchandise and services contracted for. In no event shall the licensing authority approve payments in excess of the insurance policy limits unless it determines that at the time of sale of the preneed contract, the insurance policy would have paid for the services and merchandise contracted for. Such monetary relief shall be in an amount as the licensing authority may determine and shall be payable in such manner and upon such conditions and terms as the licensing authority may prescribe. However, with respect to preneed contracts to be funded pursuant to s. 497.458, s. 497.459, ~~s. 497.461,~~ or s. 497.462, any restitution made pursuant to this subsection may ~~shall~~ not exceed, as to any single contract or arrangement, the lesser of the gross amount paid under the contract or 4 percent of the uncommitted assets of the trust fund. With respect to preneed

contracts funded by life insurance policies, any restitution may ~~shall~~ not exceed, as to any single contract or arrangement, the lesser of the face amount of the policy, the actual cost of the arrangement contracted for, or 4 percent of the uncommitted assets of the trust fund. The total of all restitutions made to all applicants under this subsection in a single fiscal year may ~~shall~~ not exceed the greater of 30 percent of the uncommitted assets of the trust fund as of the end of the most recent fiscal year or $120,000. The department may use moneys in the trust fund to contract with independent vendors pursuant to chapter 287 to administer the requirements of this subsection.

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

Section 22. Paragraphs (a), (b), (d), and (f) of subsection (1), paragraph (a) of subsection (3), subsection (4), paragraphs (a) and (c) of subsection (5), and subsections (6) through (9) of section 497.458, Florida Statutes, are amended, and a new paragraph (j) is added to subsection (1) of that

section, to read:

497.458 Disposition of proceeds received on contracts.—

(1)

(a) Any person who is paid, collects, or receives funds under a preneed contract for funeral services or merchandise or burial services or merchandise shall deposit an amount at least equal to the sum of 70 percent of the purchase price collected for all services sold and facilities rented; 100 percent of the purchase price collected for all cash advance items sold; and 30 percent of the purchase price collected ~~or 110 percent of the wholesale cost, whichever is greater,~~ for each item of merchandise sold. The board may, by rule, specify criteria for the classification of items sold in a preneed contract as services, merchandise, or cash advances.

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

(c) ~~(d)~~ The trustee shall take title to the property conveyed to the trust for the purpose of investing, protecting, and conserving it for the preneed licensee; collecting income; and distributing the fair market value ~~principal and income~~ as prescribed in this chapter. The preneed licensee is prohibited from sharing in the discharge of these responsibilities, except

that the preneed licensee may request the trustee to invest in tax-free investments and may appoint an adviser to the trustee. The licensing authority may adopt rules limiting or otherwise specifying the degree to which the trustee may rely on the investment advice of an investment adviser appointed by the preneed licensee. The licensing authority may adopt rules limiting or prohibiting payment of fees by the trust to investment advisors that are employees or principals of the licensee to whom the trust fund relates.

(d) ~~(f)~~ The deposited funds shall be held in trust, both as to principal and any change in fair market value ~~income earned~~ thereon, and shall remain intact, except that the cost of the operation of the trust or trust account authorized by this section may be deducted from the income earned thereon.

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

and the procedures for submission.

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

(4) The licensing authority may adopt rules exempting from the prohibition of paragraph (1)(g) ~~(1)(h)~~, pursuant to criteria established in such rule, the investment of trust funds in investments, such as widely and publicly traded stocks and bonds, notwithstanding that the licensee, its principals, or persons related by blood or marriage to the licensee or its principals have an interest by investment in the same entity, where neither the licensee, its principals, or persons related by blood or marriage to the licensee or its principals have the ability to control the entity invested in, and it would be in the interest of the preneed contract holders whose contracts are secured by the trust funds to allow the investment.

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

(a) Invest in investments as prescribed in s. 518.11 ~~215.47~~ and exercise the powers set forth in part VIII of chapter 736, provided that life insurance policies or annuity contracts are not allowable investments or assets by or of the trust and that real estate does not comprise more than 25 percent of the trust assets; provided further that the licensing authority may by order require the trustee to liquidate or dispose of any investment within 30 days after such order, or within such other

times as the order may direct. The licensing authority may issue such order if it determines that the investment violates any provision of this chapter or is not in the best interests of the preneed contract holders whose contracts are secured by the trust funds.

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

~~(6) The preneed licensee, at her or his election, shall have the right and power, at any time, to revest in it title to the trust assets, or its pro rata share thereof, provided it has complied with s. 497.461.~~

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

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

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

~~(c) For any preneed licensee authorized to do business in this state that has total bonded liability exceeding $100~~

~~million as of July 1, 2001, s. 497.462 is a viable option to it at any and all relevant times for contracts written prior to December 31, 2004, for funds not held in trust as of July 1, 2001.~~

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

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

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

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

Section 23. Paragraph (a) of subsection (6) of section 497.459, Florida Statutes, is amended to read:

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

(6) OTHER PROVISIONS.—

(a) All preneed contracts are cancelable and revocable as provided in this section, provided that a preneed contract does not restrict any contract purchaser who is the beneficiary of the preneed contract and who is a qualified applicant for, or a

recipient of, supplemental security income, temporary cash assistance, or Medicaid from making her or his contract irrevocable. A preneed contract that is made irrevocable pursuant to this section may not be cancelled during the life or after the death of the contract purchaser or beneficiary as described in this section. Any unexpended moneys paid on an irrevocable contract shall be remitted to the Agency for Health Care Administration for deposit into the Medical Care Trust Fund after final disposition of the beneficiary.

Section 24. Section 497.460, Florida Statutes, is amended to read:

497.460 Payment of funds upon death of named beneficiary.—Disbursements of funds discharging any preneed contract fulfilled after September 30, 1993, shall be made by the trustee to the preneed licensee upon receipt of a certified copy of the death certificate of the contract beneficiary or satisfactory evidence as established by rule of the licensing authority that the preneed contract has been performed in whole or in part. However, if the contract is only partially performed, the disbursement shall only cover the fair market value of that portion of the contract performed. In the event of any contract default by the contract purchaser, or in the event that the funeral merchandise or service or burial merchandise or service contracted for is not provided or is not desired by the legally authorized person ~~heirs or personal representative of the contract beneficiary~~, the trustee shall return, within 30 days

after its receipt of a written request therefor, funds paid on the contract to the preneed licensee or to its assigns, subject to ~~the provisions of~~ s. 497.459.

Section 25. Section 497.461, Florida Statutes, is repealed.

Section 26. The repeal of s. 497.461, Florida Statutes, by this act does not apply to any surety bonds in force under s. 497.461 as of July 1, 2016, but no additional preneed contracts shall be added under such surety bonds after July 1, 2016.

Section 27. Subsections (3) through (11) of section 497.462, Florida Statutes, are renumbered as subsections (2) through (10), respectively, and present subsection (2), paragraph (a) of subsection (3), and subsections (7) and (10) of that section are amended, to read:

497.462 Other alternatives to deposits under s. 497.458.—

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

(2)~~(3)~~(a) A buyer of preneed merchandise or services who does not receive such services or merchandise due to the economic failure, closing, or bankruptcy of the preneed licensee must file a claim with the surety as a prerequisite to payment of the claim and, if the claim is not paid, may bring an action

based on the bond and recover against the surety. ~~In the case of a letter of credit or cash deposit that has been filed with the licensing authority, the buyer may file a claim with the licensing authority.~~

(6)~~(7)~~ Any preneed contract which promises future delivery of merchandise at no cost constitutes a paid-up contract. Merchandise which has been delivered is not covered by the required performance bond ~~or letter of credit~~ even though the contract is not completely paid. The preneed licensee may not cancel a contract unless the purchaser is in default according to the terms of the contract and subject to the requirements of s. 497.459. A contract sold, discounted, and transferred to a third party constitutes a paid-up contract for the purposes of the performance bond ~~or letter of credit~~.

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

Section 28. Paragraphs (c) through (g) of subsection (1) of section 497.464, Florida Statutes, are amended to read:

497.464 Alternative preneed contracts.—

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

~~(c) Section 497.458(1), (3), and (6).~~

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

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

~~(f) Section 497.461.~~

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

Section 29. Subsection (2) and paragraph (c) of subsection (9) of section 497.465, Florida Statutes, is amended to read:

497.465 Inactive, surrendered, and revoked preneed licensees.—

(2) A preneed licensee shall cease all preneed sales to the public upon becoming inactive. Upon becoming inactive, the preneed licensee shall ~~collect and~~ deposit into the trust all of the funds received from ~~paid toward~~ preneed contracts sold before ~~prior to~~ becoming inactive.

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

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

Section 30. Paragraph (b) of subsection (1) of section 497.601, Florida Statutes, is amended to read:

497.601 Direct disposition; duties.—

(1) Those individuals licensed as direct disposers may

perform only those functions set forth below:

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

Section 31. Subsection (1) of section 497.607, Florida Statutes, is amended, subsections (2), (3), and (4) are renumbered as subsections (3), (4), and (5), respectively, and a new subsection (2) is added to that section, to read:

497.607 Cremation; procedure required.—

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

(2) Cremated remains are not property, as defined in s. 731.201, and are not subject to ownership or court-ordered partition. A division of cremated remains requires the consent

of the legally authorized person who approved the cremation or, if the legally authorized person is the decedent, the next legally authorized person pursuant to s. 497.005(40). A dispute regarding the division of cremated remains shall be resolved by a court of competent jurisdiction.

Section 32. This act shall take effect July 1, 2016.

REGULATORY AFFAIRS COMMITTEE

CS/CS/HB 473 by Rep. Roberson
Funeral, Cemetery, and Consumer Services

AMENDMENT SUMMARY
February 4, 2016

Amendment 1 by Rep. Roberson (strike-all): Retains the provisions of the bill and makes the following changes to make the bill identical to its Senate companion, CS/CS/SB 854:

- Relocates unitrust method-related definitions to the general definitions statute;
- Amends the definition of "purchaser";
- Restores current law to s. 497.264, F.S., regarding licenses under the Act,
- Revises the new unitrust statute to grant rulemaking authority to the Board and the DFS to determine certain requirements and procedures,
- Restores current law to s. 497.273, F.S., regarding the commingling of human and animal remains, and
- Authorizes the Board to specify criteria for classifying items sold in a preneed contract by rule.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Roberson, K. offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Present subsections (5) through (8), (9) through (31), (32) through (38), (39) through (46), (47) through (61), (62) through (70), and (71) of section 497.005, Florida Statutes, are redesignated as subsections (6) through (9), (11) through (33), (35) through (41), (43) through (50), (52) through (66), (68) through (76), and (78), respectively, and new subsections (5), (10), (34), (42), (51), (67), and (77) are added to that section, to read:

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

(5) "Beneficiary" means a natural person expressly identified in a preneed contract as the person for whom funeral

merchandise or services are intended.

(10) "Capital gain" or "capital loss" means a change in the value of a capital asset, such as investment or real estate, which gives the asset a different worth than the purchase price. The gain or loss is not realized until the asset is sold.

(34) "Fair market value" means the fair market value of assets held by a trust as of a specific date, assuming all assets of the trust are sold on that specific date.

(42) "Income" means earnings on trust assets, including interest, dividends, and other income earned on the principal.

(51) "Net income" means, in relation to a trust, ordinary income minus any income distributions for items such as trust expenses. For purposes of this subsection, "ordinary income" means, in relation to a trust, any earnings on trust assets, including interest and dividends received on property derived from the use of the trust principal, but does not include capital gains or capital losses.

(67) "Purchaser" means a person who executes a preneed or an at-need contract with a licensee for merchandise or services.

(77) "Total return withdrawal percentage" means a percentage, not to exceed 5 percent, of the fair market value of a trust.

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

497.141 Licensing; general application procedures.—

(2) Any person desiring to be licensed shall apply to the

licensing authority in writing using such forms and procedures as may be prescribed by rule. The application for licensure shall include the applicant's social security number if the applicant is a natural person; otherwise, the applicant's federal tax identification number shall be included. Notwithstanding any other provision of law, the department is the sole authority for determining the forms and form contents to be submitted for initial licensure and licensure renewal application. Such forms and the information and materials required by such forms may include, as appropriate, demographics, education, work history, personal background, criminal history, finances, business information, signature notarization, performance periods, reciprocity, local government approvals, supporting documentation, periodic reporting requirements, fingerprint requirements, continuing education requirements, business plans, character references, e-mail addresses, and ongoing education monitoring. Such forms and the information and materials required by such forms may also include, to the extent such information or materials are not already in the possession of the department or the board, records or information as to complaints, inspections, investigations, discipline, and bonding. The application shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application that takes place between the initial filing of the application and the final grant or denial of the license and that might affect the

decision of the department or the board. After an application by a natural person for licensure under this chapter is approved, the licensing authority may require the successful applicant to provide a photograph of himself or herself for permanent lamination onto the license card to be issued to the applicant, pursuant to rules and fees adopted by the licensing authority.

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

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

497.146 Licensing; address of record; changes; licensee responsibility.—Each licensee under this chapter is responsible for notifying the department in writing of the licensee's current e-mail address, business and residence mailing address, and the street address of the licensee's primary place of practice and shall notify the department ~~in writing~~ within 30

days after any change in such information, in accordance with procedures and forms prescribed by rule. Notwithstanding any other provision of law, electronic notification ~~service by regular mail~~ to a licensee's last known e-mail address of record or preferred street address of record with the department constitutes adequate and sufficient notice to the licensee for any official communication to the licensee by the board or the department, except when other service is expressly required by this chapter. The department may adopt rules, forms, and procedures, including a procedure for electronic reporting of the data provided pursuant to this section. ~~Rules may be adopted establishing forms and procedures for licensees to provide the notice required by this section.~~

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

497.152 Disciplinary grounds.—This section sets forth conduct that is prohibited and that shall constitute grounds for denial of any application, imposition of discipline, or other enforcement action against the licensee or other person committing such conduct. For purposes of this section, the requirements of this chapter include the requirements of rules adopted under authority of this chapter. No subsection heading in this section shall be interpreted as limiting the applicability of any paragraph within the subsection.

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

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

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

(12) DISCLOSURE REQUIREMENTS.—

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

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

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

1. Failing to acknowledge and act promptly upon communications from a licensee's customers and their representatives with respect to claims or complaints relating to

the licensee's activities regulated by this chapter.

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

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

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

5. Failing to promptly provide, in relation to a contract for funeral or burial merchandise or services entered into by the licensee or under the licensee's license, a reasonable explanation to the contract purchaser or a legally authorized person ~~her or his representative or legal guardian~~ of the licensee's basis for denying or rejecting all or any part of a claim or complaint submitted.

(c) Making a material misrepresentation to a contract purchaser or a legally authorized person ~~her or his representative or legal guardian~~ for the purpose and with the

intent of effecting settlement of a claim or complaint or loss under a prepaid contract on less favorable terms than those provided in, and contemplated by, the prepaid contract.

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

(15) MISCELLANEOUS FINANCIAL MATTERS.—

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

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

497.161 Other rulemaking provisions.—

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

(g) Rules, not inconsistent with part IV of this chapter

and the Florida Insurance Code, establishing conditions of use for insurance as a funding mechanism for preneed contracts.

Section 6. Subsections (3) and (4) of section 497.266, Florida Statutes, are amended to read:

497.266 Care and maintenance trust fund; remedy of department for noncompliance.—

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

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

Section 7. Section 497.267, Florida Statutes, is amended to read:

497.267 Disposition of withdrawals from the ~~income of~~ care and maintenance trust fund; notice to purchasers and depositors.—Withdrawals from the ~~net income of the~~ care and

maintenance trust fund shall be used solely for the care and maintenance of the cemetery, including maintenance of monuments, which maintenance may ~~shall~~ not be deemed to include the cleaning, refinishing, repairing, or replacement of monuments; for reasonable costs of administering the care and maintenance; and for reasonable costs of administering the trust fund. At the time of making a sale or receiving an initial deposit, the cemetery company shall deliver to the person to whom the sale is made, or who makes a deposit, a written instrument which shall specifically state the purposes for which withdrawals from the ~~income of the~~ trust fund shall be used.

Section 8. Section 497.2675, Florida Statutes, is created to read:

497.2675 Withdrawal methods from the care and maintenance trust fund.—

(1) The board shall adopt rules, with the approval of the department, to administer ss. 497.267 and 497.268, including, but not limited to:

(a) Reporting requirements for a cemetery licensed under this chapter, including the requirement that specific reports be made on forms designed and approved by the board by rule.

(b) Rules to address a cemetery licensed under this chapter whose pro rata share of the fair market value of the trust has not grown over a 3-year average, including limiting withdrawals from the care and maintenance trust fund, and any exceptions approved by the board.

(2) Each cemetery company licensed under this chapter shall elect one of two withdrawal methods, as specified in paragraphs (a) and (b), for withdrawals from the cemetery company's care and maintenance trust fund. The board shall adopt rules, with the approval of the department, to administer this subsection.

(a) *Net income withdrawal method.*—Net income may be withdrawn from the trust, as earned, on a monthly basis.

(b) *Total return withdrawal method.*—The licensee shall multiply the average fair market value of its pro rata share of the trust by the total return withdrawal percentage and may withdraw one-fourth of that amount at least quarterly beginning the first quarter of the new trust year. The initial total return withdrawal percentage elected by the licensee may not increase the total return withdrawal percentage for that quarter. For purposes of this paragraph, "average fair market value" means, in relation to a trust, the average of the fair market value of each asset held by the trust at the beginning of the current year and in each of the 2 previous years, or for the entire term of the trust if there are less than 2 previous years, and adjusted as follows:

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

2. If assets are distributed from the trust during the years used to determine the average, other than in satisfaction

of the unitrust amount, as defined in s. 738.1041, the amount of each distribution is subtracted from all other years in which such distribution is not included.

(3) Without regard to the withdrawal method selected, taxes on capital gains, if any, must be paid from the trust principal.

Section 9. Paragraphs (a) and (b) of subsection (1) and subsection (2) of section 497.268, Florida Statutes, are amended to read:

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

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

(a) For burial rights, 10 percent of all payments received; however, for sales made after September 30, 1993, no deposit shall be less than $25 per burial right ~~grave~~. For each burial right which is provided without charge, the deposit to the fund shall be $25.

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

(2) Deposits to the care and maintenance trust fund shall be made by the cemetery company not later than 30 days following the close of the calendar month in which any payment was received; however, when such payments are received in installments, the percentage of the installment payment placed

in trust must be identical to the percentage which the payment received bears to the total cost for the burial rights. Trust income may be used to pay for all usual and customary services for the operation of a trust account, including, but not limited to: reasonable trustee and custodian fees, investment adviser fees, allocation fees, and taxes. If the net income is not sufficient to pay the fees and other expenses, the fees and other expenses shall be paid by the cemetery company. ~~Capital gains taxes shall be paid from the corpus.~~

Section 10. Section 497.269, Florida Statutes, is amended to read:

497.269 Care and maintenance trust fund; financial reports.—On or before April 1 of each year, the trustee shall furnish adequate financial reports <u>that record the fair market value</u> with respect to the care and maintenance trust fund utilizing forms and procedures specified by rule. However, the department may require the trustee to make such additional financial reports as it deems necessary. In order to ensure that the proper deposits to the trust fund have been made, the department shall examine the status of the trust fund of the company on a semiannual basis for the first 2 years of the trust fund's existence.

Section 11. Subsection (4) of section 497.273, Florida Statutes, is amended to read:

497.273 Cemetery companies; authorized functions.—

(4) This chapter does not prohibit the interment or

entombment of the inurned cremated animal remains of the decedent's pet or pets with the decedent's human remains or cremated human remains if:

(a) The human remains or cremated human remains are not commingled with the inurned cremated animal remains; and

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

Section 12. Subsection (1) of section 497.274, Florida Statutes, is amended to read:

497.274 Standards for grave spaces.—

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

Section 13. Paragraph (c) of subsection (2) of section 497.283, Florida Statutes, is amended to read:

497.283 Prohibition on sale of personal property or services.—

(2)

(c) In lieu of delivery as required by paragraph (b), for sales to cemetery companies and funeral establishments, and only

for such sales, the manufacturer of a permanent outer burial receptacle which meets standards adopted by rule may elect, at its discretion, to comply with the delivery requirements of this section by annually submitting for approval pursuant to procedures and forms as specified by rule, in writing, evidence of the manufacturer's financial responsibility with the licensing authority for its review and approval. ~~The standards and procedures to establish evidence of financial responsibility shall be those in s. 497.461, with the manufacturer of permanent outer burial receptacles which meet national industry standards assuming the same rights and responsibilities as those of a preneed licensee under s. 497.461.~~

Section 14. Subsection (3) of section 497.286, Florida Statutes, is amended to read:

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

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

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

(b) Set forth the name of the owner or owners of the burial rights, or if the owner is known to the cemetery to be deceased, then the names, if known to the cemetery, of such

claimants as are heirs at law, next of kin, or specific devisees under the will of the owner or the legally authorized person;

(c) Detail the facts with respect to the failure of the owner or survivors as outlined in this section to keep the cemetery informed of the owner's address for a period of 50 consecutive years or more; and

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

Section 15. Section 497.371, Florida Statutes, is amended to read:

497.371 Embalmers; establishment of embalmer apprentice program.—The licensing authority adopts rules establishing an embalmer apprentice program. An embalmer apprentice may perform only those tasks, functions, and duties relating to embalming which are performed under the direct supervision of an embalmer who has an active, valid license under s. 497.368 or s. 497.369. An embalmer apprentice is ~~shall be~~ eligible to serve in an apprentice capacity for a period not to exceed 3 years as may be determined by licensing authority rule or for a period not to exceed 5 years if the apprentice is enrolled in and attending a course in mortuary science or funeral service education at any mortuary college or funeral service education college or school. An embalmer apprentice shall be issued a license ~~licensed~~ upon payment of a licensure fee as determined by licensing authority rule but not to exceed $200. An applicant for the embalmer

apprentice program may not be issued a license unless the licensing authority determines that the applicant is of good character and has not demonstrated a history of lack of trustworthiness or integrity in business or professional matters.

Section 16. Paragraph (b) of subsection (1) of section 497.372, Florida Statutes, is amended to read:

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

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

(b) 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, including the removal of such remains from the state~~, with the family or friends of the decedent or any other person responsible for such services~~; setting the time of the services; establishing the type of services to be rendered; acquiring the services of the clergy; and obtaining vital information for the filing of death certificates and obtaining of burial transit permits.

Section 17. Subsection (4) of section 497.381, Florida Statutes, is amended to read:

497.381 Solicitation of goods or services.—

(4) At-need solicitation of funeral merchandise or

services is prohibited. A ~~No~~ funeral director or direct disposer or her or his agent or representative may not contact the legally authorized person or family ~~or next of kin of a deceased person~~ to sell services or merchandise unless the funeral director or direct disposer or her or his agent or representative has been initially called or contacted by the legally authorized person or family ~~or next of kin of such person~~ and requested to provide her or his services or merchandise.

Section 18. Paragraph (c) of subsection (2) of section 497.452, Florida Statutes, is amended to read:

497.452 Preneed license required.—

(2)

~~(c) The provisions of paragraph (a) do not apply to any Florida corporation existing under chapter 607 acting as a servicing agent hereunder in which the stock of such corporation is held by 100 or more persons licensed pursuant to part III of this chapter, provided no one stockholder holds, owns, votes, or has proxies for more than 5 percent of the issued stock of such corporation; provided 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 provided the corporation processes the funds directly to and from the trustee within the applicable time limits set forth in this chapter. The department may require any person claiming that the provisions of this paragraph exempt it~~

~~from the provisions of paragraph (a) to demonstrate to the satisfaction of the department that it meets the requirements of this paragraph.~~

Section 19. Subsections (1) and (3) of section 497.454, Florida Statutes, are amended to read:

497.454 Approval of preneed contract and related forms.—

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

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

Section 20. Subsections (2), (7), and (8) of section 497.456, Florida Statutes, are amended to read:

497.456 Preneed Funeral Contract Consumer Protection Trust Fund.—

(2) Within 60 days after the end of each calendar quarter, for each preneed contract written during the quarter and not canceled within 30 days after the date of the execution of the contract, each preneed licensee, whether funding preneed contracts by the sale of insurance or by establishing a trust

pursuant to s. 497.458 or s. 497.464, shall remit the sum of $2.50 for each preneed contract having a purchase price of $1,500 or less, and the sum of $5 for each preneed contract having a purchase price in excess of $1,500; and each preneed licensee utilizing ~~s. 497.461 or~~ s. 497.462 shall remit the sum of $5 for each preneed contract having a purchase price of $1,500 or less, and the sum of $10 for each preneed contract having a purchase price in excess of $1,500.

(7) In any situation in which a delinquency proceeding has not commenced, the licensing authority may, in its discretion, use the trust fund for the purpose of providing restitution to any consumer, owner, or beneficiary of a preneed contract or similar regulated arrangement under this chapter entered into after June 30, 1977. If, after investigation, the licensing authority determines that a preneed licensee has breached a preneed contract by failing to provide benefits or an appropriate refund, or that a provider, who is a former preneed licensee or an establishment which has been regulated under this chapter, has sold a preneed contract and has failed to fulfill the arrangement or provide the appropriate refund, and such preneed licensee or provider does not provide or does not possess adequate funds to provide appropriate refunds, payments from the trust fund may be authorized by the licensing authority. In considering whether payments shall be made or when considering who will be responsible for such payments, the licensing authority shall consider whether the preneed licensee

or previous provider has been acquired by a successor who is or should be responsible for the liabilities of the defaulting entity. With respect to preneed contracts funded by life insurance, payments from the fund shall be made: if the insurer is insolvent, but only to the extent that funds are not available through the liquidation proceeding of the insurer; or if the preneed licensee is unable to perform under the contract and the insurance proceeds are not sufficient to cover the cost of the merchandise and services contracted for. In no event shall the licensing authority approve payments in excess of the insurance policy limits unless it determines that at the time of sale of the preneed contract, the insurance policy would have paid for the services and merchandise contracted for. Such monetary relief shall be in an amount as the licensing authority may determine and shall be payable in such manner and upon such conditions and terms as the licensing authority may prescribe. However, with respect to preneed contracts to be funded pursuant to s. 497.458, s. 497.459, ~~s. 497.461,~~ or s. 497.462, any restitution made pursuant to this subsection may ~~shall~~ not exceed, as to any single contract or arrangement, the lesser of the gross amount paid under the contract or 4 percent of the uncommitted assets of the trust fund. With respect to preneed contracts funded by life insurance policies, any restitution may ~~shall~~ not exceed, as to any single contract or arrangement, the lesser of the face amount of the policy, the actual cost of the arrangement contracted for, or 4 percent of the uncommitted

assets of the trust fund. The total of all restitutions made to all applicants under this subsection in a single fiscal year may ~~shall~~ not exceed the greater of 30 percent of the uncommitted assets of the trust fund as of the end of the most recent fiscal year or $120,000. The department may use moneys in the trust fund to contract with independent vendors pursuant to chapter 287 to administer the requirements of this subsection.

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

Section 21. Paragraphs (a), (d), and (f) of subsection (1) of section 497.458, Florida Statutes, are amended, a new paragraph (k) is added to that subsection, and paragraph (a) of subsection (3), subsection (4), paragraphs (a) and (c) of subsection (5), and subsections (6) through (9) of that section are amended, to read:

497.458 Disposition of proceeds received on contracts.—

(1)(a) Any person who is paid, collects, or receives funds under a preneed contract for funeral services or merchandise or

burial services or merchandise shall deposit an amount at least equal to the sum of 70 percent of the purchase price collected for all services sold and facilities rented; 100 percent of the purchase price collected for all cash advance items sold; and 30 percent of the purchase price collected or 110 percent of the wholesale cost, whichever is greater, for each item of merchandise sold. The board may, by rule, specify criteria for the classification of items sold in a preneed contract as services, cash advances, or merchandise.

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

(f) The deposited funds shall be held in trust, both as to principal and any change in fair market value ~~income earned~~

thereon, and shall remain intact, except that the cost of the operation of the trust or trust account authorized by this section may be deducted from the income earned thereon.

(k) Beginning April 1, 2018, and on or before each April 1 thereafter, the trustee shall furnish the department with an annual report regarding each preneed licensee trust account held by the trustee at any time during the previous calendar year. The report shall state the name and address of the trustee; the name, address, and license number of the licensee to whom the report relates; the trust account number; the beginning and ending trust balance; and, as may be specified by department rule, a list of receipts showing the date and amount of any disbursement. The report must be signed by the trustee's account manager for the trust account. The trustee shall submit the report in a format and pursuant to procedures specified by department rule.

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

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

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

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

(a) Invest in investments as prescribed in s. 518.11 ~~215.47~~ and exercise the powers set forth in part VIII of chapter 736. However, the trustee may not invest in, or count as assets, life insurance policies or annuity contracts; real estate may not compose more than 25 percent of the trust's assets; and~~,~~ ~~provided that~~ the licensing authority may by order require the trustee to liquidate or dispose of any investment within 30 days after such order, or within such other times as the order may direct. The licensing authority may issue such order if it determines that the investment violates any provision of this chapter or is not in the best interests of the preneed contract holders whose contracts are secured by the trust funds.

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

~~(6) The preneed licensee, at her or his election, shall have the right and power, at any time, to revest in it title to the trust assets, or its pro rata share thereof, provided it has~~

~~complied with s. 497.461.~~

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

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

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

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

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

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

(a) For contracts entered into before October 1, 1993, the

trust amounts as amended by s. 6, chapter 83-316, Laws of Florida, shall apply.

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

Section 22. Paragraph (a) of subsection (6) of section 497.459, Florida Statutes, is amended to read:

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

(6) OTHER PROVISIONS.—

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

Section 23. Section 497.460, Florida Statutes, is amended to read:

497.460 Payment of funds upon death of named beneficiary.—

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

Section 24. Section 497.461, Florida Statutes, is repealed.

Section 25. The repeal of s. 497.461, Florida Statutes, by this act does not apply to a preneed licensee who has elected to maintain a surety bond in lieu of depositing funds into a trust as of July 1, 2016.

Section 26. Subsection (2), paragraph (a) of subsection (3), and subsections (7) and (10) of section 497.462, Florida Statutes, are amended to read:

497.462 Other alternatives to deposits under s. 497.458.—

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

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

(6) ~~(7)~~ Any preneed contract which promises future delivery of merchandise at no cost constitutes a paid-up contract. Merchandise which has been delivered is not covered by the required performance bond ~~or letter of credit~~ even though the contract is not completely paid. The preneed licensee may not cancel a contract unless the purchaser is in default according to the terms of the contract and subject to the requirements of s. 497.459. A contract sold, discounted, and transferred to a third party constitutes a paid-up contract for the purposes of the performance bond ~~or letter of credit~~.

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

Section 27. Paragraphs (c) and (f) of subsection (1) of section 497.464, Florida Statutes, are amended to read:

497.464 Alternative preneed contracts.—

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

~~(c) Section 497.458(1), (3), and (6).~~

~~(f) Section 497.461.~~

Section 28. Subsection (2) and paragraph (c) of subsection (9) of section 497.465, Florida Statutes, are amended to read:

497.465 Inactive, surrendered, and revoked preneed licensees.—

(2) Upon becoming inactive, a preneed licensee shall cease all preneed sales to the public and ~~upon becoming inactive, the preneed licensee~~ shall ~~collect and~~ deposit into the trust all funds it receives on or after the date on which it becomes inactive from sales of ~~into trust all of the funds paid toward~~ preneed contracts sold before ~~prior to~~ becoming inactive.

(9) The licensing authority may adopt rules for the implementation of this section, for the purpose of ensuring a

thorough review and investigation of the status and condition of the preneed licensee's business affairs for the protection of the licensee's preneed customers. Such rules may include:

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

Section 29. Paragraph (b) of subsection (1) of section 497.601, Florida Statutes, is amended to read:

497.601 Direct disposition; duties.—

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

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

Section 30. Subsection (1) of section 497.607, Florida Statutes, is amended, present subsections (2), (3), and (4) of that section are redesignated as subsections (3), (4), and (5), respectively, and a new subsection (2) is added to that section, to read:

497.607 Cremation; procedure required.—

(1) At the time of the arrangement for a cremation performed by any person licensed pursuant to this chapter, the legally authorized person contracting for cremation services shall be required to designate her or his intentions with respect to ~~the~~ disposition of the cremated remains of the

deceased in a signed declaration of intent which shall be provided by and retained by the funeral or direct disposal establishment. A cremation may not be performed until a legally authorized person gives written authorization, which may include the declaration of intent to dispose of the cremated remains, for such cremation. The cremation must be performed within 48 hours after a specified time which has been agreed to in writing by the person authorizing the cremation.

(2) Cremated remains are not property, as defined in s. 731.201(32), and are not subject to partition for purposes of distribution under s. 733.814. A division of cremated remains requires the consent of the legally authorized person who approved the cremation or, if the legally authorized person is the decedent, the next legally authorized person pursuant to s. 497.005(43). A dispute regarding the division of cremated remains shall be resolved by a court of competent jurisdiction.

Section 31. This act shall take effect July 1, 2016.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to funeral, cemetery, and consumer services; amending s. 497.005, F.S.; defining terms; amending s. 497.141, F.S.; revising required information for licensure to include e-mail addresses;

requiring the Department of Financial Services to include e-mail notification as a means to administer the licensing process; amending s. 497.146, F.S.; revising required information for current licensees to include an address for e-mail notification; providing for rulemaking relating to electronic reporting; amending s. 497.152, F.S.; conforming provisions to changes made by the act; requiring, rather than authorizing, the Board of Funeral, Cemetery, and Consumer Services to provide certain criteria; prohibiting the board from requiring a fine when certain deficiencies are fully corrected within a specified period; amending s. 497.161, F.S.; revising requirements for rules of the licensing authority; amending s. 497.266, F.S.; revising the prohibition against withdrawal or transfer of assets within the care and maintenance trust fund to include an exception; amending s. 497.267, F.S.; revising provisions relating to the disposition of withdrawals from the care and maintenance trust fund; creating s. 497.2675, F.S.; requiring the board to adopt certain rules; requiring a licensed cemetery company to request a method for withdrawal from the cemetery company's care and maintenance trust fund; providing requirements for such methods; requiring that taxes on capital gains be paid from the trust principal;

amending s. 497.268, F.S.; conforming provisions to changes made by the act; deleting a required deposit in a cemetery company's care and maintenance trust fund for mausoleums or columbaria; deleting the requirement that taxes on capital gain be paid from the trust corpus; amending s. 497.269, F.S.; requiring a trustee to annually furnish financial reports that record the fair market value of the care and maintenance trust fund; amending ss. 497.273 and 497.274, F.S.; conforming provisions to changes made by the act; amending ss. 497.283 and 497.286, F.S.; conforming provisions to changes made by the act; amending s. 497.371, F.S.; providing that an applicant for the embalmer apprentice program may not be licensed without a determination of character by the licensing authority; amending ss. 497.372 and 497.381, F.S.; conforming provisions to changes made by the act; amending s. 497.452, F.S.; deleting an exception that prohibits a person from receiving specified funds without holding a valid preneed license; amending ss. 497.454 and 497.456, F.S.; conforming provisions to changes made by the act; amending s. 497.458, F.S.; revising requirements relating to the disposition of proceeds on a preneed contract; authorizing the board to specify criteria for the classification of items sold in a preneed contract; requiring the trustee to

furnish the department with an annual report regarding preneed licensee trust accounts beginning on a specified date; providing requirements for the annual report; revising which investments a trustee of a trust has the power to invest in; deleting provisions relating to the preneed licensee; amending s. 497.459, F.S.; prohibiting certain preneed contracts from being canceled during the life or after the death of the contract purchaser or beneficiary; requiring unexpended moneys on an irrevocable contract to be deposited into the Medical Care Trust Fund under certain circumstances; amending s. 497.460, F.S.; conforming provisions to changes made by the act; repealing s. 497.461, F.S., relating to the authorization for a preneed licensee to elect surety bonding as an alternative to depositing funds into a trust; amending s. 497.462, F.S.; deleting obsolete references to surety bonds; amending s. 497.464, F.S.; conforming provisions to changes made by the act; amending s. 497.465, F.S.; requiring an inactive preneed licensee to deposit a specified amount of funds received on certain preneed contracts into the trust upon a specified time; amending ss. 497.601 and 497.607, F.S.; specifying that cremated remains are not property; requiring a division of cremated remains to be consented to by certain persons; providing that

a dispute shall be resolved by a court of competent jurisdiction; conforming provisions to changes made by the act; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 491 Water and Wastewater
SPONSOR(S): Finance & Tax Committee; Energy & Utilities Subcommittee; Smith
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 534

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	12 Y, 1 N, As CS	Keating	Keating
2) Finance & Tax Committee	10 Y, 1 N, As CS	Aldridge	Langston
3) Regulatory Affairs Committee		Keating CLC	Hamon KWH.

SUMMARY ANALYSIS

Chapter 2012-187, Laws of Florida, created the Study Committee on Investor-Owned Water and Wastewater Utility Systems (Study Committee) to "identify issues of concern of investor-owned water and wastewater utility systems, particularly small systems, and their customers" and to research possible solutions. Consistent with the law, the Study Committee submitted a report containing its recommendations to the Speaker of the House, the President of the Senate, and the Governor, on February 15, 2013. This bill adopts several of the Study Committee's recommendations for legislative action. In particular, the bill:

- Directs the Division of Bond Finance to review the allocation of private activity bonds in Florida with respect to water and wastewater projects.
- Creates an exemption from PSC regulation for persons who resell water service to individually-metered residents at a price that does not exceed the purchase price of water plus the actual cost of meter reading and billing, not to exceed 9 percent of the actual cost of service.
- Requires the PSC, upon the request of an investor-owned water or wastewater utility (IOU) in a rate case, to create a reserve fund for the IOU to be used for certain infrastructure repair and replacement projects, with disbursement subject to PSC approval.
- Identifies specific types of expenses eligible for "pass-through" treatment in IOU rates and authorizes the PSC, by rule, to identify additional types of expenses eligible for such treatment, provided the expenses are beyond the utility's control.
- Prohibits the recovery of an IOU's rate case expense where the rate case expense is incurred to prepare or file a staff-assisted rate case in which no party intervenes.
- Authorizes the PSC, on its own motion or based on customer complaints, to review water quality issues involving secondary drinking water standards (e.g., standards related to odor, taste, and corrosiveness) and wastewater service issues involving odor, noise, aerosol drift, or lighting.
- Expands the availability of low-interest loans through the State Revolving Fund to all for-profit water utilities.
- Requires each county that has opted to regulate the rates of IOUs operating within the county to do so pursuant to existing law relating to the abandonment of a facility.

The Revenue Estimating Conference has not estimated the revenue impacts of the bill as amended. However, staff estimates that the bill will have no revenue impact on state or local government. The bill appears to have an insignificant impact on state government expenditures and no impact on local government expenditures.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Water and Wastewater Industry Overview

In various areas throughout Florida, water and wastewater services are provided through privately-owned or investor-owned water and/or wastewater utilities (IOUs). IOUs can range in size from very small systems, owned by individuals as sole proprietorships and serving only a few dozen customers in a small neighborhood, to systems owned by large interstate corporations which serve tens of thousands of customers in multiple Florida counties.

For IOUs operating within a single Florida county, the county has the option to regulate rates and service or allow the Public Service Commission (PSC or Commission) to regulate those utilities.[1] Regardless of whether the county has opted to regulate IOUs, the PSC has jurisdiction over all water and wastewater utility systems whose service transverses county boundaries, except for systems owned and regulated by intergovernmental authorities.[2] Currently, the PSC has jurisdiction over almost 150 water and/or wastewater IOUs in 37 of 67 counties in Florida.[3] The remaining water and wastewater customers in the state are served either by IOUs in non-jurisdictional counties, by statutorily exempt utilities (such as municipal utilities, cooperatives, and non-profits), by wells and septic tanks, or by systems owned, operated, managed, or controlled by governmental authorities.[4]

For regulatory purposes, the PSC classifies a water or wastewater IOU into one of three categories based on annual operating revenues:[5]

Class A – Operating revenues of $1,000,000 or more
Class B – Operating revenues of $200,000 or more but less than $1,000,000
Class C – Operating revenues less than $200,000

Currently, there are 13 Class A utilities, 37 Class B utilities, and 96 Class C utilities under the PSC's jurisdiction.

Study Committee on Investor-Owned Water and Wastewater Utility Systems

Chapter 2012-187, Laws of Florida, created the Study Committee on Investor-Owned Water and Wastewater Utility Systems (Study Committee)[6] to "identify issues of concern of investor-owned water

[1] s. 367.171, F.S. If a county chooses to allow regulation by the PSC, it may rescind this election only after 10 continuous years of PSC regulation.
[2] *Id.*
[3] *Facts and Figures of the Florida Utility Industry*, Florida Public Service Commission, March 2015, p.30, *available at* http://www.psc.state.fl.us/Publications/Reports# (last visited February 2, 2016).
[4] s. 367.022(2), F.S.
[5] Rules 25-30.110(4) and 25-30.115, F.A.C. As noted in these rules, this classification system is used by the National Association of Regulatory Utility Commissioners for publishing its system of accounts.
[6] As required by the law, the Study Committee was comprised of 18 members, including three non-voting members and 15 voting members. The three non-voting members included Commissioner Julie I. Brown (representing the PSC as the Study Committee Chair), a representative of the Florida Department of Environmental Protection, and the Public Counsel. The 15 voting members included State Senator Alan Hays (appointed by the President of the Senate), State Representative Ray Pilon (appointed by the Speaker of the House), and representatives of the following entities or groups, as appointed by the Governor: a county commission that regulates investor-owned water/wastewater utilities; a governmental authority created under ch. 163, F.S.; a water management district; a county health department; two Class A utilities; a Class B utility; a Class C utility; a utility owned or operated by a

and wastewater utility systems, particularly small systems, and their customers" and to research possible solutions.[7] Specifically, the Study Committee was required to consider:

- The ability of a small IOU to achieve economies of scale when purchasing equipment, commodities, or services;
- The availability of low interest loans to a small, privately owned water or wastewater utility;
- Any tax incentives or exemptions, temporary or permanent, which are available to a small water or wastewater utility;
- The impact on customer rates if a utility purchases an existing water or wastewater utility system;
- The impact on customer rates of a utility providing service through the use of a reseller; and
- Other issues that the Study Committee identifies during its investigation.[8]

The Study Committee conducted 12 public meetings at which it heard public comment on these issues, identified additional issues for consideration and research (and heard public comment on the additional issues), and discussed and debated solutions to the issues.[9] Consistent with the law, the Study Committee submitted a report containing its recommendations to the Speaker of the House, the President of the Senate, and the Governor, on February 15, 2013.

The Study Committee's report included recommendations for legislative action, agency rulemaking, and other agency action. Based on the issues that it was required to consider, the Study Committee recommended legislative action to do the following:

- Increase the availability of low-interest loans to small, privately owned water and wastewater utilities by:
    - Expanding availability of low-interest loans through the State Revolving Fund (SRF) to all for-profit water utilities;
    - Allowing IOUs to apply "pass-through" treatment for loan service fees or loan origination fees for eligible projects as identified by the PSC; and
    - Directing the Division of Bond Finance to review the allocation of private activity bonds (PABs) in Florida with respect to water and wastewater projects.
- Provide a sales tax exemption for sales or leases to an IOU owned or operated by a Florida corporation.
- Create an exemption from PSC regulation for persons who resell service to individually-metered end-users at a price that does not exceed the actual purchase price of water plus actual costs of meter reading and billing not to exceed 9%.

Based on additional issues that it identified and considered, the Study Committee recommended legislative action to do the following:

- Authorize the PSC, during a rate case, to create individual utility reserve funds to be used for projects identified in an IOU's capital improvement plan, with disbursement subject to approval by the PSC, as a means of reducing borrowing costs and making funds more readily available.
- Identify specific types of expenses eligible for "pass-through" treatment in utility rates, and/or authorize the PSC to adopt rules identifying such expenses, provided the expenses are beyond the utility's control, to help minimize the need for costly rate case proceedings.
- Reduce the impact of rate case expense on customer rates by prohibiting the recovery of rate case expense in certain circumstances.

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municipal or county government; customers of a Class A utility; customers of a Class B or C utility; the Florida Section of the American Water Works Association; and the Florida Rural Water Association.

[7] s. 2, Ch. 2012-187, Laws of Fla.

[8] *Id.*

[9] See Sections II and III, *Report of the Study Committee on Investor-Owned Water and Wastewater Utility Systems*, February 15, 2013 (*Study Committee Report), available at* http://www.psc.state.fl.us/WaterWasteWater (last visited February 2, 2016).

- Provide a mechanism for the resolution of issues involving secondary water standards (e.g., odor, taste, corrosiveness, etc.) and wastewater operational requirements.

Private Activity Bonds

Qualified private activity bonds are tax-exempt bonds issued by a state or local government, the proceeds of which are used for a defined qualified purpose by an entity other than the government issuing the bonds. For a private activity bond to be tax-exempt, 95% or more of the net bond proceeds must be used for one of the qualified purposes listed in ss. 142 through 145 and 1394 of the Internal Revenue Code (the Code). These qualified purposes include facilities used to furnish water or sewer services. The Code limits an issuing authority (such as a state) to a maximum amount of tax-exempt bonds that can be issued to finance a particular qualified purpose during a calendar year. Facilities used to furnish water or sewer services are subject to a volume cap.[10]

Private activity bonds are administered in Florida by the Division of Bond Finance of the State Board of Administration (the Division) under ss. 159.801-159.816, F.S. Each year, the Division determines the amount of private activity bonds permitted to be issued in Florida under the Code.[11] This amount is allocated on January 1 of each year as follows:[12]

- An initial amount is allocated to manufacturing facility projects.
- 50 percent of the amount remaining after the initial allocation is allocated to individual counties and groups of counties[13] on a per capita basis for any permitted purpose, which may include water and sewer projects.
- 25 percent of the amount remaining after the initial allocation is allocated to the Florida Housing Finance Corporation for use in connection with the issuance of housing bonds.
- 5 percent of the amount remaining after the initial allocation is allocated to the state allocation pool and applied to "priority projects," which may include water and sewer projects.
- 20 percent of the amount remaining after the initial allocation is allocated to the Florida First Business allocation pool for projects certified by the Department of Economic Opportunity.

The Study Committee was unable to determine the amount of private activity bonds ultimately utilized for water and sewer projects in Florida.[14]

Resellers of Water Service

As noted above, the PSC currently has jurisdiction to regulate the rates and service of water and wastewater utilities in 37 of 67 counties in Florida. For purposes of the PSC's jurisdiction, "utility" is defined as every person owning, operating, managing, or controlling a system, who is providing water or wastewater service to the public for compensation.[15] However, certain entities that meet this definition are exempt from PSC regulation as utilities.[16] Included among these exemptions are persons who resell water or wastewater service at a rate or charge which does not exceed the actual purchase price of the water or wastewater.[17] If the reseller includes any additional costs in the rate or charge to the retail customer, the reseller is considered a utility subject to PSC regulation.

Reseller utilities that are regulated by the PSC generally have significant investment in distribution and collection lines and other utility equipment. Examples include mobile home parks and subdivisions. In

[10] *Tax-Exempt Private Activity Bonds, Compliance Guide*, Internal Revenue Service Publication 4078, Version 09-2005.
[11] s. 159.804, F.S.
[12] *Id.*
[13] These individual counties and groups of counties are identified in s. 159.804(2)(b), F.S.
[14] *Study Committee Report*, p. 43.
[15] s. 367.021(12), F.S.
[16] *See* s. 367.022, F.S.
[17] s. 367.022(8), F.S.

a rate proceeding, the PSC determines the utility's investment and expenses related to the facilities it owns and operates, then it sets rates accordingly. The cost of the water and/or wastewater service purchased from a wholesale provider, which is often a significant portion of the customers' bills, is allowed to be passed through to the customers pursuant to s. 367.081(4)(b), F.S. Resellers that choose not to pass along costs beyond their cost to purchase water or wastewater (and therefore remain exempt from PSC regulation) generally have very little investment in equipment or lines needed to provide the service. Examples include apartment complexes, condominium buildings and small master-metered shopping centers.[18]

In its report, the Study Committee noted that a metered charge for water sends an appropriate price signal to end users and is a means of discouraging indiscriminate use of this resource. However, if a reseller wishes to install sub-meters for its users and bill those users for their actual water use, it will be unable recover those metering and billing costs from its customers without becoming regulated and incurring the costs of regulation.[19]

Reserve Funds for Water and Wastewater Utilities

As noted above, the Study Committee was required to consider, among other things, the availability of low interest loans to a small, privately owned water or wastewater utility. In its report, the Study Committee noted the following:

> Affordable, accessible financing is an ongoing issue for the water and wastewater industry and is a particularly acute need for smaller systems. Smaller utilities ... have difficulty securing low-cost, long-term financing because the characteristics and track record of the industry make smaller systems more risky in the view of lending institutions. Timing is also an issue, particularly when critical system failures occur and small utilities do not have the cash reserves to address such short-term needs. In addition, regulatory policy frequently does not provide sufficient cash flow to fully service the debt over the term of the loan. The establishment of individual utility reserve funding and/or establishment of a broader statewide reserve fund could reduce borrowing costs and make funding more readily available.[20]

Section 367.081, F.S., establishes the rate-setting procedures for water and wastewater IOUs regulated by the PSC. None of these procedures provides explicit statutory authority for the PSC to establish reserve funds for water and wastewater IOUs during the rate-setting process.

Pass-Through Costs

Outside of a rate case, PSC-regulated water and wastewater IOUs are entitled to "pass through" specific types of expenses without the requirement of a PSC hearing.[21] This mechanism provides quick rate relief to a utility when it experiences an increase in one of these types of costs and may help defer the need for a full rate case. Currently, the types of expenses eligible for pass-through treatment are limited by statute to the following:[22]

- Purchased water or wastewater service.
- Electric power.
- Ad valorem taxes.
- Regulatory Assessment Fees.

[18] *Study Committee Report*, p. 61.
[19] *Id.*, pp. 61-62.
[20] *Id.*, p. 67.
[21] s. 367.081(4)(b), F.S.
[22] *Id.*

- Department of Environmental Protection (DEP) fees for the National Pollutant Discharge Elimination System Program.
- Water quality or wastewater quality testing required by DEP.

Prior to changing rates using this mechanism, the IOU must file, under oath, an affirmation as to the accuracy of the figures and calculations upon which the change in rates is based and a statement that the change will not cause the utility to exceed the rate of return on equity last approved by the PSC.[23]

Recovery of Rate Case Expense

In a rate case conducted by the PSC, a water or wastewater IOU is entitled to recover its reasonable expenses incurred in preparing and proceeding with the rate case.[24] These expenses (referred to as "rate case expense") typically include legal, engineering, and accounting expenses and are reviewed by the PSC as part of the rate case. Any rate case expense deemed unreasonable by the PSC may not be recovered by the IOU through its rates.[25] The amount of rate case expense deemed reasonable is apportioned for recovery though the IOU's rates over a period of 4 years. At the end of this 4-year period, the IOU's rates are reduced to remove the impact of the rate case expense.[26] According to the Study Committee, the impact of rate case expense on customer bills varies from case to case and is often negligible.[27] However, one analysis presented to the Study Committee noted 3 cases between 2006 and 2011 in which the annual rate impact attributed to rate case expense (over the 4-year recovery period) exceeded the annual revenue increase approved in the rate case, excluding rate case expense. In addition, this analysis noted 6 additional cases over the same period in which the annual rate impact attributed to rate case expense equaled more than 25 percent of the annual revenue increase approved in the rate case, excluding rate case expense.[28]

A water or wastewater IOU with gross annual revenues under $275,000 is permitted by law to request and obtain assistance from the PSC staff in preparing the IOU's rate case.[29] These rate cases are referred to as staff-assisted rate cases (SARCs). In these cases, the PSC staff reviews the IOUs books and records, inspects the IOU's premises, prepares a quality of service analysis, and presents recommended rates and charges to the PSC for consideration. In requesting staff assistance, the IOU agrees to accept the final rates and charges approved by the PSC unless these rates and charges produce less revenue than the existing rates and charges.[30] An IOU that uses the SARC process may still seek assistance from other professionals in preparing and proceeding with its case and may submit the associated expenses for recovery as rate case expense.[31] One analysis presented to the Study Committee showed an average rate case expense of $4,563 for 23 SARCs conducted between 2007 and 2011 in which some level of rate case expense was approved.[32] The average drops to $3,025 by removing one case.[33]

Quality of Service / Secondary Standards

The Department of Environmental Protection (DEP) is the state agency with primary authority to implement and enforce federal and state drinking water and wastewater standards. The focus of DEP's permitting, monitoring, and enforcement of water and wastewater systems is to ensure compliance with

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[23] s. 367.081(4)(c), F.S.
[24] s. 367.081(7), F.S.
[25] *Id.*
[26] s. 367.0816, F.S.
[27] *Study Committee Report*, p. 83.
[28] *Study Committee Report*, p. 88.
[29] s. 367.0814, F.S.
[30] *Id.* However, a person other than the utility may protest or appeal the PSC's order approving the rates and charges.
[31] *Study Committee Report*, pp. 84-91.
[32] *Study Committee Report*, p. 87.
[33] *Id.* Information provided by the PSC indicated that there were approximately 48 SARCs conducted during this time frame, thus the average rate case expense for all SARCs is lower than this amount.

primary drinking water standards and wastewater operational requirements to protect the health and safety of the public and the environment.[34]

With respect to drinking water, DEP has also adopted secondary standards for contaminants related to color, corrosion, and odor.[35] Testing for these secondary standards is required on a regular basis, though DEP generally requires corrective action only if users (i.e., water customers) voice significant complaints or if a primary contaminant level has also been exceeded.

With respect to wastewater, DEP requires that new treatment plants and modifications to existing plants be designed and sited to minimize adverse effects on neighboring residential and commercial areas resulting from odors, noise, aerosol drift, and lighting.[36] Permittees must give reasonable assurance that such effects will not be potentially harmful to human health or welfare or unreasonably interfere with the enjoyment of life or property.[37] Likewise, if existing facilities fail to function as intended and create such adverse effects, the permittee must take corrective action, or DEP may require corrective action.[38] DEP generally requires corrective action only in response to significant complaints or if a primary contaminant level has also been exceeded.[39]

The PSC considers an IOU's quality of service in rate cases. In doing so, the PSC evaluates the quality of the product, the operating condition of the IOU's plant and facilities, and the IOU's efforts to address customer satisfaction.[40] Sanitary surveys, outstanding citations, violations and consent orders on file with DEP and county health departments are also considered. In addition, DEP and county health department officials' testimony and customer testimony concerning quality of service is considered.[41] In most cases, the emphasis of this evaluation is compliance with standards related to health and safety of the public and the environment.[42] If the PSC finds that an IOU has failed to provide its customers with water or wastewater service that meets the standards set by DEP or the water management districts, the PSC may reduce the IOU's return on equity until the standards are met.[43]

In 2014, the Legislature passed CS/CS/CS/SB 272,[44] which established a process by which the customers of an IOU may petition the PSC to investigate issues concerning the quality of the water service provided by the utility. Upon review of a petition signed by at least 65 percent of the IOU's customers, the utility's response, and other relevant factors, the PSC may:

- Dismiss the petition, if doing so is supported by clear and convincing evidence;
- Require the utility to take corrective actions to resolve the issues identified; or
- Revoke the utility's certificate of authorization and appoint a receiver until a sale of the utility is approved by the PSC.

The bill also required the PSC, when setting rates for a water utility, to consider the extent to which the utility provides service that meets secondary drinking water standards established by DEP. If the PSC determines that the utility's water service does not meet these standards, the utility must create an estimate of the costs and benefits of a plausible solution to address each issue identified by the PSC, meet with its customers to discuss these estimates and the time necessary to implement the solution,

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[34] *See* ch. 403, F.S., and Chapters 62-550, 555, 602, and 699, F.A.C., for drinking water regulations, and Chapters 62-600, 604, 610, 620, 621, and 640, F.A.C., for wastewater regulations.
[35] Rule 62-550.320, F.A.C.
[36] Rule 62-600.400(2)(a), F.A.C.
[37] *Id.*
[38] Rule 62-600.410, F.A.C.
[39] *Study Committee Report*, p. 105.
[40] Rule 25-30.433(1), F.A.C.
[41] *Id.*
[42] *Study Committee Report*, p. 106.
[43] s. 367.111(2), F.S.
[44] Ch. 2014-68, Laws of Fla., codified at ss. 367.072 and 367.0812, F.S.

and report the results of these meetings to the PSC. The PSC may require the utility to implement a solution for each issue that is in the best interests of the customers, and the utility may recover its costs to implement any solutions ordered by the PSC. The PSC may impose penalties for a utility's failure to adequately resolve each issue as required.

Drinking Water State Revolving Fund

Sections 403.8532 and 403.8533, F.S., establish the Drinking Water State Revolving Fund (SRF). The SRF, which is administered by DEP, provides low-interest loans to eligible entities for planning, designing, and constructing public water facilities. Eligible entities include, among others, investor-owned public water systems that are legally responsible for public water services and which serve no more than 1,500 connections.[45] Projects eligible for SRF loans include new construction and improvements of public water systems, inclusive of storage, transmission, treatment, disinfection, and distribution facilities.[46] Loan funding is based on a priority system which takes into account public health considerations, compliance, and affordability.[47]

Based on data gathered from IOUs' 2011 annual reports filed with the PSC, the Study Committee determined that all Class C water IOUs and almost all (28 out of 33) Class B water IOUs serve no more than 1,500 connections and are therefore eligible for the SRF program.[48] The remaining PSC-regulated Class B and Class A water IOUs are, presumably, not eligible to use the SRF program.

Abandonment of a Water or Wastewater Utility

Section 367.165, F.S., establishes a process to ensure continuous service in the event of abandonment by a water or wastewater utility. First, the utility must give 60 days' notice of abandonment to the PSC and to the county or counties in which the utility is located.[49] After receiving such notice, the county, or counties acting jointly if more than one county is affected, must petition the circuit court to appoint a receiver who will operate the utility from the date of abandonment until the receiver disposes of the utility property in a manner designed to provide for continuous service. The receiver may be the governing body of a political subdivision or any other person deemed appropriate. The receiver is considered to hold temporary authorization from the PSC to provide service, and the previously approved rates of the utility apply until modified by the PSC.

Effect of Proposed Changes

This bill adopts several of the Study Committee's recommendations for legislative action. In particular, the bill:

- Directs the Division of Bond Finance to review the allocation of private activity bonds (PABs) in Florida with respect to water and wastewater projects.
- Creates an exemption from PSC regulation for persons who resell water service to individually-metered residents at a price that does not exceed the purchase price of water plus the actual cost of meter reading and billing, not to exceed 9 percent of the actual cost of service.
- Requires the PSC, upon an IOU's request in a rate case, to create a reserve fund for the IOU to be used for certain infrastructure repair and replacement projects, with disbursement subject to PSC approval.

[45] s. 403.8532(3), F.S. An investor-owned public water system that serves more than 1,500 connections may qualify for a loan only if the proposed project will result in the consolidation of two or more public water systems.
[46] Florida Department of Environmental Protection, *Drinking Water State Revolving Fund - Eligible Local Governments*, http://www.dep.state.fl.us/water/wff/dwsrf/ellocgov.htm (last visited February 2, 2016).
[47] s. 403.8532(9)(a), F.S.
[48] *Study Committee Report*, pp. 36-37. The report notes that this data does not include water IOUs that are regulated by counties.
[49] Section 367.165, F.S., provides criminal and administrative penalties for a utility that fails to provide proper notice.

- Identifies specific types of expenses eligible for "pass-through" treatment in IOU rates and authorizes the PSC, by rule, to identify additional types of expenses eligible for such treatment, provided the expenses are beyond the utility's control.
- Prohibits the recovery of an IOU's rate case expense where the rate case expense is incurred to prepare or file a staff-assisted rate case in which no party intervenes.
- Authorizes the PSC, on its own motion or based on customer complaints, to review water quality issues involving secondary drinking water standards (e.g., standards related to odor, taste, and corrosiveness) and wastewater service issues involving odor, noise, aerosol drift, or lighting.
- Expands the availability of low-interest loans through the State Revolving Fund (SRF) to all for-profit water utilities.
- Requires each county that has opted to regulate the rates of IOUs operating within the county to do so pursuant to existing law relating to the abandonment of a facility.

Private Activity Bonds

The bill directs the Division of Bond Finance of the State Board of Administration to review the allocation of private activity bonds (PABs) to determine the availability of additional allocation and reallocation of PABs for water and wastewater infrastructure projects.

Resellers of Water Service

The bill creates an exemption from PSC regulation for a person who resells water service to his or her tenants or to individually metered residents for a fee that does not exceed the reseller's actual purchase price of the water plus the actual cost of meter reading and billing, not to exceed 9 percent of the actual cost of service.

Absent this exemption, a water reseller who charges more than the actual purchase price of the water would be subject to PSC regulation and would incur the costs and obligations of such regulation. While the costs would be recoverable from the reseller's customers through PSC-approved rates, a reseller may not wish to incur the additional regulatory obligations.

This provision may encourage resellers to utilize individual metering more often for their tenants. Through individual metering, water users can be charged more accurately for the water they consume. Thus, customers of resellers who utilize individual metering may be more likely to use water more efficiently.

Reserve Funds for Water and Wastewater IOUs

The bill requires the PSC, upon request by a water or wastewater IOU in a rate case proceeding, to create a reserve fund to be used by the IOU for repair or replacement of its existing distribution and collection infrastructure if the infrastructure is either near the end of its useful life or detrimental to water quality or reliability of service. The reserve fund may be funded through a portion of the rates charged by the utility, by a secured escrow account, or through a letter of credit. The bill directs the PSC to adopt rules to govern the funding, implementation, management, and use of the fund. These rules must include, but are not limited to:

- Provisions related to the expenses for which the fund may be used.
- Segregation of the reserve fund accounts.
- Requirements for the IOU to maintain a capital improvement plan.
- Requirements for PSC authorization prior to disbursements from the fund.

The establishment of individual reserve funds may reduce borrowing costs and make funding more readily available for PSC-regulated water and wastewater IOUs. IOUs may be able to avoid the need to access capital markets to finance certain projects and repairs and/or avoid the need to request a rate increase to cover the costs of the projects and repairs.

Pass-Through Costs

The bill expands the types of expenses eligible for "pass-through" treatment in IOU rates by adding the following non-exclusive list of expense items:

- Fees charged for wastewater biosolids disposal.
- Costs incurred for a tank inspection required by DEP or a local governmental authority.
- Treatment plant operator and water distribution system license fees required by DEP or a local governmental authority.
- Water or wastewater operating permit fees charged by DEP or a local governmental authority.
- Consumptive or water use permit fees charged by a water management district.

The bill authorizes the PSC, by rule, to establish additional specific expense items eligible for pas-through treatment. To be eligible for such treatment, an additional expense item must be imposed by a local, state, or federal law, rule, order, or notice and must be outside the control of the utility. If the PSC uses this authority, it must review its rule at least once every 5 years to determine if each specific expense item should remain eligible for pass-through treatment or if any additional expense items should become eligible.

The bill continues the current requirement that an IOU wishing to change its rates to reflect a change in any of these costs must provide verified notice to the PSC 45 days before implementing a change in its rates. The bill provides that the new rates must reflect, on an amortized or annual basis, as appropriate, the cost or amount of change in the cost of the specified expense item. Further, the bill provides that the new rates may not reflect the costs of any specific expense item already included in the IOU's rates. The bill also continues the current prohibition on use of the pass-through mechanism for increases or decreases in a specific expense item that occurred more than 12 months before the IOU's filing.

Rate Case Expense

The bill prohibits the PSC, where the IOU has requested a staff-assisted rate case, from approving rate case expense to cover fees for attorneys and other outside consultants who are engaged by an IOU for purposes of preparing or filing the case, unless another party has intervened in the case. The bill provides two exceptions. It authorizes the recovery of rate expense for such fees if the fees are incurred to provide consulting or legal services to the IOU after the initial PSC staff report is issued to customers and the utility. It also requires that the PSC allow recovery of rate case expense for such fees incurred after any protest or appeal of the PSC's decision by a party other than the IOU. The bill requires the PSC to adopt rules by December 31, 2016, to implement these provisions.

Quality of Service / Secondary Standards

The bill provides the PSC specific authority to review, on its own motion or based upon customer complaints, a water IOU's water quality in relation to secondary drinking water standards (e.g., standards related to odor, taste, and corrosiveness) established by DEP. The bill also authorizes the PSC, on its own motion or based upon customer complaints, to review a wastewater IOU's service in relation to odor, noise, aerosol drift, or lighting issues.

Drinking Water State Revolving Fund

The bill removes the current size restrictions on water IOUs eligible to utilize the Drinking Water State Revolving Fund (SRF). Water IOUs of any size will be eligible to seek low-interest loans through the SRF for planning, designing, and constructing public water facilities, including storage, transmission, treatment, disinfection, and distribution facilities. This may increase competition for available funds.

Abandonment of a Water or Wastewater Utility

Under current law, each county that opts to regulate IOUs operating within the county must regulate the rates of those IOUs pursuant to specified provisions of law governing PSC regulation of IOU rates. The bill expands this provision by requiring each county that regulates the rates of IOUs to also do so pursuant to s. 367.165, F.S. Section 367.165, F.S., does not address rate regulation. Instead, it establishes a process for the abandonment of a water or wastewater utility.

B. SECTION DIRECTORY:

Section 1. Creates s. 159.8105, F.S., requiring the Division of Bond Finance to review the allocation of private activity bonds.

Section 2. Amends s. 367.022, F.S., relating to exemptions to regulation by the Public Service Commission.

Section 3. Amends s. 367.081, F.S., relating to the procedure for fixing and changing rates.

Section 4. Amends s. 367.0814, F.S., relating to staff assistance in changing rates and charges.

Section 5. Amends s. 367.111, F.S., relating to service quality.

Section 6. Amends s. 403.8532, F.S., relating to use of the drinking water state revolving loan fund.

Section 7. Amends s. 367.171, F.S., relating to the application of Chapter 367, F.S., to certain counties.

Section 8. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference has not estimated the revenue impacts of the bill as amended. However, staff estimates that the bill will have no revenue impact on state local government.

2. Expenditures:

   The bill appears to have an insignificant impact on state government expenditures.

   The PSC has not identified an impact on agency expenditures; however, it may be required to expend resources to complete rulemaking as required by the bill. In its analysis of a similar bill filed in 2015, the Department of Revenue identified an insignificant impact on its expenditures.[50] DEP, in its analysis of the same bill filed in 2015, estimated additional expenditures of between $10,000 and $100,000 to employ additional expertise needed to evaluate the credit worthiness of large, complex water systems that become eligible under the bill to seek low-interest loans through the SRF; however, it indicated that these costs will be covered by service fees collected in the normal course of the SRF program.[51]

[50] Department of Revenue, Agency Analysis of 2015 HB 1173, p. 3 (March 5, 2015).
[51] Department of Environmental Protection, Agency Analysis of 2015 HB 1173, pp. 2-4 (March 13, 2015).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference has not estimated the revenue impacts of the bill as amended. However, staff estimates that the bill will have no revenue impact on local government.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private Activity Bonds

To the extent that additional private activity bonds are made available for eligible projects, more water and wastewater IOUs may be encouraged to make investments in water and wastewater infrastructure in the state at a lower cost to ratepayers than would otherwise result from such expenditures.

Resellers of Water Service

The creation of a regulatory exemption for water resellers who add no more than the costs of meter reading and billing (capped at 9 percent) to their purchase price for water, will allow these resellers to avoid the costs and obligations of regulation and may encourage them to invest in individual metering apparatus.

Reserve Funds for Water and Wastewater IOUs

The establishment of individual reserve funds may reduce borrowing costs and make funding more readily available for PSC-regulated water and wastewater IOUs to make needed improvements and repairs. In some instances, the availability of these reserve funds may allow IOUs to avoid or defer the need for a rate case, the expense of which ultimately would be borne by ratepayers.

Pass-Through Costs

The expanded availability of "pass-through" treatment for new expense items may, in some instances, allow IOUs to avoid or defer the need for a rate case, the expense of which ultimately would be borne by ratepayers.

Rate Case Expense

The limitation on the recovery of rate case expense may reduce the impact of rate case expense on ratepayers' bills. However, these limitations may discourage an IOU from seeking a rate increase necessary to make system repairs and improvements or to assure it a reasonable rate of return on its investment.

Quality of Service / Secondary Standards

Depending on the PSC's application of the mechanism established to identify and potentially resolve secondary water quality issues and wastewater operational issues, IOUs may be compelled to incur additional costs to resolve these issues. To the extent that an IOU is compelled to incur additional costs, these costs will likely be recovered from ratepayers.

Drinking Water State Revolving Fund

The expanded availability of low-interest financing through the State Revolving Fund to additional water IOUs may encourage more of these utilities to make investments in water infrastructure in the state at a lower cost to ratepayers than would otherwise result from such expenditures.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the PSC to adopt rules:

- To govern the operation of individual utility reserve funds created by the PSC.
- To administer the prohibition on recovery of rate case expense in specified circumstances in a staff-assisted rate case.

The bill authorizes the PSC to adopt rules establishing additional specific expense items eligible for pass-through treatment in IOU rates.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Abandonment of a Water or Wastewater Utility

Under current law, each county that opts to regulate IOUs operating within the county must regulate the rates of those IOUs pursuant to specified provisions of law governing PSC regulation of rates. The bill expands this provision by requiring each county that regulates the rates of IOUs to also regulate rates pursuant to s. 367.165, F.S. Section 367.165, F.S., does not address rate regulation, but instead establishes a process for the abandonment of a water or wastewater utility. Therefore, the effect of this provision of the bill is unclear. In addition, the bill title describes this provision of the bill as making only technical changes. Because the changes are substantive, an amendment to the title is necessary.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 17, 2015, the Energy & Utilities Subcommittee adopted three amendments to the bill and reported the bill favorably as a committee substitute. The amendments:

- Make it mandatory, rather than permissive, that the PSC create a reserve fund if requested by a utility in a rate case proceeding.

- Make it mandatory, rather than permissive, that the PSC allow recovery of rate case expense (i.e., fees for attorneys and other outside consultants) incurred by a utility in a staff-assisted rate case after any protest or appeal of the PSC's decision by a party other than the utility.
- Remove a provision of the bill that limited a utility's recovery of rate case expense to 50 percent of the amount of rate case expense deemed reasonable by the PSC.

On January 21, 2016, the Finance & Tax Committee adopted two amendments to the bill and reported the bill favorably as a committee substitute. The amendments:

- Remove the provision that created an exemption from sales and use tax for sales or leases to a water or wastewater IOU.
- Remove the provision that required an IOU, when it begins recovery of approved rate case expense associated with a new rate case, to discontinue the recovery of any uncollected rate case expense approved in a prior rate case.

This analysis has been updated to reflect these changes.

A bill to be entitled

An act relating to water and wastewater; creating s. 159.8105, F.S.; requiring the Division of Bond Finance of the State Board of Administration to review the allocation of private activity bonds to determine the availability of additional allocation and reallocation of bonds for water and wastewater infrastructure projects; amending s. 367.022, F.S.; exempting from regulation by the Florida Public Service Commission a person who resells water service to certain tenants or residents up to a specified percentage or cost; amending s. 367.081, F.S.; requiring the commission to create a utility reserve fund; requiring the commission to adopt rules to govern the implementation, management, and use of the fund; establishing criteria for adjusted rates; specifying expense items that may be the basis for an automatic increase or decrease of a utility's rates; authorizing the commission to establish by rule additional specified expense items; amending s. 367.0814, F.S.; requiring the commission to award rate case expenses to recover attorney fees or fees of other outside consultants in certain circumstances; requiring the commission to adopt rules by a certain date; amending s. 367.111, F.S.; authorizing the commission to review water quality and wastewater service under certain

circumstances; amending s. 403.8532, F.S.; authorizing the Department of Environmental Protection to require or request that the Florida Water Pollution Control Financing Corporation make loans, grants, and deposits to for-profit, privately owned, or investor-owned water systems; removing current restrictions on such activities; amending s. 367.171, F.S.; making technical changes; providing an effective date.

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

Section 1. Section 159.8105, Florida Statutes, is created to read:

159.8105 Allocation of bonds for water and wastewater infrastructure projects.—The division shall review the allocation of private activity bonds to determine the availability of additional allocation and reallocation of bonds for water and wastewater infrastructure projects.

Section 2. Subsections (9) through (12) of section 367.022, Florida Statutes, are renumbered as subsections (10) through (13), respectively, and a new subsection (9) is added to that section to read:

367.022 Exemptions.—The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:

(9) Any person who resells water service to his or her

tenants or to individually metered residents for a fee that does not exceed the actual purchase price of the water plus the actual cost of meter reading and billing, not to exceed 9 percent of the actual cost of service.

Section 3. Paragraph (c) is added to subsection (2) of section 367.081, Florida Statutes, and paragraph (b) of subsection (4) of that section is amended, to read:

367.081 Rates; procedure for fixing and changing.—

(2)

(c) In establishing rates for a utility, the commission, upon petition by the utility, shall create a utility reserve fund for infrastructure repair and replacement for a utility for existing distribution and collection infrastructure that is nearing the end of its useful life or is detrimental to water quality or reliability of service, to be funded by a portion of the rates charged by the utility, by a secured escrow account, or through a letter of credit. The commission shall adopt rules to govern the implementation, management, and use of the fund, including, but not limited to, rules related to expenses for which the fund may be used, segregation of reserve account funds, requirements for a capital improvement plan, and requirements for commission authorization before disbursements are made from the fund.

(4)

(b) The approved rates of any utility ~~which receives all or any portion of its utility service from a governmental~~

~~authority or from a water or wastewater utility regulated by the commission and which redistributes that service to its utility customers~~ shall be automatically increased or decreased without hearing, upon verified notice to the commission 45 days prior to its implementation of the increase or decrease that the utility's costs for any specified expense item ~~rates charged by the governmental authority or other utility~~ have changed. ~~The approved rates of any utility which is subject to an increase or decrease in the rates or fees that it is charged for electric power, the amount of ad valorem taxes assessed against its used and useful property, the fees charged by the Department of Environmental Protection in connection with the National Pollutant Discharge Elimination System Program, or the regulatory assessment fees imposed upon it by the commission shall be increased or decreased by the utility, without action by the commission, upon verified notice to the commission 45 days prior to its implementation of the increase or decrease that the rates charged by the supplier of the electric power or the taxes imposed by the governmental authority, or the regulatory assessment fees imposed upon it by the commission have changed. The new rates authorized shall reflect the amount of the change of the ad valorem taxes or rates imposed upon the utility by the governmental authority, other utility, or supplier of electric power, or the regulatory assessment fees imposed upon it by the commission. The approved rates of any utility shall be automatically increased, without hearing, upon~~

~~verified notice to the commission 45 days prior to implementation of the increase that costs have been incurred for water quality or wastewater quality testing required by the Department of Environmental Protection.~~

1. The new rates authorized shall reflect, on an amortized or annual basis, as appropriate, the cost of~~,~~ or the amount of change in the cost of~~,~~ the specified expense item ~~required water quality or wastewater quality testing performed by laboratories approved by the Department of Environmental Protection for that purpose~~. The new rates, however, shall not reflect the costs of any specified expense item ~~required water quality or wastewater quality testing~~ already included in a utility's rates. Specified expense items that are eligible for automatic increase or decrease of a utility's rates include, but are not limited to:

a. The rates charged by a governmental authority or other water or wastewater utility regulated by the commission which provides utility service to the utility.

b. The rates or fees that the utility is charged for electric power.

c. The amount of ad valorem taxes assessed against the utility's used and useful property.

d. The fees charged by the Department of Environmental Protection in connection with the National Pollutant Discharge Elimination System Program.

e. The regulatory assessment fees imposed upon the utility by the commission.

f. Costs incurred for water quality or wastewater quality testing required by the Department of Environmental Protection.

g. The fees charged for wastewater biosolids disposal.

h. Costs incurred for any tank inspection required by the Department of Environmental Protection or a local governmental authority.

i. Treatment plant operator and water distribution system operator license fees required by the Department of Environmental Protection or a local governmental authority.

j. Water or wastewater operating permit fees charged by the Department of Environmental Protection or a local governmental authority.

k. Consumptive or water use permit fees charged by a water management district.

2. A utility may not use this procedure to increase its rates as a result of an increase in a specific expense item which occurred ~~water quality or wastewater quality testing or an increase in the cost of purchased water services, sewer services, or electric power or in assessed ad valorem taxes, which increase was initiated~~ more than 12 months before the filing by the utility.

3. The commission may establish by rule additional specific expense items that are outside the control of the utility and have been imposed upon the utility by a federal, state, or local law, rule, order, or notice. If the commission establishes such a rule, the commission shall review the rule at

least once every 5 years and determine if each expense item should continue to be cause for an automatic increase or decrease and whether additional items should be included.

4. ~~The provisions of~~ This subsection does ~~do~~ not prevent a utility from seeking a change in rates pursuant to ~~the provisions of~~ subsection (2).

Section 4. Subsection (3) of section 367.0814, Florida Statutes, is amended to read:

367.0814 Staff assistance in changing rates and charges; interim rates.—

(3) The provisions of s. 367.081(1), (2)(a), and (3) shall apply in determining the utility's rates and charges. However, the commission may not award rate case expenses to recover attorney fees or fees of other outside consultants who are engaged for the purpose of preparing or filing the case if a utility receives staff assistance in changing rates and charges pursuant to this section, unless the Office of Public Counsel or interested parties have intervened. The commission may award rate case expenses for attorney fees or fees of other outside consultants if such fees are incurred for the purpose of providing consulting or legal services to the utility after the initial staff report is made available to customers and the utility. If there is a protest or appeal by a party other than the utility, the commission shall award rate case expenses to the utility for attorney fees or fees of other outside consultants for costs incurred after the protest or appeal. By

December 31, 2016, the commission must adopt rules to administer this subsection.

Section 5. Subsection (3) is added to section 367.111, Florida Statutes, to read:

367.111 Service.—

(3) The commission may, on its own motion or based on complaints of customers of a water utility subject to its jurisdiction, review water quality as it pertains to secondary drinking water standards established by the Department of Environmental Protection. The commission may, on its own motion or based on complaints of customers of a wastewater utility subject to its jurisdiction, review wastewater service as it pertains to odor, noise, aerosol drift, or lighting.

Section 6. Subsection (3) of section 403.8532, Florida Statutes, is amended to read:

403.8532 Drinking water state revolving loan fund; use; rules.—

(3) The department may make, or request that the corporation make, loans, grants, and deposits to community water systems; for-profit, privately owned, or investor-owned water systems; nonprofit, transient, noncommunity water systems;~~,~~ and nonprofit, nontransient, noncommunity water systems to assist them in planning, designing, and constructing public water systems~~, unless such public water systems are for-profit privately owned or investor-owned systems that regularly serve 1,500 service connections or more within a single certified or~~

~~franchised area. However, a for-profit privately owned or investor-owned public water system that regularly serves 1,500 service connections or more within a single certified or franchised area may qualify for a loan only if the proposed project will result in the consolidation of two or more public water systems~~. The department may provide loan guarantees, purchase loan insurance, and refinance local debt through the issue of new loans for projects approved by the department. Public water systems may borrow funds made available pursuant to this section and may pledge any revenues or other adequate security available to them to repay any funds borrowed.

(a) The department shall administer loans so that amounts credited to the Drinking Water Revolving Loan Trust Fund in any fiscal year are reserved for the following purposes:

1. At least 15 percent for qualifying small public water systems.

2. Up to 15 percent for qualifying financially disadvantaged communities.

(b) If an insufficient number of the projects for which funds are reserved under this subsection have been submitted to the department at the time the funding priority list authorized under this section is adopted, the reservation of these funds no longer applies. The department may award the unreserved funds as otherwise provided in this section.

Section 7. Subsection (8) of section 367.171, Florida Statutes, is amended to read:

367.171 Effectiveness of this chapter.—

(8) Each county that ~~which~~ is not subject to ~~excluded from the provisions of~~ this chapter shall regulate the rates of all utilities in that county which would otherwise be subject to regulation by the commission pursuant to ss. ~~s.~~ 367.081(1), (2), (3), and (6) and 367.165. The county shall not regulate the rates or charges of any system or facility that ~~which~~ would otherwise be exempt from commission regulation pursuant to s. 367.022(2). For this purpose, the county or its agency shall proceed as though the county or agency is the commission.

Section 8. This act shall take effect July 1, 2016.

REGULATORY AFFAIRS COMMITTEE
CS/CS/HB 491 by Rep. Smith
Water and Wastewater

AMENDMENT SUMMARY
February 4, 2016

Amendment 1 by Rep. Smith

- Provides that a county is responsible for seeking appointment of a receiver to operate a water or wastewater utility that has been abandoned in that county, regardless of whether the county regulates water and wastewater utilities.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Smith offered the following:

Amendment (with title amendment)

Remove lines 233-244 and insert:

Section 7. Section 367.165, Florida Statutes, is amended to read:

367.165 Abandonment.—It is the intent of the Legislature that water or wastewater service to the customers of a utility not be interrupted by the abandonment or placement into receivership of the utility. Notwithstanding s. 367.171, this section applies to each county. To that end:

(1) A ~~No~~ person, lessee, trustee, or receiver owning, operating, managing, or controlling a utility may not ~~shall~~ abandon the utility without giving 60 days' notice to the county or counties in which the utility is located and to the

commission. Anyone who violates ~~the provisions of~~ this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Each day of such abandonment constitutes a separate offense. In addition, such act is a violation of this chapter, and the commission may impose upon the utility a penalty for each such offense of not more than $5,000 or may amend, suspend, or revoke its certificate of authorization; each day of such abandonment without prior notice constitutes a separate offense.

(2) After receiving such notice, the county, or counties acting jointly if more than one county is affected, shall petition the circuit court of the judicial circuit in which such utility is domiciled to appoint a receiver, which may be the governing body of a political subdivision or any other person deemed appropriate. The receiver shall operate the utility from the date of abandonment until such time as the receiver disposes of the property of the utility in a manner designed to continue the efficient and effective operation of utility service.

(3) The notification to the commission under subsection (1) is sufficient cause for revocation, suspension, or amendment of the certificate of authorization of the utility as of the date of abandonment. The receiver operating such utility shall be considered to hold a temporary authorization from the commission, and the approved rates of the utility shall be deemed to be the interim rates of the receiver until modified by the commission.

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

Remove lines 33-34 and insert:

activities; amending s. 367.165, F.S.; requiring a county that regulates water or wastewater services to comply with the requirements for abandoned water and wastewater systems; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 559 Self-Service Storage Facilities
SPONSOR(S): Business & Professions Subcommittee; La Rosa
TIED BILLS: **IDEN./SIM. BILLS:** SB 720

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	8 Y, 2 N, As CS	Anderson	Anstead
2) Regulatory Affairs Committee		Anderson CA	Hamon

SUMMARY ANALYSIS

The Florida Self-storage Facility Act (the Act) controls the relationship between the owner of a self-service storage facility and a tenant with whom the owner has entered into an agreement. The act controls the enforcement of an owner's lien upon all personal property located at the self-service storage facility for failure to pay rent.

Self-service storage facility owners are currently permitted to sell personal property in a tenant's storage unit if the tenant fails to pay rent. The facility owner is required to give notice to the tenant of the intent to sell the property before the sale. After the time provided in the notice expires, the facility owner must publish an advertisement of the sale in a newspaper of general circulation prior to the sale or disposition of the contents of the unit. If there is no newspaper of general circulation in the region, the owner can post the advertisement in at least three conspicuous places in the neighborhood.

The bill provides an alternative method for publishing advertisements for the sale of a tenant's property. The bill allows the advertisement to be published on a publicly accessible Internet website for 2 consecutive weeks. The bill eliminates the option of posting notice of the sale in three conspicuous places in the neighborhood.

The bill provides that a lien sale may be conducted on a public website that typically conducts personal property auctions. The facility owner does not have to be licensed as an auctioneer to post property on such a website.

The bill limits the value of property contained in a storage unit if the value was limited in the rental agreement. This provision appears to be a restatement of current case law.

The bill authorizes a facility owner to have a motor vehicle or watercraft towed, without liability for damages, if a lien is claimed and if the tenant has failed to pay rent or other charges. The bill requires a facility owner to contact the Department of Highway Safety and Motor Vehicles for information regarding the property owner and any lienholders and requires the facility owner to send written notice to such persons. The facility owner is authorized to sell the motor vehicle or watercraft if the property owner or lienholder receives notice and does not satisfy the lien.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Sections 83.801-83.809, F.S., comprise Florida's "Self-storage Facility Act" (the Act). The Act provides remedies for the owner of a self-service storage facility[1] in the event that a tenant does not pay rent. The Act gives the facility owner the ability to deny a tenant access to his or her property if the tenant is more than five days delinquent in paying rent.[2]

The Act provides that the owner of a self-service storage facility has a lien upon all personal property located at a self-service storage facility for rent, labor charges, or other charges in relation to the personal property and for the expenses necessary to preserve or dispose of the property.[3] The facility owner is required to take certain steps before satisfying the lien.

First, the tenant must be provided written notice prior to the sale of the property. The notice must be delivered in person or by certified mail to the tenant's last known address and conspicuously posted at the self-service storage facility. The notice must contain a statement showing the amount due, the date it became due, a description of the property, a demand for payment within 14 days, and a conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place.

If the owner has not become current on the payments after the expiration of the time provided by the notice, the facility owner may advertise for a sale of the property. An advertisement of the sale must be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility is located. If there is no such newspaper of general circulation, the advertisement must be posted at least 10 days before the sale in at least three conspicuous places in the neighborhood where the self-service storage facility is located.[4] The advertisement must include a brief and general description of the property believed to be contained in the storage unit, the address of the facility, the name of the tenant, and the time, place, and manner of the sale or other disposition, which may not be sooner than 15 days after the first publication.[5]

The facility owner may then satisfy the lien from the proceeds of the sale. The balance, if any, is held by the facility owner for delivery on demand to the tenant. A notice of any balance must be delivered by the facility owner to the tenant in person or by certified mail. The balance is considered abandoned if the tenant does not claim it within two years.[6]

Current law also requires the facility owner to hold the sale proceeds for holders of liens against the property whose liens have priority over the facility owner's lien. The facility owner must provide notice of the amount of sale proceeds to such lienholders by either personal delivery or certified mail.[7]

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[1] "Self-service storage facility" is defined by s. 83.803(1), F.S, as any real property designed and used for the purpose of renting or leasing individual storage space to tenants who are to have access to such space for the purpose of storing and removing personal property.
[2] s. 83.8055, F.S.
[3] s. 83.805, F.S.
[4] s. 83.806, F.S.
[5] s. 83.806(4)(a), F.S.
[6] s. 83.806(8), F.S.
[7] *Id.*

Effect of the Bill

The bill provides an alternative method for publishing advertisements for the sale or disposition of the contents of a storage unit after proper notice to the unit owner. The facility owner is permitted to advertise the sale for two consecutive weeks on a publicly accessible Internet website. The bill eliminates the method of advertising a sale by posting the advertisement in three conspicuous locations in the neighborhood.

The bill creates s. 83.806(9), F.S., to limit the value of property that may be stored in a storage unit if the value is limited in the rental agreement. This limits the liability of the facility to the amount stated in the contract if the contents of the unit are damaged or stolen or if the facility owner wrongfully sells the tenant's property. This provision appears to be a restatement of current case law.[8]

The bill creates s. 83.806(10), F.S., to allow a facility owner to have the motor vehicle or watercraft towed without liability for damage to the vehicle or watercraft after it is towed. Alternatively, the facility owner may sell the motor vehicle or watercraft by public auction. Before the sale, the facility owner must contact the Department of Highway Safety and Motor Vehicles (DHSMV) to determine whether there are any lienholders and for contact information for the motor vehicle or watercraft owner. Within 10 days of receiving such information, the facility owner must send written notice to the lienholder and property owner by first class mail. The notice must state that: 1) the facility owner is holding the motor vehicle or watercraft, 2) a lien has attached, 3) payment is required within 30 days, and 4) the property may be sold if the lien is not satisfied. If an owner or lienholder receives notice of the sale and does not satisfy the lien, the facility owner may sell the motor vehicle or watercraft.

B. SECTION DIRECTORY:

Section 1 amends s. 83.806, F.S., revising requirements for the advertisement of the sale or disposition of property held in a self-service storage facility and providing options and notice requirements for the disposition of motor vehicles or watercraft claimed to be subject to a lien.

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.

[8] *Muns v. Shurgard Income Properties Fund 16-Limited Partnership*, 682 So.2d 166 (Fla. 4th DCA 1996).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Self-service storage facility owners may be able to more easily recoup losses from tenants who lapse on rent payments and may be able to recover more of the debt owed if they are able to use alternative and less expensive advertising methods. Newspapers of general circulation may experience a corresponding reduction in advertising revenue. The price of a newspaper advertisement for public auction varies widely statewide by publication and metropolitan area. An advertisement for public auction costs up to $225 in at least one publication,[9] but the price may not necessarily reflect the total cost per storage unit because a facility owner could purchase one advertisement for the public auction of multiple units.

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:

There appears to be no rulemaking authority added or amended.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The limitation of the liability of the facility owner for the value of the tenant's property, as agreed to in the rental agreement, may have the effect of allowing for an actionable claim for damages by the tenant if the facility owner sells the property for less than the amount indicated in the contract. This provision could be clarified to indicate that the agreed upon limitation in the contract does not reflect fair market value and is not a determination of the value of the property.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 2, 2015, the Business & Professions Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Provides that the sale of a tenant's property may be advertised on an Internet website for 2 consecutive weeks rather than in a "commercially reasonable" manner.
- Clarifies subsection (10) and requires a facility or unit owner to contact DHSMV for information regarding the property owner and lienholders before selling a motor vehicle or watercraft at public auction.

This staff analysis is drafted to reflect the committee substitute.

[9] PALM BEACH POST, *Place a Legal Ad*, *available at* http://www2.palmbeachpost.com/projects/classifieds/place-a-legal.php (last visited Feb. 2, 2016).

A bill to be entitled

An act relating to self-service storage facilities; amending s. 83.806, F.S.; providing that advertisement of a sale or disposition of property may be advertised on certain websites; providing that a lien sale may be conducted on certain websites; providing that a self-service storage facility owner is not required to have a license to post property for online sale; deleting a required alternative form of advertisement; providing limits for the maximum valuation of property under certain circumstances; providing options for the disposition of motor vehicles or watercraft claimed to be subject to a lien; requiring specified notice to lienholders and owners of motor vehicles or watercraft subject to a lien; providing an effective date.

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

Section 1. Subsection (4) of section 83.806, Florida Statutes, is amended, and subsections (9) and (10) are added to that section, to read:

83.806 Enforcement of lien.—An owner's lien as provided in s. 83.805 may be satisfied as follows:

(4) After the expiration of the time given in the notice, an advertisement of the sale or other disposition shall be published once a week for 2 consecutive weeks in a newspaper of

general circulation in the area where the self-service storage facility or self-contained storage unit is located or advertised for 2 consecutive weeks on an Internet website accessible to the public.

(a) A lien sale may be conducted on a public website that customarily conducts personal property auctions. The facility or unit owner is not required to be licensed to post property online for sale pursuant to this subsection. Inasmuch as any sale may involve property of more than one tenant, a single advertisement may be used to dispose of property at any one sale.

(b) ~~(a)~~ The advertisement shall include:

1. A brief and general description of what is believed to constitute the personal property contained in the storage unit, as provided in paragraph (2)(b).

2. The address of the self-service storage facility or the address where the self-contained storage unit is located and the name of the tenant.

3. The time, place, and manner of the sale or other disposition. The sale or other disposition shall take place not sooner than 15 days after the first publication or advertisement.

~~(b) If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement shall be posted at least 10 days before the date of the sale or other disposition~~

~~in not fewer than three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.~~

(9) If the rental agreement contains a limit on the value of property stored in the tenant's storage space, the limit is deemed to be the maximum value of the property stored in that space.

(10) If a lien is claimed on property that is a motor vehicle or a watercraft and rent and other charges related to the property remain unpaid or unsatisfied for 60 days after the maturity of the obligation to pay the rent and other charges, the facility or unit owner may do one of the following:

(a) The facility or unit owner may have the property towed. If a motor vehicle or watercraft is towed, the facility or unit owner is not liable for the motor vehicle or watercraft or any damages to the motor vehicle or watercraft once a tower takes possession of the property.

(b) The facility or unit owner may sell the motor vehicle or watercraft by public auction if an owner or lienholder who receives notice pursuant to this paragraph does not satisfy the lien. Before the public auction, the facility or unit owner must contact the Department of Highway Safety and Motor Vehicles to determine the existence and identity of any lienholder and the name and address of the owner of the motor vehicle or watercraft. Within 10 days after receipt of such information concerning a lienholder and the owner of such motor vehicle or

watercraft, the facility or unit owner must send written notice to the lienholder and to the owner by first-class mail stating that:

1. Such motor vehicle or watercraft is being held by the facility or unit owner;

2. A lien has attached;

3. Payment must be made within 30 days after notification to satisfy the lien and take possession of the motor vehicle or watercraft; and

4. The facility or unit owner may sell the motor vehicle or watercraft by public auction if the lien is not satisfied.

Section 2. This act shall take effect July 1, 2016.

REGULATORY AFFAIRS COMMITTEE

CS/HB 559 by Rep. La Rosa
Self-Service Storage Facilities

AMENDMENT SUMMARY
February 4, 2016

Amendment 1 by Rep. La Rosa (Strike-all): The amendment makes the following changes:

- Requires the Department of Financial Services and the Chief Financial Officer to develop and maintain an Internet website to provide public notice of the sale of a self-storage facility tenant's property and provides minimum guidelines for the website, requires a fee for posting notice, and authorizes rulemaking;
- Revises the alternative method for publishing advertisements to allow posts on the Internet website developed by the Department of Financial Services and limits liability of the Chief Financial Officer for technical failures or contents of notice;
- Requires a wrecker who takes possession of a motor vehicle or watercraft subject to lien to comply with certain notification and sale requirements;
- Requires a facility or unit owner to check the National Motor Vehicle Title Information System or an equivalent commercially available system before conducting a public auction and requires notice to a lienholder or owner to be provided by certified mail;
- Provides that notice can be provided by first-class mail if a motor vehicle or watercraft owner identified in a title search is the same person as the self-service storage facility tenant in default; and
- Conforms terminology.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative La Rosa offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (4) of section 83.806, Florida Statutes, is amended, and subsections (9) and (10) are added to that section, to read:

83.806 Enforcement of lien.—An owner's lien as provided in s. 83.805 may be satisfied as follows:

(4) After the expiration of the time given in the notice, an advertisement of the sale or other disposition shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located or advertised for 14 calendar days on the Internet website developed by the

Department of Financial Services pursuant to s. 624.307(10). The obligation to provide notice pursuant to this section shall rest solely with the owner. The Chief Financial Officer may not be held liable for technical failures or any other cause which may interfere with or interrupt the required 14 day notice or for the content of or any defects in the notice posted on the website.

(a) A lien sale may be conducted on a public website that customarily conducts personal property auctions. The facility or unit owner is not required to be licensed to post property online for sale pursuant to this subsection. Inasmuch as any sale may involve property of more than one tenant, a single advertisement may be used to dispose of property at any one sale.

(b) ~~(a)~~ The advertisement shall include:

1. A brief and general description of what is believed to constitute the personal property contained in the storage unit, as provided in paragraph (2)(b).

2. The address of the self-service storage facility or the address where the self-contained storage unit is located and the name of the tenant.

3. The time, place, and manner of the sale or other disposition. The sale or other disposition shall take place not sooner than 15 days after the first publication or advertisement.

~~(b) If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement shall be posted at least 10 days before the date of the sale or other disposition in not fewer than three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.~~

(9) If the rental agreement contains a limit on the value of property stored in the tenant's storage space, the limit is deemed to be the maximum value of the property stored in that space.

(10) If a lien is claimed on property that is a motor vehicle or a watercraft and rent and other charges related to the property remain unpaid or unsatisfied for 60 days after the maturity of the obligation to pay the rent and other charges, the facility or unit owner may do one of the following:

(a) The facility or unit owner may have the property towed. If a motor vehicle or watercraft is towed, the facility or unit owner is not liable for the motor vehicle or watercraft or any damages to the motor vehicle or watercraft once a wrecker takes possession of the property. The wrecker taking possession must comply with all notification and sale requirements provided in s. 713.78.

(b) The facility or unit owner may sell the motor vehicle or watercraft by public auction if an owner or lienholder who receives notice pursuant to this paragraph does not satisfy the

lien. Before the public auction, the facility or unit owner must check the Department of Highway Safety and Motor Vehicles database to determine the existence and identity of any lienholder and the name and address of the owner of the motor vehicle or watercraft. In the event that the vehicle or watercraft is not titled in Florida, the facility or unit owner must check the National Motor Vehicle Title Information System or an equivalent commercially available system to determine the state of registration and to determine the existence and identity of any lienholder and the name and address of the owner of the motor vehicle or watercraft. Within 10 days after receipt of such information concerning a lienholder and the owner of such motor vehicle or watercraft, the facility or unit owner must send written notice to the lienholder and to the owner by certified mail stating that:

1. Such motor vehicle or watercraft is being held by the facility or unit owner;

2. A lien has attached;

3. Payment must be made within 30 days after notification to satisfy the lien and take possession of the motor vehicle or watercraft; and

4. The facility or unit owner may sell the motor vehicle or watercraft by public auction if the lien is not satisfied.

(c) If an owner identified as part of a search conducted pursuant to paragraph (b) is the same as the tenant in default who has been notified pursuant to subsection (1), the facility

or unit owner may send written notice to the owner by first class mail to satisfy the notice requirements under paragraph (b).

Section 2. Subsection (10) is added to section 624.307, Florida Statutes, to read:

624.307 General powers; duties.—

(10)(a) The department and the Chief Financial Officer, shall develop, operate, and maintain an Internet website for the purpose of providing public notice of the sale of property belonging to a tenant of a self-service storage facility, as defined in part III of ch. 83.

(b) The website must, at a minimum, include information concerning the identity of the tenant; the location of the property; the type of property subject to sale; and the time, place, and manner of sale.

(c) The department shall establish by rule a fee for the service of posting notice of the sale of property on behalf of a self-service storage facility owner. The fee must cover the cost of building, maintaining, and operating the website and shall be deposited into the Department of Financial Services Administrative Trust Fund.

(d) The department may adopt rules for the administration, operation, and maintenance of the website.

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

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to self-service storage facilities; amending s. 83.806, F.S.; providing that advertisement of a sale or disposition of property may be advertised on a website developed by the Department of Financial Services; providing that the Chief Financial Officer may not be held liable in specified circumstances; providing that a lien sale may be conducted on certain websites; providing that a self-service storage facility owner is not required to have a license to post property for online sale; deleting a required alternative form of advertisement; providing limits for the maximum valuation of property under certain circumstances; providing options for the disposition of motor vehicles or watercraft claimed to be subject to a lien; requiring specified notice to lienholders and owners of motor vehicles or watercraft subject to a lien; amending s. 624.307, F.S.; requiring the department and Chief Financial Officer to develop, operate, and maintain an Internet website to provide public notice of the sale of property belonging to a tenant of a self-service storage facility; providing guidelines for the website; requiring the department to establish a fee for deposit into the department's

Administrative Trust Fund; providing rulemaking authority; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 577 Liability Insurance Coverage
SPONSOR(S): Insurance & Banking Subcommittee; Lee
TIED BILLS: **IDEN./SIM. BILLS:** SB 774

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	10 Y, 0 N, As CS	Lloyd	Luczynski
2) Regulatory Affairs Committee		Lloyd	Hamon

SUMMARY ANALYSIS

Liability insurance is a form of casualty insurance covering the legal obligations of the insured for bodily injuries or property damage caused to another person. When a person is injured or their property is damaged by another person or by conditions or by property for which the other person is responsible, the injured person may have a legal claim for their losses. To facilitate ready and timely access to insurance coverage information, Florida law provides a mechanism to obtain insurance information related to the claim. Upon receipt of the relevant coverage information, the injured person can then make an informed decision about how to proceed with their claim, such as filing insurance claims or pursuing litigation.

Florida law allows claimants to make written requests for disclosure of specific insurance information regarding liability insurance coverage. Upon receipt of a written request, the insured or their insurance agent are required to forward the request to all affected insurers. The written request may also be filed directly with any insurer that is or may be responsible for covering the insured.

Within 30 days of receipt of the written request, the insurer must disclose the following information regarding every known policy that may be related to the claim:

- The name of the insurer;
- The name of each insured;
- The limits of the liability coverage;
- A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement; and
- A copy of the policy.

The information must be provided under oath, subject to penalties for perjury, by a corporate officer, claims manager, or claims superintendent of the insurer. This sworn statement of coverage information must be amended upon the discovery of additional material facts, such as additional policies or defenses that were not initially identified.

The bill adds "company employee adjusters" to the list of individuals that may issue a sworn statement detailing the required coverage information on behalf of the insurer.

The bill has no impact on state and local governments. The bill has a positive impact on the private sector.

The bill is effective on July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Liability insurance is "insurance against legal liability for the death, injury, or disability of any human being, or for damage to property, with provision for medical, hospital, and surgical benefits to the injured persons, irrespective of the legal liability of the insured, when issued as a part of a liability insurance contract."[1] It is a form of casualty insurance[2] covering the legal obligations of the insured for bodily injuries or property damage caused to another person.

When a person is injured or their property is damaged by another person or by conditions or by property for which the other person is responsible, the injured person may have a legal claim for their losses. However, the injured person usually has no knowledge of or information about the insurance coverage of the person responsible for the loss. To facilitate ready and timely access to insurance coverage information, Florida law provides a mechanism to obtain insurance information related to the claim. Upon receipt of coverage information, the injured person can then make an informed decision about how to proceed with their claim, such as filing insurance claims or pursuing litigation.

Section 627.4137, F.S., allows claimants to make written requests for disclosure of specific insurance information regarding liability insurance coverage. Upon receipt of a written request for disclosure, the insured or their insurance agent are required to forward the request to all affected insurers. The written request may also be filed directly with any insurer that is or may be responsible for liability insurance coverage of the insured.

Within 30 days of receipt of the written request,[3] the insurer must provide the following information regarding every known policy:[4]

- The name of the insurer;
- The name of each insured;
- The limits of the liability coverage;
- A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement; and
- A copy of the policy.

The information must be provided under oath by a corporate officer, claims manager, or claims superintendent of the insurer.[5] This sworn statement must be amended upon the discovery of

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[1] s. 624.605(1)(b), F.S.

[2] s. 624.605, F.S. The following forms of insurance are also casualty insurance: vehicle, workers' compensation and employer's liability, burglary and theft, personal property floaters, glass, boiler and machinery, leakage and fire extinguishing equipment, credit, credit property, malpractice, animal, elevator, entertainments, failure of certain institutions to record documents, failure to file certain personal property instruments, debt cancellation products, and, when not contrary to law or public policy or within any other line of insurance, any insurance providing coverage against liabilities for loss or damage to person or property. Medical, hospital, surgical, and funeral benefits covered under policies for vehicle, liability, burglary and theft, boiler and machinery, or elevator are deemed to be casualty insurance and is not subject to the provisions of the Insurance Code applicable to life and health insurance. Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S., constitute the "Florida Insurance Code." s. 624.01, F.S.

[3] Written requests made of a self-insured corporation must be sent by certified mail to the registered agent of the entity that is obligated to make the disclosures required by statute. s. 627.4137(3), F.S.

[4] This includes policies for excess or umbrella insurance applicable to the insured's liability coverages. s. 627.4137(1), F.S.

[5] The oath required for verification of the informational response is governed by s. 92.525, F.S. If perjury is committed in executing the oath, it is punishable as a felony of the third degree under s. 775.082, F.S., (up to 5 years imprisonment), s. 775.083, F.S., (up to a $5,000 fine), or s. 775.084, F.S., (sentencing factors for habitual offenders). Depending upon circumstances of the claim, the claims handling of the insurer, including settlement practices, and the coverages involved, a civil remedy under s. 624.155, F.S., may be available to the claimant for damages related to an alleged failure of the insurer to operate in good faith. This is in addition to a possible civil remedy for bad faith under common-law.

additional material facts, such as additional policies or defenses that were not initially identified. Willful violation of the requirements of s. 627.4137, F.S., is grounds for an administrative penalty against individuals holding one of the various insurance licenses issued by the Department of Financial Services.[6]

In addition to corporate officers, claims managers, and claims superintendents, the bill allows "company employee adjusters" to issue a sworn statement detailing the required coverage information. Section 626.856, F.S., defines a "company employer adjuster" as "a person licensed as an all-lines adjuster who is appointed and employed on an insurer's staff of adjusters or a wholly owned subsidiary of the insurer, and who undertakes on behalf of such insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss, or damage payable under a contract of insurance, or undertakes to effect settlement of such claim, loss, or damage."

B. SECTION DIRECTORY:

Section 1: Amends s. 627.4137, F.S., relating to disclosure of certain information required.

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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Liability insurers could experience increased efficiency by allowing the adjuster with direct responsibility for a claim file or policy to perform the required information disclosure consistent with the requirements of the bill, rather than more senior, and possibly remotely located, personnel.

D. FISCAL COMMENTS:

None.

[6] ss. 626.611 and 626.621, F.S.

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:

Section 626.9372, F.S., contains a substantively comparable provision that requires a surplus lines insurer to disclose the same coverage information in the same way as s. 627.4137, F.S. The only substantive difference is that the surplus lines liability insurer must issue its disclosure within 60 days of a written request from the claimant. For purposes of consistency, it may be advisable to amend s. 626.9372, F.S., so that the same information response requirements apply to insurers admitted in the state and surplus lines insurers.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 2, 2015, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably with a committee substitute. The amendment replaced the term "licensed company adjuster," which is not defined in statute, with the term "company employee adjuster," which is defined in statute.

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

A bill to be entitled

An act relating to liability insurance coverage; amending s. 627.4137, F.S.; adding company employee adjusters to the list of persons who may respond to a claimant's written request for information relating to liability insurance coverage; providing an effective date.

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

Section 1. Subsection (1) of section 627.4137, Florida Statutes, is amended to read:

627.4137 Disclosure of certain information required.—

(1) Each insurer that provides ~~which does~~ or may provide liability insurance coverage to pay all or a portion of a ~~any~~ claim that ~~which~~ might be made shall provide, within 30 days after ~~of~~ the written request of the claimant, a statement, under oath, of a corporate officer, ~~or~~ the insurer's claims manager or superintendent, or a company employee adjuster setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

(a) The name of the insurer.

(b) The name of each insured.

(c) The limits of the liability coverage.

(d) A statement of any policy or coverage defense that the ~~which such~~ insurer reasonably believes is available to the ~~such~~

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

insurer at the time of filing such statement.

(e) A copy of the policy.

In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, shall disclose the name and coverage of each known insurer to the claimant and shall forward such request for information as required by this subsection to all affected insurers. The insurer shall then supply the information required in this subsection to the claimant within 30 days after ~~of~~ receipt of such request.

Section 2. This act shall take effect July 1, 2016.

Regulatory Affairs Committee

CS/HB 577 by Lee
Liability Insurance Coverage

AMENDMENT SUMMARY
February 4, 2016

Amendment 1 by Rep. Lee (Line 18): The amendment restores the word "or" that the bill strikes from statute. It makes a technical change.

Amendment 2 by Rep. Lee (Line 30): The amendment requires that the company employee adjuster must include in the sworn statement that appropriate personnel were consulted to verify the insurance related information being produced under law (i.e, the name of the insurer and each insured, the liability coverage limits, a statement of any policy or coverage defenses, and a copy of the policy).

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 577 (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	_____

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Lee offered the following:

Amendment

Remove line 18 and insert:

oath, of a corporate officer, or the insurer's claims manager or

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 577 (2016)

Amendment No. 2

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Lee offered the following:

Amendment (with title amendment)

Remove line 30 and insert:

If the person providing the statement required under this subsection is the company employee adjuster, the statement will also include a sworn statement that the affiant has consulted with the appropriate personnel in the company's underwriting department and claims department to verify the information disclosed in the statement. In addition, the insured, or her or his insurance agent, upon

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

Remove line 6 and insert:

liability insurance coverage; requiring a company employee adjuster who provides a specified statement to consult with certain individuals to verify information disclosed in the sworn statement; providing an effective

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 613 Workers' Compensation System Administration
SPONSOR(S): Sullivan
TIED BILLS: **IDEN./SIM. BILLS:** CS/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	11 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee		Lloyd	Hamon

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 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;
- Requiring employers to simply 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.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background – Workers' Compensation

The workers' compensation law[1] requires employers[2] 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 workers[9] 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

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[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.

employers that are unable to purchase a workers' compensation insurance policy from an authorized insurance company); or, qualifying as a self-insurer.[11]

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]

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[11] ss. 440.38, F.S. and 627.311(5)(a), F.S.
[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.

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, DFS 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.

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 is required to reduce the 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 member[23] 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

[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.

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 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 coverage[33] that they may file with the DFS.

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[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."

[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.

Current Situation – Medical Reimbursement Disputes

The DFS is responsible for resolving medical reimbursement disputes between health care providers and insurers[34] 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 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, as 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

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[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.

[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.

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.

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.

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[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.
[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).

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.
- 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.

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[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.
[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.

- 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.

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.

[60] Email correspondence with The Department of Financial Services (Jan. 20, 2016) on file with the Government Operations Appropriations Subcommittee.

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 $0.00 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.

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.

[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 visited Jan. 19, 2016)

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. Section 440.13(9)(a), F.S., specifies certain requirements and considerations to be used by the DFS for certification and recertification of EMAs. These standards 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

A bill to be entitled

An act relating to workers' compensation system administration; amending s. 440.02, F.S.; revising definitions; amending s. 440.021, F.S.; conforming a cross-reference; amending s. 440.05, F.S.; requiring members of limited liability companies to submit specified notices; deleting a required item to be listed on a notice of election to be exempt; revising specified rules regarding the maintenance of business records by an officer of a corporation; removing the requirement that the Department of Financial Services issue a specified stop-work order; amending s. 440.107, F.S.; requiring that the department allow an employer who has not previously been issued an order of penalty assessment to receive a specified credit to be applied to the penalty; prohibiting the application of a specified credit unless the employer provides specified documentation and proof of payment to the department within a specified period; requiring the department to reduce the final assessed penalty by a specified percentage for employers who have not been previously issued a stop-work order or order of penalty assessment; revising the penalty calculation for the imputed weekly payroll for an employee; amending s. 440.13, F.S.; eliminating the certification requirements when an expert medical

advisor is selected by a judge of compensation claims; amending s. 440.185, F.S.; deleting the requirement that employers notify the department within 24 hours of any injury resulting in death; amending s. 440.42, F.S.; conforming a cross-reference; amending s. 440.49, F.S.; revising definitions; revising the requirements for filing a claim; deleting the preferred worker program; deleting the notification fees on certain filed claims which supplement the Special Disability Trust Fund; conforming cross-references; amending s. 440.50, F.S.; conforming cross-references; amending s. 440.52, F.S.; deleting a fee for certain registration of insurance carriers; amending s. 624.4626, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (9) 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

Division of Corporations of the Department of State or as authorized or required under part I of chapter 607. For persons engaged in the construction industry, the term "officer of a corporation" includes a member owning at least 10 percent of a limited liability company as defined in and organized pursuant to chapter 605.

(15)

(c) "Employee" includes:

1. A sole proprietor, a member of a limited liability company, or a partner who is not engaged in the construction industry, devotes full time to the proprietorship, limited liability company, or partnership, and elects to be included in the definition of employee by filing notice thereof as provided in s. 440.05.

2. All persons who are being paid by a construction contractor as a subcontractor, unless the subcontractor has validly elected an exemption as permitted by this chapter, or has otherwise secured the payment of compensation coverage as a subcontractor, consistent with s. 440.10, for work performed by or as a subcontractor.

3. An independent contractor working or performing services in the construction industry.

4. A sole proprietor who engages in the construction industry and a partner or partnership that is engaged in the construction industry.

Section 2. Section 440.021, Florida Statutes, is amended

to read:

440.021 Exemption of workers' compensation from chapter 120.—Workers' compensation adjudications by judges of compensation claims are exempt from chapter 120, and no judge of compensation claims shall be considered an agency or a part thereof. Communications of the result of investigations by the department pursuant to s. 440.185(3) ~~s. 440.185(4)~~ are exempt from chapter 120. In all instances in which the department institutes action to collect a penalty or interest which may be due pursuant to this chapter, the penalty or interest shall be assessed without hearing, and the party against which such penalty or interest is assessed shall be given written notice of such assessment and shall have the right to protest within 20 days of such notice. Upon receipt of a timely notice of protest and after such investigation as may be necessary, the department shall, if it agrees with such protest, notify the protesting party that the assessment has been revoked. If the department does not agree with the protest, it shall refer the matter to the judge of compensation claims for determination pursuant to s. 440.25(2)-(5). Such action of the department is exempt from the provisions of chapter 120.

Section 3. Subsections (1), (2), (3), (5), (10), and (11) of section 440.05, Florida Statutes, are amended to read:

440.05 Election of exemption; revocation of election; notice; certification.—

(1) Each corporate officer who elects not to accept the

provisions of this chapter or who, after electing such exemption, revokes that exemption shall submit ~~mail~~ to the department ~~in Tallahassee~~ notice to such effect in accordance with a form to be prescribed by the department.

(2) Each sole proprietor, member of a limited liability company, or partner who elects to be included in the definition of "employee" or who, after such election, revokes that election must submit ~~mail~~ to the department ~~in Tallahassee~~ notice to such effect, in accordance with a form to be prescribed by the department.

(3) ~~Each officer of a corporation who is engaged in the construction industry and who elects an exemption from this chapter or who, after electing such exemption, revokes that exemption must submit a notice to such effect to the department on a form prescribed by the department.~~ The notice of election to be exempt must be electronically submitted to the department by the officer of a corporation who is allowed to claim an exemption as provided by this chapter and must list the name, ~~federal tax identification number,~~ date of birth, driver license number or Florida identification card number, and all certified or registered licenses issued pursuant to chapter 489 held by the person seeking the exemption, the registration number of the corporation filed with the Division of Corporations of the Department of State, and the percentage of ownership evidencing the required ownership under this chapter. The notice of election to be exempt must identify each corporation that

employs the person electing the exemption and must list the social security number or federal tax identification number of each such employer and the additional documentation required by this section. In addition, the notice of election to be exempt must provide that the officer electing an exemption is not entitled to benefits under this chapter, must provide that the election does not exceed exemption limits for officers provided in s. 440.02, and must certify that any employees of the corporation whose officer elects an exemption are covered by workers' compensation insurance. Upon receipt of the notice of the election to be exempt, receipt of all application fees, and a determination by the department that the notice meets the requirements of this subsection, the department shall issue a certification of the election to the officer, unless the department determines that the information contained in the notice is invalid. The department shall revoke a certificate of election to be exempt from coverage upon a determination by the department that the person does not meet the requirements for exemption or that the information contained in the notice of election to be exempt is invalid. The certificate of election must list the name of the corporation listed in the request for exemption. A new certificate of election must be obtained each time the person is employed by a new or different corporation that is not listed on the certificate of election. A notice ~~copy~~ of the certificate of election must be sent to each workers' compensation carrier identified in the request for exemption.

Upon filing a notice of revocation of election, an officer who is a subcontractor or an officer of a corporate subcontractor must notify her or his contractor. Upon revocation of a certificate of election of exemption by the department, the department shall notify the workers' compensation carriers identified in the request for exemption.

(5) A notice given under subsection (1), subsection (2), or subsection (3) shall become effective when issued by the department or 30 days after it ~~an application for an exemption~~ is received by the department, whichever occurs first. However, if an accident or occupational disease occurs less than 30 days after the effective date of the insurance policy under which the payment of compensation is secured or the date the employer qualified as a self-insurer, such notice is effective as of 12:01 a.m. of the day following the date it is submitted ~~mailed~~ to the department ~~in Tallahassee~~.

(10) Each officer of a corporation who is actively engaged in the construction industry and who elects an exemption from this chapter shall maintain business records as specified by the department by rule~~, which rules must include the provision that any corporation with exempt officers engaged in the construction industry must maintain written statements of those exempted persons affirmatively acknowledging each such individual's exempt status~~.

(11) Any corporate officer permitted by this chapter to claim an exemption must be listed on the records of this state's

Secretary of State, Division of Corporations, as a corporate officer. ~~The department shall issue a stop-work order under s. 440.107(7) to any corporation who employs a person who claims to be exempt as a corporate officer but who fails or refuses to produce the documents required under this subsection to the department within 3 business days after the request is made.~~

Section 4. Paragraphs (d) and (e) of subsection (7) of section 440.107, Florida Statutes, are amended to read:

440.107 Department powers to enforce employer compliance with coverage requirements.—

(7)

(d)1. In addition to any penalty, stop-work order, or injunction, the department shall assess against any employer who has failed to secure the payment of compensation as required by this chapter a penalty equal to 2 times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation required by this chapter within the preceding 2-year period or $1,000, whichever is greater.

a. For employers who have not been previously issued a stop-work order or order of penalty assessment, the department must allow the employer to receive a credit for the initial payment of the estimated annual workers' compensation policy premium, as determined by the carrier, to be applied to the penalty. Before applying the credit to the penalty, the employer

must provide the department with documentation reflecting that the employer has secured the payment of compensation pursuant to s. 440.38 and proof of payment to the carrier. In order for the department to apply a credit for an employer that has secured workers' compensation for leased employees by entering into an employee leasing contract with a licensed employee leasing company, the employer must provide the department with a written confirmation, by a representative from the employee leasing company, of the dollar or percentage amount attributable to the initial estimated workers' compensation expense for leased employees, and proof of payment to the employee leasing company. The credit may not be applied unless the employer provides the documentation and proof of payment to the department within 28 days after service of the stop-work order or first order of penalty assessment upon the employer.

b. For employers who have not been previously issued a stop-work order or order of penalty assessment, the department must reduce the final assessed penalty by 25 percent if the employer has complied with administrative rules adopted pursuant to subsection (5) and has provided such business records to the department within 10 business days after the employer's receipt of the written request to produce business records.

c. The $1,000 penalty shall be assessed against the employer even if the calculated penalty after the credit and 25 percent reduction have ~~has~~ been applied is less than $1,000.

2. Any subsequent violation within 5 years after the most

recent violation shall, in addition to the penalties set forth in this subsection, be deemed a knowing act within the meaning of s. 440.105.

(e) When an employer fails to provide business records sufficient to enable the department to determine the employer's payroll for the period requested for the calculation of the penalty provided in paragraph (d), for penalty calculation purposes, the imputed weekly payroll for each employee, corporate officer, sole proprietor, or partner shall be the statewide average weekly wage as defined in s. 440.12(2) multiplied by 1.5 ~~2~~.

Section 5. Paragraph (a) of subsection (7) and paragraphs (a) and (f) of subsection (9) of section 440.13, Florida Statutes, are amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

(7) UTILIZATION AND REIMBURSEMENT DISPUTES.—

(a) Any health care provider~~, carrier, or employer~~ who elects to contest the disallowance or adjustment of payment by a carrier under subsection (6) must, within 45 days after receipt of notice of disallowance or adjustment of payment, petition the department to resolve the dispute. The petitioner must serve a copy of the petition on the carrier and on all affected parties by certified mail. The petition must be accompanied by all documents and records that support the allegations contained in the petition. Failure of a petitioner to submit such

documentation to the department results in dismissal of the petition.

(9) EXPERT MEDICAL ADVISORS.—

(a) The department shall certify expert medical advisors in each specialty to assist the department ~~and the judges of compensation claims~~ within the advisor's area of expertise as provided in this section. The department shall, in a manner prescribed by rule, in certifying, recertifying, or decertifying an expert medical advisor, consider the qualifications, training, impartiality, and commitment of the health care provider to the provision of quality medical care at a reasonable cost. As a prerequisite for certification or recertification, the department shall require, at a minimum, that an expert medical advisor have specialized workers' compensation training or experience under the workers' compensation system of this state and board certification or board eligibility.

(f) If the department or a judge of compensation claims orders the services of an ~~a certified~~ expert medical advisor to resolve a dispute under this section, the party requesting such examination must compensate the advisor for his or her time in accordance with a schedule adopted by the department. If the employee prevails in a dispute as determined in an order by a judge of compensation claims based upon the expert medical advisor's findings, the employer or carrier shall pay for the costs of such expert medical advisor. If a judge of compensation

claims, upon his or her motion, finds that an expert medical advisor is needed to resolve the dispute, the carrier must compensate the advisor for his or her time in accordance with a schedule adopted by the department. The department may assess a penalty not to exceed $500 against any carrier that fails to timely compensate an advisor in accordance with this section.

Section 6. Subsection (3) of section 440.185, Florida Statutes, is amended to read:

440.185 Notice of injury or death; reports; penalties for violations.—

~~(3) In addition to the requirements of subsection (2), the employer shall notify the department within 24 hours by telephone or telegraph of any injury resulting in death. However, this special notice shall not be required when death results subsequent to the submission to the department of a previous report of the injury pursuant to subsection (2).~~

Section 7. Subsection (3) of section 440.42, Florida Statutes, is amended to read:

440.42 Insurance policies; liability.—

(3) No contract or policy of insurance issued by a carrier under this chapter shall expire or be canceled until at least 30 days have elapsed after a notice of cancellation has been sent to the department and to the employer in accordance with the provisions of s. 440.185(6) ~~s. 440.185(7)~~. For cancellation due to nonpayment of premium, the insurer shall mail notification to the employer at least 10 days prior to the effective date of the

cancellation. However, when duplicate or dual coverage exists by reason of two different carriers having issued policies of insurance to the same employer securing the same liability, it shall be presumed that only that policy with the later effective date shall be in force and that the earlier policy terminated upon the effective date of the latter. In the event that both policies carry the same effective date, one of the policies may be canceled instanter upon filing a notice of cancellation with the department and serving a copy thereof upon the employer in such manner as the department prescribes by rule. The department may by rule prescribe the content of the notice of retroactive cancellation and specify the time, place, and manner in which the notice of cancellation is to be served.

Section 8. Paragraph (b) of subsection (2), paragraph (c) of subsection (4), paragraph (c) of subsection (6), paragraphs (c) and (d) of subsection (7), subsection (8), and paragraph (d) of subsection (9) of section 440.49, Florida Statutes, are amended to read:

440.49 Limitation of liability for subsequent injury through Special Disability Trust Fund.—

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

~~(b) "Preferred worker" means a worker who, because of a permanent impairment resulting from a compensable injury or occupational disease, is unable to return to the worker's regular employment.~~

In addition to the definitions contained in this subsection, the department may by rule prescribe definitions that are necessary for the effective administration of this section.

(4) PERMANENT IMPAIRMENT OR PERMANENT TOTAL DISABILITY, TEMPORARY BENEFITS, MEDICAL BENEFITS, OR ATTENDANT CARE AFTER OTHER PHYSICAL IMPAIRMENT.—

(c) Temporary compensation and medical benefits; aggravation or acceleration of preexisting condition or circumstantial causation.—If an employee who has a preexisting permanent physical impairment experiences an aggravation or acceleration of the preexisting permanent physical impairment as a result of an injury or occupational disease arising out of and in the course of her or his employment, or suffers an injury as a result of a merger as defined in paragraph (2)(b) ~~(2)(c)~~, the employer shall provide all benefits provided by this chapter, but, subject to the limitations specified in subsection (7), the employer shall be reimbursed by the Special Disability Trust Fund created by subsection (9) for 50 percent of its payments for temporary, medical, and attendant care benefits.

(6) EMPLOYER KNOWLEDGE, EFFECT ON REIMBURSEMENT.—

(c) An employer's or carrier's right to apportionment or deduction pursuant to ss. 440.02(1), 440.15(5)(b), and 440.151(1)(c) does not preclude reimbursement from such fund, except when the merger comes within the definition of paragraph (2)(b) ~~(2)(c)~~ and such apportionment or deduction relieves the employer or carrier from providing the materially and

substantially greater permanent disability benefits otherwise contemplated in those paragraphs.

(7) REIMBURSEMENT OF EMPLOYER.—

(c) A proof of claim must be filed on each notice of claim on file as of June 30, 1997, within 1 year after July 1, 1997, or the right to reimbursement of the claim shall be barred. A notice of claim on file on or before June 30, 1997, may be withdrawn and refiled if, at the time refiled, the notice of claim remains within the limitation period specified in paragraph (a). Such refiling shall not toll, extend, or otherwise alter in any way the limitation period applicable to the withdrawn and subsequently refiled notice of claim. ~~Each proof of claim filed shall be accompanied by a proof-of-claim fee as provided in paragraph (9)(d).~~ The Special Disability Trust Fund shall, within 120 days after receipt of the proof of claim, serve notice of the acceptance of the claim for reimbursement. This paragraph shall apply to all claims notwithstanding the provisions of subsection (12).

(d) ~~Each notice of claim filed or refiled on or after July 1, 1997, must be accompanied by a notification fee as provided in paragraph (9)(d).~~ A proof of claim must be filed within 1 year after the date the notice of claim is filed or refiled~~,~~ ~~accompanied by a proof-of-claim fee as provided in paragraph (9)(d),~~ or the claim shall be barred. ~~The notification fee shall be waived if both the notice of claim and proof of claim are submitted together as a single filing.~~ The Special Disability

Trust Fund shall, within 180 days after receipt of the proof of claim, serve notice of the acceptance of the claim for reimbursement. This paragraph shall apply to all claims notwithstanding the provisions of subsection (12).

~~(8) PREFERRED WORKER PROGRAM.—The Department of Education or administrator shall issue identity cards to preferred workers upon request by qualified employees and the Department of Financial Services shall reimburse an employer, from the Special Disability Trust Fund, for the cost of workers' compensation premium related to the preferred workers payroll for up to 3 years of continuous employment upon satisfactory evidence of placement and issuance of payroll and classification records and upon the employee's certification of employment. The Department of Financial Services and the Department of Education may by rule prescribe definitions, forms, and procedures for the administration of the preferred worker program. The Department of Education may by rule prescribe the schedule for submission of forms for participation in the program.~~

(8)~~(9)~~ SPECIAL DISABILITY TRUST FUND.—

~~(d) The Special Disability Trust Fund shall be supplemented by a $250 notification fee on each notice of claim filed or refiled after July 1, 1997, and a $500 fee on each proof of claim filed in accordance with subsection (7). Revenues from the fee shall be deposited into the Special Disability Trust Fund and are exempt from the deduction required by s. 215.20. The fees provided in this paragraph shall not be imposed~~

~~upon any insurer which is in receivership with the department.~~

Section 9. Paragraph (b) of subsection (1) of section 440.50, Florida Statutes, is amended to read:

440.50 Workers' Compensation Administration Trust Fund.—

(1)

(b) The department is authorized to transfer as a loan an amount not in excess of $250,000 from such special fund to the Special Disability Trust Fund established by s. 440.49(8) ~~s. 440.49(9)~~, which amount shall be repaid to the ~~said~~ special fund in annual payments equal to not less than 10 percent of moneys received for the ~~such~~ Special Disability Trust Fund.

Section 10. Subsection (1) of section 440.52, Florida Statutes, is amended to read:

440.52 Registration of insurance carriers; notice of cancellation or expiration of policy; suspension or revocation of authority.—

(1) Each insurance carrier who desires to write workers' ~~such~~ compensation insurance in compliance with this chapter shall be required, before writing such insurance, to register with the department ~~and pay a registration fee of $100. This shall be deposited by the department in the fund created by s. 440.50~~.

Section 11. Subsection (2) of section 624.4626, Florida Statutes, is amended to read:

624.4626 Electric cooperative self-insurance fund.—

(2) A self-insurance fund that meets the requirements of

this section is subject to the assessments set forth in ss. 440.49(8) ~~ss. 440.49(9)~~, 440.51(1), and 624.4621(7), but is not subject to any other provision of s. 624.4621 and is not required to file any report with the department under s. 440.38(2)(b) which is uniquely required of group self-insurer funds qualified under s. 624.4621.

Section 12. This act shall take effect October 1, 2016.

Regulatory Affairs Committee

HB 613 by Rep. Sullivan
Workers' Compensation System Administration

AMENDMENT SUMMARY
February 4, 2016

Amendment 1 by Rep. Sullivan (Line 45): The amendment retains current law regarding the status of non-construction LLC members as "employees" who are eligible for coverage exemptions.

Amendment 2 by Rep. Sullivan (Line 277): The amendment provides for selection and appointment of certified or non-certified Expert Medical Advisors in workers' compensation benefits litigation.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Sullivan offered the following:

Amendment (with title amendment)

Remove lines 45-110 and insert:

Section 1. Section 440.021, Florida Statutes, is amended to read:

440.021 Exemption of workers' compensation from chapter 120.—Workers' compensation adjudications by judges of compensation claims are exempt from chapter 120, and no judge of compensation claims shall be considered an agency or a part thereof. Communications of the result of investigations by the department pursuant to s. 440.185(3) ~~s. 440.185(4)~~ are exempt from chapter 120. In all instances in which the department institutes action to collect a penalty or interest which may be due pursuant to this chapter, the penalty or interest shall be

assessed without hearing, and the party against which such penalty or interest is assessed shall be given written notice of such assessment and shall have the right to protest within 20 days of such notice. Upon receipt of a timely notice of protest and after such investigation as may be necessary, the department shall, if it agrees with such protest, notify the protesting party that the assessment has been revoked. If the department does not agree with the protest, it shall refer the matter to the judge of compensation claims for determination pursuant to s. 440.25(2)-(5). Such action of the department is exempt from the provisions of chapter 120.

Section 2. Subsections (1), (2), (3), (5), (10), and (11) of section 440.05, Florida Statutes, are amended to read:

440.05 Election of exemption; revocation of election; notice; certification.—

(1) Each corporate officer who elects not to accept the provisions of this chapter or who, after electing such exemption, revokes that exemption shall submit ~~mail~~ to the department ~~in Tallahassee~~ notice to such effect in accordance with a form to be prescribed by the department.

(2) Each sole proprietor or partner who elects to be included in the definition

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

Amendment No. 1

Remove lines 3-7 and insert:

administration; amending s. 440.021, F.S.; conforming a cross-reference; amending s. 440.05, F.S.; deleting a required item to be

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 613 (2016)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Sullivan offered the following:

Amendment (with directory and title amendments)

Between lines 277 and 278, insert:

(c) If there is disagreement in the opinions of the health care providers, if two health care providers disagree on medical evidence supporting the employee's complaints or the need for additional medical treatment, or if two health care providers disagree that the employee is able to return to work, the department may, and the judge of compensation claims shall, upon his or her own motion or within 15 days after receipt of a written request by either the injured employee, the employer, or the carrier, order the injured employee to be evaluated by an expert medical advisor. The injured employee and the employer or carrier may agree on the health care provider to serve as an

expert medical advisor. If the parties do not agree, the judge of compensation claims shall select an expert medical advisor from the department's list of certified expert medical advisors. If a certified medical advisor within the relevant medical specialty is unavailable, the judge of compensation claims shall appoint any otherwise qualified health care provider to serve as an expert medical advisor without obtaining the department's certification. The opinion of the expert medical advisor is presumed to be correct unless there is clear and convincing evidence to the contrary as determined by the judge of compensation claims. The expert medical advisor appointed to conduct the evaluation shall have free and complete access to the medical records of the employee. An employee who fails to report to and cooperate with such evaluation forfeits entitlement to compensation during the period of failure to report or cooperate.

D I R E C T O R Y A M E N D M E N T

Remove line 247 and insert:

(a), (c), and (f) of subsection (9) of section 440.13, Florida

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

Between lines 27 and 28, insert:

providing requirements for the selection of an expert medical advisor;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 691 Retail Sale of Dextromethorphan
SPONSOR(S): Business & Professions Subcommittee; Broxson and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 938

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Brown-Blake	Anstead
2) Local Government Affairs Subcommittee	10 Y, 0 N	Renner	Miller
3) Regulatory Affairs Committee		Brown-Blake	Hamon K.W.H.

SUMMARY ANALYSIS

Dextromethorphan (DXM) is a common active ingredient used by pharmaceutical companies in many over-the-counter (OTC) cough suppressant medications. The ingredient is used most commonly as a cough suppressant and an expectorant, but is also used for the temporary relief of sinus congestions, runny nose, cough, sneezing, itchy nose and throat, and watery eyes caused by allergies, cold, flu, or other upper respiratory infections.

The use of DXM in larger than therapeutic doses causes impaired vision, sweating, fever, rapid breathing, increased blood pressure and heart rate, slurred speech, impaired judgment and mental function, hallucinations and dissociative effects, and in higher doses, coma, or death. Teenagers and young adults have been documented as abusing DXM in larger than therapeutic doses in order to achieve the dissociative effect. The dangers associated with DXM abuse include possible overdose of DXM, overdose of other combined substances, impairment leading to injury or death, and dependence upon the drug.

The bill restricts the sale of a "finished drug product" that contains DXM to persons younger than the age of 18. Specifically, manufacturers, distributors, retail entities, and their employees and representatives are prohibited from knowingly or willfully selling a finished drug product that contains any quantity of DXM to a person younger than 18 years old. Additionally, the bill prohibits a person younger than 18 years of age from purchasing a finished drug product that contains any quantity of DXM. The person making the sale of the finished drug product that contains DXM is required to obtain proof of age from the purchaser prior to completing the sale, unless the person making the sale could reasonably presume from the consumer's outward appearance that the consumer is 25 years old or older.

The bill provides for fines to be paid by manufacturers, distributors, retail entities, or their employees or representatives in violation of this section, as well as persons who possess or receive a finished drug product that contains DXM with the intent to distribute it to a person under the age of 18. The bill provides for a way for recipients of the fine to dispute the violation and provides for the local jurisdiction to recover unpaid accrued fines.

The bill preempts any ordinance regulating the sale, distribution, receipt, or possession of DXM which may be enacted by a county, municipality, or other political subdivision of the state. DXM is not subject to further regulation by such political subdivisions.

The bill is expected to have no financial impact on a state or local agency.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

General:
DXM is a common active ingredient used by pharmaceutical companies in many OTC cough suppressant medications. The ingredient is used most commonly as a cough suppressant and an expectorant, but is also used for the temporary relief of sinus congestions, runny nose, cough, sneezing, itchy nose and throat, and watery eyes caused by allergies, cold, flu, or other upper respiratory infections. Approximately 70 products which contain DXM are available to consumers. Additionally, DXM can be purchased in bulk over the internet in a powder form as the pure raw ingredient used by pharmaceutical companies to manufacture the cough medicines. When taken as directed in an OTC medication, DXM has few side effects and has a long history of safety and effectiveness.[1]

The use of DXM in larger than therapeutic doses causes impaired vision, sweating, fever, rapid breathing, increased blood pressure and heart rate, slurred speech, impaired judgment and mental function, hallucinations and dissociative effects, and in higher doses, coma.[2] Teenagers and young adults have been documented as abusing DXM in larger than therapeutic doses in order to achieve the dissociative effect, where the drug distorts how they perceive sight and sound and creates a feeling of detachment from the environment.[3] The dangers associated with DXM abuse include possible overdose of DXM, overdose of other combined substances, impairment leading to injury or death, and dependence upon the drug.

Overdoses:
Before 2009, there were five documented fatal overdoses associated with ingestion of DXM. [4] Very high doses of DXM are shown to shut down the central nervous system, causing death. Additionally, OTC medications that include DXM typically are combined with acetaminophen to relieve pain, or other medications that can be toxic in larger than therapeutic doses, causing liver damage, heart attack, stroke, and death.

Impairment:
DXM causes impaired vision, altered consciousness, and hallucinations, which can lead to irrational or dangerous behavior or otherwise impede the ability of a person to act responsibly. A person who is suffering from these conditions would be a risk to themselves and others if they chose to operate a motor vehicle or otherwise be in a place where their safety was not insured. Individuals have killed and been killed in car related accidents while high on DXM.[5]

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[1] Center for Substance Abuse Research, *Dexatromethrophan (DXM)*, found at http://www.cesar.umd.edu/cesar/drugs/dxm.asp (last visited January 6, 2016).
[2] WebMD, *Teen Drug Abuse of Cough Medicine*, found at http://www.webmd.com/parenting/teen-abuse-cough-medicine-9/teens-and-dxm-drug-abuse?page=3 (last visited January 6, 2016).
[3] What is DXM, *About DXM*, found at http://www.whatisdxm.com/about-dxm.html, (last visited January 6, 2016).
[4] Journal of Analytical Toxicology, Vol. 33, March 2009, F*ive Deaths Resulting from Abuse of Dextromethorphan Sold Over the Internet*, found at https://www.researchgate.net/publication/24037337_Five_Deaths_Resulting_from_Abuse_of_Dextromethorphan_Sold_Over_the_Internet, (last visited on January 6, 2016).
[5] The Morning Call, *Moore teen who drove high on 'poor man's PCP,' killing 2, pleads guilty*," found at http://www.mcall.com/news/breaking/mc-moore-township-teen-killed-two-while-driving-high-cough-syrup-20151023-story.html, (last visited on January 6, 2016).

Dependence:
The level and likelihood of experiencing addiction to DXM depends upon the dose and frequency of the use by an individual. High dose chronic use of DXM can lead to toxic psychosis, a mental condition which is characterized by loss of contact with reality and confusion, as well as other physiological and behavioral problems.[6]

Regulation:
The sale of DXM directly to consumers is not regulated by the state of Florida or the Federal government. It is not considered a controlled substance that would require a prescription. The Federal Drug Administration approved DXM in 1958 as an OTC cough suppressant. During the 1960s and 70s, DXM was available OTC in tablet form by the brand name of Romilar. In 1975, the extensive abuse of Romilar was recognized, and the medication was removed from the OTC market. However, DXM was specifically excluded from the 1970 Controlled Substances Act (CSA), which required the regulation of manufacture, importation, possession, use, and distribution of certain medications. Because DXM was excluded from the CSA, it remained legal to produce and sell in OTC medications, thus it was still readily available for abuse. Shortly after the removal of Romilar from the market, other pharmaceutical companies introduced other medications, including various cough syrups, which included DXM.[7] These new medications were allegedly designed to limit recreation use by creating an unpleasant taste if consumed in large quantities. However, shortly after their introduction, many of the companies introduced more tolerable flavors in order to increase sales of their products.[8]

Currently, larger retailers such as Target, Walgreens, and CVS already prohibit their employees from selling DXM-related products to persons under the age of 18. Therefore, the possible violations of this provision are likely to be related to the sale of DXM-related products from smaller retailers or retailers that do not specialize in the sale of OTC medications and do not currently require age verification prior to sale.

Effect of the Bill

The bill restricts the sale of a "finished drug product" that contains DXM to persons younger than the age of 18. The term "finished drug product" is defined to mean a drug legally marketed under the Federal Food, Drug, and Cosmetic Act that is in finished dosage form. The term "drug" is defined pursuant to s. 499.003(18), F.S.

The bill specifies that a manufacturer, distributor, retail entity, or its employee or representative is prohibited from knowingly or willfully selling a finished drug product that contains any quantity of DXM to a person younger than 18 years old. Additionally, the bill prohibits a person younger than 18 years of age from purchasing a finished drug product that contains any quantity of DXM.

The employee or representative making the sale of the finished drug product that contains DXM is required to obtain proof of age from the purchaser prior to completing the sale, unless the person making the sale could reasonably presume from the consumer's outward appearance that the consumer is 25 years old or older. "Proof of age" is defined to mean any document issued by a governmental agency that contains the date of birth and a description or photograph of the person purchasing the finished drug product. The term includes, but is not limited to, a passport, United States Armed Services identification card, driver license, or an identification card issued by this state or another state of the United States.

[6] Jaffe, J.H. (ed). (1995). Encyclopedia of Drugs and Alcohol, Vol. 1. Simon & Schuster MacMillan: New York. (Id. Footnote 1).
[7] Id. at 1.
[8] Id. at 1.

The bill provides for the following fines to be paid by entities or individuals in violation of these requirements:

- A manufacturer, distributor, or retailer whose employee sells to a consumer under the age of 18 during the course of employment or in association with the manufacturer, distributor, or retailer, is subject to:
  - A warning for the initial violation at each sales location;
  - A $100 fine for any subsequent violations at each sales location.

  Note: The manufacturer, distributor, or retailer may avoid the fine if it can demonstrate a good faith effort to comply with the requirements.
- A person who possesses or receives a finished drug product that contains DXM with the intent to distribute it to a person under the age of 18 is subject to a fine of $25.
- An employee or representative of a manufacturer, distributor, or retailer who sells to a person under the age of 18 during the course of employment is subject to a warning.

The civil penalties issued shall accrue and may be recovered in a civil action brought by the local jurisdiction. The civil penalty issued to the person in possession with the intent to distribute must include information regarding how to dispute the penalty, and shall clearly state that the violation is a noncriminal violation. The civil penalty issued to the manufacturer, distributor, or retailer must include:

- The date and approximate time of the sale in violation of this section;
- The location of the sale, including the address;
- The name of the employee or representative that completed the sale;
- Information regarding how to dispute the penalty; and
- Notice that the violation is a noncriminal violation.

The civil penalty issued to the manufacturer, distributor, or retailer must be provided to the manager on duty. If no manager on duty is available, the law enforcement officer may attempt to contact the manager. If the attempt to contact fails, a copy of the penalty may be given to the employee and a copy mailed the owner's business address as filed with the Department of State or the law enforcement officer may return for service to the manager at a later time.

The civil penalty may be disputed by the recipient of the penalty. In order to dispute, the recipient must provide notice of a dispute to the clerk of the county court in the jurisdiction in which the violation occurred within 15 days of receipt of the penalty. The local jurisdiction then must hold a hearing in a court of competent jurisdiction. If the court finds in favor of the jurisdiction, the jurisdiction can then recover the fine.

The requirements of the bill do not:

- Restrict on the placement of finished drug products that contain DXM in a retail store, restrict direct access of consumers to the finished drug product, or require the maintenance of transaction records;
- Create a criminal violation; or
- Apply to a medication that contains DXM that is sold pursuant to a prescription.

The bill preempts any ordinance regulating the sale, distribution, receipt, or possession of DXM which may be enacted by a county, municipality, or other political subdivision of the state. DXM is not subject to further regulation by such political subdivisions.

B. SECTION DIRECTORY:

Section 1 restricts the sale of a "finished drug product" that contains dextromethorphan to persons over the age of 18.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill provides for local jurisdictions to recover the fines after the issuance of penalties by local law enforcement officers to persons who violate this provision. Therefore, there may be a minimal increase in revenues for local governments that receive payment for the fines, though the amount is difficult to determine and would likely be minimal due to the anticipated low number of citations issued.

2. Expenditures:

   Local law enforcement offices would be required to issue citations for the violations. Because the possible violations of this provision are likely to be related to the sale of DXM related products from smaller retailers, and the officers would need to be present or run a sting in order to catch a violation, the number of violations is likely to be low. Local law enforcement agencies likely will be able to meet these requirements with existing resources. Any projected expenditures by local governments should be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private entities would be required to train their employees to check the identifications of individuals purchasing certain medications. If there is a cost to this additional training, it should be minimal.

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:

The bill neither authorizes nor requires implementation by administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 12, 2016, the Business & Professions Subcommittee adopted a strike-all amendment and an amendment to the strike-all and reported the bill favorably as a committee substitute. The amendments:

- Create s. 501.975, F.S., placing the language in the Consumer Protection chapter of the Florida Statutes.
- Clarify the definition of "drug".
- Update the term "proof of age" to mirror the identification requirements for the sale of tobacco.
- Extend the prohibition to sell to include manufacturers, distributors, retailers and their employees and representatives.
- Clarify that the violation is non-criminal.
- Clarify that failure to pay the required fine issued for a violation will subject the person to civil recovery by the local jurisdiction.
- Provide due process for individuals or entities to dispute the violation in county court.
- Provide enforcement by local law enforcement.
- Remove penalties for underage purchasers or employees in violation of this section.
- Provide a warning for any violations by employees and for first violations by distributors, manufacturers, and retailers.
- Provide a $100 fine for any subsequent violation by distributors, manufacturers, and retailers.

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to the retail sale of dextromethorphan; providing definitions; prohibiting a manufacturer, distributor, or retailer, or its employees and representatives, from knowingly or willfully selling a finished drug product containing dextromethorphan to a person younger than 18 years of age; prohibiting a person younger than 18 years of age from purchasing a finished drug product containing dextromethorphan; requiring an employee or representative of a retailer making a retail sale of a finished drug product containing any quantity of dextromethorphan to obtain certain proof of age from the purchaser; providing an exception; providing penalties; providing requirements for imposing or disputing civil penalties; specifying information to be provided in notices of such penalties; providing applicability; preempting local government regulation of dextromethorphan; providing an effective date.

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

Section 1. Restrictions on sale of dextromethorphan.-

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

(a) "Finished drug product" means a drug legally marketed under the Federal Food, Drug, and Cosmetic Act that is in

finished dosage form. For purposes of this section, the term "drug" has the same meaning as provided in s. 499.003(18).

(b) "Proof of age" means any document issued by a governmental agency that contains the date of birth and a description or photograph of the person purchasing the finished drug product. The term includes, but is not limited to, a passport, a driver license, or an identification card issued by this state, another state, or any branch of the United States Armed Forces.

(2)(a) A manufacturer, distributor, or retailer, or its employees and representatives, may not knowingly or willfully sell a finished drug product containing any quantity of dextromethorphan to a person younger than 18 years of age.

(b) A person younger than 18 years of age may not purchase a finished drug product containing any quantity of dextromethorphan.

(3) An employee or representative of a retailer making a retail sale of a finished drug product containing any quantity of dextromethorphan must require and obtain proof of age from the purchaser before completing the sale, unless from the purchaser's outward appearance the person making the sale would reasonably presume the purchaser to be 25 years of age or older.

(4)(a) Each sales location of a manufacturer, distributor, or retailer whose employee or representative, during the course of the employee's or representative's employment or association with the manufacturer, distributor, or retailer, sells

dextromethorphan in violation of this section is subject to a written warning for an initial violation or, for each subsequent violation, a civil penalty of not more than $100, which shall accrue and may be recovered in a civil action brought by the local jurisdiction. A manufacturer, distributor, or retailer who demonstrates a good faith effort to comply with this section is not subject to the civil penalty.

(b) An employee or representative of a manufacturer, distributor, or retailer who, during the course of the employee's or representative's employment or association with the manufacturer, distributor, or retailer, sells dextromethorphan in violation of this section is subject to a written warning.

(c) A person who possesses or receives dextromethorphan with the intent to distribute to a person younger than 18 years of age in violation of this section is subject to a civil penalty of not more than $25 for each violation, which shall accrue and may be recovered in a civil action brought by the local jurisdiction. Notice of a civil penalty issued to a person pursuant to this paragraph shall include information regarding how to dispute the civil penlaty and shall clearly state that the violation is a noncriminal violation.

(5) Notice of a civil penalty issued to a manufacturer, distributor, or retailer pursuant to this section shall be provided to the manager on duty at the time the notice is issued. If a manager is not available, a local law enforcement

officer shall attempt to contact the manager to issue the notice. If the local law enforcement officer is unsuccessful in contacting the manager, he or she may leave a copy of the notice with an employee and mail a copy of the notice to the owner's business address, as filed with the Department of State, or he or she may return to issue the notice at a later time. A notice of civil penalty shall provide:

(a) The date and approximate time of the sale in violation of this section.

(b) The location of the sale, including the address.

(c) The name of the employee or representative that completed the sale.

(d) Information regarding how to dispute the civil penalty.

(e) Notice that the violation is a noncriminal violation.

(6) To dispute the civil penalty, the recipient of the notice must notify the clerk of the county court in the jurisdiction in which the violation occurred of the dispute in writing within 15 days after receipt of the notice. The local jurisdiction, through its duly authorized officers, shall hold a hearing in the court of competent jurisdiction when a notice of a violation of this section is issued, when the violation is disputed, and when the recipient is issued the notice of civil penalty by a local law enforcement officer employed by or acting on behalf of the jurisdiction. If the court finds in favor of the jurisdiction, the court shall require payment of the civil

penalty as provided in this section.

(7) This section shall be applied uniformly throughout the state. Enforcement of this section shall remain with local law enforcement departments and officials charged with the enforcement of the laws of the state.

(8) This section does not:

(a) Impose any restriction on the placement of products in a retail store, direct access of customers to finished drug products, or the maintenance of transaction records.

(b) Apply to a medication containing dextromethorphan that is sold by a retailer pursuant to a valid prescription.

(c) Create a criminal violation. A person who violates this section commits a noncriminal violation as defined in s. 775.08(3).

(9) This section preempts any ordinance regulating the sale, distribution, receipt, or possession of dextromethorphan enacted by a county, municipality, or other political subdivision of the state, and dextromethorphan is not subject to further regulation by such political subdivisions.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 717 Consumer Credit
SPONSOR(S): Insurance & Banking Subcommittee; Burgess and others
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	11 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee		Bauer GB	Hamon K.W.H.

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.

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:

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[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 MLA[9]:

- 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,

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[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.

A bill to be entitled

An act relating to consumer credit; amending s. 516.07, F.S.; authorizing the Office of Financial Regulation to deny a license or take disciplinary action against a person who violates the Military Lending Act or the regulations adopted under that act in connection with a consumer finance loan under the Florida Consumer Finance Act; amending s. 537.013, F.S.; prohibiting a title loan lender or its agent or employee from violating the Military Lending Act or the regulations adopted under that act; amending s. 560.114, F.S.; authorizing the office to take disciplinary action or deny a license of a money services business, authorized vendor, or affiliated party in connection with a deferred presentment transaction for violating the Military Lending Act or the regulations adopted under that act; creating s. 655.035, F.S.; authorizing the office to conduct an investigation to determine whether a person is violating the Military Lending Act or the regulations adopted under that act; authorizing the office to seek specified remedies for such violations; providing applicability; providing an effective date.

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

Section 1. Paragraph (q) is added to subsection (1) of section 516.07, Florida Statutes, to read:

516.07 Grounds for denial of license or for disciplinary action.—

(1) The following acts are violations of this chapter and constitute grounds for denial of an application for a license to make consumer finance loans and grounds for any of the disciplinary actions specified in subsection (2):

(q) Violating any provision of the Military Lending Act, 10 U.S.C. s. 987, or the regulations adopted under that act in 32 C.F.R. part 232, in connection with a consumer finance loan made under this chapter.

Section 2. Paragraph (o) is added to subsection (1) of section 537.013, Florida Statutes, to read:

537.013 Prohibited acts.—

(1) A title loan lender, or any agent or employee of a title loan lender, shall not:

(o) Violate any provision of the Military Lending Act, 10 U.S.C. s. 987, or the regulations adopted under that act in 32 C.F.R. part 232, in connection with a title loan made under this chapter.

Section 3. Paragraph (cc) is added to subsection (1) of section 560.114, Florida Statutes, to read:

560.114 Disciplinary actions; penalties.—

(1) The following actions by a money services business, authorized vendor, or affiliated party constitute grounds for

the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or taking any other action within the authority of the office pursuant to this chapter:

(cc) Violating any provision of the Military Lending Act, 10 U.S.C. s. 987, or the regulations adopted under that act in 32 C.F.R. part 232, in connection with a deferred presentment transaction conducted under part IV of this chapter.

Section 4. Section 655.035, Florida Statutes, is created to read:

655.035 Military lending.—Pursuant to s. 655.032, the office may conduct an investigation that it deems necessary to determine whether a financial institution, a subsidiary, a service corporation, an affiliate, or other person is engaging in or has engaged in conduct that violates any provision of the Military Lending Act, 10 U.S.C. s. 987, or the regulations adopted under that act in 32 C.F.R. part 232. If the office has reason to believe that a person has violated any such provision or regulation, the office may initiate a proceeding against such person in accordance with s. 655.033, s. 655.034, s. 655.037, or s. 655.041.

Section 5. This act 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.

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/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	12 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee		Bauer	Hamon

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 transaction[2] 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]

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[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/2009gbforum/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]

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[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 as a "dealer" in which the dealer has an office or engages in business with the state.[14] 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.[15] State dealer 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.[16] All dealer registration fees become revenue of the state, except for that portion of the registration fees that are assessments for purposes of the Securities Guaranty Fund.[17]

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).[18] It is important to note that exempt securities are still subject to the Act's anti-fraud and boiler room provisions.[19]

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.

Dealers 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.[20] Civil remedies under the act include rescission and damages.[21] 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 or dealer* exemption in the Act.

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[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. 517.021(6), F.S. (definition of "dealer").

[15] s. 517.12, F.S.

[16] *Id.* and s. 517.161, F.S.

[17] ss. 517.12(10) and 517.131(1), F.S.

[18] 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.

[19] s. 517.061; *see* ss. 517.301, 517.311, and 517.312, F.S.

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

[21] 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.[22] 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.[23]

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) 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.

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[22] On file with the Insurance & Banking Subcommittee staff.

[23] 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.

- 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.[24]

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 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.[25]

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.[26]

[24] Office of Financial Regulation, Agency Analysis of 2016 House Bill 817, pp. 2-3 (Dec. 29, 2015).
[25] Email correspondence with the Office of Financial Regulation (Jan. 19, 2016) on file with the Government Operations Appropriations Subcommittee.
[26] *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.

A bill to be entitled

An act relating to merger and acquisition brokers; amending s. 517.061, F.S.; providing an exemption from certain requirements for the registration with the Office of Financial Regulation of a specified offer or sale of securities; amending s. 517.12, F.S.; providing definitions; requiring a merger and acquisition broker to receive certain written assurances from a specified person before completion of specified securities transactions; providing an exemption from certain requirements for the registration with the office of a merger and acquisition broker under certain circumstances; specifying disqualifying conditions for the exemption; providing an effective date.

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

Section 1. Subsection (22) is added to section 517.061, Florida Statutes, to read:

517.061 Exempt transactions.—Except as otherwise provided in s. 517.0611 for a transaction listed in subsection (21), the exemption for each transaction listed below is self-executing and does not require any filing with the office before claiming the exemption. Any person who claims entitlement to any of the exemptions bears the burden of proving such entitlement in any

proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to the provisions of ss. 517.301, 517.311, and 517.312:

(22) The offer or sale of securities, solely in connection with the transfer of ownership of an eligible privately held company, through a merger and acquisition broker in accordance with s. 517.12(22).

Section 2. Subsection (22) is added to section 517.12, Florida Statutes, to read:

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

(22)(a) As used in this subsection, the term:

1. "Broker" has the same meaning as the term "dealer" as defined in s. 517.021.

2. "Control person" means an individual or entity that possesses the power, directly or indirectly, to direct the management or policies of a company through ownership of securities, by contract, or otherwise. A person is presumed to be a control person of a company if, with respect to a particular company, the person:

a. Is a director, general partner, member, or manager of a limited liability company, or is an officer who exercises executive responsibility or has a similar status or function;

b. Has the power to vote 20 percent or more of a class of voting securities or has the power to sell or direct the sale of

20 percent or more of a class of voting securities; or

c. In the case of a partnership or limited liability company, may receive upon dissolution, or has contributed, 20 percent or more of the capital.

3. "Eligible privately held company" means a company that meets all of the following conditions:

a. The company does not have any class of securities which is registered, or which is required to be registered, with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., or with the office under s. 517.07, or for which the company files, or is required to file, summary and periodic information, documents, and reports under s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d).

b. In the fiscal year immediately preceding the fiscal year during which the merger and acquisition broker begins to provide services for the securities transaction, the company, in accordance with its historical financial accounting records, had earnings before interest, taxes, depreciation, and amortization of less than $25 million or had gross revenues of less than $250 million. On July 1, 2016, and every 5 years thereafter, each dollar amount in this sub-subparagraph shall be adjusted by dividing the annual value of the Employment Cost Index for wages and salaries for private industry workers, or any successor index, as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the

adjustment is being made, by the annual value of such index or successor index for the calendar year ending December 31, 2012, and multiplying such dollar amount by the quotient obtained. Each dollar amount determined under this sub-subparagraph shall be rounded to the nearest multiple of $100,000.

4. "Merger and acquisition broker" means any broker and any person associated with a broker engaged in the business of effecting 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.

5. "Public shell company" means a company that, at the time of a transaction with an eligible privately held company:

a. Has any class of securities which is registered, or which is required to be registered, with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., or with the office under s. 517.07, or for which the company files, or is required to file, summary and periodic information, documents, and reports under s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d);

b. Has nominal or no operations; and

c. Has nominal assets or no assets, assets consisting

solely of cash and cash equivalents, or assets consisting of any amount of cash and cash equivalents and nominal other assets.

(b) Before completion of any securities transaction described in s. 517.061(22), a merger and acquisition broker must receive written assurances from the control person with the largest percentage of ownership for both the buyer and seller engaged in the transaction that:

1. After the transaction is completed, any person who acquires securities or assets of the eligible privately held company, acting alone or in concert, will be a control person of the eligible privately held company or will be a control person for the business conducted with the assets of the eligible privately held company; and

2. If any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, before becoming legally bound to complete the transaction, receive or be given reasonable access to the most recent year-end financial statements of the issuer of the securities offered in exchange. The most recent year-end financial statements shall be customarily prepared by the issuer's management in the normal course of operations. If the financial statements of the issuer are audited, reviewed, or compiled, the most recent year-end financial statements must include any related statement by the independent certified public accountant; a balance sheet dated not more than 120 days before the date of the exchange offer; and information

pertaining to the management, business, and results of operations for the period covered by the foregoing financial statements, and material loss contingencies of the issuer.

(c) A merger and acquisition broker engaged in a transaction exempt under s. 517.061(22) is exempt from registration under this section unless the merger and acquisition broker:

1. Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction;

2. Engages on behalf of an issuer in a public offering of any class of securities which is registered, or which is required to be registered, with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., or with the office under s. 517.07; or for which the issuer files, or is required to file, periodic information, documents, and reports under s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d);

3. Engages on behalf of any party in a transaction involving a public shell company;

4. Is subject to a suspension or revocation of registration under s. 15(b)(4) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(b)(4);

5. Is subject to a statutory disqualification described in s. 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. s.

78c(a)(39);

6. Is subject to a disqualification under United States Securities and Exchange Commission Rule 506(d), 17 C.F.R. s. 230.506(d); or

7. Is subject to a final order described in s. 15(b)(4)(H) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(b)(4)(H).

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

REGULATORY AFFAIRS COMMITTEE

CS/HB 817 by Rep. Raulerson
Merger and Acquisitions Brokers

AMENDMENT SUMMARY
February 4, 2016

Amendment 1 by Rep. Raulerson (line 73): Revises the next date that the gross revenue threshold may be adjusted from July 1, 2016 to July 1, 2021.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 817 (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	_____

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Raulerson offered the following:

Amendment

Remove line 73 and insert:

million. On July 1, 2021, and every 5 years thereafter, each

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 931 Operations of Citizens Property Insurance Corporation
SPONSOR(S): Insurance & Banking Subcommittee; Passidomo and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 958

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Peterson	Luczynski
2) Regulatory Affairs Committee		Peterson KP	Hamon K.W.H.

SUMMARY ANALYSIS

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company.

By law, Citizens is required to adopt programs to reduce the number of insured properties and to decrease its financial exposure. The depopulation program, as it is known, encourages insurance companies licensed in Florida to assume policies currently covered by Citizens, thus reducing Citizens' policy count and exposure.

A second program, the Clearinghouse was created by the Legislature in 2013 to ensure that new applications for insurance through Citizens and policies that are coming up for renewal are assessed to determine if appropriate coverage is available in the private market. A new policy is ineligible for coverage in Citizens if a private company offers comparable coverage with a premium that is up to 15 percent higher than the Citizens premium. A policy is ineligible for renewal coverage through Citizens if a private company offers comparable coverage at or below Citizens' premium.

Current law allows Citizens to share confidential underwriting and claims files with an insurer that is contemplating underwriting a risk insured by the corporation, provided the insurer executes a notarized agreement to retain their confidentiality. The corporation may also make specified information from the underwriting and claims files available to general lines insurance agents. The law requires the agent to keep the information confidential.

The bill expands the list of who may receive information from the confidential underwriting and claims files to include an entity that has obtained a permit to become an authorized insurer, a reinsurer, a licensed reinsurance broker, a licensed rating organization, or a modeling company. The information may be used by these entities for the sole purposes of analyzing risks for underwriting or developing rating plans in the private insurance market and must be kept confidential. The bill narrows the authorized uses of the data by agents to use in developing a takeout plan or analyzing risks for underwriting. In addition, the bill expressly prohibits the use of the data by any of the authorized users for direct solicitation of policyholders.

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

The bill provides for an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company.

Citizens was created in 2002 when the Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (FRPCJUA) and the Florida Windstorm Underwriting Association (FWUA). The FRPCJUA provided full-coverage personal and commercial residential property policies in all counties of Florida, while the FWUA provided personal and commercial residential property wind-only coverage in designated territories.

Citizens writes property insurance in three separate accounts:[1]

- Personal Lines Account – personal residential[2] multiperil[3] policies.
  - With wind coverage, on properties located outside the Coastal Account area; and
  - Without wind coverage, on properties located within the Coastal Account Area.
- Commercial Lines Account – commercial residential[4] and commercial non-residential policies.
  - With wind coverage, on properties located outside the Coastal Account area; and
  - Without wind coverage, on properties located within the Coastal Account Area.
- Coastal Account – personal residential, commercial residential, and commercial non-residential wind-only[5] and multiperil policies[6] for properties in limited eligible coastal areas.[7]

At the time of its creation, Citizens handled approximately 602,000 policies. The policy count peaked in November 2012 at nearly 1.5 million, but has dropped to just over 500,000.[8]

Depopulation

By law, Citizens is required to adopt programs to reduce the number of insured properties and to decrease its financial exposure.[9] The depopulation program, as it is known, encourages insurance companies licensed in Florida to assume policies currently covered by Citizens, thus reducing Citizens' policy count and exposure.[10] Depopulation has been accomplished almost exclusively by Florida domestic insurers—either those already in existence which have removed policies as part of an overall business plan, or those new domestic insurers created specifically to remove policies from Citizens.[11]

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[1] s. 627.351(6)(b)2., F.S.

[2] Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

[3] A multiperil policy is defined as a package policy, such as a homeowners or business insurance policy, that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. Multiperil property insurance policies may include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

[4] Commercial residential policies include condominium association, apartment building, and homeowner's association policies

[5] A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.

[6] Effective July 1, 2014, Citizens may no longer offer new commercial residential policies providing multiperil coverage, but may continue to renew existing policies. s. 627.351(6)(b)2.a.(III), F.S.

[7] These include areas eligible for coverage by the FWUA as those areas were defined on January 1, 2002. s. 627.351(6)(a)2., F.S.

[8] CITIZENS PROPERTY INSURANCE CORPORATION, *PIF Standard Summary By Product Line* (Dec. 31, 2015) (on file with the House Insurance & Banking Subcommittee).

[9] s. 627.351(q)3.a., F.S.

[10] *See generally* s. 627.3511, F.S.

[11] CITIZENS PROPERTY INSURANCE CORPORATION, *History of Depopulation* (Feb. 2012), *available at* https://www.citizensfla.com/about/mDetails_boardmtgs.cfm?show=PDF&link=/bnc_meet/docs/431/01A_Historical_Report_of_Depopulation_Activity.pdf&event=431&when=Past (last visited Jan. 12, 2016).

A Citizens policy that is assumed by a takeout company (TOC) is, as of the date of assumption, direct insurance issued by the TOC. The TOC is liable to pay any claims that may arise, although Citizens continues to service the policy. During the period before the policy expires, Citizens pays to the TOC the unearned premiums on the policy that it has received adjusted to reflect any changes in coverage or conditions as may occur during the period. Forty-five days before the Citizens policy expires, the TOC issues the initial offer on renewal coverage with the premium amount. At this time (or any time after the assumption and prior to the policy's expiration) the policyholder may return to Citizens, unless the Clearinghouse presents an offer of coverage with a premium equal to or less than the Citizens renewal premium.[12]

Citizens Clearinghouse

The Legislature created the Clearinghouse in 2013 to ensure that new applications for insurance through Citizens and policies that are coming up for renewal are assessed to determine if appropriate coverage is available in the private market. By law, a new policy is ineligible for coverage in Citizens if a private company offers comparable coverage with a premium that is up to 15 percent higher than the Citizens premium. A policy is ineligible for renewal coverage through Citizens if a private company offers comparable coverage at or below Citizens' premium. A policy that is taken out of Citizens at renewal through the Clearinghouse is eligible to return through the Clearinghouse if, during the 36 months after takeout, the new insurer increases the policyholder's rate more than 10 percent in any year. Under this provision, a policyholder would then return to Citizens, unless the policyholder receives a new offer in the private market at or below Citizens' rate. The reduction is the result of two initiatives: the depopulation program and, to a lesser degree, the Clearinghouse.

Underwriting Files of Citizens Property Insurance Corporation

Current law allows Citizens to share confidential underwriting and claims files with an insurer that is contemplating underwriting a risk insured by the corporation, provided the insurer executes a notarized agreement to retain their confidentiality. The corporation may also make specified information from the underwriting and claims files available to general lines insurance agents. Such information is limited to the name, address, and telephone number of the property owner or insured; the location of the risk; rating information; loss history; and policy type. The law requires the agent to retain the confidentiality of the information.

Effect of the Bill on Underwriting Files of Citizens Property Insurance Corporation

The bill expands the list of who may receive information from the confidential underwriting and claims files to include an entity that has obtained a permit to become an authorized insurer, a reinsurer, a licensed reinsurance broker, a licensed rating organization, or a modeling company. The information made available to these entities is the same information available to a licensed general lines agent. The information may be used by these entities for the sole purposes of analyzing risks for underwriting or developing rating plans in the private insurance market and must be kept confidential. The bill narrows the authorized uses of the data by agents to use in developing a takeout plan or analyzing risks for underwriting. In addition, the bill expressly prohibits the use of the data by any of the authorized users for direct solicitation of policyholders.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.351, F.S., relating to insurance risk apportionment plans.
Section 2: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

[12] CITIZENS PROPERTY INSURANCE CORPORATION, *Agent Technical Bulletin: New Process for Returning a Risk to Citizens After Assumption/Depopulation/Takeout*, ATB # 014-14 (September 16, 2014), *available at* https://www.citizensfla.com/agent/ac_techbulletins.cfm?show=pdf&year=2014&link=/shared/IE/IE002-14.pdf (last visited Jan. 12, 2016).

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:

Broader access to the data may facilitate greater participation in the Clearinghouse and depopulation programs.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 19, 2016, the Insurance & Banking Subommittee considered and adopted an amendment and reported the bill favorably as a committee substitute. The amendment corrected a drafting error by changing the term "an authorized insurer" to the term "an entity that has obtained a permit to become an authorized insurer."

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

A bill to be entitled

An act relating to operations of the Citizens Property Insurance Corporation; amending s. 627.351, F.S.; authorizing the use of specified information by certain entities in analyzing risks or developing rating plans; prohibiting the use of such information for the direct solicitation of policyholders; providing an effective date.

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

Section 1. Paragraph (x) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(x)1. The following records of the corporation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files. Confidential and exempt underwriting file records may also be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

b. Claims files, until termination of all litigation and

settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information that is exempt shall include, but is not limited to, information relating to workers' compensation, insurance benefits, and

retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty which affects the employee's job performance, all records relative to that participation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law shall be redacted.

2. If an authorized insurer is considering underwriting a risk insured by the corporation, relevant underwriting files and confidential claims files may be released to the insurer provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. If a file is transferred to an insurer, that file is no longer a public record because it is not held by an agency subject to the provisions of the public records law. Underwriting files and confidential claims files may also be released to staff and the

board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to licensed general lines insurance agents: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving licensed general lines insurance agent must retain the confidentiality of the information received and may use the information only for the purposes of developing a take-out plan to be submitted to the office for approval or otherwise analyzing the underwriting of a risk or risks insured by the corporation on behalf of the private insurance market. The licensed general lines agent and an insurer receiving information under this subparagraph may not use the information for the direct solicitation of policyholders. An entity that has obtained a permit to become an authorized insurer, a reinsurer that may provide reinsurance under s. 624.610, a licensed reinsurance broker, a licensed rating organization, or a modeling company may receive the information available to a licensed general lines agent for the

sole purpose of analyzing risks for underwriting or developing rating plans in the private insurance market and must retain the confidentiality of the information received. Such entities may not use the information for the direct solicitation of policyholders.

3. A policyholder who has filed suit against the corporation has the right to discover the contents of his or her own claims file to the same extent that discovery of such contents would be available from a private insurer in litigation as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law. Pursuant to subpoena, a third party has the right to discover the contents of an insured's or applicant's underwriting or claims file to the same extent that discovery of such contents would be available from a private insurer by subpoena as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law, and subject to any confidentiality protections requested by the corporation and agreed to by the seeking party or ordered by the court. The corporation may release confidential underwriting and claims file contents and information as it deems necessary and appropriate to underwrite or service insurance policies and claims, subject to any confidentiality protections deemed necessary and appropriate by the corporation.

4. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or

confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(d)-(f), the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

Section 2. This act shall take effect July 1, 2016.

REGULATORY AFFAIRS COMMITTEE

CS/HB 931 by Rep. Passidomo
Operations of the Citizens Property Insurance Corporation

AMENDMENT SUMMARY
February 4, 2016

Amendment 1 by Rep. Passidomo (strike-all amendment):

- Extends to the consumer representative on the Citizens board the same exemption from the conflict of interest statute that applies to the board members with insurance expertise.
- Requires Citizens to appoint only those agents who have and maintain at least one appointment with a separate insurer to write or to renew the types of policies offered by Citizens.
- Allows Citizens to use the public hurricane loss-projection model or other model approved by the Florida Commission on Hurricane Loss Projection Methodology to estimate windstorm rates.
- Adds requirements for providing information about competing offers and comparing rate and premium information to a policyholder and the agent of record before a policy may be taken out of Citizens through the depopulation program.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Affairs Committee

Representative Passidomo offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraphs (c), (n), and (x) of subsection (6) of section 627.351, Florida Statutes, are amended, and paragraph (ii) is added to that subsection, to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. Effective January 1, 2013, the corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of

losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of

hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence

of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of the state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope

of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff

as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service,

including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including

wind coverage unless rejected under subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15

percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the

standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or

area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the

corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015(3) by ~~with~~ an insurer who ~~at the time of the agent's initial appointment by the corporation~~ is authorized to write and is actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering that is constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least $3,000.

18. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

20. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios

that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

21. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgment and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of this subparagraph.

b. The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(n)1. Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing ~~serve as the minimum benchmark for determining~~ the windstorm portion of the corporation's rates. The corporation may use the public hurricane loss-projection model or other model or method found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology, and as further provided in 627.0628, to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The rate filings for the corporation which were approved by the office and took effect January 1, 2007, are rescinded, except for those rates that were lowered. As soon as possible, the corporation shall begin using the lower rates that were in effect on December 31, 2006, and provide refunds to policyholders who paid higher rates as a result of that rate filing. The rates in effect on December 31, 2006, remain in effect for the 2007 and 2008 calendar years except for any rate change that results in a lower rate. The next rate change that

may increase rates shall take effect pursuant to a new rate filing recommended by the corporation and established by the office, subject to this paragraph.

5. Beginning on July 15, 2009, and annually thereafter, the corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes, to be effective no earlier than January 1, 2010.

6. Beginning on or after January 1, 2010, and notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed 10 percent for any single policy issued by the corporation, excluding coverage changes and surcharges.

7. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

8. The corporation's implementation of rates as prescribed in subparagraph 6. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing for each commercial and personal line of business the corporation writes.

(x)1. The following records of the corporation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files. Confidential and exempt underwriting file records may also be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information that is exempt shall include, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty which affects the employee's job performance, all records relative to that participation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all

claims with regard to that claim, except that information otherwise confidential or exempt by law shall be redacted.

2. If an authorized insurer is considering underwriting a risk insured by the corporation, relevant underwriting files and confidential claims files may be released to the insurer provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. If a file is transferred to an insurer, that file is no longer a public record because it is not held by an agency subject to the provisions of the public records law. Underwriting files and confidential claims files may also be released to staff and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to licensed general lines insurance agents: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving licensed general lines insurance agent must retain the confidentiality of the information received and may use the information only for the purposes of

developing a take-out plan to be submitted to the office for approval or otherwise analyzing the underwriting of a risk or risks insured by the corporation on behalf of the private insurance market. The licensed general lines agent and an insurer receiving information under this subparagraph may not use the information for the direct solicitation of policyholders. An entity that has obtained a permit to become an authorized insurer, a reinsurer that may provide reinsurance under s. 624.610, a licensed reinsurance broker, a licensed rating organization, or a modeling company may receive the information available to a licensed general lines agent for the sole purpose of analyzing risks for underwriting or developing rating plans in the private insurance market and must retain the confidentiality of the information received. Such entities may not use the information for the direct solicitation of policyholders.

3. A policyholder who has filed suit against the corporation has the right to discover the contents of his or her own claims file to the same extent that discovery of such contents would be available from a private insurer in litigation as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law. Pursuant to subpoena, a third party has the right to discover the contents of an insured's or applicant's underwriting or claims file to the same extent that discovery of such contents would be available from a private insurer by subpoena as provided by the Florida Rules of

Civil Procedure, the Florida Evidence Code, and other applicable law, and subject to any confidentiality protections requested by the corporation and agreed to by the seeking party or ordered by the court. The corporation may release confidential underwriting and claims file contents and information as it deems necessary and appropriate to underwrite or service insurance policies and claims, subject to any confidentiality protections deemed necessary and appropriate by the corporation.

4. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(d)-(f), the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

(ii) The corporation shall revise the programs adopted pursuant to sub-subparagraph (6)(q)3.a. for personal lines

residential policies to maximize policyholder options and encourage increased participation by insurers and agents. After January 1, 2017, a policy may not be taken out from the corporation unless the provisions of this paragraph are met.

1. The corporation must publish a periodic schedule of cycles during which an insurer may identify, and notify the corporation of, policies which the insurer is requesting to take out. A request must include a description of the coverage offered and an estimated premium and shall be submitted to the corporation in a form and manner prescribed by the corporation.

2. The corporation shall maintain and make available to the agent of record a consolidated list of all insurers requesting to take out a policy which shall include a description of the coverage offered and the estimated premium for each take-out request.

3. The corporation shall provide written notice to the policyholder and the agent of record of all insurers requesting to take out the policy and of the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with the corporation. The notice must be in a format prescribed by the corporation and include, for each take-out offer:

a. The amount of the estimated premium;

b. A description of the coverage; and

c. A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage

764 provided by the corporation, including an explanation of
765 differences among the coverage offered by each insurer, and
766 differences between each insurer's coverage and the coverage
767 provided by the corporation.
768 Section 2. This act shall take effect July 1, 2016.
769
770 ----------
771 **T I T L E A M E N D M E N T**
772 Remove everything before the enacting clause and insert:
773 A bill to be entitled
774 An act relating to operations of the Citizens Property Insurance
775 Corporation; amending s. 627.351, F.S.; specifying that a
776 consumer representative appointed by the Governor to the
777 Citizens Property Insurance Corporation's board of governors is
778 not prohibited from practicing in a certain profession if
779 required or permitted by law or ordinance; revising the
780 requirements for licensed agents of the corporation; revising
781 provisions related to the corporation's use of certain public
782 and private hurricane loss-projection models in establishing
783 certain rates; authorizing the use of specified information by
784 certain entities in analyzing risks or developing rating plans;
785 prohibiting the use of such information for the direct
786 solicitation of policyholders; requiring the take-out program to
787 be revised for specified purposes by a specified date; requiring
788 the corporation to schedule cycles during which insurers may
789 identify and submit policy take-out requests; specifying

information required to be included in such requests; requiring the corporation to maintain and make available specified lists of insurers to its agents of record; requiring the corporation to provide policyholders and the agents of record with a specified notice regarding their policy renewal options; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1233 Federal Home Loan Banks
SPONSOR(S): Insurance & Banking Subcommittee; Stevenson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1490

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

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) charters and regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (Codes). The OFR ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness through regular examinations. These examinations measure the institutions' financial condition, and culminate in a highly confidential examination report, which in some instances, may result in a corrective or enforcement action. Currently, the Codes generally provide that OFR records related to investigations and reports of examination, operations, or condition are confidential and exempt from public records disclosure, with certain exceptions. One such exception states that the OFR is not prevented or restricted from furnishing records or information to "any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions, including Federal Home Loan Banks." However, the current statute does not clearly require or mandate that the OFR provide these records or information to those agencies or to the Federal Home Loan Banks (FHLBs). Secondly, the FHLBs are actually not federal financial institution regulators, resulting in some uncertainty regarding the OFR's ability to share confidential supervisory information with the FHLBs. While the OFR currently has information-sharing agreements with other federal financial institution regulators, it does not have any such agreements with the FHLBs.

Congress created FHLB System as a government-sponsored enterprise to provide liquidity support to the housing finance market and to promote community investment at the local level. It is comprised of 11 district FHLBs, which are wholly owned by members (financial institutions who make long-term mortgage loans and meet certain requirements), under the supervision of the Federal Housing Finance Agency (FHFA). In order to be eligible for FHLB membership, federal law requires that the institution agree that state and federal examination reports be provided to the FHLBs in order to determine its financial condition.

Due to this FHLB eligibility requirement and the ambiguity in the Codes, the bill clarifies that the OFR is not prevented or restricted from providing otherwise confidential information to any state, federal, or foreign agency responsible for the regulation or supervision of financial institutions. Secondly, the bill authorizes the OFR to furnish information to the FHLBs regarding its member institutions, in accordance with an information-sharing agreement between the FHLBs and the OFR. The bill requires the FHLBs and the OFR to execute the agreement by August 1, 2016.

The bill has no impact on local governments. It has an indeterminate impact to state government, in that the bill will require indeterminate staff time for redaction and legal review as part of the production process to the FHLBs, in order to comply with existing federal confidentiality restrictions and the OFR's information-sharing agreements with other agencies. It may have a positive impact to the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The U.S. Dual Banking System

The U.S. dual banking system allows commercial banks to become chartered (organized) under either federal or state law.

- *National banks* are chartered under federal law, i.e., the National Bank Act.[1] Their primary federal regulator is the Office of the Comptroller of the Currency (OCC), an independent agency within the U.S. Department of the Treasury.
- *State-chartered banks* are chartered under the laws of the state in which the bank is headquartered.
    - The primary federal regulator for state banks that are members of the Federal Reserve System is the Board of Governors of the Federal Reserve System (FRB).
    - The primary federal regulator for non-FRB member banks is the Federal Deposit Insurance Corporation (FDIC).[2]
- *Credit unions* may also be either state or federally chartered. Their primary federal regulator is the National Credit Union Administration.

In Florida, the Office of Financial Regulation (OFR) charters and regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (Codes) and the Florida Financial Institutions Rules.[3] The OFR does not regulate financial institutions that are nationally chartered or chartered in other states. In addition, the OFR does not regulate institutions that are chartered and regulated by foreign institutions, except to the extent those foreign institutions seek to engage in the business of banking or trust business in Florida.

The OFR ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness.[4] Like their federal counterparts, the OFR conducts regular examinations of Florida institutions. The Codes require the OFR to conduct examinations of each Florida financial institution during each 18-month period, although it may examine more frequently based on the institution's risk profile, prior exam history, or significant changes in the institution or its operations.[5] The examinations primarily review the institution's condition as to its Capital, Asset Quality, Management, Earnings, Liquidity, and Sensitivity (such as interest rate risk), based on a uniform supervisory rating system (CAMELS) that is used by state and federal financial institution regulators to classify a financial institution's overall condition.[6] Upon completion of the examination, the regulator presents its findings and recommended corrective measures to the institution through a highly confidential examination report.[7]

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[1] The National Bank Act of 1964 (12 U.S.C. § 24 Seventh) gives enumerated powers and "all such incidental powers as shall be necessary to carry on the business of banking" to nationally chartered banks.

[2] 12 U.S.C. §1813(q).

[3] Chs. 655, 657, 658, 660, 663, 665, and 667, F.S.; ch. 69U-100 through 69U-150, F.A.C.

[4] While the Codes do not specifically define "safety and soundness," s. 655.005(1)(y), F.S., defines "unsafe and unsound practice" as: [A]ny practice or conduct found by the office to be contrary to generally accepted standards applicable to a financial institution, or a violation of any prior agreement in writing or order of a state or federal regulatory agency, which practice, conduct, or violation creates the likelihood of loss, insolvency, or dissipation of assets or otherwise prejudices the interest of the financial institution or its depositors or members. In making this determination, the office must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved.

[5] s. 655.045(1), F.S.

[6] CAMELS is based on the Federal Financial Institutions Examination Council's Uniform Financial Institutions Rating System. Institutions are assessed on a 1 (best) to 5 (worst) rating system. *See* FDIC Financial Institution Letter FIL-105-96 (Dec. 26, 1996).

[7] s. 655.057(12)(a), F.S.

Confidentiality of Records and Information Held by the OFR

Currently, s. 655.057, F.S., governs the confidentiality of records and information relating to investigations, informal enforcement actions, trade secrets, and reports of examination, operations, or condition, including working papers of the OFR or any state or federal agency responsible for the regulation or supervision of financial institutions in Florida. It generally provides that OFR records related to investigations and reports of examination, operations, or condition are confidential and exempt from public records disclosure, with certain exceptions, such as publishing reports required by federal law or reporting suspected criminal activity to appropriate law enforcement and prosecutorial agencies.[8]

Another such exception is in subsection (5), which provides that the statute does not prevent or restrict the OFR from "[f]urnishing records or information to any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions, *including Federal Home Loan Banks*" (emphasis added). However, the current statute does not clearly require or mandate that the OFR provide these records or information to those agencies or to the Federal Home Loan Banks (FHLBs).

The OFR routinely shares confidential supervisory information with other federal and state agencies that are responsible for the regulation and supervision of financial institutions (such as the FDIC, the National Credit Union Administration, or the Financial Crimes Enforcement Network[9]), in accordance with memoranda of understanding (MOUs) that acknowledge the existing framework of federal and state laws and regulations which uniformly respect the confidential treatment that the documents or information would receive under the submitting agency's applicable confidentiality laws.[10] In particular, OFR reports of examination, described above, routinely contain confidential supervisory information obtained from other bank regulators, and the OFR is obligated to protect such information pursuant to federal confidentiality restrictions and these MOUs. Willful release of confidential information is a violation of s. 655.057(13), F.S., a third-degree felony. Similar federal criminal sanctions may also apply if confidential supervisory information owned by federal financial institution regulators is improperly released.

Despite the statute's inclusion of FHLBs as permissive recipients of confidential supervisory information along with other federal bank regulators, the FHLBs are actually *not* federal agencies responsible for the regulation of financial institutions,[11] but are eleven separate corporations owned by eligible financial institution members that collectively make up the FHLB System.[12] As a result, there is some uncertainty regarding the OFR's ability to share information with the FHLBs under s. 655.057, F.S. The OFR does not currently have an MOU with the FHLBs.

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[8] In addition, s. 119.0712(3), F.S., contains an OFR-specific public records exemption for any information received from or jointly developed with other state or federal regulatory, administrative, or criminal justice agencies.

[9] FinCEN is a bureau of the U.S. Department of Treasury that safeguards the U.S. financial system from illicit use, money laundering, and terrorist financing through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities. It administers portions of the federal Bank Secrecy Act and anti-money laundering regulations, which were significantly enhanced by the U.S. Patriot Act of 2001. The Codes and federal law require the OFR to monitor and assess state-chartered financial institutions' compliance with these laws, subject to significant federal confidentiality restrictions.

[10] *See, e.g.,* s. 655.057(9), F.S.; 12 C.F.R. pts. 261 and 309.

[11] Originally, the FHLBs were overseen by a FHLB Board, which was later abolished by the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and replaced by an independent agency, the Federal Housing Finance Board. In 2008, the Federal Housing Finance Agency became the successor regulatory agency with expanded legal and regulatory authority over government-sponsored enterprises Fannie Mae, Freddie Mac, and the FHLBs.

[12] In 1992, FHLBs were added to s. 655.057(5), F.S., as a permissible recipient of confidential information from the OFR, possibly as a result of the federal 1989 FIRREA amendments. Ch. 92-303, Laws of Fla.

Federal Home Loan Banks

In 1932, Congress created the FHLB System as a government-sponsored enterprise in order to provide liquidity to "building and loan institutions" and to support residential mortgage lending and community investment at a local level.[13] The FHLB System plays a critical role in the continuous flow of funds to the residential mortgage market. These funds originate with the sale of debt securities (i.e., consolidated obligations) in the capital markets. The proceeds of these sales are then loaned to member financial institutions, which in turn provide mortgage credit to homebuyers. While the Federal Home Loan Bank System mandate reflects a public purpose, each FHLB is privately capitalized and does not receive any taxpayer assistance.

Unlike the FDIC or the OCC, the FHLB System is not a federal regulatory agency, but is composed of eleven regional cooperative banks that are entirely owned by over 7,400 members, who are insured depositories like state or nationally chartered commercial banks, thrifts, and credit unions, in addition to insurance companies and community development financial institutions, that meet certain eligibility requirements. Each member is a shareholder in one of the regional FHLBs, which are privately capitalized, separate corporate entities operating in a cooperative structure.[14] Currently, 208 members of the FHLB of Atlanta are located in Florida, of which at least 124 are Florida banks and credit unions chartered and supervised by the OFR.[15]

Each regional FHLB is an individual corporate entity, which must meet strict management and capitalization criteria befitting its status as a government-sponsored enterprise. The federal regulator charged with overseeing the FHLBs is the Federal Housing Finance Agency (FHFA), and is thus considered a "federal agency responsible for the regulation of financial institutions" that the OFR is authorized by s. 655.057, F.S., to share certain confidential information. However, the OFR currently does not have a MOU with the FHFA.[16]

FHLB Membership Eligibility & Information

In order to be considered eligible for FHLB membership, federal law requires the institution to demonstrate compliance with certain financial condition requirements by providing documentation such as regulatory financial reports, financial statements, and regulatory examination reports.[17] Each potential member must agree to certain conditions, including that reports of examination by local, state, or federal agencies may be furnished by such authorities to the FHLB or the FHFA upon request.[18] According to the OFR, however, the laws pertaining to FHLBs do not address or protect the ownership or confidentiality of any information it may obtain from a state agency,[19] should a FHLB or the FHFA receive a Freedom of Information Act (FOIA) request.[20]

Effect of the Bill

The bill amends s. 655.057, F.S., to clarify that OFR is not prevented or restricted from providing otherwise confidential information to any state, federal, or foreign agency responsible for the regulation

[13] FHLBanks, *History of Service*, at http://www.fhlb-of.com/ofweb_userWeb/pageBuilder/mission--history-29 (last visited Jan. 20, 2016).
[14] FHLBANKS, *Membership*, at http://www.fhlb-of.com/ofweb_userWeb/pageBuilder/membership-32;jsessionid=7E92B18976B5D8609412906D810258BB (last visited Jan. 20, 2016).
[15] FHLBANK ATLANTA, *Find a Member Near You*, http://corp.fhlbatl.com/find-member/ (search conducted Jan. 21, 2016).
[16] Office of Financial Regulation, Agency Analysis of 2016 House Bill 1233 ("OFR Analysis"), p. 5 (Jan. 21, 2016).
[17] 12 U.S.C. §1424(a)(2)(B) and § 1263.6(a)(4); 12 C.F.R. § 1263.11.
[18] 12 C.F.R. § 1263.31(b).
[19] OFR Analysis, p. 5.
[20] FOIA does not apply to "matters that are...contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an *agency* responsible for the regulation or supervision of financial institutions." 5 U.S.C. § 522(b)(8). For purposes of FOIA, "agency" means authorities of the government of the United States (excluding its territories and possessions), but not of the states themselves.

or supervision of financial institutions. By, removing "including any Federal Home Loan Banks" from this provision, the bill correctly reflects the FHLBs' status as not being a federal financial institution regulator. Secondly, the bill authorizes the OFR to furnish information to the FHLBs regarding its member institutions, in accordance with an information-sharing agreement between the FHLBs and the OFR. The bill requires the FHLBs and the OFR to execute the agreement by August 1, 2016.

B. SECTION DIRECTORY:

Section 1. Amends s. 655.057, F.S., relating to records; limited restrictions upon public access.
Section 2. Requires the OFR to execute an information-sharing agreement with the FHLBs by August 1, 2016.
Section 3. 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:

As noted above, the OFR's examination reports routinely contain other regulators' confidential information, which the OFR protects pursuant to federal laws and information-sharing agreements with those regulatory agencies. These agreements contain specific limitations on what information can be shared. The OFR notes that if it provided unredacted examination reports to the FHFB as a result of the bill, it would be in breach of their agreements with these other regulatory agencies.

According to the OFR, the bill will require indeterminate staff time for redaction and legal review as part of the production process to FHLB, in order to comply with existing federal confidentiality restrictions and the OFR's information-sharing agreements with other agencies.[21] The bill's requirement of an information-sharing agreement should allow the OFR and the FHLBs to provide for the permissible use of supervisory information, restricted access, safekeeping, and other terms.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate but positive. The bill's clarification of the OFR's ability to share information with the FHLBs may expedite or facilitate financial institutions' new membership in the FHLBs and continued supervision by the FHFA.

D. FISCAL COMMENTS:

None.

[21] OFR Analysis, pp. 3-4.

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 25, 2016, the Insurance & Banking Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment clarified that the OFR's authority to share information with other state, federal, or foreign agencies responsible for the regulation or supervision of financial institutions no longer includes FHLBs, which correctly reflects the status of FHLBs as not being a financial institution regulator. The amendment also authorizes the OFR to furnish information to FHLBs regarding its member institutions, in accordance with an information-sharing agreement between the FHLBs and the OFR. The amendment requires the OFR to execute the information-sharing agreement with the FHLBs by August 1, 2016.

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

A bill to be entitled

An act relating to Federal Home Loan Banks; amending s. 655.057, F.S.; authorizing the Office of Financial Regulation to furnish certain information relating to Federal Home Loan Banks pursuant to an information sharing agreement; requiring the office to execute such agreement by a specified date; providing an effective date.

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

Section 1. Paragraph (b) of subsection (5) of section 655.057, Florida Statutes, is amended, and paragraph (f) is added to that subsection, to read:

655.057 Records; limited restrictions upon public access.—

(5) This section does not prevent or restrict:

(b) Furnishing records or information to any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions~~, including Federal Home Loan Banks~~.

(f) Furnishing information to Federal Home Loan Banks regarding its member institutions pursuant to an information sharing agreement between the Federal Home Loan Banks and the office.

Any confidential information or records obtained from the office

pursuant to this subsection shall be maintained as confidential and exempt from s. 119.07(1).

Section 2. The Office of Financial Regulation shall execute an information sharing agreement with the Federal Home Loan Banks for purposes of s. 655.057(5)(f), Florida Statutes, by August 1, 2016.

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1433 Martin County
SPONSOR(S): Magar
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	11 Y, 0 N	Renner	Miller
2) Regulatory Affairs Committee		Brown-Blake	Hamon K.W.H.
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

In 1963, the Legislature enacted ch. 63-1619, Laws of Florida (later amended by chs. 91-389 and 2011-246, Laws of Florida), to provide specific requirements regarding the issuance of Special Restaurant Beverage (SRX) licenses in Martin County. Under the special act, in Martin County SRX licenses may be issued to any bona fide hotel, motel, motor court, or to any bona fide restaurant with service for 200 or more patrons at tables and occupying more than 4,000 square feet of floor space, with the exception of the area within the legal boundaries of the community redevelopment areas (CRAs) for restaurants providing service for 150 or more patrons at tables and occupying more than 2,500 square feet of floor space.

The bill repeals chs. 63-1619, 91-389, and 2011-246, Laws of Florida, relating to the issuance of SRX licenses for hotels, motels, motor courts, and certain restaurants in Martin County. The issuance of subsequent SRX licenses in the county will be as provided under general law.

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

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Division of Alcoholic Beverages and Tobacco (DABT) of the Department of Business and Profession Regulation (DBPR) is responsible for the enforcement of Florida's Beverage Laws.[1]

Florida law limits the number of alcoholic beverage licenses that may be issued to one license for every 7,500 residents in a county, known as the "quota".[2] Special Restaurant Beverage (SRX) licenses may be issued in excess of the quota limitations in s. 561.20(1), F.S., and are regulated under Rule 61A-3.0141, F.A.C. To qualify for the SRX license, a restaurant must have a service area of at least 2,500 square feet, be equipped to serve at least 150 persons full meals at one time, and derive at least 51% of its revenue from the sale of food and nonalcoholic beverages.[3]

The specific requirements regarding the issuance of SRX licenses in Martin County are found in chs. 63-1619, 91-389, and 2011-246, Laws of Florida.

In Martin County, SRX licenses are issued to any bona fide hotel, motel, motor court, or to any bona fide restaurant with service for 200 or more patrons at tables and occupying more than 4,000 square feet of floor space, with the exception of the area within the legal boundaries of the community redevelopment areas (CRAs)[4] for restaurants providing service for 150 or more patrons at tables and occupying more than 2,500 square feet of floor space.

Licensees are prohibited from selling alcoholic beverages for consumption off the premises and from operating as a package store. The process for receiving SRX licenses includes obtaining approval from the Board of County Commissioners of Martin County, followed by applying to the Division within DBPR.

Effect of Proposed Changes

The bill repeals chs. 63-1619, 91-389, and 2011-246, Laws of Florida, relating to the issuance of SRX licenses for hotels, motels, motor courts, and certain restaurants in Martin County. The issuance of subsequent SRX licenses in the county will be as provided under general law.

B. SECTION DIRECTORY:

Section 1 Repeals chs. 63-1619, 91-389, and 2011-246, Laws of Florida, relating to the issuance of SRX licenses to hotels, motels, motor courts, and certain restaurants in Martin County.

Section 2 Provides the bill is effective upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? December 8, 2015

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[1] Chs. 561-568, F.S.
[2] Section 561.20(1), F.S.
[3] Section 561.20(2)(a)4., F.S.
[4] Martin County has seven CRA districts: Golden Gate, Hobe Sound, Indiantown, Jensen Beach, Old Palm City, Port Salerno, and Rio.

WHERE? *Treasure Coast Newspapers*, Martin County

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide authority or require implementation by administrative agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Rep McGriff
HB 1433 LB

TREASURE COAST NEWSPAPERS

1939 SE Federal Highway, Stuart, Florida 34994
Affidavit of Publication
TREASURE COAST NEWSPAPERS

MARTIN CO COMMISSIONERS
2401 SE MONTEREY RD
STUART FL 34996

REFERENCE: 435812
831366 LEGISLATION-ZUMMO

STATE OF FLORIDA
COUNTY OF MARTIN, ST. LUCIE and INDIAN RIVER
Before the undersigned authority personally appeared and who on oath says that he/she is the Acct Adv Clerk of Treasure Coast Newspapers which publishes 3 daily newspapers in Martin Cnty: The Stuart News; St Lucie Cnty: St Lucie News Tribune: and Indian River Cnty: The Indian River Press Journal. Affiant further states that these newspapers are published daily, with offices and paid circulation in said counties, and distributed in said counties for one year preceding the first publication of the attached copy of advertisement; and affiant further states that he/she has neither paid nor promised any erson, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper(s). These newspapers have been entered as second class matter at the post office of Martin, St. Lucie and Indian River counties and have been for a period of one year preceding the first publication of the attached copy of advertisement.

PUBLISHED ON:
12/08/15

AD SPACE: 5.0 INCHES
FILED ON: 12/08/15

Sworn to and subscribed before me this day of Dec 8 2015, by [signature], who is

X personally known to me or
who has produced _____ as identification.

Notary: [signature] My Comm.

LINDA RUFO
Notary Public - State of Florida
My Comm. Expires Oct 22, 2016
Commission # EE 212492
Bonded Through National Notary Assn.

NOTICE OF INTENT TO SEEK LEGISLATION

Notice is hereby given of intent to apply to the 2016 Legislature and any Special and Extended Sessions for passage of an act relating to Martin County, repealing chapter 63-1619, Laws of Florida, as amended by chapter 2011-246 and 91-389, relating to Special Restaurant License (SRX) requirements for Martin County; providing an effective date.

Martin County Board of County Commissioners
2401 SE Monterey Road, Stuart FL 34996

ELECTION 2016

ıds a waste of money?

THE ASSOCIATED PRESS

tial hopeful Donald Trump speaks Saturday in Davenport, Iowa.

f anything, I think attack ads would) stir ıp's base more and engage them more."

Curt Anderson, *voter at a Donald Trump rally*

tablishment rdless," said rofessor of University co. s in Daven- concur. obably want im more," Wheatland, hen asked ct of anti- loes, how- at negative ould hurt if it targets one specific group: evangelicals, who make up 60 percent of Iowa caucusgoers. Turning them against Trump by using targeted mailings might prove effective, Goldstein said, if the candidate's past positions on abortion rights and advocacy for a single-payer health care system were targeted.

"Why was advertising so devastating to Mitt Romney? Because at the end of the day Mitt Romney's main message was 'I'm a job creator' while the Obama message was 'No, you're a job destroyer,'" Goldstein said. "If Trump's big message is 'I'm aggressive, I'm tough, I'm conservative' then saying things that don't knock at his strengths may not matter."

Voters who said they would not be swayed by ads that focus on Trump's rhetoric on the trail would be more likely to look into whether the charges were true, Goldstein argues. Those in attendance at Trump's rallies over the weekend seemed to prove Goldstein's point.

"I think if I fact-checked it myself and looked into whatever negative aspect they are pointing out I would take that a lot more seriously," Ryan, 30, from Silvis, Ill., said.

NOTICE OF INTENT TO SEEK LEGISLATION

Notice is hereby given of intent to apply to the 2016 Legislature and any Special and Extended Sessions for passage of an act relating to Martin County, repealing chapter 63-1619, Laws of Florida, as amended by chapter 2011-246 and 91-389, relating to Special Restaurant License (SRX) requirements for Martin County; providing an effective date.

Martin County Board of County Commissioners
2401 SE Monterey Road, Stuart FL 34996

HOUSE OF REPRESENTATIVES

2016 LOCAL BILL CERTIFICATION FORM

BILL #: HB 1433

SPONSOR(S): Representative MaryLynn Magar

RELATING TO: Martin County Florida

[Indicate Area Affected (City, County, or Special District) and Subject]

NAME OF DELEGATION: Martin County Delegation

CONTACT PERSON: Ann Bodic

PHONE NO.: (772) 545-3481 **E-Mail:** Ann.Bodic@myfloridahouse.gov

I. ***House local bill policy requires the following steps must occur before a committee or subcommittee of the House considers a local bill:***
(1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level;
(2) The legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and
(3) The bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting.
(4) An Economic Impact Statement for local bills must be prepared at the local level and submitted to the Local Government Affairs Subcommittee. Under House policy, no local bill will be considered by a committee or subcommittee without an Economic Impact Statement.

(1) Does the delegation certify the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES ☑ NO ☐

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES ☑ NO ☐

Date hearing held: December 7, 2015

Location: Martin County Commission Chambers

(3) Was this bill formally approved by a majority of the delegation members?

YES ☑ NO ☐

(4) Was an Economic Impact Statement prepared at the local level and submitted to the Local Government Affairs Subcommittee?

YES ☐ NO ☐

II. ***Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.***

Has this constitutional notice requirement been met?

Notice published: YES ☑ NO ☐ **DATE** Dec 8, 2015

Where? TC Palm **County** Martin, St Lucie, P Bch

Referendum in lieu of publication: YES ☐ NO ☑

Date of Referendum _____

III. ***Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.***

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES ☐ NO ☑

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES ☐ NO ☑

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES ☐ NO ☐

Please submit this completed, original form to the Local Government Affairs Subcommittee.

Gayle B. Harrell
Delegation Chair (Original Signature)

1/12/2016
Date

Gayle B. Harrell
Printed Name of Delegation Chair

HOUSE OF REPRESENTATIVES

2016 ECONOMIC IMPACT STATEMENT FORM

Read all instructions carefully.
House local bill policy requires that no local bill will be considered by a committee or a subcommittee without an Economic Impact Statement. This form must be prepared at the LOCAL LEVEL by an individual who is qualified to establish fiscal data and impacts and has personal knowledge of the information given (for example, a chief financial officer of a particular local government). Please submit this completed, original form to the Local Government Affairs Subcommittee as soon as possible after a bill is filed. Additional pages may be attached as necessary.

BILL #: HB 1433

SPONSOR(S): Representative MaryLynn Magar, District 82

RELATING TO: Martin County – The repeal of chapter 63-1619, Laws of Florida, as amended by chapter 2011-246 and 91-389, relating to Special Restaurant License (SRX) requirements for Martin County.

[Indicate Area Affected (City, County or Special District) and Subject]

I. REVENUES:

These figures are new revenues that would not exist but for the passage of the bill. The term "revenue" contemplates, but is not limited to, taxes, fees and special assessments. For example, license plate fees may be a revenue source. If the bill will add or remove property or individuals from the tax base, include this information as well.

	FY 16-17	FY 17-18
Revenue decrease due to bill:	$ 0	$ 0
Revenue increase due to bill:	$ 0	$ 0

II. COST:

Include all costs, both direct and indirect, including start-up costs. If the bill repeals the existence of a certain entity, state the related costs, such as satisfying liabilities and distributing assets.

Expenditures for Implementation, Administration and Enforcement:

FY 16-17	FY 17-18
$	$

Please include explanations and calculations regarding how each dollar figure was determined in reaching total cost.

Martin County currently levies a one-time application processing fee of $390 for a county issued Special Liquor License. If the Legislature were to pass the local bill the county would no longer receive the fee - however, the staff time involved meets or at times exceeds the application fee (staff estimates that the total staff time per application is approximately 8 hours) and is the impact is thus revenue neutral.

III. FUNDING SOURCE(S):

State the specific sources from which funding will be received, for example, license plate fees, state funds, borrowed funds, or special assessments.

If certain funding changes are anticipated to occur beyond the following two fiscal years, explain the change and at what rate taxes, fees or assessments will be collected in those years.

	FY 16-17	FY 17-18
Local:	$ 0	$ 0
State:	$ 0	$ 0
Federal:	$ 0	$ 0

IV. ECONOMIC IMPACT:

Potential Advantages:

Include all possible outcomes linked to the bill, such as increased efficiencies, and positive or negative changes to tax revenue. If an act is being repealed or an entity dissolved, include the increased or decreased efficiencies caused thereby.

Include specific figures for anticipated job growth.

1. Advantages to Individuals: This bill will increase additional dining options for restaurant patrons in unincorporated Martin County.
2. Advantages to Businesses: This bill will increase business opportunities for restaurant operators, both new and current within unincorporated Martin County with the ability to operate full-service restaurants creating a level playing field for Martin County businesses.
3. Advantages to Government: The changes would eliminate additional regulation duplicative to services provided by other government agencies. This bill would make regulations in unincorporated Martin County consistent with the City of Stuart, Martin County's community redevelopment areas, and other jurisdictions within the State.

Potential Disadvantages:

Include all possible outcomes linked to the bill, such as inefficiencies, shortages, or market changes anticipated.

Include reduced business opportunities, such as reduced access to capital or training.

State any decreases in tax revenue as a result of the bill.

1. Disadvantages to Individuals: None foreseen

2. Disadvantages to Businesses: None foreseen

3. Disadvantages to Government: None foreseen

V. DESCRIBE THE POTENTIAL IMPACT OF THE BILL ON PRESENT GOVERNMENTAL SERVICES:

This bill will reduce staff time involved in meeting with the applicant, processing application, preparing the Board agenda item, review and approval of agenda and the meeting itself which frequently exceeds the application fee (staff estimates that the total staff time per application is approximately 8 hours), resulting in greater efficiency and less cost and time to the applicant.

VI. SPECIFIC DATA USED IN REACHING ESTIMATES:

Include the type(s) and source(s) of data used, percentages, dollar figures, all assumptions made, history of the industry/issue affected by the bill, and any audits.

Florida Statutes, Florida Administrative Code, Martin County Comprehensive Plan

Martin County Growth Management Department Staff Analysis of costs and efficiencies

VII. CERTIFICATION BY PREPARER

I hereby certify I am qualified to establish fiscal data and impacts and have personal knowledge of the information given. I have reviewed all available financial information applicable to the substance of the above-stated local bill and confirm the foregoing Economic Impact Statement is a true and accurate estimate of the economic impact of the bill.

PREPARED BY: _____
[Must be signed by Preparer]

Print preparer's name: Kate Parmelee

01/11/16
Date

TITLE (such as Executive Director, Actuary, Chief Accountant, or Budget Director):
Community & Strategic Partnerships Manager

REPRESENTING: Martin County Board of County Commissioners

PHONE: (772) 320-3095

E-MAIL ADDRESS: kparmele@martin.fl.us

A bill to be entitled

An act relating to Martin County; repealing chapters 63-1619, 91-389, and 2011-246, Laws of Florida, relating to the issuance of special alcoholic beverage licenses to hotels, motels, motor courts, and certain restaurants; providing an effective date.

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

Section 1. Chapters 63-1619, 91-389, and 2011-246, Laws of Florida, are repealed.

Section 2. This act shall take effect upon becoming a law.