Transportation & Tourism Appropriations Subcommittee

Tuesday, February 13, 2018
12:30 PM – 2:30 PM
Sumner Hall (404 HOB)

Meeting Packet

Richard Corcoran
Speaker

Clay Ingram
Chair

The Florida House of Representatives

Appropriations Committee

Transportation & Tourism Appropriations Subcommittee

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AGENDA
Tuesday, February 13, 2018
Sumner Hall (404 HOB)
12:30 PM – 2:30 PM

I. Call to Order/Roll Call

II. Opening Remarks by Chair Ingram

III. **Consideration of the following committee bills:**

CS/HB 633 Florida Smart City Challenge Grant Program by Transportation & Infrastructure Subcommittee, Fischer

CS/HB 661 Business Filings by Oversight, Transparency & Administration Subcommittee, Miller, M.

CS/HB 771 Notaries Public by Civil Justice & Claims Subcommittee, Grant, J.

CS/HB 987 Affordable Housing by Local, Federal & Veterans Affairs Subcommittee, Cortes, B.

HB 1281 Garcon Point Bridge by Williamson

CS/HB 6535 Relief/Estate of Dr. Sherrill Lynn Aversa/Department of Transportation by Civil Justice & Claims Subcommittee, Newton

IV. Closing Remarks and Adjournment

221 The Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4810

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 633 Florida Smart City Challenge Grant Program
SPONSOR(S): Transportation & Infrastructure Subcommittee; Fischer and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 852

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	13 Y, 0 N, As CS	Johnson	Vickers
2) Transportation & Tourism Appropriations Subcommittee		Davis	Davis
3) Government Accountability Committee			

SUMMARY ANALYSIS

In 2017, the Legislature created the Florida Smart City Challenge Grant Program requiring the Department of Transportation (DOT), in consultation with the Department of Highway Safety and Motor Vehicles (DHSMV), to develop the Florida Smart City Challenge Grant Program and establish grant award requirements for municipalities or regions. Grant applicants must demonstrate and document the adoption of emerging technologies and their impact on the transportation system and must address certain focus areas. However, the Governor vetoed the accompanying appropriation. The program expires on July 1, 2018.

The bill creates a permanent Florida Smart City Challenge Grant Program within DOT. Goals for the program include:

- Developing smart mobility solutions to local transportation challenges;
- Deploying technology with an immediate impact on moving people and goods, including the transportation disadvantaged;
- Advancing autonomous, connected and electric vehicle technologies, as well as other emerging technologies that support our workforce;
- Relying on renewable energy sources and electronic technologies; and
- Creating a mobility demonstration community in Florida.

The bill provides eligibility requirements and requires DOT to issue a request for proposal for the award of grants by September 1, 2018.

DOT may award grants of up to $6 million to up to three recipients. Grant funds may fund up to 50 percent of the cost of the project.

The bill provides various reporting requirements and requires DOT to provide administrative support for the program.

There is no appropriation to implement the grant program thus there is no fiscal impact.

The bill is effective July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Federal Program

The United States Department of Transportation (USDOT) launched a Smart City Challenge in December 2015. The challenge asked mid-sized cities "to develop ideas for an integrated, first-of-its-kind smart transportation system that would use data, applications, and technology to help people and goods move more quickly, cheaply, and efficiently."[1] USDOT committed up to $40 million to one winning city.[2] The USDOT received 78 applications from cities across the United States, including the following cities in Florida: Jacksonville, Miami, Orlando, St. Petersburg, Tallahassee, and Tampa.

Columbus, Ohio won the challenge by proposing "a comprehensive, integrated plan addressing challenges in residential, commercial, freight, and downtown districts using a number of new technologies, including connected infrastructure, an integrated data platform, autonomous vehicles, and more."[3] USDOT then worked with seven finalists to further develop the ideas proposed by the cities and, in October 2016, announced an additional $65 million in grants to support advanced technology transportation projects.

State Law

In 2017, the Legislature created the Florida Smart City Challenge Grant Program[4] and appropriated $325,000 for the program.[5] However, the Governor vetoed the appropriation.

The 2017 statute required the Department of Transportation (DOT), in consultation with the Department of Highway Safety and Motor Vehicles (DHSMV), to develop the Florida Smart City Challenge Grant Program and establish grant award requirements for municipalities or regions for the purpose of receiving grant awards. Grant applicants must demonstrate and document the adoption of emerging technologies and their impact on the transportation system and must address at least the following focus areas:

- Autonomous vehicles;
- Connected vehicles;
- Sensor-based infrastructure;
- Collecting and using data;
- Electric vehicles, including charging stations; and
- Developing strategic models and partnerships.[6]

The grant program goals include, but are not limited to:

- Identifying transportation challenges and identifying how emerging technologies can address those challenges.
- Determining the emerging technologies and strategies that have the potential to provide the most significant impacts.
- Encouraging municipalities to take significant steps to integrate emerging technologies into their day-to-day operations.

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[1] *See* USDOT website available at: https://www.transportation.gov/smartcity. (Last visited April 21, 2017).
[2] *See* USDOT website available at: https://www.transportation.gov/sites/dot.gov/files/docs/Smart%20City%20Challenge%20Lessons%20Learned.pdf. (Last visited April 21, 2017).
[3] *See* USDOT website available at: https://www.transportation.gov/smartcity/winner. (Last visited April 21, 2017).
[4] Chapters 2017-42 and 2017-71, L.O.F.
[5] Provisio language to Specific Appropriation 1869 (2017).
[6] Section 316.08098(1), F.S.

- Identifying the barriers to implementing the grant program and communicating those barriers to the Legislature and appropriate agencies and organizations.
- Leveraging the initial grant to attract additional public and private investments.
- Increasing the state's competitiveness in the pursuit of grants from the United States Department of Transportation, the United States Department of Energy, and other federal agencies.
- Committing to the continued operation of programs implemented in connection with the grant.
- Serving as a model for municipalities nationwide.
- Documenting the costs and impacts of the grant program and lessons learned during implementation.
- Identifying solutions that will demonstrate local or regional economic impact.[7]

DOT was required to develop eligibility, application, and selection criteria for the receipt of grants and a plan for the promotion of the grant program to municipalities or regions of this state as an opportunity to compete for grant funding, including the award of grants to a single recipient and secondary grants to specific projects of merit within other applications. DOT may contract with a third party that demonstrates knowledge and expertise in the focuses and goals of the program to provide guidance in the development of the requirements of the program.[8]

On or before January 1, 2018, DOT must submit the grant program guidelines and plans for promotion of the grant program to the Governor, the President of the Senate, and the Speaker of the House of Representatives.[9]

While the Governor vetoed the appropriated funds, the program remains in statute. The program expires, however, by its own terms on July 1, 2018.

Proposed Changes

The bill creates a permanent Florida Smart City Challenge Grant Program within DOT.

Program Goals

The grant program's goals include, but are not limited to:

- Providing opportunities to municipalities and other regions of the state to develop innovative smart mobility solutions to local transportation challenges.
- Deploying smart city technology that has an immediate impact on the safe and efficient movement of people and goods within municipalities and other regions of the state.
- Advancing autonomous, connected, and electric vehicle readiness and deployment throughout the state.
- Providing enhanced education and workforce development opportunities by deploying emerging technologies that support the state's future workforce.
- Meeting mobility needs of residents of this state, particularly transportation disadvantaged[10] persons by increasing access to and convenience of transportation within municipalities and other regions of the state.
- Facilitating the efficient movement within the state, especially in and around airports and seaports.
- Supporting the reduction or elimination of fossil fuel consumption by relying on renewable energy sources and electronic technologies.

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[7] Section 316.08098(2), F.S.
[8] Section 316.08098(3), F.S.
[9] Section 316.08098(4), F.S.
[10] Section 427.011(1), F.S., defines "transportation disadvantaged" as those persons who because of physical or mental disability, income status, or age are unable to transport themselves or to purchase transportation and are, therefore, dependent upon others to obtain access to health care, employment, education, shopping, social activities, or other life-sustaining activities, or children who are handicapped or high-risk or at-risk as defined in s. 411.202, F.S.

- Creating a smart mobility demonstration community in the state that serves as a model for municipalities and other regions nationwide.

Eligibility Requirements

The following entities may apply to DOT for a grant to fund projects under the Florida Smart City Challenge Grant Program:

- A state, county, municipal, regional, or other agency that is responsible for the movement of persons, goods, or services within a defined geographical region, including an entity created pursuant to Chs. 343, 348, or 349, F.S.[11]
- A metropolitan planning organization (MPO)[12] or transportation planning organization (TPO). Each entity responsible for deploying or operating the project on behalf of a MPO or TPO must submit a letter to DOT detailing its commitment to the implementation, operation, and maintenance of the project.
- A state university.

A grant application must have in place a plan or framework for the implementation of the proposed project in at least one of the following categories:

- Autonomous vehicle deployment or demonstration.
- Connected vehicle technology deployment.
- Shared mobility services innovation and deployment.
- Acceleration of the use for plug-in electric vehicles and electric charging infrastructure.

Proposals

By September 1, 2018, DOT must issue a request for proposals for the award of a Florida Smart City Challenge Grant. Each submitted proposal must include:

- A statement by the applicant certifying that the project will be implemented and operational within two years after receiving the grant.
- A plan for fulfilling documentation requirements under DOT's Statewide Systems Engineering Management Plan within such two-year period.
- A description of how operation and maintenance costs for the project will be funded in order to ensure that DOT's investment in the project is sustained.
- A plan for evaluation of the projects and the methods by which such evaluation will be shared with residents of the area served by the project.
- The procedures for integrating the project's transportation-related data in to DOT's Data Integration and Video Aggregation System.

Award of Grants

DOT may award a grant to a maximum of three recipients. Each award may not exceed $6 million. By January 1, 2019, DOT must distribute the award to each recipient.

The grant may fund up to 50 percent of the project's costs. Grant funds are exclusively for costs associated with implementing the project and may not be used for costs associated with operating, maintaining, or evaluating of the project.

In selecting grant recipients, DOT must prioritize proposals demonstrating the availability of matching funds from partner organizations to funds the remaining 50 percent of project costs and that include a plan for documenting the acquisition of matching funds. Matching funds includes in-kind services, goods, equipment, and other noncash contributions calculated at fair market value.

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[11] Chapter 343, F.S. creates various regional transportation authorities. Chapter 348, F.S., creates various expressway and bridge authorities. Chapter 349, F.S., creates the Jacksonville Transportation Authority.

[12] Metropolitan planning organizations are federally-mandated transportation planning organizations in urban areas with populations of greater than 50,000.

DOT must further prioritize those proposals that include matching funds from private-sector partner organizations; however, local public funds may also be used.

Matching funds may be used for costs associated with the operation, maintenance, and evaluation of the project.

A grant recipient receiving matching funds must document the contribution of such funds in a quarterly report detailing the manner in which the value of such contribution is calculated.

Reporting Requirements
Each grant program recipient must submit a quarterly report to DOT regarding the development, implementation, and operation of the project. The report must include information documenting matching funds.

DOT must submit a quarterly report to the President of the Senate and the Speaker of the House of Representatives regarding the overall status of the grant program.

After implementation of the project is complete, each grant recipient must submit an initial report to the President of the Senate and the Speaker of the House of Representatives detailing the project's impact on the transportation system within the area served by the project, the extent to which the goals of the grant program have been met, and recommendations for project revisions or improvements to guide future development activities. A final report must be submitted two years after submission of the initial report.

Administrative Support
The bill requires DOT to provide administrative support to the Florida Smart City Grant Program in order to facilitate the deployment of smart city technology within the state, including, but not limited to, expedited review of grant proposals.

B. SECTION DIRECTORY:

Section 1 creates s. 316.0899, F.S., creating the Florida Smart City Challenge Grant Program.

Section 2 provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill does not appropriate funds for the Florida Smart City Challenge Grant Program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Users of a grant-funded project may experience increased mobility, reduced traffic congestion, reduced travel costs, and positive environmental benefits. Private-sector partners who invest in such projects may benefit to the extent that the project receives state grant funding.

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 action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates a grant program and a process for receiving proposals and making awards, but there is no funding available to implement these requirements. Additionally, the bill requires proposals and awards by specific dates, September 2018 and January 2019 respectively, both of which will be difficult deadlines to meet in future years as there is no program sunset established.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 23, 2018, the Transportation & Infrastructure Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed a $15 appropriation for the Smart City Challenge Grant Program.

This analysis is drafted to the committee substitute as reported favorably by the Transportation & Infrastructure Subcommittee.

A bill to be entitled

An act relating to the Florida Smart City Challenge Grant Program; creating s. 316.0899, F.S.; creating the program within the Department of Transportation; providing program goals; providing grant eligibility requirements; requiring the department to issue a request for proposals; providing proposal requirements; providing requirements for award of grants and use of grant funds; providing reporting requirements; requiring administrative support by the department; providing an effective date.

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

Section 1. Section 316.0899, Florida Statutes, is created to read:

316.0899 Florida Smart City Challenge Grant Program.—

(1) CREATION; GOALS.—The Florida Smart City Challenge Grant Program is created within the Department of Transportation. The goals of the grant program include, but are not limited to:

(a) Providing opportunities to municipalities and other regions of the state to develop innovative smart mobility solutions to local transportation challenges.

(b) Deploying smart city technology that has an immediate

impact on the safe and efficient movement of people and goods within municipalities and other regions of the state.

(c) Advancing autonomous, connected, and electric vehicle readiness and deployment throughout the state.

(d) Providing enhanced education and workforce development opportunities by deploying emerging technologies that support the state's future workforce.

(e) Meeting the mobility needs of residents of this state, particularly transportation disadvantaged persons as defined in s. 427.011, by increasing access to and convenience of transportation within municipalities and other regions of the state.

(f) Facilitating the efficient movement of freight within the state, especially in and around airports and seaports.

(g) Supporting the reduction or elimination of fossil fuel consumption by relying on renewable energy sources and electric technologies.

(h) Creating a smart mobility demonstration community in the state that serves as a model for municipalities and other regions nationwide.

(2) ELIGIBILITY REQUIREMENTS.—

(a) The following entities may apply to the Department of Transportation for a grant to fund projects under the Florida Smart City Challenge Grant Program:

1. A state, county, municipal, regional, or other agency

that is responsible for the movement of persons, goods, or services within a defined geographical region, including an entity created pursuant to chapter 343, chapter 348, or chapter 349.

2. A metropolitan planning organization or transportation planning organization. Each entity responsible for deploying or operating the project on behalf of a metropolitan planning organization or transportation planning organization must submit a letter to the department detailing its commitment to the implementation, operation, and maintenance of the project.

3. A state university.

(b) An applicant for a Florida Smart City Challenge Grant must have in place a plan or framework for the implementation of the proposed project in at least one of the following categories:

1. Autonomous vehicle deployment or demonstration.

2. Connected vehicle technology deployment.

3. Shared mobility services innovation and deployment.

4. Acceleration of the use of plug-in electric vehicles and electric charging infrastructure.

(3) PROPOSALS.—By September 1, 2018, the Department of Transportation shall issue a request for proposals for the award of a Florida Smart City Challenge Grant. Each proposal submitted to the department must include:

(a) A statement by the applicant certifying that the

project will be implemented and operational within 2 years after receipt of the grant.

(b) A plan for fulfilling documentation requirements under the department's Statewide Systems Engineering Management Plan within such 2-year period.

(c) A description of how operation and maintenance costs for the project will be funded in order to ensure that the department's investment in the project is sustained.

(d) A plan for evaluation of the project and the methods by which such evaluation will be shared with residents of the area served by the project.

(e) The procedure for integrating the project's transportation-related data into the department's Data Integration and Video Aggregation System.

(4) AWARD OF GRANTS.—The Department of Transportation may award a Florida Smart City Challenge Grant to a maximum of three recipients. Each award may not exceed $6 million. The department shall distribute the award to each recipient by January 1, 2019.

(a) The grant may fund up to 50 percent of project costs. Grant funds must be used exclusively for costs associated with implementation of the project and may not be used for costs associated with operation, maintenance, or evaluation of the project.

(b) In selecting grant recipients, the department shall give priority to those proposals that demonstrate the

availability of matching funds from partner organizations to fund the remaining 50 percent of project costs and that include a plan for documenting the acquisition and expenditure of such matching funds. For purposes of this paragraph, "matching funds" includes in-kind services, goods, equipment, or other noncash contributions calculated at fair market value.

1. The department shall give further priority to those proposals that include matching funds from private-sector partner organizations; however, local public funds may also be used.

2. Matching funds may be used for costs associated with operation, maintenance, and evaluation of the project.

3. A grant recipient that receives matching funds must document the contribution of such funds in a quarterly report that details the manner in which the value of such contribution is calculated.

(5) REPORTING REQUIREMENTS.—

(a) Each recipient of a Florida Smart City Challenge Grant must submit a quarterly report to the Department of Transportation regarding the development, implementation, and operation of the project. Such report must include information documented pursuant to subparagraph (4)(b)3.

(b) The Department of Transportation must submit a quarterly report to the President of the Senate and the Speaker of the House of Representatives regarding the overall status of

the grant program.

(c) After implementation of the project is complete, each recipient must submit an initial report to the President of the Senate and the Speaker of the House of Representatives which details the project's impact on the transportation system within the area served by the project, the extent to which the goals of the grant program have been met, and recommendations for project revisions or improvements to guide future deployment activities. A final report must be submitted 2 years after submission of the initial report.

(6) ADMINISTRATIVE SUPPORT.—The Department of Transportation shall provide administrative support to the Florida Smart City Challenge Grant Program in order to facilitate the deployment of smart city technology within the state, including, but not limited to, expedited review of proposals submitted under subsection (3).

Section 2. This act shall take effect July 1, 2018.

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: Transportation & Tourism Appropriations Subcommittee
Representative Fischer offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 316.0899, Florida Statutes, is created to read:

316.0899 Florida Smart City Challenge Grant Program.—

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

(a) "Grid-integrated vehicle" means a motor vehicle that has the ability for two-way power flow between the vehicle and the electric grid and the communications hardware and software that allow for external control of battery charging and discharging.

(b) "Matching funds" includes in-kind services, goods, equipment, or other noncash contributions calculated at fair market value.

(2) CREATION; GOALS.—The Florida Smart City Challenge Grant Program is created within the Department of Transportation. The goals of the grant program include, but are not limited to:

(a) Providing opportunities to municipalities and other regions of the state to develop innovative smart mobility solutions to local transportation challenges.

(b) Deploying smart city technology that has an immediate impact on the safe and efficient movement of people and goods within municipalities and other regions of the state.

(c) Advancing autonomous, connected, grid-integrated, and electric vehicle readiness and deployment throughout the state.

(d) Providing enhanced education and workforce development opportunities by deploying emerging technologies that support the state's future workforce.

(e) Meeting the mobility needs of residents of this state, particularly transportation disadvantaged persons as defined in s. 427.011, by increasing access to and convenience of transportation within municipalities and other regions of the state.

(f) Facilitating the efficient movement of freight within the state, especially in and around airports and seaports.

(g) Supporting the reduction of fossil fuel consumption by relying on renewable energy sources and electric technologies.

(h) Creating a smart mobility demonstration community in the state that serves as a model for municipalities and other regions nationwide.

(3) ELIGIBILITY REQUIREMENTS.—

(a) The following entities may apply to the Department of Transportation for a grant to fund projects under the Florida Smart City Challenge Grant Program:

1. A state, county, municipal, regional, or other agency that is responsible for the movement of persons, goods, or services within a defined geographical region, including an entity created pursuant to chapter 343, chapter 348, or chapter 349.

2. A metropolitan planning organization or transportation planning organization. Each entity responsible for deploying or operating the project on behalf of a metropolitan planning organization or transportation planning organization must submit a letter to the department detailing its commitment to the implementation, operation, and maintenance of the project.

3. A state university.

(b) An applicant for a Florida Smart City Challenge Grant must have in place a plan or framework for the implementation of the proposed project in at least one of the following categories:

1. Autonomous vehicle deployment or demonstration.

2. Connected vehicle technology deployment.

3. Shared mobility services innovation and deployment.

4. Acceleration of the use of plug-in electric vehicles and electric charging infrastructure, including deployment of grid-integrated vehicles.

(4) PROPOSALS.—By September 1 of the fiscal year in which funds are appropriated for this program, the Department of Transportation shall issue a request for proposals for the award of a Florida Smart City Challenge Grant. Each proposal submitted to the department must include:

(a) A statement by the applicant certifying that the project will be implemented and operational within 2 years after receipt of the grant.

(b) A plan for fulfilling documentation requirements under the department's Statewide Systems Engineering Management Plan within such 2-year period.

(c) A description of how operation and maintenance costs for the project will be funded in order to ensure that the department's investment in the project is sustained.

(d) A plan for evaluation of the project and the methods by which such evaluation will be shared with residents of the area served by the project.

(e) The procedure for integrating the project's transportation-related data into the department's Data Integration and Video Aggregation System.

(5) AWARD OF GRANTS.—Contingent upon specific appropriation by the Legislature, the Department of Transportation shall award a Florida Smart City Challenge Grant to at least three recipients. The department shall distribute the award to each recipient by January 1 of the fiscal year in which funds are appropriated.

(a) The grant may fund up to 50 percent of project costs. The grant recipient must fund at least 10 percent of project costs. Grant funds must be used exclusively for startup costs, including, but not limited to, acquisition of hardware, software, and assets associated with implementation of the project, and may not be used for costs associated with operation or maintenance of the project.

(b) In selecting grant recipients, the department shall give priority to those proposals that demonstrate the availability of matching funds from partner organizations to fund project costs and that include a plan for documenting the acquisition and expenditure of such matching funds.

1. The department shall give further priority to those proposals that include matching funds from private-sector partner organizations; however, local public funds may also be used.

2. Matching funds may be used for costs associated with operation, maintenance, and evaluation of the project.

3. A grant recipient that receives matching funds must document the contribution of such funds in a quarterly report that details the manner in which the value of such contribution is calculated.

(6) REPORTING REQUIREMENTS.—

(a) Each recipient of a Florida Smart City Challenge Grant must submit a quarterly report to the Department of Transportation regarding the development, implementation, and operation of the project. Such report must include information documented pursuant to subparagraph (5)(b)3.

(b) The Department of Transportation must submit a quarterly report to the President of the Senate and the Speaker of the House of Representatives regarding the overall status of the grant program.

(c) After implementation of the project is complete, each recipient must submit an initial report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which details the project's impact on the transportation system within the area served by the project, the extent to which the goals of the grant program have been met, and recommendations for project revisions or improvements to guide future deployment activities. A final report must be submitted 2 years after submission of the initial report.

(7) ADMINISTRATIVE SUPPORT.—The Department of Transportation shall provide administrative support to the Florida Smart City Challenge Grant Program in order to facilitate the deployment of smart city technology within the state, including, but not limited to, expedited review of proposals submitted under subsection (4). The department may select an independent nongovernmental entity to assist in project construction, management, and evaluation; to oversee the implementation of the project; and to analyze and document lessons learned during, and benefits derived from, implementation of the project. The nongovernmental entity must have experience with the national Smart Cities Initiative, advanced transportation deployment experience in this state, extensive engineering experience, or expertise in stakeholder engagement of potential partners to create a demonstration community as described in paragraph (2)(h).

Section 2. This act shall take effect July 1, 2018.

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 the Florida Smart City Challenge Grant Program; creating s. 316.0899, F.S.; defining the terms "grid-integrated vehicle" and "matching

funds"; creating the program within the Department of Transportation; providing program goals; providing grant eligibility requirements; requiring the department to issue a request for proposals; providing proposal requirements; providing requirements for the award of grants and the use of grant funds; providing reporting requirements; requiring administrative support by the department; authorizing the department to select an independent nongovernmental entity to perform certain functions; providing selection requirements; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 661 Business Filings
SPONSOR(S): Oversight, Transparency & Administration Subcommittee, Miller and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	13 Y, 0 N, As CS	Hoffman	Harrington
2) Transportation & Tourism Appropriations Subcommittee		Cobb PC	Davis GPG
3) Government Accountability Committee			

SUMMARY ANALYSIS

Current law provides that limited liability companies, Florida corporations, not-for-profit corporations, and partnerships operating in Florida maintain business records with the Department of State's Division of Corporations (department), which are available to the public. The department is a ministerial filing agency; as such, the department must file the record received unless the department determines that the record does not comply with the filing requirements. The department filing or refusing to file a document does not affect the validity of the document, relate to the correctness of the document, or create a presumption that the document is valid. In 2016, the department received 467,208 business entity filings. Any user can file an annual report or amendment online and there does not appear to be a verification system in place for business entities to review these filings before the records are filed.

This bill provides that a person on whose behalf a filed record was delivered to the department for filing may correct the record if the record contains false, misleading, or fraudulent information. A statement of correction that is filed to correct false, misleading, or fraudulent information is not subject to a fee of the department if the statement is delivered to the department within a specified time. In addition, the bill requires the department to send notice of the filing of a business record to the electronic mail address on file for the company or entity or its authorized representative or send a copy of the document to the address of such company or entity or its representative. If the record changes the electronic mail address for the company, the department must send such notice to the new electronic mail address and to the most recent prior electronic mail address. If the record changes the mailing address for the company, the department must send such notice to the new mailing address and to the most recent prior mailing address.

The Revenue Estimating Conference met on January 30, 2018, and determined that there is a negative but insignificant impact to the General Revenue Fund. According to the Department of State, the bill will not result in a fiscal impact on its operations.

The bill has an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Business Filings

The Division of Corporations (division) within the Department of State (department) collects, maintains, and makes available to the public all information related to business entities and certain information related to sole proprietorships operating in Florida and certain financial transactions that take place in the state.[1] This information includes:

- filings of corporations, limited liability companies, limited partnerships, general partnerships;
- declarations of trust;
- certain specified cooperative associations;
- notary commissions;
- cable franchises;
- trademarks and service marks;
- Uniform Commercial Code financing statements;
- federal liens and judgment liens; and
- fictitious name registrations.[2]

All business entity documents and commercial registrations received and filed by the division are available to the public via the internet, mail, and walk-in requests.[3] The department is a ministerial filing agency; as such, the department must file the record received unless the department determines that the record does not comply with the filing requirements.[4] The department filing or refusing to file a document does not affect the validity of the document, relate to the correctness of the document, or create a presumption that the document is valid.[5]

Sunbiz.org

Sunbiz.org is the official website for the division. In the 2016 calendar year, the division received 467,208 business entity filings.[6] These filings can be found online, along with the document numbers, which are unique IDs for each filed business entity in the state.[7]

On the division's website, any user can enter a document number to file or amend a business filing.[8] With the document number, any user of this website can file an annual report or amendment, with no additional information. The annual report allows a user to:

- Add, delete, or change the names or addresses of the officers, directors, managers, authorized members and make changes to addresses only for any general partners.
- Change the registered agent and registered office address.
- Change the principal office address and mailing address for the business entity.
- Add or change the federal employer identification number.

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[1] OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY, *Department of State – Corporations*, http://www.oppaga.state.fl.us/profiles/4092/front.htm/ (last visited Jan. 4, 2018).
[2] *Id.*
[3] *Id.*
[4] Section 605.0206(1), F.S.
[5] Section 605.0210(5), F.S.
[6] *Id.*
[7] DIVISION OF CORPORATIONS, *Search for Corporations, Limited Liability Companies, Limited Partnerships and Trademarks by Name,* http://search.sunbiz.org/Inquiry/CorporationSearch/ByName (last visited Jan. 4, 2018).
[8] DIVISION OF CORPORATIONS, *Annual Report-Sunbiz*, https://services.sunbiz.org/Filings/AnnualReport/FilingStart (last visited Jan. 4, 2018).

Prior to filing the report, the user must verify the name of the registered agent, agree to the changes, and make a payment. The payment can be any major credit card or any debit card with a Visa or MasterCard logo.[9]

Fraudulent Filings

Sunbiz.org warns a user that he or she must be authorized to execute the annual report or a supplement as required by Chapter 605, F.S.[10] The penalties for a false filing with the department include a third degree felony for "fraudulent practices."[11] In addition, such a person may be charged with the crime of forgery and counterfeiting.[12]

Beyond these warnings, there appears to be no verification system in place for entities to review these filings before the division files them, which has raised concerns.[13]

Effect of the Bill

This bill provides that a person on whose behalf a filed record was delivered to the department for filing may correct the record if the record contains false, misleading, or fraudulent information. A statement of correction that is filed to correct false, misleading, or fraudulent information is not subject to a fee of the department if the statement is delivered to the department within a specified time. In addition, the bill requires the department to send notice of the filing of a business record to the electronic mail address on file for the company or entity or its authorized representative or send a copy of the document to the address of such company or entity or its representative. If the record changes the electronic mail address for the company, the department must send such notice to the new electronic mail address and to the most recent prior electronic mail address. If the record changes the mailing address for the company, the department must send such notice to the new mailing address and to the most recent prior mailing address.

B. SECTION DIRECTORY:

Section 1. Amends s. 605.0209, F.S., authorizing certain persons to correct filed records that contain certain information; providing that a statement of correction is not subject to a department fee if delivered within a certain timeframe.

Section 2. Amends s. 605.0210, F.S., requiring the department to send a notice of the filing of a record through e-mail or send a copy of the document to the mailing address of the entity for limited liability companies.

Section 3. Amends s. 607.0124, F.S., authorizing a domestic or foreign corporation to correct certain documents if they contain false, misleading, or fraudulent information.

Section 4. Amends s. 607.0125, F.S., requiring the department to send a notice of the filing of a record through e-mail or send a copy of the document to the mailing address of the entity for Florida corporations.

Section 5. Amends s. 617.0124, F.S., authorizing a domestic or foreign corporation to correct certain documents that contain certain information.

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[9] DIVISION OF CORPORATIONS, *Annual Report-Sunbiz*, http://dos.myflorida.com/sunbiz/manage-business/efile/annual-report/#payment (last visited Jan. 4, 2018).

[10] DIVISION OF CORPORATIONS, *Annual Report-Sunbiz*, http://dos.myflorida.com/sunbiz/manage-business/efile/annual-report/#payment (last visited Jan. 4, 2018).

[11] Section 817.155, F.S.

[12] Section 831.06, F.S.

[13] For an example of reported abuse, *see* Samantha Joseph, *How a New Kind of Fraud Puts South Florida Real Estate Owners, Lenders at Risk*, FLA. BUS. R. ONLINE, *available at* https://advance.lexis.com/api/permalink/6f55602d-bbfd-4097-aa7a-0dfd87c0c354/?context=1000516.

Section 6. Amends s. 617.0125, F.S., requiring the department to send a notice of the filing of a record by electronic mail or send a copy of the document to the mailing address of the domestic or foreign corporation.

Section 7. Amends s. 620.1206, F.S., requiring the department to send a notice of the filing of a record by electronic mail or send a copy of the document to the mailing address of the limited partnership, foreign limited partnership, or its registered agent.

Section 8. Amends s. 620.1207, F.S., authorizing a limited partnership or foreign limited partnership to correct certain documents that contain certain information.

Section 9. Amends s. 620.8105, F.S., requiring the department to send a notice of the filing of a document by electronic mail or send a copy of the document to mailing address of the partnership, limited liability partnership, or its agent.

Section 10. Amends s. 620.81054, F.S., authorizing a partnership or limited liability partnership to correct a filed document within a certain timeframe and under certain circumstances.

Section 11 through 15. Amends ss. 620.1201, 620.1202, 620.1203, 620.1812, and 620.2108, F.S., conforming provisions to changes made by the act.

Section 16. Provides an effective date of July 1, 2018

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference met on January 30, 2018, and determined that there is a negative but insignificant impact to the General Revenue Fund.

2. Expenditures:

   According to the Department of State, the bill will not result in a fiscal impact to its operations.[14]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

[14] Email from the Department of State dated January 23, 2018, on file with the Transportation and Tourism Appropriations Subcommittee.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 10, 2018, the Oversight, Transparency & Administration Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Removed the requirement that the department create an optional secure business filing service and instead requires the department to allow a person to update his or her business filing information if the record contains false, misleading, or fraudulent information; and
- Provides that a statement of correction filed to correct false, misleading, or fraudulent information is not subject to any department fee if the statement is delivered to the department within a specified period.

The bill analysis is drafted to the committee substitute approved by the Oversight, Transparency & Administration Subcommittee.

A bill to be entitled

An act relating to business filings; amending s. 605.0209, F.S.; authorizing certain persons to correct filed records that contain certain information; providing that a statement of correction filed for certain reasons is not subject to a Department of State fee if delivered within a certain timeframe; amending s. 605.0210, F.S.; requiring the department to send a notice of the filing of a record by electronic mail or send a copy of the document to the mailing address of the company or foreign limited liability company or its representative; providing notice requirements for the department if the record changes the company's electronic mail or mailing address; amending s. 607.0124; authorizing a domestic or foreign corporation to correct certain documents that contain certain information; providing that articles of correction filed for certain reasons are not subject to a department fee if delivered within a certain timeframe; amending s. 607.0125, F.S.; requiring the department to send a notice of the filing of a record by electronic mail or send a copy of the document to the mailing address of the domestic or foreign corporation or its representative; providing notice requirements for the department if

the record changes the corporation's electronic mail or mailing address; amending s. 617.0124, F.S.; authorizing a domestic or foreign corporation to correct certain documents that contain certain information; providing that articles of correction filed for certain reasons are not subject to a department fee if delivered within a certain timeframe; amending s. 617.0125, F.S.; requiring the department to send a notice of the filing of a record by electronic mail or send a copy of the document to the mailing address of the domestic or foreign corporation or its representative; providing notice requirements for the department if the record changes the domestic or foreign corporation's electronic mail or mailing address; amending s. 620.1206, F.S.; requiring the department to send a notice of the filing of a record by electronic mail or send a copy of the document to the mailing address of the limited partnership, foreign limited partnership, or its registered agent; providing notice requirements for the department if the record changes the limited partnership's or foreign limited partnership's electronic mail or mailing address; amending s. 620.1207, F.S.; authorizing a limited partnership or foreign limited partnership to correct certain

documents that contain certain information; providing that a statement of correction filed for certain reasons is not subject to a department fee if delivered within a certain timeframe; amending s. 620.8105, F.S.; requiring the department to send a notice of the filing of a document by electronic mail or send a copy of the document to the mailing address of the partnership, limited liability partnership, or its agent; providing notice requirements for the department if the record changes the partnership's or limited liability partnership's electronic mail or mailing address; creating s. 620.81054, F.S.; authorizing a partnership or limited liability partnership to correct a filed document within a certain timeframe and under certain circumstances; providing guidelines for correcting a document; providing construction; providing that articles of correction filed for certain reasons are not subject to a department fee if delivered within a certain timeframe; amending ss. 620.1201, 620.1202, 620.1203, 620.1812, and 620.2108, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (1) of section 605.0209, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

605.0209 Correcting filed record.—

(1) A person on whose behalf a filed record was delivered to the department for filing may correct the record if:

(a) The record at the time of filing was inaccurate;

(b) The record was defectively signed; ~~or~~

(c) The electronic transmission of the record to the department was defective; or

(d) The record contains false, misleading, or fraudulent information.

(5) A statement of correction that is filed to correct false, misleading, or fraudulent information is not subject to a fee of the department if the statement of correction is delivered to the department within 15 days after the notification of filing sent pursuant to s. 605.0210.

Section 2. Subsection (2) of section 605.0210, Florida Statutes is amended to read:

605.0210 Duty of department to file; review of refusal to file; transmission of information by department.—

(2) After filing a record, the department shall send notice ~~deliver an acknowledgment~~ of the filing to the electronic mail address on file for the company or foreign limited liability company or its authorized representative or shall send

a ~~or certified~~ copy of the document to the address of such company ~~the company or foreign limited liability company~~ or ~~its~~ authorized representative. If the record changes the electronic mail address for the company, the department must send such notice to the new electronic mail address and to the most recent prior electronic mail address. If the record changes the mailing address for the company, the department must send such notice to the new mailing address and to the most recent prior mailing address.

Section 3. Subsection (1) of section 607.0124, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

607.0124 Correcting filed document.—

(1) A domestic or foreign corporation may correct a document filed by the Department of State within 30 days after filing if ~~the document~~:

(a) The document contains an inaccuracy;

(b) The document contains false, misleading, or fraudulent information;

(c) ~~(b)~~ The document was defectively executed, attested, sealed, verified, or acknowledged; or

(d) ~~(c)~~ The electronic transmission of the document was defective.

(4) Articles of correction that are filed to correct false, misleading, or fraudulent information are not subject to

a fee of the Department of State if the articles of correction are delivered to the Department of State within 15 days after the notification of filing sent pursuant to s. 607.0125(2).

Section 4. Subsection (2) of section 607.0125, Florida Statutes, is amended to read:

607.0125 Filing duties of Department of State.—

(2) The Department of State files a document by recording it as filed on the date of receipt. After filing a document, the Department of State shall send a notice of the filing to the electronic mail address on file for the domestic or foreign corporation or its representative or a ~~deliver an acknowledgment or certified~~ copy of the document to the mailing address of such corporation ~~the domestic or foreign corporation~~ or its representative. If the record changes the electronic mail address of the corporation, the Department of State must send such notice to the new electronic mail address and to the most recent prior electronic mail address. If the record changes the mailing address of the corporation, the Department of State must send such notice to the new mailing address and to the most recent prior mailing address.

Section 5. Subsection (1) of section 617.0124, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

617.0124 Correcting filed document.—

(1) A domestic or foreign corporation may correct a document filed by the department within 30 days after filing if:

(a) The document contains an incorrect statement;

(b) The document contains false, misleading, or fraudulent information;

(c) ~~(b)~~ The document was defectively executed, attested, sealed, verified, or acknowledged; or

(d) ~~(c)~~ The electronic transmission of the document was defective.

(4) Articles of correction that are filed to correct false, misleading, or fraudulent information are not subject to a fee of the department if the articles of correction are delivered to the department within 15 days after the notification of filing sent pursuant to s. 617.0125(2).

Section 6. Section 617.0125, Florida Statutes, is amended to read:

617.0125 Filing duties of Department of State.—

(1) If a document delivered to the department ~~of State~~ for filing satisfies the requirements of s. 617.01201, the department ~~of State~~ shall file it.

(2) The department ~~of State~~ files a document by stamping or otherwise endorsing "filed," together with the Secretary of State's official title and the date and time of receipt. After filing a document, the department ~~of State~~ shall send a notice ~~deliver the acknowledgment~~ of the filing to the electronic mail

address on file for the domestic or foreign corporation or its representative or send a ~~certified~~ copy of the document to the mailing address of such ~~the domestic or foreign~~ corporation or its representative. If the record changes the electronic mail address of the domestic or foreign corporation, the department must send such notice to the new electronic mail address and to the most recent prior electronic mail address. If the record changes the mailing address of the domestic or foreign corporation, the department must send such notice to the new mailing address and to the most recent prior mailing address.

(3) If the department ~~of State~~ refuses to file a document, it shall return it to the domestic or foreign corporation or its representative within 15 days after the document was received for filing, together with a brief, written explanation of the reason for refusal.

(4) The department's ~~Department of State's~~ duty to file documents under this section is ministerial. The filing or refusing to file a document does not:

(a) Affect the validity or invalidity of the document in whole or part;

(b) Relate to the correctness or incorrectness of information contained in the document; or

(c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(5) If not otherwise provided by law and the provisions of this act, the department ~~of State~~ shall determine, by rule, the appropriate format for, number of copies of, manner of execution of, method of electronic transmission of, and amount of and method of payment of fees for, any document placed under its jurisdiction.

Section 7. Subsections (2) and (3) of section 620.1206, Florida Statutes, are renumbered as subsections (3) and (4), respectively, and a new subsection (2) is added to that section, to read:

620.1206 Delivery to and filing of records by Department of State; effective time and date; notice.—

(2) After filing a record, the Department of State shall send a notice to the electronic mail address on file for the limited partnership or foreign limited partnership or the registered agent of such partnership or send a copy of the document to the mailing address of such partnership or registered agent. If the record changes the electronic mail address of the limited partnership or foreign limited partnership, the Department of State must send such notice to the new electronic mail address and to the most recent prior electronic mail address. If the record changes the mailing address of the limited partnership or foreign limited partnership, the Department of State must send such notice to

the new mailing address and to the most recent prior mailing address.

Section 8. Subsection (1) of section 620.1207, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

620.1207 Correcting filed record.—

(1) A limited partnership or foreign limited partnership may deliver to the Department of State for filing a statement of correction to correct a record previously delivered by the limited partnership or foreign limited partnership to the Department of State and filed by the Department of State, if at the time of filing the record contained false, misleading, fraudulent, or erroneous information or was defectively signed.

(4) A statement of correction that is filed under subsection (1) to correct a record that contains false, misleading, or fraudulent information is not subject to a fee of the Department of State if the statement of correction is delivered to the Department of State within 15 days after the notification of filing sent pursuant to s. 620.1206.

Section 9. Subsection (11) is added to section 620.8105, Florida Statutes, to read:

620.8105 Execution, filing, and recording of partnership registration and other statements.—

(11) After filing a document, the Department of State shall send a notice of the filing to all electronic mail

addresses on file for the partnership or limited liability partnership, or the agent of such partnership, or send a copy of the document to the mailing address of such partnership or agent. If the record changes the electronic mail address of the partnership or limited liability partnership, the Department of State must send such notice to the new electronic mail address and to the most recent prior electronic mail address. If the record changes the mailing address of the partnership or limited liability partnership, the Department of State must send such notice to the new mailing address and the most recent mailing address.

Section 10. Section 620.81054, Florida Statutes, is created to read:

620.81054 Correcting a filed record.—

(1) A partnership or limited liability partnership may correct a document filed by the Department of State within 30 days after filing if:

(a) The document contains an inaccuracy;

(b) The document contains false, misleading, or fraudulent information;

(c) The document was defectively executed, attested, sealed, verified, or acknowledged; or

(d) The electronic transmission of the document was defective.

(2) A document must be corrected by doing both of the following:

(a) Preparing articles of correction that describe the document, including its filing date; specify the inaccuracy or defect to be corrected; and correct the inaccuracy or defect.

(b) Delivering the articles of correction to the Department of State for filing, executed in accordance with s. 620.8105.

(3) Articles of correction are effective as of the effective date of the document they correct except as to persons relying on the uncorrected document who are adversely affected by the correction. As to those persons, articles of correction are effective when filed.

(4) Articles of correction filed to correct false, misleading, or fraudulent information are not subject to a fee of the Department of State if the articles of correction are delivered to the Department of State within 15 days after the notification of filing sent pursuant to s. 620.8105.

Section 11. Subsection (3) of section 620.1201, Florida Statutes, is amended to read:

620.1201 Formation of limited partnership; certificate of limited partnership.—

(3) If there has been substantial compliance with subsection (1), then subject to s. 620.1206(4) ~~s. 620.1206(3)~~, a

limited partnership is formed when the Department of State files the certificate of limited partnership.

Section 12. Subsections (5) and (8) of section 620.1202, Florida Statutes, are amended to read:

620.1202 Amendment or restatement of certificate.—

(5) Subject to s. 620.1206(4) ~~s. 620.1206(3)~~, an amendment or restated certificate is effective when filed by the Department of State.

(8) A restated certificate of limited partnership shall state, either in its heading or in an introductory paragraph, the limited partnership's present name, and, if it has been changed, the name under which it was originally filed; the date of filing of its original certificate of limited partnership with the Department of State; and, subject to s. 620.1206(4) ~~s. 620.1206(3)~~, the delayed effective date or time, which shall be a date or time certain, of the restated certificate if it is not to be effective upon the filing of the restated certificate. A restated certificate shall also state that it was duly executed and is being filed in accordance with this section. If the restated certificate only restates and integrates and does not further amend the limited partnership's certificate of limited partnership as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well.

Section 13. Subsection (2) of section 620.1203, Florida Statutes, is amended to read:

620.1203 Certificate of dissolution; statement of termination.—

(2) If there has been substantial compliance with subsection (1), then subject to s. 620.1206(4) ~~s. 620.1206(3)~~ the dissolution of the limited partnership shall be effective when the Department of State files the certificate of dissolution.

Section 14. Subsection (4) of section 620.1812, Florida Statutes, is amended to read:

620.1812 Revocation of dissolution.—

(4) If there has been substantial compliance with subsection (3), subject to s. 620.1206(4) ~~s. 620.1206(3)~~ the revocation of dissolution is effective when the Department of State files the certificate of revocation of dissolution.

Section 15. Subsection (4) of section 620.2108, Florida Statutes, is amended to read:

620.2108 Filings required for merger; effective date.—

(4) A merger becomes effective under this act:

(a) If the surviving organization is a limited partnership, upon the later of:

1. Compliance with subsection (3); or

2. Subject to s. 620.1206(4) ~~s. 620.1206(3)~~, as specified in the certificate of merger; or

(b) If the surviving organization is not a limited partnership, as provided by the governing law of the surviving organization.

Section 16. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 771 Notaries Public
SPONSOR(S): Civil Justice & Claims Subcommittee; Grant, J.
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1042

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	15 Y, 0 N, As CS	MacNamara	Bond
2) Transportation & Tourism Appropriations Subcommittee		Cobb	Davis
3) Judiciary Committee			

SUMMARY ANALYSIS

Certain documents or instruments require the presence and signature of a notary public. In order to become a notary, an individual must meet certain minimum requirements, submit a signed and sworn application, pay a fee, obtain a bond payable to any individual harmed as a result of a breach of duty by the notary, and take an oath as required by law. Among the many legal requirements of a notary, current law requires that a notary may not notarize a signature if the party executing the document or instrument is not in the physical presence of the notary at the time the signature is notarized.

The bill creates "Online Notarizations," allowing a notary public to notarize documents using audio-video communication and other technology as provided for in the bill. Specifically, the bill provides the following framework for online notarization:

- Definitions for online notarization and the required technology;
- Procedures, standards, requirements, and exemptions for online notarization;
- Minimum requirements technology must meet in order to be used for online notarization;
- Allows the Department of State and the Agency for State Technology to promulgate rules and create a list of approved technologies or minimum requirements for the technology;
- Registration requirements for online notaries;
- Requirements for an electronic journal, detailing information of online notary services performed;
- A certificate to be used by online notaries;
- Standards for supervising the witnessing of electronic records; and
- Allows an online notary to charge a fee of up to $25 in addition to the regular notary fee.

In addition to authorizing online notarization, the bill makes the following changes to current law in order to recognize online notarization:

- Requires the clerk of court to record instruments executed using an electronic signature and certified as true and correct printouts by notaries using online notarization,
- Amends the definition of "before" as used in current law related to witnesses, records, and documents to allow for parties to appear before each other through audio-video communication technology, and
- Allows document execution and signatures related to a real estate conveyance to occur in accordance with the standards related to online notarization,

The bill may have an indeterminate, positive fiscal impact on state government revenues stemming from the $25 online notary registration fee.

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

The bill has an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Notary Public

The law considers many instruments to be of such importance that they must be signed in the presence of a notary public. The notary's function is to authenticate signatures and administer oaths on these documents, and therefore prevent fraud. The notary public is directly responsible for determining that the person signing is who he or she states.[1] A notary is authorized by law to perform six basic duties:

- Administer oaths and affirmations
- Take acknowledgments
- Attest to photocopies of certain documents
- Solemnize marriage
- Verify vehicle identification numbers
- Certify the contents of a safe-deposit box.[2]

Section 117.01, F.S., sets forth the form of application for a notary public. A notary must be at least 18 years of age, maintain legal residence in the state throughout the commission, and possess the ability to read, write, and understand English. The application must be signed and sworn by the applicant and accompanied by the fee and proof of a bond required by law. The application for appointment must include a $25 fee, a $10 commission fee required by s. 113.01, F.S., and a $4 surcharge, appropriated to the Executive Office of the Governor to be used for notary education and assistance. [3] The bond must be for at least $7,500, payable to any individual harmed as a result of a breach of duty by the notary.[4]

Notaries must also take an oath following the application process. As part of the oath, the applicant must swear that he or she has read the statutes relating to notaries public and knows the responsibilities, limitations, and powers of a notary public.[5] Once appointed, a notary may serve for four years. No person may be automatically reappointed as a notary; the application process must be completed regardless of whether an applicant has previously served as a notary.[6]

When notarizing a signature, a notary public must complete a jurat or notarial certificate for an oath, affirmation, or an acknowledgment.[7] Current law provides notaries with a form certificate, in s. 117.05(12), F.S., that a notary public must use in substantially the same form as provided for under that section. The certificate of acknowledgement must contain the following items:

- The venue stating the location of the notarization;
- The type of notarial act performed;
- That the signer personally appeared before the notary public at the time of the notarization;
- The exact date of the notarial act;
- The name of the person whose signature is being notarized;

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[1] Florida Notary Association, Inc., *Important Information*, https://www.flnotary.com/become-a-notary/important-information/ (last visited January 17, 2018).
[2] Florida Governor's Office, *Duties of a Notary Public*, p. 2, https://www.flgov.com/wp-content/uploads/notary/ref_manual11-22.pdf (last visited January 17, 2018).
[3] ss. 117.01(2), 117.01(7), F.S.; See also FN. 1, *Notary Package*
[4] s. 117.01(1), F.S.
[5] s. 117.01(3), F.S.
[6] s. 117.01(6), F.S.
[7] s. 117.05(4), F.S.

- The type of identification the notary public is relying upon in identifying the signer, either based on personal knowledge or satisfactory evidence;
- The notary's official signature;
- The notary's name, typed, printed, or stamped below the signature; and
- The notary's official seal[8] affixed below or to either side of the notary's signature.

A notary public may not notarize a signature on a document if the person whose signature is being notarized is not in the physical presence of the notary public at the time the signature is notarized. This prohibition applies to notary publics using a facsimile signature stamp, unless the notary public has a physical disability that limits or prohibits his or her ability to make a written signature and unless the notary public has first submitted written notice to the Department of State.[9]

A violation of this provision is a civil infraction, punishable by penalty, and constitutes malfeasance and misfeasance in the conduct of official duties.[10] A notary public who violates this provision with the intent to defraud is guilty of violating the statute pertaining to false or fraudulent acknowledgments, which is a third degree felony.[11]

Electronic Notarization and Electronic Records

Under current law, any document requiring notarization may be notarized electronically. When notarizing a document electronically, a notary public is required to use an electronic signature:

- That is unique to the notary public,
- Capable of independent verification,
- Retained under the notary public's sole control, and
- Attached to or logically associated with the electronic document in such a manner that any subsequent alteration to the electronic document displays evidence of the alteration.

When a signature is required to be accompanied by a notary public seal, the requirement is satisfied when the electronic signature of the notary public contains the minimum information specified.[12]

The Uniform Electronic Transaction Act provides that if a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.[13]

The Florida Administrative Code defines various terms relating to electronic signatures by notaries.[14] The code provides that, in performing an electronic notarial act, a notary is required to execute an electronic signature in a manner that attributes such signature to the notary public identified on the official commission. In addition, the notary must take reasonable steps to ensure the security, reliability, and uniformity of electronic notarizations, including, but not limited to, the use of an authentication procedure such as a password, token, card, or biometric to protect access to the notary's electronic signature or the means for affixing the signature.[15]

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[8] The notary seal must be of the rubber stamp type and include the words "Notary Public—State of Florida;" it must also include the name of the notary public, the date of expiration of the commission of the notary public, and the commission number.
[9] s. 117.107(2), F.S.
[10] s. 117.107(9), F.S.; *See also* Fla. AGO 92-95 (Notary may not administer an oath over the telephone to a person who is not in the presence of the notary, even where the attorneys for all parties stipulate as to the person's identity.).
[11] s. 117.107(9), F.S., referring to s. 117.105, F.S.
[12] s. 117.021, F.S.
[13] s. 668.50(11)(a), F.S.
[14] Fla. Admin. Code R. 1N-5.001.
[15] Fla. Admin. Code R. 1N-5.002.

The Department of State developed the rules contained in the Florida Administrative Code concerning electronic notarization. The department's power and authority to adopt rules to ensure the security, reliability, and uniformity of signature and seals comes from s. 117.021(5), F.S.

Effect of Proposed Changes

The bill directs the Division of Law Revision and Information to create part I of ch. 117, F.S., consisting of ss. 117.01-117.108, F.S., to be entitled "General Provisions." Additionally, the bill creates part II of ch. 117, F.S., entitled "Online Notarizations." Lastly, the bill makes conforming changes to other provisions of state statutes to allow for the acceptance and recognition of online notarization.

Definitions, Registration and Authority for Online Notarization

In part II of ch. 117, F.S., the bill creates s. 117.201, F.S., providing definitions for online notarizations. The sections contains definitions[16] for the following terms:

- Appear before, before, appear personally before, in the presence of: In the same physical location as another person and close enough to see, hear, communicate with and exchange credentials with that person, or in a different physical location from another person but able to see, hear, and communicate with the person by means of audio-video communication technology. This term also applies to s. 92.50, F.S., related to oaths and acknowledgments for witnesses, records, and documents, as well as, s. 695.03, F.S., related to acknowledgments and proof of records of the conveyance of real estate.
- Audio-video communication technology: Technology approved by the Department of State or this part that enables real-time, two-way communication using electronic means in which participants are able to see, hear, and communicate with one another.
- Credential analysis: A process or service approved by this part in which a third party confirms the validity of a government-issued identification credential or data thereon through review of public and proprietary data sources.
- Government-issued identity credential: Any approved credential for verifying identity in s. 117.05(5)(b)2, F.S., related to notary signatures.
- Identity proofing: A process or service approved by the Department of State or this part in which a third party confirms the identity of an individual through review of public and proprietary data sources.
- Knowledge-based authentication: A form of identity proofing based on a set of questions formulated from public and proprietary data sources for which the principal has not provided a prior answer during the course of the identity proofing.
- Online notarization: The performance of an electronic notarization by means of audio-video communication technology and that meets standards in the bill.
- Online notary public: A notary public registered with the Executive Office of the Governor to perform online notarizations under this part or a civil law notary appointed under ch. 118, F.S.
- Principal: an individual whose electronic signature is acknowledged, witnessed, or attested in an online notarization or who takes an oath or affirmation from the online notary public.
- Remote presentation: Transmission of an image of a government-issued identification credential that is of sufficient quality to enable the online notary public to identify the individual seeking the notary's services and to perform credential analysis through audio-video communication technology.

[16] The bill states that any term defined in s. 668.50(2), F.S., the "Uniform Electronic Transaction Act," has the same meaning when used in ch. 117, F.S.

The bill provides methods and requirements for the registration of an online notary. Specifically, a notary public can complete a registration as an online notary public with the Executive Office of the Governor by:

- Satisfying the qualification requirements for appointment as a notary public under part I of ch. 117, F.S.;
- Paying an online notary public application fee in the amount of $25;
- Submitting to the Executive Office of the Governor a registration as an online notary public, signed and sworn to by the applicant; and
- Identifying the audio-video communication and identity proofing technologies the online notary public intends to use in performing online notarizations.

The bill allows an online notary public to perform any function as an online notarization authorized under ch. 117, F.S., excluding:

- Solemnizing the rites of matrimony;
- A notarial act in connection with the creation and execution of a testamentary instrument, including a will, codicil, or revocable trust; and
- A contract, agreement, or waiver subject to ss. 732.701 and 732.702, F.S., relating to succession and spousal rights.

If a notarization requires a principal to appear before or in the presence of the online notary public, the principal is allowed to appear before the online notary public by means of audio-video communication technology that meets the requirements of ch. 117, F.S., and any rules adopted by the Department of State.

The bill further provides that an online notary public can perform an online notarization, regardless of the physical location of the principal at the time of the notarial act, provided the notary public is physically located in the state while performing the online notarization. The validity of an online notarization performed by an online notary public is to be determined by applicable laws of this state, regardless of the physical location of the principal at the time of the notarial act.

An online notary public is subject to part I to the same extent as a notary public appointed and commissioned only under that part, including the provisions relating to electronic notarizations. The prohibition under s. 117.107(2), F.S., forbidding the use of a facsimile signature unless the notary has a physical disability and receives approval by the Department of State, does not apply to part II related to online notarizations.

The bill provides a form certificate that a notary must use for electronic documents. This certificate requires the notary to state his or her location at the time of notarization. Moreover, the bill amends current certificates under s. 117.05, F.S., to allow the notary to attest that the party appeared before him or her by means of physical presence or online notarization. Lastly, the bill allows an online notary to charge up to $25 for notarizing a document online, in addition to fees allowable under part I.

Technology Standards for Online Notarization

The bill requires that the standards applicable for electronic notarization under s. 117.021, F.S., and for the newly created online notarization reflect future improvements in technology to ensure the security of both processes. The bill grants the Department of State and the Agency for State Technology the authority to adopt rules and standards necessary to institute the requirements of the bill. Specifically, the bill allows for the adoption of the following standards, with some of these standards subjected to certain minimum requirements:

- *Identity proofing*: The security characteristics, at a minimum, must present the principal with five or more questions with a minimum of five possible answer choices per question. Moreover, each question must be drawn from a third-party provider of public and proprietary data sources

and be identifiable to the principal. Lastly, responses must be subjected to a two minute time constraint and the individual must answer at least 80% correct.
- *Credential analysis*: Must include a comparison of the presented government-issued identity credential and data thereon against public or proprietary data sources to confirm that one or more data elements conform to the asserted identity, or an alternative method as provided in s. 117.295(2)(b)2, F.S.
- *Tamper-evident technology*: Requirements are satisfied by the use of technology that renders any subsequent change or modification to the electronic record evident.
- *Audio-video communication technology*: The signal transmission must be secure from interception or access by anyone other than the participants communicating and the technology must provide sufficient audio clarity and video resolution to enable the notary to communicate with the principal and to confirm the identity of the principal pursuant to s. 117.265, F.S.
- *Unauthorized interception*: No specific minimum requirements provided.
- *Remote presentation*: No specific minimum requirements provided.

The bill also states that the online notary is not responsible for the security of the systems used by principal or others to access the online notarization session.

Moreover, the bill allows the Department of State and the Agency for State Technology to publish lists of technologies that satisfy the standards and are approved for use in online notarization. If the Department of State and Agency for State Technology establish standards for approval of technologies pursuant to this part, the technologies selected must conform to those standards. If the technologies conform to the standards, the Department of State and Agency for State Technology are required to approve the use of the technologies. If the Department of State and Agency for State Technology have not established standards, the online notary public must then select technologies satisfying the provisions of the bill.

With respect to electronic notarization, the bill amends s. 117.255, F.S., to require a notary, retaining sole control over their electronic signature, to include access protection to that signature through use of passwords or codes under the notaries control and forbids the notary from allowing another person to use the notary's electronic journal, seal, or signature. The use of an electronic signature is limited to instances where the notary is performing an online notarization. Notaries must also take reasonable steps to ensure that any device used to create their electronic signature is current and secure.

Lastly, the bill provides that a person may not require a notary to perform a notarial act, using an electronic signature, with technology not personally selected by the notary. The bill requires the Department of State to work in collaboration with the Agency for State Technology when adopting rules pursuant to s. 117.021(5), F.S.

Procedures for Online Notarization

An online notary public is allowed to perform an online notarization that meets the requirements of part II regardless of whether the principal or any witnesses are physically located in the state at the time of the online notarization. When an online notarial act performed in accordance with ch. 117, F.S., it is deemed to have been performed within the state and is therefore governed by applicable laws of the state.

In performing an online notarization, an online notary public must verify the identity of a principal at the time that the signature is taken by using audio-video communication technology and processes and must record the entire audio-video conference session between the notary public and the principal and any subscribing witnesses. A principal is not allowed to act in the capacity of a witness for an online notarization.

In performing an online notarization for a principal not located in the state, an online notary must confirm that the principal desires for the notarial act to be performed by a Florida notary public and

under the general law of the state. An online notary public is required to confirm the identity of the principal or any witness by personal knowledge, or by:

- Remote presentation of a government-issued identification credential by each individual;
- Credential analysis of each government-issued identification credential; and
- Identity proofing of each individual, in the form of knowledge-based authentication or another method of identity proofing that conforms to standards set by the Department of State.

If an online notary fails to satisfy the above three requirements, or if the databases consulted for identity proofing do not contain sufficient information to permit authentication, the online notary may not perform the online notarization.

An online notary public must take reasonable steps to ensure that the audio-video communication technology used in an online notarization is secure from unauthorized interception. An electronic notarial certificate for an online notarization is required to include a notation that the notarization is an online notarization. Except as expressly provided otherwise, the provisions of part I of ch. 117, F.S. apply to an online notarization and an online notary public. The failure to comply with the online notarization procedures does not impair the validity of the notarial act or the electronic record, but it may be introduced as evidence to establish violations of this chapter or as an indication of possible fraud, forgery, or impersonation or for other evidentiary purposes.

The bill, under s. 117.285, F.S., also allows an online notary public or an official of another state authorized under the laws of that state to perform online notarization of documents to supervise the witnessing of electronic records by the same audio-video communication technology used for online notarization. Specifically, the notary or official of another state may do so as follows:

- The identity of the witness must be verified in the same manner as the identity of the principal;
- The witness may be physically present with the principal or remote from the principal provided the witness and principal are using audio-video communication technology; and
- The witness is present in either physical proximity to the principal or through audio-video communication technology at the time the principal affixes the electronic signature and hears the principal make a statement to the effect that the principal has signed the electronic record.

Electronic Journal and Electronic Records

The bill requires an online notary to keep a secure electronic journal of electronic records he or she has notarized. For each online notarization, the electronic journal entry must contain all of the following:

- Date and time of the notarization;
- Type of notarial act;
- Type, title, or description of the electronic record or proceeding;
- Printed name and address of each principal involved in the transaction or proceeding;
- Indication that the principal satisfactorily passed the identity proofing;
- Indication that the government-issued identity credential satisfied the credential analysis;
- A recording of the audio-video communication in which the principal and any witness appeared before the notary public, identity of each participant was confirmed, and the notarial act was performed;
- The fee, if any, charged for the online notarization; and
- Copy of the identity of each principal involved in the transaction or proceeding.

For purposes of evidence of the identity of each principal, the bill provides that this may take any of the following forms:

1. Statement that the person is personally known to the online notary public,
2. Notation of the type of identification document provided to the online notary public,
3. Copy of the government-issued identity credential provided, or
4. Copy of any other identity credential or information provided.

The bill further requires that the notary attach or logically associate the electronic signature and seal to the electronic notarial certificate of an electronic record in a manner capable of independent verification using tamper-evident technology that renders any subsequent change or modification to the electronic record evident. A notary may only use an electronic signature when performing online notarization.

The electronic journal is required to be maintained for at least 10 years after the date of the notarial act. A backup record of the electronic journal must also be maintained. Moreover, the bill provides that an omitted or incomplete entry in the electronic journal does not impair the validity of the notarial act or the electronic record which was notarized. However, this fact may be introduced as evidence to establish violations of ch. 117, F.S., or as an indication of possible fraud, forgery, or impersonation or for other evidentiary purposes.

A notary must immediately notify an appropriate law enforcement agency and the Executive Office of the Governor of theft or vandalism of the electronic journal, electronic signature, or electronic seal. An online notary public must also immediately notify the Executive Office of the Governor of the loss or use by another person of the online notary public's electronic journal, electronic signature, or electronic seal.

Upon the request by a title agent, settlement agent, or title insurer which engaged the online notary in a real estate transaction, the bill requires a notary to make electronic copies of the pertinent entries in the electronic journal and provide access to the related audio-video communication recordings. An online notary may charge a reasonable fee for making these copies.

Effect of, and Relation to, Other Laws

Chapter 28, F.S., governs the clerks of circuit courts. As part of their duties, clerks are required to record certain instruments presented to him or her, upon payment of the service charges. The bill amends s. 28.222(3), F.S., requiring that a clerk of a circuit court to record copies of any instrument originally created and executed using an electronic signature and is certified as a true and correct paper printout by a notary public in accordance with ch. 117, F.S.

The bill also amends s. 695.28, F.S., related to the validity of recorded electronic documents. Under s. 695.28, F.S., a document that is submitted to the clerk of court or county recorded is deemed validly recorded and acts as notice to persons for certain purposes. The bill provides that submission to the clerk of court or county recorded provides notice to all persons that the document was signed, witnessed, or notarized electronically or that witnessing or notarization may have been done outside the physical presence in accordance with the provisions of ch. 117 or the laws of another state regarding the notarization of documents. Alternatively, it acts as notice that the document recorded was a certified printout of a document which one or more electronic signatures have been affixed.

The bill states that s. 695.28, F.S., does not preclude a challenge to the validity or enforceability of an instrument or electronic record based upon fraud, forgery, impersonation, duress, undue influence, minority, illegality, unconscionability, or any other basis.

If a provision of law requires a signature or act to be witnessed, compliance with the witnessing standards under s. 117.285, F.S., satisfies this requirement. Moreover, if a provision of law requires a signature, statement, or instrument to be acknowledged, sworn, affirmed, made under oath, or subject to penalty of perjury:

- The acknowledgment or proof may be made by any of the officials listed and in the manner described in s. 695.03, F.S.
- The requirement may be satisfied by an online notarization if made in accordance with the online notarization provisions of this part or in conformance with the laws of the notary public's appointing state.

The bill additionally amends s. 689.01, F.S., related to how real estate is conveyed. The bill provides that any requirement that an instrument be signed in the presence of two subscribing witnesses is satisfied by witnesses being present and electronically signing by means of audio-video communication technology and under standards applicable to online notarization pursuant to ch. 117, F.S., or in conformance with laws in other states that authorize online notarization of instruments.

The act of witnessing an electronic signature is satisfied if a witness is present either in physical proximity to the principal or by audio-video communication technology at the time the principal affixes the electronic signature and hears the principal make a statement acknowledging that the principal has signed the electronic record. All witnesses made or taken pursuant to this subsection are validated and, upon recording, may not be denied to have provided constructive notice based on any alleged failure to have strictly complied with these requirements, as currently or previously in effect, or the laws governing notarization of instruments, including online notarization, in this or any other state.

Lastly, the bill provides that part II modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act.[17] However, the bill does not modify, limit, or supersede s. 7001(c), related to consumer disclosures and consent to electronic records or the electronic delivery of any of the notices described in s. 7003(b), F.S.[18]

B. SECTION DIRECTORY:

Section 1: Directs the Division of Law Revision and Information to create part I of Chapter 117, Florida Statutes.
Section 2: Amends s. 117.01, F.S., relating to appointment, application, suspension, revocation, application fee, bond, and oath of notary public.
Section 3: Amends s. 117.021, F.S., relating to electronic notarization.
Section 4: Amends s. 117.05, F.S., relating to use of notary commission, unlawful use, notary fee, seal, duties, employer liability, name change, advertising, photocopies, and penalties.
Section 5: Amends s. 117.107, F.S., relating to prohibited acts.
Section 6: Creates part II of chapter 117, relating to online notarizations.
Section 7: Amends s. 28.222, F.S., relating to the clerk to be county recorder.
Section 8: Amends s. 92.50, F.S., relating to oath, affidavits, and acknowledgments; who may take or administer; requirements.
Section 9: Amends s. 95.231, F.S., relating to limitations where deed or will on record.
Section 10: Amends s. 689.01, F.S., relating to how real estate is conveyed.
Section 11: Amends s. 694.08, F.S., relating to certain instruments validated, notwithstanding lack of seals or witnesses, or defect in acknowledgement, etc.

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[17] 15 U.S.C. ss. 7001 et seq.

[18] These notices include: (1) Court orders or documents required to be executed in connection with a court proceeding; (2) The cancellation or termination of utility services; (3) Any notice of default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual; (4) The cancellation or termination of health insurance or benefits or life insurance benefits; (5) The recall of a product, or material failure of a product, that risks endangering health or safety; or (6) Any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

Section 12: Amends s. 695.03, F.S., relating to acknowledgment and proof, validation of certain acknowledgments, and legalization or authentication before foreign officials.
Section 13: Amends s. 695.04, F.S., relating to requirements of certificate.
Section 14: Amends s. 695.05, F.S., relating to certain defects cured as to acknowledgments and witnesses.
Section 15: Amends s. 695.09, F.S., relating to identity of grantor.
Section 16: Amends s. 695.28, F.S., relating to validity of recorded electronic documents.
Section 17: Providing an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may have an indeterminate positive impact to state revenues from the $25 application fee to become an online notary.

2. Expenditures:

   The bill allows, but does not require the Department of State (DOS) and the Agency for State Technology (AST) to publish lists of technologies that satisfy the standards and are approved for use in online notarization. DOS has not provided an estimated fiscal impact or agency bill analysis as requested therefore it is assumed that any impacts can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill allows the act of notarization to be performed remotely, as opposed to in person. In some instances, this new method will allow businesses and professions that must use notary publics in their day-to-day work to do so without all of the parties coming together in one location. As such, these businesses and professions may see a reduction in expenditures as a result of allowing this alternative, more convenient method of notarization.

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 allows the Department of State, together with the Agency of State Technology, to adopt rules and standards for the technology used by online notaries. The bill provides sufficient direction for the agency with respect to the scope of the rules and the areas of focus.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2018, the Civil Justice & Claims Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Remove the Executive Office of the Governor from the rulemaking process for rules related to online notarization; and
- Provides that a notary may not utilize an online notarization in connection with the creation or execution of a testamentary instrument, including a succession agreement or waiver of a spouses rights.

This analysis is drafted to the committee substitute as passed by the Civil Justice & Claims Subcommittee

A bill to be entitled

An act relating to notaries public; providing a directive to the Division of Law Revision and Information; amending s. 117.01, F.S.; revising provisions relating to use of office of notary public; amending s. 117.021, F.S.; requiring electronic signatures to include access protection; prohibiting a person from requiring a notary public to perform a notarial act with certain technology; authorizing the Department of State to adopt rules for certain purposes; amending s. 117.05, F.S.; revising limitations on notary fees; providing for inclusion of certain information in a jurat or notarial certificate; providing for compliance with online notarization requirements; providing for notarial certification of a printed electronic record; revising statutory forms for jurats and notarial certifications; amending s. 117.107, F.S.; providing applicability; revising prohibited acts; creating part II of ch. 117, F.S., entitled "Online Notarizations"; providing definitions; authorizing online notarizations; providing exceptions; providing for legal recognition; providing registration and qualification requirements; authorizing the performance of certain notarial acts; requiring a

notary public to keep an electronic journal of online notarizations; providing requirements for electronic journals, signatures, and seals; providing online notarization procedures; providing fees for online notarizations; authorizing a notary public to supervise the witnessing of electronic records of online notarizations; providing standards for electronic and online notarizations; authorizing the Department of State and the Agency for State Technology to adopt rules; providing construction; amending s. 28.222, F.S.; requiring the clerk of the circuit court to record certain instruments; amending s. 92.50, F.S.; providing a definition; amending s. 95.231, F.S.; providing a limitation period for certain recorded instruments; amending s. 689.01, F.S.; providing for witnessing of documents in connection with real estate conveyances; providing for validation of certain recorded documents; amending s. 694.08, F.S.; providing for validation of certain recorded documents; amending s. 695.03, F.S.; providing and revising requirements for making acknowledgments, proofs, and other documents; providing a definition; amending s. 695.04, F.S.; conforming a provision to changes made by the act; amending s. 695.05, F.S.; making an editorial change;

amending s. 695.09, F.S.; conforming a provision to changes made by the act; amending s. 695.28, F.S.; providing for validity of recorded documents; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. The Division of Law Revision and Information is directed to create part I of chapter 117, Florida Statutes, consisting of ss. 117.01-117.108, Florida Statutes, to be entitled "General Provisions."

Section 2. Subsection (1) of section 117.01, Florida Statutes, is amended to read:

117.01 Appointment, application, suspension, revocation, application fee, bond, and oath.—

(1) The Governor may appoint as many notaries public as he or she deems necessary, each of whom shall be at least 18 years of age and a legal resident of the state. A permanent resident alien may apply and be appointed and shall file with his or her application a recorded Declaration of Domicile. The residence required for appointment must be maintained throughout the term of appointment. Notaries public shall be appointed for 4 years and may only ~~shall~~ use and exercise the office of notary public if he or she is within the boundaries of this state. An

applicant must be able to read, write, and understand the English language.

Section 3. Subsections (4) and (5) of section 117.021, Florida Statutes, are renumbered as subsections (5) and (6), respectively, paragraph (c) of subsection (2) and present subsection (5) are amended, and a new subsection (4) is added to that section, to read:

117.021 Electronic notarization.—

(2) In performing an electronic notarial act, a notary public shall use an electronic signature that is:

(c) Retained under the notary public's sole control and includes access protection through the use of passwords or codes under control of the notary public; and

(4) A person may not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.

(6)~~(5)~~ The Department of State, in collaboration with the Agency for State Technology, may adopt rules to ensure the security, reliability, and uniformity of signatures and seals authorized in this section.

Section 4. Subsection (1), paragraph (a) of subsection (2), paragraphs (a) and (c) of subsection (4), subsection (5), paragraph (a) of subsection (12), subsection (13), and paragraphs (c) and (e) of subsection (14) of section 117.05, Florida Statutes, are amended, and paragraph (c) is added to

subsection (12) of that section, to read:

117.05 Use of notary commission; unlawful use; notary fee; seal; duties; employer liability; name change; advertising; photocopies; penalties.—

(1) No person shall obtain or use a notary public commission in other than his or her legal name, and it is unlawful for a notary public to notarize his or her own signature. Any person applying for a notary public commission must submit proof of identity to the Department of State if so requested. Any person who violates the provisions of this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2)(a) The fee of a notary public may not exceed $10 for any one notarial act, except as provided in ss. ~~s.~~ 117.045 and 117.275.

(4) When notarizing a signature, a notary public shall complete a jurat or notarial certificate in substantially the same form as those found in subsection (13). The jurat or certificate of acknowledgment shall contain the following elements:

(a) The venue stating the location of the notary at the time of the notarization in the format, "State of Florida, County of ....."

(c) That the signer personally appeared before the notary public at the time of the notarization either by physical

presence or by means of audio-video communication technology pursuant to part II of this chapter.

(5) A notary public may not notarize a signature on a document unless he or she personally knows, or has satisfactory evidence, that the person whose signature is to be notarized is the individual who is described in and who is executing the instrument. A notary public shall certify in the certificate of acknowledgment or jurat the type of identification, either based on personal knowledge or other form of identification, upon which the notary public is relying. In the case of an online notarization, the online notary public shall comply with the procedures set forth in part II of this chapter.

(12)(a) A notary public may supervise the making of a photocopy of an original document or the duplication or printing of an electronic record and attest to the trueness of the copy, provided the document is neither a vital record in this state, another state, a territory of the United States, or another country, nor a public record, if a copy can be made by the custodian of the public record.

(c) A notary public must use a certificate in substantially the following form in notarizing an attested copy of an electronic document:

STATE OF FLORIDA

COUNTY OF .....

On this .... day of ....., ...(year)..., I attest that the

preceding or attached document is a true, exact, complete, and unaltered copy duplicated before me or printed by me from an electronic record presented to me by the document's custodian. At the time of duplication or printing, no security features, if any, present on the electronic record indicated that the record had been altered since execution.

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

(13) The following notarial certificates are sufficient for the purposes indicated, if completed with the information required by this chapter. The specification of forms under this subsection does not preclude the use of other forms.

(a) For an oath or affirmation:

STATE OF FLORIDA

COUNTY OF .....

Sworn to (or affirmed) and subscribed before me by means of [] physical presence or [] online notarization, this .... day of ....., ...(year)..., by ...(name of person making statement)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known ..... OR Produced Identification .....

Type of Identification Produced.....

(b) For an acknowledgment in an individual capacity:

STATE OF FLORIDA

COUNTY OF .....

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this .... day of ....., ...(year)..., by ...(name of person acknowledging)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known ..... OR Produced Identification .....

Type of Identification Produced.....

(c) For an acknowledgment in a representative capacity:

STATE OF FLORIDA

COUNTY OF .....

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this .... day of ....., ...(year)..., by ...(name of person)... as ...(type of authority, . . . e.g. officer, trustee, attorney in fact)... for ...(name of party on behalf of whom instrument was executed)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known ..... OR Produced Identification .....

Type of Identification Produced.....

(14) A notary public must make reasonable accommodations to provide notarial services to persons with disabilities.

(c) The following notarial certificates are sufficient for the purpose of notarizing for a person who signs with a mark:

1. For an oath or affirmation:

...(First Name)... ...(Last Name)...

...His (or Her) Mark...

STATE OF FLORIDA

COUNTY OF .....

Sworn to and subscribed before me by means of [] physical presence or [] online notarization, this .... day of ....., ...(year)..., by ...(name of person making statement)..., who signed with a mark in the presence of these witnesses:

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known ..... OR Produced Identification .....

Type of Identification Produced.....

2. For an acknowledgment in an individual capacity:

...(First Name)... ...(Last Name)...

...His (or Her) Mark...

STATE OF FLORIDA

COUNTY OF .....

The foregoing instrument was acknowledged before me by means of

[] physical presence or [] online notarization, this .... day of ....., ...(year)..., by ...(name of person acknowledging)..., who signed with a mark in the presence of these witnesses:

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known ..... OR Produced Identification .....

Type of Identification Produced.....

(e) The following notarial certificates are sufficient for the purpose of notarizing for a person with a disability who directs the notary to sign his or her name:

1. For an oath or affirmation:

STATE OF FLORIDA

COUNTY OF .....

Sworn to (or affirmed) before me by means of [] physical presence or [] online notarization, this .... day of ....., ...(year)..., by ...(name of person making statement)..., and subscribed by ...(name of notary)... at the direction of ~~and in the presence of~~ ...(name of person making statement)..., and in the presence of these witnesses:

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known ..... OR Produced Identification .....

Type of Identification Produced.....

2. For an acknowledgment in an individual capacity:

STATE OF FLORIDA

COUNTY OF .....

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this .... day of ....., ...(year)..., by ...(name of person acknowledging)... and subscribed by ...(name of notary)... at the direction of ~~and in the presence of~~ ...(name of person acknowledging)..., and in the presence of these witnesses:

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known ..... OR Produced Identification .....

Type of Identification Produced.....

Section 5. Subsections (2) and (9) of section 117.107, Florida Statutes, are amended to read:

117.107 Prohibited acts.—

(2) A notary public may not sign notarial certificates using a facsimile signature stamp unless the notary public has a physical disability that limits or prohibits his or her ability to make a written signature and unless the notary public has first submitted written notice to the Department of State with an exemplar of the facsimile signature stamp. This subsection does not apply to or prohibit the use of an electronic signature and seal by a notary public performing online notarization in

accordance with general law.

(9) A notary public may not notarize a signature on a document if the person whose signature is being notarized does not appear before the notary public either by means of physical presence or audio-video communication technology pursuant to part II of this chapter ~~is not in the presence of the notary public~~ at the time the signature is notarized. Any notary public who violates this subsection is guilty of a civil infraction, punishable by penalty not exceeding $5,000, and such violation constitutes malfeasance and misfeasance in the conduct of official duties. It is no defense to the civil infraction specified in this subsection that the notary public acted without intent to defraud. A notary public who violates this subsection with the intent to defraud is guilty of violating s. 117.105.

Section 6. Part II of chapter 117, Florida Statutes, consisting of sections 117.201-117.305, Florida Statutes, is created to read:

PART II

ONLINE NOTARIZATIONS

117.201 Definitions.—As used in this part, the term:

(1)(a) "Appear before," "before," "appear personally before," or "in the presence of" means:

1. In the same physical location as another person and close enough to see, hear, communicate with and exchange credentials with that person; or

2. In a different physical location from another person but able to see, hear, and communicate with the person by means of audio-video communication technology.

(b) This term also applies to ss. 92.50 and 695.03.

(2) "Audio-video communication technology" means technology approved by the Department of State or this part that enables real-time, two-way communication using electronic means in which participants are able to see, hear, and communicate with one another.

(3) "Credential analysis" means a process or service approved by this part in which a third party confirms the validity of a government-issued identification credential or data thereon through review of public and proprietary data sources.

(4) "Government-issued identity credential" means any approved credential for verifying identity in s. 117.05(5)(b)2.

(5) "Identity proofing" means a process or service approved by the Department of State or this part in which a third party confirms the identity of an individual through review of public and proprietary data sources.

(6) "Knowledge-based authentication" means a form of identity proofing based on a set of questions formulated from

public and proprietary data sources for which the principal has not provided a prior answer during the course of the identity proofing.

(7) "Online notarization" means the performance of an electronic notarization by means of audio-video communication technology and that meets standards in this chapter.

(8) "Online notary public" means a notary public registered with the Executive Office of the Governor to perform online notarizations under this part or a civil law notary appointed under chapter 118.

(9) "Principal" means an individual whose electronic signature is acknowledged, witnessed, or attested in an online notarization or who takes an oath or affirmation from the online notary public.

(10) "Remote presentation" means transmission of an image of a government-issued identification credential that is of sufficient quality to enable the online notary public to identify the individual seeking the notary's services and to perform credential analysis through audio-video communication technology.

(11) Except where the context otherwise requires, any term defined in s. 668.50(2) shall have the same meaning when used in this chapter.

117.209 Authority to perform online notarizations.—

(1) An online notary public may perform any of the

functions authorized under this chapter as an online notarization, excluding:

(a) Solemnizing the rites of matrimony.

(b) A notarial act in connection with the creation and execution of a testamentary instrument, including a will, codicil, or revocable trust.

(c) A contract, agreement, or waiver subject to ss. 732.701 and 732.702.

(2) If a notarial act requires a principal to appear before or in the presence of the online notary public, the principal may appear before the online notary public by means of audio-video communication technology that meets the requirements of this chapter and any rules adopted by the Department of State under s. 117.295.

(3) An online notary public may perform an online notarization authorized under this chapter, regardless of the physical location of the principal at the time of the notarial act, provided the notary public is physically located in this state while performing the online notarization.

(4) The validity of an online notarization performed by an online notary public appointed in this state shall be determined by applicable laws of this state regardless of the physical location of the principal at the time of the notarial act.

117.215 Relation to other laws.—With the exception of laws governing the creation and execution of a testamentary

instrument, including a will, codicil, revocable trust, or a contract, agreement, or waiver subject to ss. 732.701 and 732.702:

(1) If a provision of law requires a signature, statement, or instrument to be acknowledged, sworn, affirmed, made under oath, or subject to penalty of perjury:

(a) The acknowledgement or proof may be made by any of the officials listed and in the manner described in s. 695.03.

(b) The requirement may be satisfied by an online notarization if made in accordance with the online notarization provisions of this part or in conformance with the laws of the notary public's appointing state.

(2) If a provision of law requires a signature or act be witnessed, compliance with the online electronic witnessing standards under s. 117.285 satisfies that requirement.

117.225 Registration; qualifications.—A notary public may complete a registration as an online notary public with the Executive Office of the Governor by:

(1) Satisfying the qualification requirements for appointment as a notary public under part I.

(2) Paying an online notary public application fee in the amount of $25.

(3) Submitting to the Executive Office of the Governor a registration as an online notary public, signed and sworn to by the applicant.

(4) Identifying the audio-video communication and identity proofing technologies the online notary public intends to use in performing online notarizations. If the Department of State and Agency for State Technology have established standards for approval of technologies pursuant to this part, the technologies selected must conform to those standards. If the technologies conform to the standards, the Department of State and Agency for State Technology shall approve the use of the technologies. If the Department of State and Agency for State Technology have not yet established such standards, the online notary public shall select technologies satisfying the provisions of this chapter.

117.235 Performance of notarial acts.—

(1) An online notary public is subject to part I to the same extent as a notary public appointed and commissioned only under that part, including the provisions of s. 117.021 relating to electronic notarizations.

(2) An online notary public may perform notarial acts as provided by part I in addition to performing online notarizations as authorized and pursuant to the provisions of this part.

117.245 Electronic journal of online notarizations.—

(1) An online notary public shall keep a secure electronic journal of electronic records notarized by the online notary public. For each online notarization, the electronic journal entry must contain all of the following:

(a) Date and time of the notarization.

(b) Type of notarial act.

(c) Type, title, or description of the electronic record or proceeding.

(d) Printed name and address of each principal involved in the transaction or proceeding.

(e) Evidence of identity of each principal involved in the transaction or proceeding in any of the following forms:

1. Statement that the person is personally known to the online notary public.

2. Notation of the type of identification document provided to the online notary public.

3. Copy of the government-issued identity credential provided.

4. Copy of any other identity credential or information provided.

(f) Indication that the principal satisfactorily passed the identity proofing.

(g) Indication that the government-issued identity credential satisfied the credential analysis.

(h) A recording of the audio-video communication in which the:

1. Principal and any witnesses appeared before the notary public.

2. Identity of each participant was confirmed.

3. Notarial act was performed.

(i) The fee, if any, charged for the online notarization.

(2) The online notary public shall take reasonable steps to:

(a) Ensure the integrity, security, and authenticity of online notarizations.

(b) Maintain a backup record for the electronic journal required by subsection (1).

(c) Protect the backup record from unauthorized use.

(3) The electronic journal required by subsection (1) shall be maintained for at least 10 years after the date of the notarial act.

(4) An omitted or incomplete entry in the electronic journal does not impair the validity of the notarial act or the electronic record which was notarized, but may be introduced as evidence to establish violations of this chapter or as an indication of possible fraud, forgery, or impersonation or for other evidentiary purposes.

117.255 Use of electronic journal, signature, and seal.—An online notary public shall:

(1) Take reasonable steps to ensure that any registered device used to create an electronic signature is current and has not been revoked or terminated by the issuing or registering authority of the device.

(2) Keep the electronic journal, electronic signature, and

electronic seal secure and under his or her sole control, which shall include access protection through the use of passwords or codes under control of the notary public. The online notary public may not allow another person to use the online notary public's electronic journal, electronic signature, or electronic seal.

(3) Use electronic signatures only for performing online notarization.

(4) Attach or logically associate the electronic signature and seal to the electronic notarial certificate of an electronic record in a manner capable of independent verification using tamper-evident technology that renders any subsequent change or modification to the electronic record evident.

(5) Immediately notify an appropriate law enforcement agency and the Executive Office of the Governor of theft or vandalism of the electronic journal, electronic signature, or electronic seal. An online notary public shall immediately notify the Executive Office of the Governor of the loss or use by another person of the online notary public's electronic journal, electronic signature, or electronic seal.

(6) Make electronic copies, upon request, of the pertinent entries in the electronic journal and provide access to the related audio-video communication recordings to the title agent, settlement agent, or title insurer which engaged the online notary with regard to a real estate transaction. The online

notary public may charge a reasonable fee for making and delivering electronic copies of a given series of related electronic records. Such fee must be disclosed to the requestor before copies are made.

117.265 Online notarization procedures.—

(1) An online notary public physically located in this state may perform an online notarization that meets the requirements of this part regardless of whether the principal or any witnesses are physically located in this state at the time of the online notarization. An online notarial act performed in accordance with this chapter is deemed to have been performed within the state and is governed by applicable laws of this state.

(2) In performing an online notarization, an online notary public shall verify the identity of a principal at the time that the signature is taken by using audio-video communication technology and processes that meet the requirements of this part and record the entire audio-video conference session between the notary public and the principal and any subscribing witnesses. A principal may not act in the capacity of a witness for the online notarization.

(3) In performing an online notarization of a principal not located within the state, an online notary public shall confirm that the principal desires for the notarial act to be performed by a Florida notary public and under the general law

of this state.

(4) An online notary public shall confirm the identity of the principal or any witness by:

(a) Personal knowledge of each such individual; or

(b) All of the following, as the same may be refined or supplemented in rules adopted pursuant to s. 117.295:

1. Remote presentation of a government-issued identification credential by each individual.

2. Credential analysis of each government-issued identification credential.

3. Identity proofing of each individual, in the form of knowledge-based authentication or another method of identity proofing that conforms to standards set by the Department of State and the Agency for State Technology.

If the online notary public does not satisfy subparagraphs (b)1.-3., or if the databases consulted for identity proofing do not contain sufficient information to permit authentication, the online notary public may not perform the online notarization.

(5) An online notary public shall take reasonable steps to ensure that the audio-video communication technology used in an online notarization is secure from unauthorized interception.

(6) An electronic notarial certificate for an online notarization shall include a notation that the notarization is an online notarization.

(7) Except where otherwise expressly provided in this part, the provisions of part I of this chapter apply to an online notarization and an online notary public.

(8) Any failure to comply with the online notarization procedures of this section does not impair the validity of the notarial act or the electronic record which was notarized, but may be introduced as evidence to establish violations of this chapter or as an indication of possible fraud, forgery, or impersonation or for other evidentiary purposes.

117.275 Fees for online notarization.—An online notary public or employer of such online notary public may charge a fee, not to exceed $25, for performing an online notarization in addition to any other fees authorized under part I. Fees for services other than notarial acts are not governed by this section.

117.285 Supervising the witnessing of electronic records.—An online notary public or an official of another state authorized under the laws of that state to perform online notarization of documents may supervise the witnessing of electronic records by the same audio-video communication technology used for online notarization, as follows:

(1) The identity of the witness must be verified in the same manner as the identity of the principal.

(2) The witness may be physically present with the principal or remote from the principal provided the witness and

principal are using audio-video communication technology.

(3) The witness is present in either physical proximity to the principal or through audio-video communication technology at the time the principal affixes the electronic signature and hears the principal make a statement to the effect that the principal has signed the electronic record.

117.295 Standards for electronic and online notarization; rulemaking authority.—

(1) The Legislature intends for the standards applicable to electronic notarization under s. 117.021 and for online notarization under this part to reflect future improvements in technology and methods of assuring the identity of principals and the security of an electronic record. Further, the Department of State, in collaboration with the Agency for State Technology, may adopt rules and standards necessary to implement the requirements of this chapter and such other rules and standards as may be required to facilitate the integrity, security, and reliability of online notarization, including standards regarding identity proofing, credential analysis, unauthorized interception, remote presentation, tamper-evident technology, and audio-video communication technology, and may publish lists of technologies that satisfy the standards and are approved for use in online notarizations.

(2) Identity proofing, credential analysis, unauthorized interception, remote presentation, tamper-evident technology,

and audio-video communication technology shall be governed by the following minimum standards:

(a) Identity proofing by means of knowledge-based authentication shall have these or greater security characteristics:

1. The principal must be presented with five or more questions with a minimum of five possible answer choices per question.

2. Each question must be drawn from a third-party provider of public and proprietary data sources and be identifiable to the principal's social security number or other identification information, or the principal's identity and historical events records.

3. Responses to all questions must be made within a 2-minute time constraint.

4. The principal must answer a minimum of 80 percent of the questions correctly.

5. The principal may be offered one additional attempt in the event of a failed attempt.

6. During the second attempt, the principal may not be presented with questions from the prior attempt.

(b) Credential analysis must include:

1. A comparison of the presented government-issued identity credential and data thereon against public or proprietary data sources to confirm that one or more data

elements conform to the asserted identity; or

2.a. The inspection of one or more readable format features to verify that they conform to those specified by the issuing state or country.

b. The reading of any bar codes contained on the credential to verify that they contain data corresponding to the asserted identity information of the principal.

c. An attempt to verify any micro-printing contained on the credential.

(c) Tamper-evident technology requirements are deemed satisfied by use of technology that renders any subsequent change or modification to the electronic record evident.

(d) Audio-video communication technology used in completing online notarizations must meet the following requirements:

1. The signal transmission must be secure from interception or access by anyone other than the participants communicating.

2. The technology must provide sufficient audio clarity and video resolution to enable the notary to communicate with the principal and to confirm the identity of the principal using identification methods described in s. 117.265.

(e) An online notary public is not responsible for the security of the systems used by the principal or others to access the online notarization session.

117.305 Relation to Electronic Signatures in Global and National Commerce Act.—This part modifies, limits and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or authorize electronic delivery of any of the notices described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

Section 7. Paragraph (h) of subsection (3) of section 28.222, Florida Statutes, is redesignated as paragraph (i), and a new paragraph (h) is added to that subsection to read:

28.222 Clerk to be county recorder.—

(3) The clerk of the circuit court shall record the following kinds of instruments presented to him or her for recording, upon payment of the service charges prescribed by law:

(h) Copies of any instruments originally created and executed using an electronic signature, as defined in s. 695.27, and certified to be a true and correct paper printout by a notary public in accordance with chapter 117 or by a title agency, authorized intermediary, or other approved party, if the county recorder is not prepared to accept electronic documents for recording electronically.

Section 8. Subsection (4) is added to section 92.50, Florida Statutes, to read:

92.50 Oaths, affidavits, and acknowledgments; who may take

or administer; requirements.—

(4) DEFINITION.—As used in this section, the term "before" means:

(a) In the same physical location as another person and close enough to see, hear, communicate with, and exchange credentials with that person; or

(b) In a different physical location from another person but able to see, hear, and communicate with the person by means of audio-video communication technology.

Section 9. Subsection (1) of section 95.231, Florida Statutes, is amended to read:

95.231 Limitations where deed or will on record.—

(1) Five years after the recording of an instrument required to be executed in accordance with s. 689.01; 5 years after the recording of a power of attorney accompanying and used for an instrument required to be executed in accordance with s. 689.01; or 5 years after the probate of a will purporting to convey real property, from which it appears that the person owning the property attempted to convey, affect, or devise it, the instrument, power of attorney, or will shall be held to have its purported effect to convey, affect, or devise, the title to the real property of the person signing the instrument, as if there had been no lack of seal or seals, witness or witnesses, defect in, failure of, or absence of acknowledgment or relinquishment of dower, in the absence of fraud, adverse

possession, or pending litigation. The instrument is admissible in evidence. A power of attorney validated under this subsection shall be valid only for the purpose of effectuating the instrument with which it was recorded.

Section 10. Section 689.01, Florida Statutes, is amended to read:

689.01 How real estate conveyed.—

(1) No estate or interest of freehold, or for a term of more than 1 year, or any uncertain interest of, in or out of any messuages, lands, tenements or hereditaments shall be created, made, granted, transferred or released in any other manner than by instrument in writing, signed in the presence of two subscribing witnesses by the party creating, making, granting, conveying, transferring or releasing such estate, interest, or term of more than 1 year, or by the party's lawfully authorized agent, unless by will and testament, or other testamentary appointment, duly made according to law; and no estate or interest, either of freehold, or of term of more than 1 year, or any uncertain interest of, in, to, or out of any messuages, lands, tenements or hereditaments, shall be assigned or surrendered unless it be by instrument signed in the presence of two subscribing witnesses by the party so assigning or surrendering, or by the party's lawfully authorized agent, or by the act and operation of law. No seal shall be necessary to give validity to any instrument executed in conformity with this

section. Corporations may execute any and all conveyances in accordance with the provisions of this section or ss. 692.01 and 692.02.

(2) For purposes of this chapter:

(a) Any requirement that an instrument be signed in the presence of two subscribing witnesses may be satisfied by witnesses being present and electronically signing by means of audio-video communication technology as defined in s. 117.201 under standards applicable to online notarization pursuant to chapter 117 or in conformance with laws in other states that authorize online notarization of instruments.

(b) The act of witnessing an electronic signature is satisfied if a witness is present either in physical proximity to the principal or by audio-video communication technology at the time the principal affixes the electronic signature and hears the principal make a statement acknowledging that the principal has signed the electronic record.

(3) All witnesses heretofore made or taken pursuant to subsection (2) are hereby validated and, upon recording, may not be denied to have provided constructive notice based on any alleged failure to have strictly complied with this section, as currently or previously in effect, or the laws governing notarization of instruments, including online notarization, in this or any other state.

Section 11. Subsection (1) of section 694.08, Florida

Statutes, is amended to read:

694.08 Certain instruments validated, notwithstanding lack of seals or witnesses, or defect in acknowledgment, etc.—

(1) Whenever any power of attorney has been executed and delivered, or any conveyance has been executed and delivered to any grantee by the person owning the land therein described, or conveying the same in an official or representative capacity, and has, for a period of 7 years or more been spread upon the records of the county wherein the land therein described has been or was at the time situated, and one or more subsequent conveyances of said land or parts thereof have been made, executed, delivered and recorded by parties claiming under such instrument or instruments, and such power of attorney or conveyance, or the public record thereof, shows upon its face a clear purpose and intent of the person executing the same to authorize the conveyance of said land or to convey the said land, the same shall be taken and held by all the courts of this state, in the absence of any showing of fraud, adverse possession, or pending litigation, to have authorized the conveyance of, or to have conveyed, the fee simple title, or any interest therein, of the person signing such instruments, or the person in behalf of whom the same was conveyed by a person in an official or representative capacity, to the land therein described as effectively as if there had been no defect in, failure of, or absence of the acknowledgment or the certificate

of acknowledgment, if acknowledged, or the relinquishment of dower, and as if there had been no lack of the word "as" preceding the title of the person conveying in an official or representative capacity, of any seal or seals, or of any witness or witnesses, and shall likewise be taken and held by all the courts of this state to have been duly recorded so as to be admissible in evidence;

Section 12. Section 695.03, Florida Statutes, is amended to read:

695.03 Acknowledgment and proof; validation of certain acknowledgments; legalization or authentication before foreign officials.—

(1) To entitle any instrument concerning real property to be recorded, the execution must be acknowledged by the party executing it, proved by a subscribing witness to it, or legalized or authenticated by a civil-law notary or notary public who affixes her or his official seal, before the officers and in the form and manner following:

(a) ~~(1)~~ WITHIN THIS STATE.—An acknowledgment or proof made within this state may be made before a judge, clerk, or deputy clerk of any court; a United States commissioner or magistrate; or a notary public or civil-law notary of this state, and the certificate of acknowledgment or proof must be under the seal of the court or officer, as the case may be. ~~All affidavits and acknowledgments heretofore made or taken in this manner are~~

~~hereby validated.~~

(b)~~(2)~~ WITHOUT THIS STATE BUT WITHIN THE UNITED STATES.—An acknowledgment or proof of a person located outside ~~made out~~ of this state but within the United States may be made before a notary public or a civil-law notary ~~of this state~~ or by a commissioner of deeds appointed by the Governor of this state; a judge or clerk of any court of the United States or of any state, territory, or district; a United States commissioner or magistrate; or a notary public, justice of the peace, master in chancery, or registrar or recorder of deeds of any state, territory, or district having a seal, and the certificate of acknowledgment or proof must be under the seal of the court or officer, as the case may be. If the acknowledgment or proof is made before a notary public who does not affix a seal, it is sufficient for the notary public to type, print, or write by hand on the instrument, "I am a Notary Public of the State of ...(state)..., and my commission expires on ...(date)...."

(c)~~(3)~~ WITHIN FOREIGN COUNTRIES.—If the acknowledgment, affidavit, oath, legalization, authentication, or proof of a person is made in a foreign country, it may be made before a commissioner of deeds appointed by the Governor of this state to act in such country; before a notary public of such foreign country or a civil-law notary of this state or of such foreign country who has an official seal; before an ambassador, envoy extraordinary, minister plenipotentiary, minister, commissioner,

charge d'affaires, consul general, consul, vice consul, consular agent, or other diplomatic or consular officer of the United States appointed to reside in such country; or before a military or naval officer authorized by the Laws or Articles of War of the United States to perform the duties of notary public, and the certificate of acknowledgment, legalization, authentication, or proof must be under the seal of the officer. A certificate legalizing or authenticating the signature of a person executing an instrument concerning real property and to which a civil-law notary or notary public of that country has affixed her or his official seal is sufficient as an acknowledgment. For the purposes of this section, the term "civil-law notary" means a civil-law notary as defined in chapter 118 or an official of a foreign country who has an official seal and who is authorized to make legal or lawful the execution of any document in that jurisdiction, in which jurisdiction the affixing of her or his official seal is deemed proof of the execution of the document or deed in full compliance with the laws of that jurisdiction.

(d) All affidavits, oaths, acknowledgments, legalizations, authentications, or proofs made or taken in any of the manners in paragraphs (a)-(c) are validated and upon recording shall not be denied to have provided constructive notice based on any alleged failure to have strictly complied with this section, as currently or previously in effect, or the laws governing notarization of instruments in chapter 117 or in the place where

such notary public or other authorized person is commissioned or authorized to act.

~~All affidavits, legalizations, authentications, and acknowledgments heretofore made or taken in the manner set forth above are hereby validated.~~

(2) As used in this section, the term "before" means:

(a) In the same physical location as another person and close enough to see, hear, communicate with, and exchange credentials with that person; or

(b) In a different physical location from another person but able to see, hear, and communicate with the person by means of audio-video communication technology.

Section 13. Section 695.04, Florida Statutes, is amended to read:

695.04 Requirements of certificate.—The certificate of the officer before whom the acknowledgment or proof is taken, except for a certificate legalizing or authenticating the signature of a person executing an instrument concerning real property pursuant to s. 695.03(1)(c) ~~s. 695.03(3)~~, shall contain and set forth substantially the matter required to be done or proved to make such acknowledgment or proof effectual as set forth in s. 117.05.

Section 14. Section 695.05, Florida Statutes, is amended to read:

695.05 Certain defects cured as to acknowledgments and witnesses.—All deeds, conveyances, bills of sale, mortgages or other transfers of real or personal property within the limits of this state, heretofore or hereafter made and received bona fide and upon good consideration by any corporation, and acknowledged for record by ~~before~~ some officer, stockholder or other person interested in the corporation, grantee, or mortgagee as a notary public or other officer authorized to take acknowledgments of instruments for record within this state, shall be held, deemed and taken as valid as if acknowledged by the proper notary public or other officer authorized to take acknowledgments of instruments for record in this state not so interested in said corporation, grantee or mortgagee; and said instrument whenever recorded shall be deemed notice to all persons; provided, however, that this section shall not apply to any instrument heretofore made, the validity of which shall be contested by suit commenced within 1 year of the effective date of this law.

Section 15. Section 695.09, Florida Statutes, is amended to read:

695.09 Identity of grantor.—No acknowledgment or proof shall be taken, except as set forth in s. 695.03(1)(c) ~~s. 695.03(3)~~, by any officer within or without the United States unless the officer knows, or has satisfactory proof, that the person making the acknowledgment is the individual described in,

and who executed, such instrument or that the person offering to make proof is one of the subscribing witnesses to such instrument.

Section 16. Section 695.28, Florida Statutes, is amended to read:

695.28 Validity of recorded electronic documents.—

(1) A document that is otherwise entitled to be recorded and that was or is submitted to the clerk of the court or county recorder by electronic or other means and accepted for recordation is deemed validly recorded and provides notice to all persons notwithstanding:

(a) That the document was received and accepted for recordation before the Department of State adopted standards implementing s. 695.27; ~~or~~

(b) Any defects in, deviations from, or the inability to demonstrate strict compliance with any statute, rule, or procedure relating to electronic signatures, electronic witnesses, electronic notarization, online notarization, or for submitting or recording ~~to submit or record~~ an electronic document in effect at the time the electronic document was executed or was submitted for recording;

(c) That the document was signed, witnessed, or notarized electronically or that witnessing or notarization may have been done outside the physical presence of the notary public or principal in accordance with the provisions of chapter 117 or

the laws of another state regarding the notarization of documents; or

(d) That the document recorded was a certified printout of a document to which one or more electronic signatures have been affixed.

(2) This section does not alter the duty of the clerk or recorder to comply with s. 28.222 or s. 695.27 or rules adopted pursuant to those sections ~~that section~~.

(3) This section does not preclude a challenge to the validity or enforceability of an instrument or electronic record based upon fraud, forgery, impersonation, duress, undue influence, minority, illegality, unconscionability, or any other basis not in the nature of those matters described in subsection (1).

Section 17. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 987 Affordable Housing
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee, Cortes, B.
TIED BILLS: **IDEN./SIM. BILLS:** SB 1328

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	12 Y, 0 N, As CS	Miller	Miller
2) Transportation & Tourism Appropriations Subcommittee		Banner	Davis
3) Government Accountability Committee			

SUMMARY ANALYSIS

Florida has extensive programs for funding and overseeing the development and delivery of affordable housing to residents qualifying for such services. The recent impacts of hurricanes have disclosed significant needs for additional affordable housing in this State. The bill revises several key provisions of law and creates additional processes to expedite the creation of affordable housing in Florida. The bill also creates the Hurricane Housing Recovery Program and the Rental Recovery Loan Program to expedite the creation of additional affordable housing in response to the needs created by the recent hurricanes.

The bill creates new provisions on the use of local and state government-owned surplus land, the assessment of impact and mobility fees by local government entities, and local government permitting as it relates to the development of affordable housing.

The bill requires the Departments of Environmental Protection and Transportation and the Water Management Districts, in conjunction with the Florida Housing Finance Corporation, to evaluate all nonconservation surplus lands for suitability for residential use and the development of permanently affordable housing and offer such parcels to the county or municipality where the land is located. The bill provides for additional evaluation criteria intended to address specific needs and characteristics for development of affordable housing.

The bill prohibits a county or municipality from charging impact fees and mobility fees for the development of affordable housing for a five-year period beginning July 1, 2018. Local government entities are required to include in their annual financial reports data on the specific purpose of each impact fee, the impact fee schedule policy, the method of calculating impact fees, the amount assessed for each purpose and type of dwelling, and each exception and waiver provided for affordable housing developments. The bill also provides for an expedited local permit approval process for affordable housing by reducing the time a local government entity has to approve or deny permit applications from 120 days to 60 days. Additionally, the bill requires the evaluation of additional components related to local government contribution in the State Apartment Incentive Loan (SAIL) program.

The bill provides 20 percent of the funds available in the Local Government and State Housing Trust Funds for hurricane recovery programs. The August 2017 REC estimated $314.08 million to be available for distribution to the Housing Trust Funds. The estimated impact of this bill is $62.82 million. In January 2018, the REC estimated a total negative recurring impact on local government revenues of $5.9-6.3 million due to the prohibition on the collection of impact and mobility fees. SEE FISCAL ANALYSIS AND COMMENTS.

The bill provides an effective date of July 1, 2018.

The bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. *See* Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Affordable housing is defined in terms of household income. Housing is considered affordable when monthly rent or mortgage payments including taxes, insurance and utilities do not exceed 30 percent of the household income.[1] Resident eligibility for Florida's state and federally funded housing programs is typically governed by area median income (AMI) levels, published annually by the U.S. Department of Housing and Urban Development (HUD) for every county and metropolitan area. The following are standard household income level definitions and their relationship to the 2017 Florida state median of $59,000 for a family of four (as family size increases or decreases, the income range also increases or decreases):[2]

- Extremely low income – earning up to 30 percent AMI (at or below $17,700);[3]
- Very low income – earning from 30.01 to 50 percent AMI ($17,701 to $29,500);[4]
- Low income – earning from 50.01 to 80 percent AMI ($29,501 to $47,200);[5] and
- Moderate income – earning from 80.01 to 120 percent of AMI ($47,201 to $70,800).[6]

The two primary state housing assistance programs are the State Housing Initiatives Partnership (SHIP)[7] and the State Apartment Incentive Loan (SAIL)[8] programs. The SHIP program provides funds to eligible local governments, allocated using a population-based formula, to address local housing needs as adopted in the Local Housing Assistance Plan. Eligible local government entities must develop and adopt local housing assistance plans that include, but are not limited to, strategies and incentives for the construction, rehabilitation, repair, or financing of affordable housing production.[9] The SAIL program provides low interest loans on a competitive basis as gap financing for the construction or substantial rehabilitation of multifamily affordable housing developments.[10]

Local Government Surplus Land

Present Situation

Since July 1, 2007, all counties and municipalities have been required to prepare, every three years, an inventory list of all real property held in fee simple by the respective government entity that is appropriate for use as affordable housing. The list must be reviewed at a public hearing of the appropriate local governing body and may be revised at the conclusion of the public hearing. The governing body must adopt a resolution that includes the inventory following the meeting.[11]

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[1] Section 420.9071(2), F.S. Public housing, commonly referred to as Section 8 Housing, is provided by local housing agencies (HAs) for low-income residents. Funding for HAs is provided directly from HUD.
[2] U.S. Department of Housing and Urban Development, Office of Policy Research and Development, *FY 2017 HUD Income Limits Briefing Material, available* at https://www.huduser.gov/portal/datasets/il/il17/IncomeLimitsBriefingMaterial-FY17.pdf (last visited January 4, 2018).
[3] Section 420.0004(9), F.S.
[4] Section 420.9071(28), F.S.
[5] Section 420.9071(19), F.S.
[6] Section 420.9071(20), F.S.
[7] Sections 420.907-9089, F.S.
[8] Section 420.5087, F.S.
[9] Section 420.9071(14), (15), & (16), F.S. These local housing plans must also align with the requirements for housing under the Local Government Comprehensive Planning and Land Development Regulation Act of 1985. Chapter 163, Part II, F.S.
[10] Section 420.5087, F.S.
[11] Sections 125.379 and 166.0451, F.S.

Properties identified as appropriate for affordable housing may be offered for sale by the local government and the proceeds may be used:

- To purchase land for the development of affordable housing;
- To increase the local government fund earmarked for affordable housing;
- For sale with a restriction that requires the development of the property as permanent affordable housing; or
- For donation to a nonprofit housing organization for the construction of permanent affordable housing.

Alternatively, the county or municipality may make the property available for use for the production and preservation of permanent affordable housing.[12]

Effect of the Bill

The bill requires each county and municipality to include the following criteria when preparing the inventory list of real property and evaluating for use as affordable housing:

- Environmental suitability for construction;
- Site characteristics;
- Current land use designation;
- Current or anticipated zoning;
- Inclusion in at least one special district meant to revitalize the community;
- Existing infrastructure; and
- Proximity to employment opportunities, public transportation, and existing services.

Transportation Concurrency and Mobility Fees

Present Situation

Transportation concurrency is a growth management strategy aimed at ensuring that transportation facilities and services are available concurrent with the impacts of development. To carry out concurrency, local governments must define what constitutes an adequate level of service (LOS) for the transportation system and measure whether the service needs of a new development exceed existing capacity and scheduled improvements for that period. If adequate capacity is not available, then the developer must provide the necessary improvements, provide monetary contribution toward the improvements, or wait until government provides the necessary improvements.[13]

Level of Services (LOS) is a technical measure of the quality of service provided by a roadway. LOS is graded on an A through F scale based on the average arterial speed of a roadway. An uncongested roadway with a high average arterial speed will receive an A, while a congested roadway with a low average arterial speed will receive an F.[14] Local governments, in conjunction with the Florida Department of Transportation, are responsible for setting LOS standards for roadways.[15]

Proportionate share is the amount of money a developer must contribute to mitigate the transportation impacts of a new development. Proportionate share contributions are triggered when a new development will cause a decrease in the LOS grade below a set standard. When a proportionate share contribution is triggered, a developer must, at minimum, contribute money toward one or several mobility improvements. However, developers are only required to contribute toward deficiencies they create and are not required to correct existing deficiencies.[16]

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[12] *Id.*
[13] Fla. Dep't of Community Affairs, *Transportation Concurrency: Best Practices Guide* pg. 5 (2007), retrieved from https://www.cutr.usf.edu/oldpubs/TCBP%20Final%20Report.pdf (1/3/2018).
[14] *Id.* At 53.
[15] Section 163.3180(5)(b), Florida Statutes
[16] Section 163.3180(5)(h), Florida Statutes

A mobility fee is a transportation system charge on development that allows local governments to assess the proportionate cost of transportation improvements needed to serve the demand generated by development projects. The specificity of a mobility fee allows funds to be expended not only on roadways, but also on transit-supportive investments such as bus shelters/amenities and bicycle and pedestrian infrastructure. Mobility fees also may be expended on buses, stations, and rail infrastructure. Statute requires that mobility fee programs meet the following requirements:

- Any alternative mobility funding system adopted may not be used to deny, time, or phase an application for site plan approval, building permits, or the functional equivalent of such approvals provided that the developer agrees to pay for the development's identified transportation impacts via the funding mechanism implemented by the local government.
- The revenue from the funding mechanism used in the alternative system must be used to implement the needs of the plan which serves as the basis for the fee imposed.
- A mobility fee-based funding system must comply with the rational nexus test applicable to impact fees.
- An alternative system that is not mobility fee-based shall not be applied in a manner that imposes upon new development any responsibility for funding an existing transportation deficiency.[17]

Effect of the Bill

The bill prohibits a local government from charging a mobility fee for the development or construction of affordable housing for a five year period beginning July 1, 2018 and ending June 30, 2023.

Local Government Impact Fees

Present Situation

Impact fees are amounts imposed by local governments to fund local infrastructure required to provide for increased local services needs caused by new growth.[18] Adopted by ordinance of a county, municipality, or special district, impact fees must meet the following minimum criteria:

- The fee must be calculated using the most recent and localized data.
- The local government adopting the impact fee must account for and report fee collections and expenditures. If the fee is imposed for a specific infrastructure need, the local government must account for those revenues and expenditures in a separate accounting fund.
- Charges imposed for the collection of impact fees are limited to the actual costs.
- All local governments are required to give notice of a new or increased impact fee at least 90 days before the new or increased fee takes effect. Counties and municipalities need not wait 90 days before decreasing, suspending, or eliminating an impact fee.[19]

The types of impact fees, amounts, and timing of collection are within the discretion of the local government authorities choosing to impose the fees.[20] The courts have found appropriate the imposition of impact fees where the local government meets two fundamental requirements: a reasonable connection, or nexus, between the need for additional capital facilities and the population growth generated by the project, and a

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[17] Fla. Department of Transportation, *A Guidebook: Using Mobility Fees to Fund Transit Improvements* pg. 11-12 (2016), retrieved from http://www.fdot.gov/transit/Pages/FinalMobilityFeeGuidebook111816.pdf (1/3/2018)

[18] Section 163.31801(2), F.S.

[19] Section 163.31801(3), F.S.

[20] Currently, in Florida there are 67 counties, 413 municipalities, 1,056 independent special districts, and 634 dependent special districts. *See* ch. 7, F.S.; *The Local Government Formation Manual 2017-2018*, Appx. B, at http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2018&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf (accessed 12/27/2017); Lists of Independent and Dependent Districts available through Dept. of Economic Opportunity, Special District Accountability Program, at http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx (accessed 12/27/2017).

reasonable connection, or nexus, between the expenditures of the funds collected from the impact fees and the benefits accruing to the subdivision or project. Meeting the second criteria requires the local government ordinance imposing the impact fee to earmark the funds collected to acquire the new capital facilities necessary to benefit the new residents.[21]

Some local governments require payment of impact fees prior to the issuance of a development or building permit.[22] In general, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building.[23] A development permit pertains to any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.[24]

A certificate of occupancy is required before a building or structure may be used or occupied.[25] The certificate is issued by the appropriate local building official after completion of all work and a final inspection of the building or structure shows no violations of the Florida Building Code or other applicable laws.[26]

The Affordable Housing Workgroup, created in ch. 2017-71, Laws of Florida, was charged with providing recommendations for, among other components, a review of land use for affordable housing developments.[27] Included in the discussion of land use was the impact of fees, including impact fees, exactions, mitigation fees and development fees.[28] In an effort to provide context to workgroup members, staff at the Florida Housing Finance Corporation queried local SHIP Administrators regarding impact fee calculations and waivers in their locales. Based on responses from approximately two-thirds of those surveyed, nearly 25 percent do not currently assess any impact fees. For the remaining cities and counties that do impose impact fees, they are calculated using a combinations of methodologies, including by square footage, number of bedrooms, geographic location, resident status as a senior citizen, or as a flat fee. Approximately 30 percent of the reporting entities indicated the existence of mechanisms to waive fees in part or whole for affordable housing development. Based on their review and discussion, the workgroup report recommends that local governments currently assessing impact fees either waive fees for affordable housing or establish local dedicated funds to make such waivers possible.[29]

Effect of the Bill

The bill prohibits a local government from charging an impact fee for the development or construction of affordable housing for a five year period beginning July 1, 2018 and ending June 30, 2023.

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[21] This is known as the dual rational nexus test. *St. Johns County v. Northeast Florida Builders Association, Inc.*, 583 So. 2d 635, 637 (Fla. 1991), citing *Hollywood, Inc. v. Broward County*, 431 So. 2d 606, 611-612 (Fla. 4th DCA (1983), *rev. den.* 440 So. 2d 352 (Fla. 1983).

[22] *See*, e.g., Roads Impact Fee, ch. 2, art. VI, div. 2, s. 2-267(a), Land Development Code Lee County, Florida, at https://library.municode.com/fl/lee_county/codes/land_development_code?nodeId=LADECO_CH2AD_ARTVIIMFE (accessed 12/17/2017); Transportation Impact Fee, Ch. 56, Part I, s. 56-15.C.1, City of Orlando Code of Ordinances, at https://library.municode.com/fl/orlando/codes/code_of_ordinances?nodeId=TITIICICO_CH56IMFE (accessed 12/17/2017); Road Impact Fees, Miami-Dade County Code of Ordinances, s. 33E-6.1(c), at dade_county/codes/code_of_ordinances?nodeId=CD_MIAMI-DADE_CO_FLORIDA_CH33EROIMFEOR_S33E-6.1PAROIMFE (accessed 12/17/2017).

[23] Section 553.79, F.S.

[24] Section 163.3164(16), F.S.

[25] Section 111.1, Florida Building Code – Building (6th ed. 2017), athttps://codes.iccsafe.org/public/document/FBC2017/chapter-1-scope-and-administration (accessed 12/27/2017) .

[26] Section 111.2, Florida Building Code (6th ed. 2017). *See also* Broward County Amendments to the 5th Edition (2014) Florida Building Code (Effective June 30, 2015, with amendments through March 2017), s. 110, "Inspections," p. 1.39, at http://www.broward.org/CodeAppeals/AboutUs/Documents/ch%201-5thEdition%20-PAssed%2003-09-2017.pdf (accessed 12/26/2017).

[27] Section 46, Ch. 2017-71, L.O.F.

[28] Florida Housing Finance Corporation, *Affordable Housing Workgroup Final Report 2017* pg. 23 (2017), retrieved from https://issuu.com/fhfc/docs/ah-study_commission_2017-web?e=16933686/56642924 (1/4/2017).

[29] *Id.* pg. 25-27

The bill also requires each local government entity to include, in their annual financial reports, the following pertaining to impact fees imposed for construction other than affordable housing:

- The specific purpose of each impact fee, including the specific infrastructure need to be met, such as transportation, parks, water, sewer, and schools;
- The Impact Fee Schedule Policy, describing the method of calculating impact fees, such as flat fee, tiered scale based on number of bedrooms, and tiered scale based on square footage;
- The amount assessed for each purpose and type of dwelling; and
- Each exception and waiver provided for affordable housing developments.

Local Permit Approval Process

Present Situation

As noted in the previous section, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building. A development permit pertains to any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land. Local governments may enforce these requirements, including the processing of applications and granting building permits.[30]

Counties, municipalities, and most special districts are not required to comply with the notice and procedural requirements of ch. 120, F.S., the Administrative Procedure Act.[31] For certain types of building permit applications[32] the local government must meet certain deadlines:

- Within ten days of the application being submitted, the local government must inform the applicant in writing of what information is needed to complete the application, if any.
- If no written notice of deficiency is provided, the application is deemed properly completed and accepted.
- Within forty-five days of receiving a completed application, the local government must notify the applicant if additional information is needed to determine whether the application is sufficient.
- Within 120 days from receiving a completed application, the local government must approve, approve with conditions, or deny the application.[33]

Effect of the Bill

The bill creates s. 420.0007, F.S., providing a new process for local government consideration of applications for development or building permits or for certificates of occupancy pertaining to affordable housing construction. A local government receiving an application for permit to develop, build, or occupy an affordable housing construction must comply with the following requirements and deadlines:

- The local government has fifteen days from receiving the application to notify the applicant of any errors or omissions. The local government may require any additional information to be submitted within ten days from the date of this notice, and may extend this time for good cause shown.
- Failure to request additional information within this time prevents the local government from denying the permit if the applicant fails to correct an error or omission or to supply additional information.
- Once the application is completed, the local government has sixty days to approve or deny the application unless a shorter period is provided by law.

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[30] Sections 553.79 & 553.792, F.S.

[31] *See* s. 120.52(1), F.S.

[32] The list includes permits for the following types of construction: accessory structure, alarm, nonresidential buildings less than 25,000 square feet, electric, irrigation, landscaping, mechanical, plumbing, residential units other than a single family unit, multifamily residential not exceeding 50 units, roofing, signs, site-plan approvals and subdivision plats not requiring public hearings or public notice, lot grading and site alteration associated with the permit application. *See* s. 553.792(2), F.S.

[33] Section 553.792(1), F.S.

- Failure of the local government to approve or deny the application within the sixty day or shorter period means the permit is considered approved and must be issued by the local government, subject to reasonable conditions authorized by law.
- The bill further provides that an applicant seeking to assert a permit received by default due to the failure of the local government to meet the sixty day or shorter deadline may not act upon the default permit until the applicant receives notice or a receipt showing the local government received the applicant's notice of relying on the default permit.

State Apartment Incentive Loan Program Local Government Contribution

Present Situation

The State Apartment Incentive Loan (SAIL) program provides low-interest loans on a competitive basis to affordable housing developers each year. This money often serves to bridge the gap between the primary financing and the total cost of the development. SAIL dollars are available to individuals, public entities, not-for-profit or for-profit organizations that propose the construction or substantial rehabilitation of multifamily units affordable to very low income individuals and families.[34]

The Florida Housing Finance Corporation administers the SAIL program and is required to establish a review committee for the competitive evaluation and selection of applications submitted in this program. The evaluation criteria considered include, but are not limited to, local government contributions and local government comprehensive planning and activities that promote affordable housing.[35]

Effect of the Bill

The bill requires the evaluation of additional components related to local government contribution, including policies that promote access to public transportation, reduce the need for on-site parking, and expedite permits for affordable housing projects.

Using Surplus State Lands for Affordable Housing

Present Situation

The Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees),[36] the five water management districts (WMDs), and the Department of Transportation (DOT) may each acquire and hold real property for various public purposes.[37] Each agency must follow certain procedures to dispose of property that is no longer needed.

Board of Trustees

The Board of Trustees may determine which state lands may be surplused. To dispose of conservation lands, the Board of Trustees must determine whether the land is no longer needed for conservation purposes and may dispose of such lands by an affirmative vote of at least three members. To dispose of nonconservation lands, the Board of Trustees must determine whether the land is no longer needed and may dispose of such lands by an affirmative vote of at least three members.[38]

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[34] Florida Housing Finance Corporation, State Apartment Incentive Loan, Background, http://www.floridahousing.org/programs/developers-multifamily-programs/state-apartment-incentive-loan (last visited 1/3/2018).
[35] Section 420.5087(6)(c), F.S.
[36] The Board of Trustees consists of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. Art. IV, s. 4(f), Fla. Const., s. 253.02(1), F.S. The Department of Environmental Protection, through its Division of State Lands, performs all staff duties and functions related to the acquisition, administration, and disposition of state lands. Section 253.002(1), F.S.
[37] Sections 253.001, 253.02, 337.25(1), and 373.089, F.S.
[38] Section 253.0341(1), F.S.

"Conservation lands" are lands managed for conservation, outdoor resource-based recreation, or archaeological or historic preservation, except those lands acquired solely to facilitate the acquisition of other conservation lands. Lands acquired for uses other than conservation, outdoor resource-based recreation, or archaeological or historic preservation are "nonconservation lands." Nonconservation lands include the following: correction and detention facilities, military installations and facilities, state office buildings, maintenance yards, State University or Florida College System institution campuses, agricultural field stations or offices, tower sites, law enforcement and license facilities, laboratories, hospitals, clinics, and other sites that possess no significant natural or historical resources.[39]

At least every ten years, the land manager evaluates and indicates whether state lands are still being used for the purposes for which they were originally leased from the Board of Trustees. For conservation lands, the Acquisition and Restoration Council (ARC)[40] reviews the land manager's findings and then provides a recommendation to the Board of Trustees whether the lands can be surplused. For nonconservation lands, the Division of State Lands (DSL), within the Department of Environmental Protection (DEP), reviews the findings and then provides a recommendation to the Board of Trustees whether the lands may be surplused.[41] The Board of Trustees may surplus lands that are not actively being managed or when a land management plan has not been adopted, if recommended by the Acquisition and Restoration Council.[42]

Any public or private entity or person may ask the Board of Trustees to surplus lands. The lead managing agency must review the request and make a recommendation to ARC within 90 days. ARC must immediately schedule a hearing to review the request at the next regularly scheduled hearing for any surplusing requests that have not been acted upon within 90 days.[43]

Before a building or parcel of land is offered for lease or sale, DSL must first offer the land for lease to state agencies, state universities, and Florida College System institutions. Within 60 days of such offer, the interested state agencies, state universities, or Florida College System institutions must submit a plan outlining the intended use, including future use, of the building or parcel of land for review by the Board of Trustees before approval of a lease. The Board of Trustees must then compare the estimated value of the building or parcel to any submitted business plan to determine if the lease or sale is in the best interest of the state.[44]

DSL must determine the sale price of the land by considering an appraisal. If the value of the land is estimated at $500,000 or less, DSL may use a comparable sales analysis or broker's opinion.[45] DSL must offer parcels valued at more than $500,000 by competitive bid first. If the parcel is not successfully sold by competitive bid, or the parcel is valued at $500,000 or less, then DSL may sell the property by any reasonable means.[46]

Water Management Districts

A WMD may sell lands its governing board determines to be surplus at any time.[47] These lands must be sold at the highest price obtainable, but not less than the appraised value of the land determined by a certified appraiser 360 days before the sale.[48] Such sales must be in cash and on the terms set by the governing board of the WMD.[49] The WMD must publish notice of its intent to sell the land in a newspaper in the county where the land is located. The notice of intent must be published three times for three successive weeks at least 30

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[39] Section 253.034(2)(c), F.S.
[40] Section 259.035, F.S.
[41] Section 253.0341(4), F.S.
[42] Section 253.0341(5), F.S.
[43] Section 253.0341(11), F.S
[44] Section 253.0341(7), F.S.
[45] Section 253.0341(8), F.S.
[46] Section 253.0341(9), F.S.
[47] Section 373.089(1), F.S.
[48] Section 373.089(1), F.S.
[49] Section 373.089(2), F.S.

days, and not more than 360 days, before any sale. The notice of intent must describe the land or the interest or rights to be sold.[50]

Public and private entities may request that a WMD make its lands available for purchase when those lands are not essential or necessary to meet conservation purposes and when:

- The land is located in a county with a population of 75,000 or fewer or within a county with a population of 100,000 or fewer that is contiguous to a county with a population of 75,000 or fewer; and
- More than 50 percent of the lands within the county boundary are federal lands and lands titled in the name of the state, a state agency, a WMD, or a local government.[51]

If so requested and the lands are determined to be surplus, the WMD must give priority consideration to public or private buyers who are willing to return the property to productive use so long as the property can reenter the county ad valorem tax roll.[52]

When deciding whether to sell lands designated as acquired for conservation purposes, the governing board of the WMD must determine by a two-thirds vote that the land is no longer needed for conservation purposes.[53] For all other lands, the governing board of the WMD must determine by a majority vote that the land is no longer needed.[54]

Prior to selling land, a WMD must first offer title to lands acquired in whole or in part with Florida Forever funds[55] to the Board of Trustees unless:

- The land will be used for linear facilities, including electric transmission and distribution facilities, telecommunication transmission and distribution facilities, pipeline transmission and distribution facilities, public transportation corridors, and related appurtenances;
- The WMD will sell the fee interest in the land and retain a conservation easement to fulfill the conservation objectives for which the land was acquired;
- The land will be exchanged for other lands that meet or exceed the conservation objectives for which the original land was acquired;
- The land will be used by a governmental entity for a public purpose; or
- The portion of an overall purchase deemed surplus at the time of the acquisition.[56]

If the Board of Trustees declines to accept title to the land, the WMD may dispose of the land.[57]

A WMD may expedite the disposal of land valued at $25,000 or less. If a parcel of land is no longer essential or necessary for conservation purposes and is valued at $25,000 or less as determined by a certified appraisal obtained within 360 days before the effective date of a contract for the sale, the governing board of the WMD may determine that the parcel of land is surplus. Unlike other surplus parcels, the WMD must publish the notice of intention to sell in the newspaper in the county where the land is located only one time. The WMD must send the notice of intention to sell the parcel to adjacent property owners by certified mail and publish the notice on its website. Fourteen days after publication of notice, the WMD may sell the parcel to an adjacent property owner. If there are two or more owners of adjacent property, the WMD may accept sealed bids and sell the parcel to the highest bidder or reject all offers. Thirty days after publication of notice, the WMD must accept sealed bids and may sell the parcel to the highest bidder or reject all offers.[58]

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[50] Section 373.089(3), F.S.
[51] Section 373.089(5), F.S.
[52] *Id.*
[53] Section 373.089(6)(a), F.S.
[54] Section 373.089(6)(b), F.S.
[55] *See* ss. 259.105, 259.1051, F.S.
[56] Section 373.089(7), F.S.
[57] Section 373.089, F.S.
[58] Section 373.089(8), F.S.

Department of Transportation

DOT may convey any land, building, or other property, real or personal, when it determines the property is not needed for the construction, operation, and maintenance of a transportation facility. DOT may dispose of its surplus property through negotiations, sealed competitive bids, auctions, or any other means it deems to be in its best interest. DOT must advertise the sale of property valued by DOT at greater than $10,000.[59] DOT may not sell property for less than DOT's current estimate of value, except when:

- The property was donated to the state for transportation purposes and a transportation facility has not been constructed for at least five years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor. The governmental entity may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives;[60]
- The property will be used for a public purpose. In this situation, the property may be conveyed without consideration to a governmental entity;[61]
- DOT originally acquired the property specifically to provide replacement housing for persons displaced by transportation projects. As compensation for the conveyance, the state must receive at least its investment in such property or DOT's current estimate of value, whichever is lower. DOT may only extend this benefit to persons actually displaced by the project. Dispositions to any other person must be for at least DOT's current estimate of value;[62] or
- DOT determines that continued ownership of the property will cause DOT to incur significant costs or exposes DOT to significant liability risks. DOT may use the projected maintenance costs over the next 10 years to offset the property's value in establishing a value for disposal of the property, even if that value is zero.[63]

DOT may afford a right of first refusal to the local government or other political subdivision in the jurisdiction where the parcel is situated, except when:

- The property was donated to the state for transportation purposes and a transportation facility has not been constructed for at least five years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor;[64]
- DOT originally acquired the property specifically to provide replacement housing for persons displaced by transportation projects;[65] or
- DOT determines a sale to a person other than an abutting owner would be inequitable, the property may be sold to the abutting owner for DOT's current estimate of value.[66]

Effect of the Bill

The bill creates s. 420.56, F.S., to make all surplus lands designated as nonconservation available for affordable housing before making the parcels available for purchase by other governmental entities or the public. As nonconservation land becomes available for surplus, the DEP, acting on the behalf of the Board of Trustees, the WMDs, and DOT must notify the Florida Housing Finance Corporation (FHFC) that the land is available for surplus before making the parcel available for any other use, including for purchase by other governmental entities or the public. WMDs must only identify nonconservation surplus lands originally acquired using state funds.

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[59] Section 337.25(4), F.S.
[60] Section 337.25(4)(a), F.S.
[61] Section 337.25(4)(b), F.S.
[62] Section 337.25(4)(c), F.S.
[63] Section 337.25(4)(d), F.S.
[64] Section 337.25(4)(a), F.S.
[65] Section 337.25(4)(c), F.S.
[66] Section 337.25(4)(e), F.S.

The bill requires FHFC to evaluate, in consultation with DEP, the WMDs, and DOT, whether the surplus lands identified by DEP, the WMDs, and DOT are suitable for affordable housing based on the following characteristics of the property:

- Environmental suitability for construction;
- Current and anticipated land use and zoning;
- Inclusion in one or more special districts meant to revitalize the community;
- Existing infrastructure on the land such as roads, water, sewer, and electricity;
- Access to grocery stores within walking distance or by public transportation;
- Access to employment opportunities within walking distance or by public transportation;
- Access to public transportation within one half mile; and
- Access to community services such as public libraries, food kitchens, and employment centers.

If FHFC determines the nonconservation surplus land is suitable for affordable housing, the bill requires the Board of Trustees, the WMDs, and DOT to first offer the land to the county and municipality where the land is located to be used for affordable housing before the entity offers the land to other governmental entities or the public. If the county and municipality where the parcel is located do not want the parcel for affordable housing, the Board of Trustees, the WMDs, or DOT may dispose of the parcel using the procedures in existing law.

The bill authorizes the Board of Trustees, the WMDs, and DOT to sell the parcels for less than the appraised value to any party. If the agency sells the parcels for less than appraised value, the agency must place an encumbrance on the parcels to ensure the purchaser uses the land for affordable housing for a period of not less than 99 years.

The bill exempts the Board of Trustees, the WMDs, and DOT from certain disposal procedures to expedite the sales of surplus land for affordable housing, specifically:

- The Board of Trustees does not need to follow the appraisal and competitive bidding procedures;
- The WMDs do not need to follow their appraisal and advertising requirements and the procedures for selling land valued at $25,000 or less; and
- DOT does not need to follow its disposal procedures.

The bill authorizes the Board of Trustees, the WMDs, and DOT to determine the sale price of the parcels. The bill requires Board of Trustees, the WMDs, and DOT to consider at least one appraisal, or if the estimated value of the land is $500,000 or less, a comparable sales analysis or a broker's opinion of value.

The bill amends s. 253.0341(4), F.S., to require the land manager of Board of Trustees owned land to evaluate and indicate whether state lands it manages are still being used for the purpose for which they were originally leased from the Board of Trustees every three years instead of every ten. This change appears to be inconsistent with the Board of Trustee's duty to review the management of its lands at least every ten years in s. 253.034(5), F.S.

The bill amends s. 253.0341(7), F.S., to require the Board of Trustees to offer nonconservation surplus lands to the county and municipality where the land is located for use as affordable housing as identified by the FHFC before offering it to other potential buyers. This will give those counties and municipalities the opportunity to purchase nonconservation lands for affordable housing prior to state agencies, state universities, and Florida College System institutions, who currently have the first opportunity to either lease or buy surplus lands. All lands not needed for affordable housing will still be offered first to state agencies, state universities, and Florida College System institutions.

The bill amends s. 337.25(3), F.S., to require DOT to evaluate all of its land not within a transportation corridor or within the right-of-way of a transportation facility at least every ten years on a rotating basis to determine whether DOT should retain the property. This change is consistent with the Board of Trustee's current duty to

review the management of its lands every ten years in s. 253.0341(4), F.S., to determine if the lands should be kept.

The bill creates s. 337.25(12), F.S., to require DOT to offer nonconservation surplus lands to the county and municipality where the land is located for use as affordable housing as identified by the FHFC before offering it to other potential buyers except when:

- The property was donated to the state for transportation purposes and a transportation facility has not been constructed for at least 5 years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor;
- DOT originally acquired the property specifically to provide replacement housing for persons displaced by transportation projects; or
- DOT determines a sale to a person other than an abutting owner would be inequitable, the property may be sold to the abutting owner for DOT's current estimate of value.

The bill amends s. 373.089(1), F.S., to require the WMDs review all lands and interests or rights in lands every ten years on a rotating basis to determine whether the lands are still needed for the purpose for which they were acquired. This change is consistent with the Board of Trustee's current duty to review the management of its lands every ten years in s. 253.0341(4), F.S., to determine if the lands should be kept.

The bill creates s. 373.089(9), F.S., to require WMDs to offer nonconservation surplus lands to the county and municipality where the land is located for use as affordable housing as identified by the FHFC before offering it to other potential buyers. This requirement only applies to nonconservation surplus lands originally acquired using state funds.

Hurricane Recovery Programs

Present Situation

Following the 2004 Hurricane Season, a statewide Hurricane Housing Work Group was created to recommend how best to leverage funding recommended by the Governor for hurricane housing recovery needs. A Work Group recommended at that time, and the Legislature subsequently funded, the Hurricane Housing Recovery Program and the Rental Recovery Loan Program.

Hurricane Housing Recovery Program (HHRP)

The Hurricane Housing Recovery Program (HHRP) was created as a local housing recovery program and modeled after the existing State Housing Incentive Program (SHIP) aimed at assisting homeowners with post-hurricane recovery efforts. HHRP funds were distributed to local governments using a need-based formula to allow local communities to evaluate and address needs as appropriate. Eligible uses of the funds included, but were not limited to:

- Repair and replacement of site built housing;
- Land acquisition, through community land trusts or other means, for properties that may include scattered sites, community revitalization sites, and older manufactured home parks;
- Construction and development financing;
- Down payment, closing cost, and purchase price assistance for site-built and post-1994 manufactured homes where the wind load rating is sufficient for the location;
- Repair, replacement, and relocation assistance for post-1994 manufactured homes where the wind load rating is sufficient for the location, including those on leased land in stable park situations;
- Limited repair and relocation assistance on a case by case basis to pre-1994 manufactured homes;
- The acquisition of building materials for home repair and construction;
- Implementation of long-term recovery plans prepared through a locally initiated collaborative community partnership or in conjunction with the Department of Community Affairs and FEMA;

- Housing re-entry assistance, such as security deposits, utility deposits, and temporary storage of household furnishings;
- Foreclosure eviction prevention, including monthly rental assistance for limited periods of time; and
- Capital to leverage other private and public resources.[67]

Rental Recovery Loan Program

The Rental Recovery Loan Program (RRLP) was created to provide affordable rental units needed to promote the housing recovery needs of local communities. Modeled in part after the State Apartment Incentive Loan (SAIL) Program, the RRLP program allowed the state to leverage existing federal rental financing programs to provide units that served a range of incomes, including extremely low income households, throughout the areas impacted by the hurricanes.

Effects of the Bill

The bill creates the Hurricane Housing Recovery Program and the Rental Recovery Loan Program to provide funds to local governments for affordable housing recovery efforts due to impacts of hurricanes.

The HHRP will provide resources to local governments according to a need-based formula that reflects affordable housing damage estimates. Eligible local governments must submit a strategy outlining proposed recovery actions, income levels and number of units to be served, and funding requests. Program funds will be used as follows:

- To serve households with incomes up to 120 percent of the area median income (AMI), except that at least thirty percent of program funds should be reserved for households with incomes up to fifty percent AMI and an additional thirty percent of program funds reserved for households with incomes up to eighty percent AMI.
- At least sixty-five percent of the funds shall be used for homeownership.
- Up to fifteen percent may be used for administrative expenses.

The RRLP will provide resources to build additional rental housing and allow the state to leverage federal rental financing similar to the SAIL program. The bill requires that each participating local entity submit a report of its housing recovery program and accomplishments by September 15, 2019 and each year thereafter. The bill provides FHFC the authority to adopt emergency rules pursuant to s. 120.54, F.S. for the purpose of implementing these programs.

The bill also provides for an appropriation from the Local Government Housing Trust Fund and State Housing Trust Fund to implement these programs. (SEE FISCAL COMMENTS).

B. SECTION DIRECTORY:

Section 1: Amends s. 125.379, F.S., requiring certain evaluation criteria of real property by counties when developing surplus land inventory lists.

Section 2: Amends s. 163.3180, F.S., prohibiting a local government from charging a mobility fee for the development of affordable housing for a five year period beginning July 1, 2018.

Section 3: Amends s. 163.31801, F.S., prohibiting a local government from charging impact fees for the development of affordable housing for a five year period beginning July 1, 2018; requiring additional annual financial reporting requirements

[67] Hurricane Housing Work Group, "Recommendations to Assist in Florida's Long Term Housing Recovery Efforts," 14 (Feb. 2015), at https://www.floridahousing.org/press/publications/hurricane-housing-work-group-recommendations-february-2005 (accessed 1/16/2018). *See also* ch. 2006-69, Laws of Fla.

Section 4: Amends s. 166.0451, F.S., requiring certain evaluation criteria of real property by municipalities when developing surplus land inventory lists.

Section 5: Creates s. 420.0007, F.S., providing a local permit approval process for affordable housing.

Section 6: Amends s. 420.5087, F.S., requiring consideration of certain criteria when evaluating applications under the State Apartment Incentive Loan (SAIL) program.

Section 7: Creates s. 420.56, F.S., providing a process for the disposal of surplus lands for use as affordable housing.

Section 8: Amends s. 420.9071, F.S., correcting a technical cross-reference.

Section 9: Amends s. 253.0341, F.S., requiring nonconservation surplus state lands be offered for affordable housing purposes first to the county or municipality where the land is located before generally offering the land to state universities, etc.

Section 10: Amends s. 337.25, F.S., requiring certain surplus state lands within a transportation corridor be offered for affordable housing purposes first to the county or municipality where the land is located.

Section 11: Amends s. 373.089, F.S., requiring nonconservation surplus state lands within a water management district be offered for affordable housing purposes first to the county or municipality where the land is located. The nonconservation lands affected by this section are only those originally acquired using state funds.

Section 12: Creates the Hurricane Housing Recovery Program and Rental Recovery Loan Program; provides emergency rulemaking authority for Florida Housing Finance Corporation.

Section 13: Provides an appropriation for the Hurricane Housing Recovery Program and Rental Recovery Loan Program.

Section 14: Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Revenue for the Local Government Housing Trust Fund and State Housing Trust Fund are provided from allocations of the Documentary Stamp Tax Collections. The August 2017 Revenue Estimating Conference estimated $314.08 million to be available for distribution to these trust funds for Fiscal Year 2018-19.

   The bill directs twenty percent of this estimate be appropriated to Florida Housing Finance Corporation for affordable housing hurricane recovery efforts. Based on the estimate, $62.82 million would be provided.

   The bill also provides $100,000 to Florida Housing Finance Corporation from the State Housing Trust Fund to provide technical and training assistance.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill prohibits local governments from collecting impact fees and mobility fees on affordable housing projects for a five-year period beginning July 1, 2018 and ending June 30, 2023. In 2015, 38 counties reported total impact fee revenues of $503.9 million and 193 cities reported total impact fee revenues of $225.3 million.[68] In 2016, 28 school districts reported total impact fee revenues of $265.3 million.[69]

Currently, data is not collected on the revenues related specifically to the development of affordable housing. As a result, staff from the Office of Economic and Demographic Research (EDR) surveyed all counties and municipalities that reported total revenues in FY 2014-15 greater than $300,000 and $1 million, respectively.[70] Using these data, the Revenue Estimating Conference estimated a total negative recurring impact on local government revenues of $5.9 million in 2018-19 increasing to $6.3 million by 2022-23.[71]

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill prohibits the collection of certain impact fees for construction or development of affordable housing. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides Florida Housing Finance Corporation with emergency rulemaking authority pursuant to s. 120.54, F.S., to adopt rules necessary to implement the hurricane recovery programs.

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[68] Office of Economic and Demographic Research, The Florida Legislature, *Impact Fees*, available at http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm. County Revenues were updated July 25, 2017, and City Revenues were updated September 28, 2017.

[69] *Id.* School District Revenues were updated October 5, 2017.

[70] Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Conference,* pg 335-341 and 349-354, available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/Impact0126.pdf.

[71] *Id.*

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill amends s. 253.0341(4), F.S., to require the land manager of land owned by the Board of Trustees of the Internal Improvement Trust Fund to evaluate and indicate whether state lands it manages are still being used for the purpose for which they were originally leased every three years instead of every ten years. This change appears to be inconsistent with the Board of Trustee's duty to review the management of its lands at least every ten years in s. 253.034(5), F.S., and the changes in this bill to require the WMDs and DOT to review their lands every ten years to determine if the lands are still needed.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 16, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted one amendment and approved the bill as a committee substitute. The amendment made clarifying technical changes, including conforming references to special districts meant to revitalize communities and expressly referencing the statutory definition of "permits" in s. 163.3164(16), F.S., for use in conjunction with the expedited local permitting process created in the bill.

This analysis is drawn to the bill as amended by the Local, Federal & Veterans Affairs Subcommittee.

A bill to be entitled

An act relating to affordable housing; amending ss. 125.379 and 166.0451, F.S.; revising the criteria that counties and municipalities must use when evaluating real property as part of their inventory for disposal of lands; amending s. 163.3180, F.S.; prohibiting local governments from charging mobility fees for specified period; preempting to the state the right to impose such fees; amending s. 163.31801, F.S.; prohibiting local governments from charging impact fees for specified period; preempting to the state the right to impose such fees; specifying that additional information be submitted by specified entities when submitting their annual financial reports; creating s. 420.0007, F.S.; providing a local permit approval process; amending s. 420.5087, F.S.; revising the criteria used by a review committee when evaluating and selecting specified applications for the state apartment incentive loans; creating s. 420.56, F.S.; providing a process for certain entities to dispose of surplus lands for use as affordable housing; amending s. 420.9071, F.S.; revising the definition of "local housing incentive strategies"; amending ss. 253.0341, 337.25, and 373.089, F.S.; revising the procedures under which the board of trustees, the Department of

Transportation, and the water management districts must dispose of nonconservation surplus lands; creating the Hurricane Housing Recovery Program to provide funds for specified purposes related to affordable housing; specifying that the Florida Housing Finance Corporation shall administer the program according to specified procedures; specifying how program funds are to be used; creating the Recovery Rental Loan Program; providing legislative intent; requiring an annual report regarding the housing recovery program; authorizing emergency rule-making; exempting the emergency rules from the requirement for making certain legislative findings; providing appropriations; providing an effective date.

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

Section 1. Subsection (1) of section 125.379, Florida Statutes, is amended to read:

125.379 Disposition of county property for affordable housing.—

(1) Beginning July 1, 2018 ~~By July 1, 2007~~, and every 3 years thereafter, each county shall prepare an inventory list of all real property within its jurisdiction to which the county holds fee simple title that is appropriate for use as affordable

housing. The real property must be evaluated on criteria that includes environmental suitability for construction, site characteristics, current land use designation, current or anticipated zoning, inclusion in at least one special district meant to revitalize the community, existing infrastructure, proximity to employment opportunities, proximity to public transportation, and proximity to existing services. The inventory list must include the address and legal description of each such real property and specify whether the property is vacant or improved. The governing body of the county must review the inventory list at a public hearing and may revise it at the conclusion of the public hearing. The governing body of the county shall adopt a resolution that includes an inventory list of such property following the public hearing.

Section 2. Paragraph (i) of subsection (5) of section 163.3180, Florida Statutes, is amended to read:

163.3180 Concurrency.—

(5)

(i)1. If a local government elects to repeal transportation concurrency, it is encouraged to adopt an alternative mobility funding system that uses one or more of the tools and techniques identified in paragraph (f). Any alternative mobility funding system adopted may not be used to deny, time, or phase an application for site plan approval, plat approval, final subdivision approval, building permits, or the

functional equivalent of such approvals provided that the developer agrees to pay for the development's identified transportation impacts via the funding mechanism implemented by the local government. The revenue from the funding mechanism used in the alternative system must be used to implement the needs of the local government's plan which serves as the basis for the fee imposed. A mobility fee-based funding system must comply with the dual rational nexus test applicable to impact fees. An alternative system that is not mobility fee-based shall not be applied in a manner that imposes upon new development any responsibility for funding an existing transportation deficiency as defined in paragraph (h).

2. Beginning July 1, 2018, and ending June 20, 2023, a local government may not charge a mobility fee for the development or construction of housing that is affordable, as defined in s. 420.9071.

Section 3. Subsection (6) is added to section 163.31801, Florida Statutes, to read:

163.31801 Impact fees; short title; intent; definitions; ordinances levying impact fees.—

(6)(a) Beginning July 1, 2018, and ending June 20, 2023, a local government may not charge an impact fee for the development or construction of housing that is affordable, as defined in s. 420.9071.

(b) In addition to the items that must be reported in the

annual financial reports under s. 218.32, counties and municipalities must report the following data on all impact fees charged:

1. The specific purpose of the impact fee, including the specific infrastructure need to be met, such as transportation, parks, water, sewer, and schools;

2. The Impact Fee Schedule Policy, describing the method of calculating impact fees, such as flat fee, tiered scale based on number of bedrooms, and tiered scale based on square footage;

3. The amount assessed for each purpose and type of dwelling;

4. The total amount of impact fees charged by type of dwelling;

5. Each exception and waiver provided for affordable housing developments.

Section 4. Subsection (1) of section 166.0451, Florida Statutes, is amended to read:

166.0451 Disposition of municipal property for affordable housing.—

(1) Beginning July 1, 2018 ~~By July 1, 2007~~, and every 3 years thereafter, each municipality shall prepare an inventory list of all real property within its jurisdiction to which the municipality holds fee simple title that is appropriate for use as affordable housing. Such real property shall be evaluated on criteria that includes the environmental suitability for

construction, site characteristics, currently designated land use, current or anticipated zoning, inclusion in one or more special districts meant to revitalize the community, existing infrastructure, proximity to employment opportunities, proximity to public transportation, and proximity to existing services. The inventory list must include the address and legal description of each such property and specify whether the property is vacant or improved. The governing body of the municipality must review the inventory list at a public hearing and may revise it at the conclusion of the public hearing. Following the public hearing, the governing body of the municipality shall adopt a resolution that includes an inventory list of such property.

Section 5. Section 420.0007, Florida Statutes, is created to read:

420.0007 Local Permit Approval Process for Affordable Housing.—

(1) A local government has 15 days from the date it receives an application for a development permit, construction permit, or certificate of occupancy for affordable housing to examine the application and notify the applicant of any apparent errors or omissions and request any additional information the local government is permitted by law to require.

(2) If a local government does not request additional information within the required time, the local government may

not deny a development permit, construction permit, or certificate of occupancy for affordable housing if the applicant has failed to correct an error or omission or to supply additional information.

(3) The local government may require any additional requested information to be submitted no later than 10 days from the date of the notice specified in subsection (1).

(4) For good cause shown, the local government shall grant a request for an extension of time for submitting the additional information.

(5) An application is complete upon receipt of all requested information and the correction of any error or omission for which the applicant was timely notified or when the time for notification has expired.

(6) The local government must approve or deny an application for a development permit, construction permit, or certificate of occupancy for affordable housing within 60 days after receipt of a completed application unless a shorter period of time for local government action is provided by law.

(7) If the local government does not approve or deny within the 60-day or shorter time period an application for a development permit, construction permit, or certificate of occupancy for affordable housing, the permit is considered approved and the local government must issue the development permit, construction permit, or certificate of occupancy and may

include such reasonable conditions as authorized by law.

(8) An applicant for a development permit, construction permit, or certificate of occupancy seeking to receive a permit by default under this section shall notify the local government, in writing, of the intent to rely upon the default approval provision of this section but may not take any action based upon the default development permit, construction permit, or certificate of occupancy until the applicant receives notification or a receipt that the local government received the notice. The applicant must retain the notification or receipt.

Section 6. Paragraph (c) of subsection (6) of section 420.5087, Florida Statutes, is amended to read:

420.5087 State Apartment Incentive Loan Program.—There is hereby created the State Apartment Incentive Loan Program for the purpose of providing first, second, or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, nonprofit, and public entities, to provide housing affordable to very-low-income persons.

(6) On all state apartment incentive loans, except loans made to housing communities for the elderly to provide for lifesafety, building preservation, health, sanitation, or security-related repairs or improvements, the following provisions shall apply:

(c) The corporation shall provide by rule for the establishment of a review committee for the competitive

evaluation and selection of applications submitted in this program, including, but not limited to, the following criteria:

1. Tenant income and demographic targeting objectives of the corporation.

2. Targeting objectives of the corporation which will ensure an equitable distribution of loans between rural and urban areas.

3. Sponsor's agreement to reserve the units for persons or families who have incomes below 50 percent of the state or local median income, whichever is higher, for a time period that exceeds the minimum required by federal law or this part.

4. Sponsor's agreement to reserve more than:

a. Twenty percent of the units in the project for persons or families who have incomes that do not exceed 50 percent of the state or local median income, whichever is higher; or

b. Forty percent of the units in the project for persons or families who have incomes that do not exceed 60 percent of the state or local median income, whichever is higher, without requiring a greater amount of the loans as provided in this section.

5. Provision for tenant counseling.

6. Sponsor's agreement to accept rental assistance certificates or vouchers as payment for rent.

7. Projects requiring the least amount of a state apartment incentive loan compared to overall project cost,

except that the share of the loan attributable to units serving extremely-low-income persons must be excluded from this requirement.

8. Local government contributions and local government comprehensive planning and activities that promote affordable housing, policies that promote access to public transportation, reduce the need for on-site parking, and expedite permits for affordable housing projects as provided in s. 420.0007.

9. Project feasibility.

10. Economic viability of the project.

11. Commitment of first mortgage financing.

12. Sponsor's prior experience.

13. Sponsor's ability to proceed with construction.

14. Projects that directly implement or assist welfare-to-work transitioning.

15. Projects that reserve units for extremely-low-income persons.

16. Projects that include green building principles, storm-resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance.

17. Job-creation rate of the developer and general contractor, as provided in s. 420.507(47).

Section 7. Section 420.56, Florida Statutes, is created to read:

420.56 Disposal of surplus lands for use as affordable housing.—

(1) It is intent of the Legislature to make all surplus lands designated as nonconservation available for affordable housing before making the parcels available for purchase by other governmental entities or the public.

(2) The Department of Environmental Protection acting on the behalf of the Board of Trustees of the Internal Improvement Trust Fund, the Department of Transportation, and each water management district shall notify the corporation when nonconservation land becomes available for surplus as part of the entity's regular review of lands under the provisions of ss. 253.0341, 337.25, or 373.089 before making the parcel available for any other use, including for purchase by other governmental entities or the public. Water management districts must only identify nonconservation surplus lands originally acquired using state funds.

(3) In consultation with the Department of Environmental Protection, the Department of Transportation, and the water management districts, the corporation must evaluate whether these surplus lands are suitable for affordable housing based on the property's environmental suitability for construction; current and anticipated land use and zoning; inclusion in one or more special districts meant to revitalize the community; existing infrastructure on the land such as roads, water, sewer,

and electricity; access to grocery stores within walking distance or by public transportation; access to employment opportunities within walking distance or by public transportation; access to public transportation within one half mile; and access to community services such as public libraries, food kitchens, and employment centers.

(4) If the corporation determines that the nonconservation surplus land is suitable for affordable housing, the entity seeking to dispose of the parcel must first offer the land to the county and municipality where the land is located to be used for affordable housing before the entity offers the land to other governmental entities or the public. If the county and municipality where the parcel is located do not wish to use the parcel for affordable housing, the entity may dispose of the parcel as otherwise provided by law or herein.

(5) The Board of Trustees of the Internal Improvement Trust Fund, the Department of Transportation, and the water management districts may sell the parcels identified by the corporation for affordable housing for less than the appraised value to any party so long as the agency places an encumbrance on the parcels to ensure the purchaser uses the land for affordable housing for a period of not less than 99 years.

(6)(a) The Board of Trustees of the Internal Improvement Trust Fund, the Department of Transportation, and the water management districts are exempt from the disposal procedures of

ss. 253.0341(8) and (9), 337.25(4) and (7), 373.089(1), (2), (3), and (8) when disposing of nonconservation surplus lands under this section.

(b) The sale price of land parcels disposed of pursuant to this section shall be determined by the entity disposing of the parcel. The Department of Transportation, the Board of Trustees of the Internal Improvement Trust Fund, and the water management districts must consider at least one appraisal of the property or, if the estimated value of the land is $500,000 or less, a comparable sales analysis or a broker's opinion of value.

Section 8. Subsection (16) of section 420.9071, Florida Statutes, is amended to read:

420.9071 Definitions.—As used in ss. 420.907-420.9079, the term:

(16) "Local housing incentive strategies" means local regulatory reform or incentive programs to encourage or facilitate affordable housing production, which include at a minimum, expediting development permits, as defined in s. 163.3164(16), for affordable housing projects as provided in s. 420.0007 ~~assurance that permits for affordable housing projects are expedited to a greater degree than other projects, as provided in s. 163.3177(6)(f)3.~~; an ongoing process for review of local policies, ordinances, regulations, and plan provisions that increase the cost of housing prior to their adoption; and a schedule for implementing the incentive strategies. Local

housing incentive strategies may also include other regulatory reforms, such as those enumerated in s. 420.9076 or those recommended by the affordable housing advisory committee in its triennial evaluation of the implementation of affordable housing incentives, and adopted by the local governing body.

Section 9. Subsections (4) and (7) of section 253.0341, Florida Statutes, are amended to read:

253.0341 Surplus of state-owned lands.—

(4) Beginning July 1, 2018, and continuing every 3 years thereafter, ~~At least every 10 years,~~ as a component of each land management plan or land use plan and in a form and manner adopted by rule of the board of trustees, each manager shall evaluate and indicate to the board of trustees those lands that are not being used for the purpose for which they were originally leased. For conservation lands, the Acquisition and Restoration Council shall review and recommend to the board of trustees whether such lands should be retained in public ownership or disposed of by the board of trustees. For nonconservation lands, the Division of State Lands shall review and recommend to the board of trustees whether such lands should be retained in public ownership or disposed of by the board of trustees.

(7)(a) The board of trustees must first offer nonconservation surplus lands to the county and municipality where the land is located for use as affordable housing as

identified by the Florida Housing Finance Corporation pursuant to s. 420.56. All surplus buildings or land not needed for affordable housing ~~Before a building or parcel of land is offered for lease or sale to a local or federal unit of government or a private party, it~~ shall first be offered for lease to state agencies, state universities, and Florida College System institutions, with priority consideration given to state universities and Florida College System institutions. If the surplus building or land is not used for affordable housing or leased by a state agency, state university, or Florida College System institution, then the board of trustees shall offer the building or parcel for lease or sale to a local or federal unit of government or a private party.

(b) Within 60 days after the offer for lease of a surplus building or parcel, a state university or Florida College System institution that requests the lease must submit a plan for review and approval by the Board of Trustees of the Internal Improvement Trust Fund regarding the intended use, including future use, of the building or parcel of land before approval of a lease. Within 60 days after the offer for lease of a surplus building or parcel, a state agency that requests the lease of such facility or parcel must submit a plan for review and approval by the board of trustees regarding the intended use. The state agency plan must, at a minimum, include the proposed use of the facility or parcel, the estimated cost of renovation,

a capital improvement plan for the building, evidence that the building or parcel meets an existing need that cannot otherwise be met, and other criteria developed by rule by the board of trustees. The board or its designee shall compare the estimated value of the building or parcel to any submitted business plan to determine if the lease or sale is in the best interest of the state. The board of trustees shall adopt rules pursuant to chapter 120 for the implementation of this section.

Section 10. Subsection (3) is amended and subsection (12) is added to section 337.25, Florida Statutes, to read:

337.25 Acquisition, lease, and disposal of real and personal property.—

(3) Beginning July 1, 2018, the department shall evaluate all of its land not within a transportation corridor or within the right-of-way of a transportation facility at least every 10 years on a rotating basis to determine whether the property should be retained. ~~The inventory of real property that was acquired by the state after December 31, 1988, that has been owned by the state for 10 or more years, and that is not within a transportation corridor or within the right-of-way of a transportation facility shall be evaluated to determine the necessity for retaining the property.~~ If the property is not needed for the construction, operation, and maintenance of a transportation facility or is not located within a transportation corridor, the department may dispose of the

property pursuant to subsection (4).

(12) Except in a conveyance transacted under paragraphs (4)(a),(c), and (e), the department must first offer parcels of nonconservation surplus land to the county and municipality where the land is located for use as affordable housing as identified by the Florida Housing Finance Corporation pursuant to s. 420.56.

Section 11. Subsection (1) is amended and subsection (9) is added to section 373.089, Florida Statutes, to read:

373.089 Sale or exchange of lands, or interests or rights in lands.—The governing board of the district may sell lands, or interests or rights in lands, to which the district has acquired title or to which it may hereafter acquire title in the following manner:

(1) Beginning on July 1, 2018, the district shall review all lands and interests or rights in lands every 10 years on a rotating basis to determine whether the lands are still needed for the purpose for which they were acquired. Any lands, or interests or rights in lands, determined by the governing board to be surplus may be sold by the district, at any time, for the highest price obtainable; however, in no case shall the selling price be less than the appraised value of the lands, or interests or rights in lands, as determined by a certified appraisal obtained within 360 days before the effective date of a contract for sale.

(9) The governing board must first offer nonconservation surplus lands to the county and municipality where the land is located for use as affordable housing as identified by the Florida Housing Finance Corporation pursuant to s. 420.56. Districts must only offer nonconservation surplus lands originally acquired using state funds.

If the Board of Trustees of the Internal Improvement Trust Fund declines to accept title to the lands offered under this section, the land may be disposed of by the district under the provisions of this section.

Section 12. Hurricane Recovery Programs.—

(1) The Hurricane Housing Recovery Program is created to provide funds to local governments for affordable housing recovery efforts due to impacts to the affordable housing stock resulting from Hurricanes Irma and Maria. The Florida Housing Finance Corporation shall administer the program with resources allocated to local governments according to a need-based formula that reflects affordable housing damage estimates. Eligible local governments must submit a strategy outlining proposed recovery actions, income levels and number of units to be served, and funding requests. Program funds shall be used as follows:

(a) To serve households with incomes up to 120 percent of area median income, except that at least 30 percent of program

funds should be reserved for households with incomes up to 50 percent of area median income and an additional 30 percent of program funds reserved for households with incomes up to 80 percent of area median income.

(b) At least 65 percent of funds allocated shall be used for homeownership as described in paragraph (a).

(c) Up to 15 percent of the allocation may be used for administrative expenses to ensure expeditious use of funds.

(2) The Recovery Rental Loan Program is created to provide funds to build additional rental housing due to impacts to the housing stock resulting from Hurricanes Irma and Maria. The program is intended to allow the state to leverage additional federal rental financing similar to the State Apartment Incentive Loan Program as described in s. 420.5087, Florida Statutes.

(3) By September 15, 2019, and each year thereafter, each participating local entity shall submit a report of its housing recovery program and accomplishments through June 30, as specified by the Florida Housing Finance Corporation.

(4) Florida Housing Finance Corporation may adopt emergency rules pursuant to s. 120.54, Florida Statutes. The Legislature finds that emergency rules adopted pursuant to this section meet the health, safety, and welfare requirement of s. 120.54(4), Florida Statutes. The Legislature finds that such emergency rulemaking is necessary to preserve the rights and

welfare of the people and to provide additional funds to assist those areas of the state that sustained impacts to available affordable housing stock due to Hurricanes Irma and Maria. Therefore, in adopting such emergency rules, the corporation need not make the findings required by s. 120.54(4)(a), Florida Statutes. Emergency rules adopted under this section are exempt from s. 120.54(4)(c), Florida Statutes.

Section 13. For the 2018-2019 fiscal year only, 20 percent of the most recent revenue estimate from the Revenue Estimating Conference for the 2018-2019 fiscal year from both the Local Government Housing Trust Fund and the State Housing Trust Fund are appropriated to the Florida Housing Finance Corporation for the purpose of affordable housing hurricane recovery efforts. Funds from the Local Government Housing Trust Fund shall be used for the Hurricane Housing Recovery Program and shall be allocated based on the review of FEMA damage assessment data by the Florida Housing Finance Corporation. Funds from the State Housing Trust Fund shall be used for the Rental Recovery Loan Program to assist with building and rehabilitating affordable rental housing to help communities respond to hurricane recovery needs. The Florida Housing Finance Corporation shall use $100,000 from the funds appropriated from the State Housing Trust Fund to provide technical and training assistance.

Section 14. This act shall take effect July 1, 2018.

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: Transportation & Tourism Appropriations Subcommittee

Representative Cortes, B. offered the following:

Amendment (with title amendment)

Remove lines 65-115

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

Remove lines 6-14 and insert:

of lands; creating s.

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: Transportation & Tourism Appropriations Subcommittee
Representative Cortes, B. offered the following:

Amendment (with title amendment)

Remove lines 437-498 and insert:

Section 12. Section 420.57, Florida Statutes, is created to read:

420.57 Hurricane Recovery Programs.—

(1) The Hurricane Housing Recovery Program is created to provide funds to local governments for affordable housing recovery efforts, similar to the State Housing Initiatives Partnership Program as set forth in ss. 420.907-420.9079, Florida Statutes. Subject to a specific appropriation as authorized by the General Appropriations Act, the Florida

Housing Finance Corporation shall administer the program. Notwithstanding ss. 420.9072 and 420.9073, Florida Statutes, the Florida Housing Finance Corporation shall allocate resources to local governments according to a need-based formula that reflects housing damage estimates and population impacts resulting from hurricanes. Eligible local governments must submit a strategy outlining proposed recovery actions, income levels and number of residential units to be served, and funding requests. Program funds shall be used to serve households with incomes up to 120 percent of area median income, except that at least 30 percent of program funds should be reserved for households with incomes up to 50 percent of area median income and an additional 30 percent of program funds reserved for households with incomes up to 80 percent of area median income. Program funds shall be used as follows:

(a) At least 65 percent of funds allocated shall be used for homeownership.

(b) Up to 15 percent of the funds may be used for administrative expenses to ensure expeditious use of funds.

(c) Up to one-quarter of 1 percent may be used by the Florida Housing Finance Corporation for compliance monitoring.

(2) Each participating local government shall submit an annual report of its use of funds from the Hurricane Housing Recovery Program to the Florida Housing Finance Corporation. The corporation shall compile such reports and submit them to the

President of the Senate and the Speaker of the House of Representatives.

(3) The Rental Recovery Loan Program is created to provide funds to build additional rental housing due to impacts to the affordable housing stock and changes to population resulting from hurricanes. The program is intended to allow the state to leverage additional federal rental financing similar to the State Apartment Incentive Loan Program as described in s. 420.5087, Florida Statutes and is subject to a specific appropriation as authorized by the General Appropriations Act.

(4) The Florida Housing Finance Corporation may adopt emergency rules pursuant to s. 120.54, Florida Statutes to implement this section. The Legislature finds that any emergency rules adopted pursuant to this section meet the health, safety, and welfare requirements of s. 120.54(4), Florida Statutes. The Legislature finds that such emergency rulemaking is necessary to preserve the rights and welfare of the people and to provide additional funds to assist those areas of the state that sustained impacts to available affordable housing stock due to recent hurricanes. Therefore, in adopting such emergency rules, the corporation need not make the findings required by s. 120.54(4)(a), Florida Statutes. Emergency rules adopted under this section are exempt from s. 120.54(4)(c), Florida Statutes

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

Remove lines 28-39 and insert:

creating s. 420.57, F.S.; creating the Hurricane Housing Recovery Program to provide funds for certain affordable housing recovery efforts; requiring the Florida Housing Finance Corporation to administer the program and allocate resources to local governments that meet certain criteria; specifying requirements for receiving and using funds; requiring participating local governments to submit a report; creating the Rental Recovery Loan Program to provide funds for additional rental housing due to specified impacts; providing rationale for the program; authorizing the Florida Housing Finance Corporation to adopt emergency rules; providing that the adoption of emergency rules meets certain criteria related to public health, safety, and welfare; providing an effective date.

Amendment No. 3

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

Committee/Subcommittee hearing bill: Transportation & Tourism Appropriations Subcommittee
Representative Cortes, B. offered the following:

Amendment (with title amendment)

Between lines 498 and 499, insert:

Section 13. Section 420.58, Florida Statutes, is created to read:

420.58 Prohibition on awarding, distributing or allocating funds.-- Florida Housing Finance Corporation is prohibited from awarding, distributing or allocating funds to any applicant, principal of an applicant, or an affiliate of an applicant that has been convicted of, entered into a consent decree, or otherwise settled charges relating to material misrepresentation or fraudulent actions, in connection with an application for any program administered by the corporation.

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

Between lines 38 and 39, insert:

creating 420.58, F.S.; prohibiting the corporation from awarding, distributing or allocating funds in certain circumstances;

Amendment No. 4

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: Transportation & Tourism Appropriations Subcommittee
Representative Jenne offered the following:

Amendment (with title amendment)

Between lines 482 and 483, insert:

Section 13. Section 420.0005, Florida Statutes, is amended to read:

420.0005 State Housing Trust Fund; State Housing Fund.—There is established in the State Treasury a separate trust fund to be named the "State Housing Trust Fund." There shall be deposited in the fund all moneys appropriated by the Legislature, or moneys received from any other source, for the purpose of this chapter, and all proceeds derived from the use of such moneys. The fund shall be administered by the Florida Housing Finance Corporation on behalf of the department, as

specified in this chapter, and money deposited to the fund may not be transferred or used for any other purpose. Money deposited to the fund and appropriated by the Legislature must, notwithstanding the provisions of chapter 216 or s. 420.504(3), be transferred quarterly in advance, to the extent available, or, if not so available, as soon as received into the State Housing Trust Fund, and subject to the provisions of s. 420.5092(6)(a) and (b) by the Chief Financial Officer to the corporation upon certification by the executive director of the Department of Economic Opportunity that the corporation is in compliance with the requirements of s. 420.0006. The certification made by the executive director shall also include the split of funds among programs administered by the corporation and the department as specified in chapter 92-317, Laws of Florida, as amended. Moneys advanced by the Chief Financial Officer must be deposited by the corporation into a separate fund established with a qualified public depository meeting the requirements of chapter 280 to be named the "State Housing Fund" and used for the purposes of this chapter. Administrative and personnel costs incurred in implementing this chapter may be paid from the State Housing Fund, but such costs may not exceed 5 percent of the moneys deposited into such fund. To the State Housing Fund shall be credited all loan repayments, penalties, and other fees and charges accruing to such fund under this chapter. It is the intent of this chapter that all

loan repayments, penalties, and other fees and charges collected be credited in full to the program account from which the loan originated. Moneys in the State Housing Fund which are not currently needed for the purposes of this chapter shall be invested in such manner as is provided for by statute. The interest received on any such investment shall be credited to the State Housing Fund.

Section 14. Subsection (2) of section 420.9079, Florida Statutes, is amended to read:

420.9079 Local Government Housing Trust Fund.—

(2) The corporation shall administer the fund exclusively for the purpose of implementing the programs described in ss. 420.907-420.9076; ss. 420.531, 420.606, 420.622; and this section and money deposited to the fund may not be transferred or used for any other purpose. With the exception of monitoring the activities of counties and eligible municipalities to determine local compliance with program requirements, the corporation shall not receive appropriations from the fund for administrative or personnel costs. For the purpose of implementing the compliance monitoring provisions of s. 420.9075(9), the corporation may request a maximum of one-quarter of 1 percent of the annual appropriation per state fiscal year. When such funding is appropriated, the corporation shall deduct the amount appropriated prior to calculating the

local housing distribution pursuant to ss. 420.9072 and 420.9073.

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

Between lines 38 and 39, insert:

amending ss. 420.0005 and 420.9079, F.S.; prohibiting the transfer of certain funds under specified conditions;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1281 Garcon Point Bridge
SPONSOR(S): Williamson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1436

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	11 Y, 0 N	Johnson	Vickers
2) Transportation & Tourism Appropriations Subcommittee		Davis	Davis
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Santa Rosa Bay Bridge Authority (SRBBA) owns the Garcon Point Bridge (bridge) in Santa Rosa County. The bridge has never met its traffic and revenue projections and its bonds are currently in default. Additionally, SRBBA does not have a functioning governing board. Pursuant to a 1996 lease-purchase agreement, the Department of Transportation (DOT) has assumed responsibility for the operation and maintenance of the bridge. Florida's Turnpike Enterprise (Turnpike) provides toll operations, and maintenance functions are performed by DOT's District Three.

The bill authorizes DOT, subject to the verification of economic feasibility, to acquire the Garcon Point Bridge and purchase, as part of the acquisition, SRBBA's bonds. Following the acquisition, the bridge will become part of the Florida Turnpike System.

The bill provides that the acquisition price must first be used to settle all claims of SRBBA bondholders. Additionally, the bill provides that the bridge's toll may not be increased in connection with the acquisition of the bridge. However, following the acquisition, tolls may be increased as required by law or to meet bond covenants.

The bill stipulates that DOT and the state may not incur any financial obligation for acquiring the bridge in excess of its forecasted gross revenues. Therefore, the total acquisition price may not exceed anticipated toll revenues, calculated without any increase in the toll rate, anticipated to be collected from the operation of the bridge between the date of purchase and the projected remaining useful life of the bridge.

Upon the acquisition of the bridge, the lease-purchase agreement between SRBBA and DOT is terminated.

The bill provides that upon DOT's acquisition of the bridge, the Santa Rosa Bay Bridge Authority Act is repealed.

The fiscal impact of the bill is indeterminate, but likely to be significant. See fiscal analysis for details.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

History

Creation of the Santa Rosa Bay Bridge Authority
Created in 1984,[1] the Santa Rosa Bay Bridge Authority (SRBBA) is an agency of the State located in Santa Rosa County. SRBBA was created to acquire, hold, construct, maintain, operate, own and lease all or any part of the Santa Rosa Bay Bridge System, consisting of the Garcon Point Bridge (bridge) and its related infrastructure.[2] Bridge construction began in December 1996 and the bridge opened to traffic in May 1999.[3]

Toll Facility Revolving Trust Fund Loans
Previously codified in s. 338.251, F.S., the Toll Facilities Revolving Trust Fund (TFRTF) was a loan program used to develop and enhance the financial feasibility of revenue-producing road projects. TFRTF loans could be awarded for project planning and design activities, and advanced right-of-way purchase activities. The trust fund provided interest free loans to pay the toll facility's initial project development costs. Loans of greater than $1.5 million required specific legislative appropriation. In 2012, the Legislature repealed the TFRTF.[4]

Between 1989 and 1994, SRBBA received $8.5 million in TFRTF loans. SRBBA used the loan proceeds to pay preliminary expenditures related to the bridge's planning, engineering, permitting, acquisition of right-of-way, and design. TFRTF loan repayment is subordinate to the SRBBA's debt service and administrative costs. As of June 30, 2016, SRBBA owed DOT $7.9 million in TFRTF loans. Since August 1999, SRBBA has not made any payments on its TFRTF loans.[5]

In January 2001, SRBBA requested a TFRTF loan of over $2.9 million, anticipated to be sufficient to cover revenue shortfalls in Fiscal Years 2001 and 2002. SRBBA's request was reduced to $1.4 million after updated revenue estimates decreased the anticipated revenue shortfall. On May 4, 2001, the Legislature approved SRBBA's TFRTF loan.[6] On June 15, 2001, Governor Bush vetoed the loan.[7]

Following the veto, SRBBA had to use its operating reserves to cover the revenue shortfall for its July 1, 2001, debt service payment. This temporarily allowed SRBBA to delay drawing on its $9.2 million debt service reserve fund (DSRF). This also left SRBBA without funds for its day-to-day operations. By mid-2001, SRBBA was using all available toll revenues for debt service, leaving it without operating funds. By the end of 2001, due to lack of funds, SRBBA closed its office and ceased all administration services. DOT agreed to take possession of all SRBBA's records and provide administrative support for SRBBA's future board meetings.[8]

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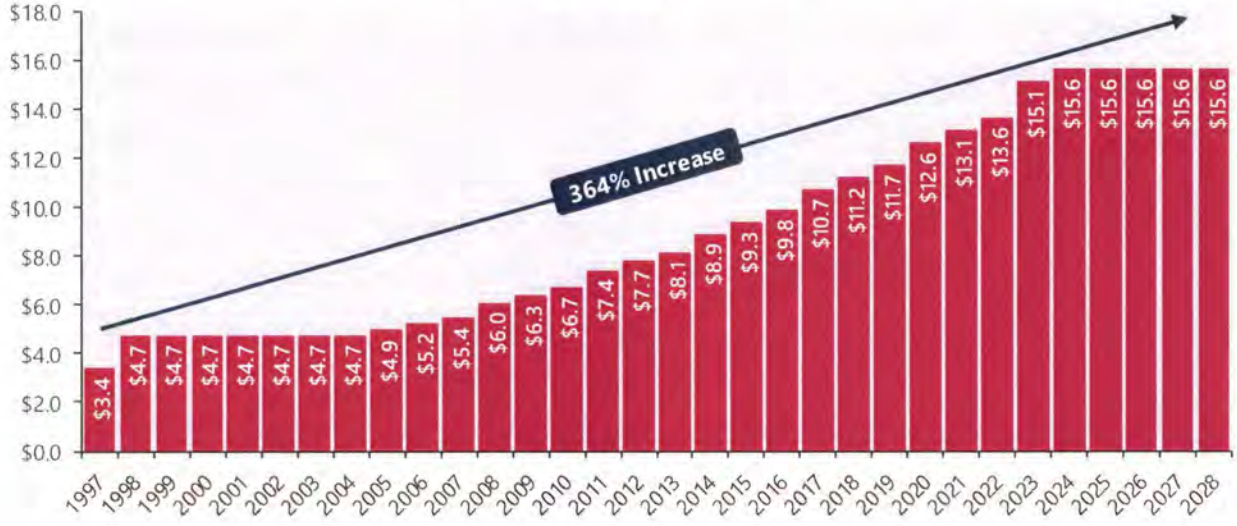
[1] Chapter 84-354, L.O.F.
[2] Department of Transportation/Division of Bond Finance; *Economic Feasibility Study: State Acquisition of the Garcon Point Bridge*, December 2017 (Economic Feasibility Study) p. 11.
[3] *Id.* at B-2
[4] Chapter 2012-128, L.O.F.
[5] Economic Feasibility Study, p. 11.
[6] Chapter 2001-253, L.O.F.
[7] Economic Feasibility Study, p. B-3.
[8] *Id.* at B-3 - B-4.

Financing and Construction

On October 16, 1996, SRBBA issued $95.0 million in revenue bonds, with a final maturity in July 2028, to finance bridge construction. SRBBA's bonds are secured by the bridge's gross toll revenues and a DSRF funded with $9.2 million from bond proceeds. SRBBA was able to pledge its gross toll revenues due to its lease-purchase agreement (LPA) with DOT.[9]

Santa Rosa Bay Bridge Authority
Revenue Bonds, Series 1996
Annual Debt Service Payment Schedule by Fiscal Year
(in millions of dollars)



Of SRBBA's $95.0 million in bonds, $75.5 million were issued as fixed-rate current-interest bonds. Fixed-rate current-interest bonds pay interest at a set rate on a periodic basis. At maturity, the final interest payment and the original principal amount is paid to the bondholder. This is the conventional debt structure in the municipal bond market and is utilized for the vast majority of the state's debt transactions.[10]

The remaining $19.5 million in bonds were issued as Capital Appreciation Bonds. Capital Appreciation Bonds do not make periodic interest payments and instead increase in value at a compounded rate. At maturity, bondholders receive a single payment equal to their original principal and all compounded interest. The total or amount due at maturity of SRBBA's in Capital Appreciation Bonds issued is $73.8 million. Since the bonds only pay at maturity, Capital Appreciation Bonds are used to avoid periodic interest payments.[11]

Lease-Purchase Agreement

Prior to 2011, various toll authorities were authorized to enter into LPAs with DOT. Section 334.044, F.S., authorized DOT to enter into these LPAs. Additionally, s. 339.08(1)(g), F.S., authorized DOT to lend or pay a portion of the operation and maintenance (O&M) and capital costs of any revenue-producing transportation project located on the State Highway System or that is demonstrated to relieve traffic congestion on the State Highway System. In 2011, the Legislature repealed DOT's authority to enter into LPAs.[12]

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[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] Chapter 2011-64, L.O.F.

On October 23, 1996, SRBBA and DOT entered into an LPA, granting DOT exclusive possession and use of the bridge. Under the LPA, DOT pays the costs of operating, maintaining, repairing, and insuring the bridge. The LPA requires DOT to collect the tolls on the bridge and remit the revenues to the bond trustee as lease payments. The LPA's terms extends through the date upon which all of the bonds have been repaid and all amounts due to DOT, including the TFRTF loans and all operations and maintenance costs paid by DOT, have been repaid.[13]

The LPA was a mechanism for the state to provide credit support in connection with financing the bridge. With the state paying the operation and maintenance expenses, SRBBA was able to pledge its gross toll revenues as security for the bonds. The state's credit support reduced the financial risk to bondholders and was essential for the marketability of the bonds given the bridge's questionable financial feasibility.[14]

Pursuant to the LPA, SRBBA must reimburse DOT for all of the bridge's direct and indirect O&M costs. This liability is subordinate to all debt service, administrative costs, and repayment of the TFRTF loans. SRBBA has not reimbursed any of the O&M costs that DOT has incurred in relation to the bridge. As of June 30, 2017, the long-term liability owed to DOT under the LPA was $25.3 million. DOT projects that it will incur an additional $16.2 million of O&M costs over the next 11 years resulting in a total long-term liability of $41.5 million in 2028, the LPA's original termination date. However, DOT is committed to pay O&M expenses through the final payoff of the bonds, which is anticipated to extend beyond 2028. On January 21, 2009, the LPA was amended with DOT agreeing to pay certain administrative expenses of the SRBBA. The LPA amendment stipulates that SRBBA will reimburse DOT for all administrative expenses in the same manner that it is required to reimburse its accrued O&M expenses. Set forth below is an illustration of the annual O&M costs and cumulative costs expected to be paid by DOT pursuant to the LPA through 2028.[15]

Santa Rosa Bay Bridge Authority
FDOT's Annual & Cumulative O&M Expenses
Actuals for FY 1999-2016 & Projected for FY 2017-2028
(in millions of dollars)

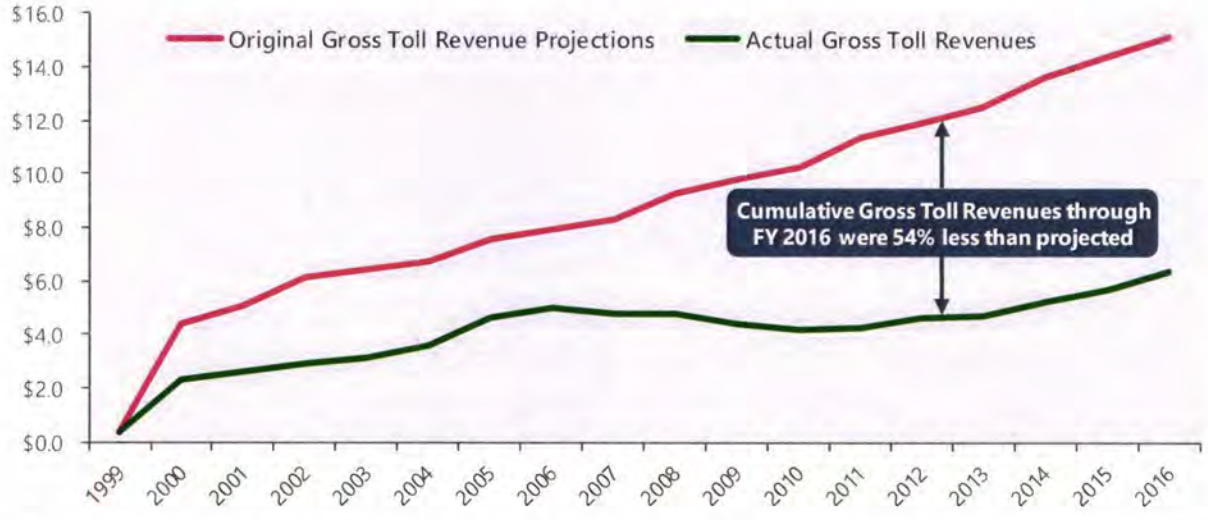
Revenue Shortfalls, Toll Increases & Debt Default
Immediately after the bridge opened to traffic, the bridge's traffic and gross toll revenues began to come in well below the estimates used to justify the project and structure the financing. By the end of

[13] Economic Feasibility Study, p. 14
[14] *Id.*
[15] *Id.*

Fiscal Year 2000, the average annual daily traffic was approximately 42 percent of the projected levels, and total annual toll revenues were approximately 54 percent of the original projections[16]

By June 30, 2000, it had become clear that the traffic consultant and SRBBA had significantly overestimated the bridge's traffic demand.

Santa Rosa Bay Bridge Authority
Original Gross Toll Revenue Projections vs
Actual Gross Toll Revenues by Fiscal Year
(in millions of dollars)



	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Annual Shortfall	$0.0	$2.0	$2.5	$3.2	$3.3	$3.1	$3.0	$2.9	$3.5	$4.5	$5.4	$6.1	$7.1	$7.3	$7.8	$8.4	$8.8	$8.8
Cumulative Shortfall	$0.0	$2.1	$4.6	$7.8	$11.1	$14.2	$17.2	$20.1	$23.6	$28.2	$33.6	$39.6	$46.7	$54.0	$61.8	$70.2	$79.0	$87.8

On August 15, 2000, SRBBA received updated estimates showing that toll revenues for Fiscal Year 2001 would not be sufficient to meet the rate covenant required by the bond resolution. In the bond documents, SRBBA had agreed that if gross toll revenues were expected to be less than 120 percent of the current year's debt service, it would engage its traffic consultants to make recommendations regarding toll increases or any other revenue enhancing strategies. If SRBBA failed to comply with the traffic consultant's recommendations, the bonds would be in technical default. SRBBA engaged a traffic consultant, and its recommendations would be provided in 2001.[17]

In April 2001, SRBBA adopted a schedule of toll rate increases designed to maximize the bridge's toll revenues. The toll rate plan was developed because of its anticipated failure to meet its toll rate covenant in Fiscal Year 2001, and by accepting and implementing the plan, SRBBA was able to avoid a technical default on its bonds. The schedule called for a toll increase on July 1, 2001, with incremental toll increases every three years from Fiscal Years 2002 to 2020.[18]

[16] *Id.*
[17] *Id.* at 16
[18] *Id* at 17

GARCON POINT BRIDGE PROPOSED TOLL RATES

Fiscal Year	Toll Rate
1999	$2.00
2002	$2.50
2005	$3.00
2008	$3.50
2011	$3.75 (This is the current toll rate)
2014	$4.00
2017	$4.25
2020	$4.50

The proposed toll increases in 2002, 2005, and 2008 went into effect as planned, while the 2011 increase went into effect on January 1, 2011, following six months delay due to the Deepwater Horizon oil spill. However, SRBBA has not implemented the proposed toll increases for Fiscal Years 2014 and 2017 since there is no governing board or administrative body to authorize or implement the toll rate increase. The bridge's toll is currently $3.75.[19]

Draws on DSFR and Bond Default

In January 2002, SRBBA used its DSRF for the first time to make an interest payment. Funded with $9.2 million of bond proceeds, the DSRF provides additional security to bondholders and protect against revenue shortfalls. While using the DSRF did not constitute a technical default, the bond resolution required SRBBA to replenish any draws. However, replenishing the DSRF is subordinate to the payment of debt service. Given that toll revenues were insufficient to cover all of the required debt service, SRBBA was unable to replenish the DSRF. As a result, in February 2002, SRBBA officially entered into a technical default.

Through the first half of Fiscal Year 2005, SRBBA continued to draw on its DSRF to make its annual debt service payments, reducing the DSRF's balance of funds in the DSRF to $6.2 million.[20]

From Fiscal Year 2007 to 2010, gross toll revenues suffered annual declines coinciding with the economic recession. At the same time, the bond's annual debt service due grew each year due to the ascending debt service structure. By Fiscal Year 2011, its annual debt service was $2.6 million higher than its gross toll revenues, with that deficit continuing to grow in the years that followed.

On June 29, 2011, the bond trustee filed a material event notice indicating SRBBA did not have sufficient funds to make the July 1, 2011, debt service payment. As a result, the trustee withheld all funds and did not make the debt service payment. The notice also indicated that the trustee expected the payment default to continue indefinitely On July 1, 2011, there was a payment default on the bonds.[21]

In March 2012, the trustee disbursed the remaining $2.2 million in the DSRF fund making a pro-rata payment on interest that was due on July 1, 2011. While the trustee used the remaining DSRF to make this payment, it had not been utilizing the gross toll revenues that were being collected to make any payments on interest or principal coming due, and the trustee did not make the next three payments. Following those missed payments, the trustee received a request for acceleration from a majority of bondholders and all of the outstanding principal of the bonds was declared immediately due and payable on January 1, 2013. Following acceleration, the trustee has used all available gross toll revenues to make partial payments on each debt service payment date.[22]

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[19] *Id.*
[20] *Id.* at 18
[21] *Id.*
[22] *Id.* at 18-19

Toll Increase Demand
In 2014, the bond trustee engaged a consultant to determine the optimal toll rates that would generate the highest revenues for bondholders. The consultant concluded that a toll increase would increase revenues, and proposed increasing cash tolls from $3.75 to $5.00 and SunPass[23] tolls from $3.75 to $4.00. It also recommended decreasing the SunPass discount for the bridge's frequent users from 50 percent to 25 percent. In November 2014, the bond trustee delivered to SRBBA's board its demand to raise tolls.[24]

In March 2015, with no board in place to authorize the toll increases, the trustee sent notice to DOT demanding that DOT immediately implement a toll increase in the amounts recommended by the trustee's consultant. In September 2015, following DOT's refusal to implement the requested toll increase, the bond trustee filed a notice stating that it would sue DOT to force the toll increase if a majority of bondholders agreed to cover the potential costs of litigation. The bond trustee never filed suit, and in August 2016, the trustee was replaced. To date, the new trustee has not filed litigation.[25]

Securities and Exchange Commission Investigation and Board Resignations
In November 2010, the Securities and Exchange Commission (SEC) sent a letter to the chair of SRBBA's board requesting that he appear for a deposition and provide the SEC with copies of SRBBA's records. After receiving the letter, the chairman resigned. At its December 2010 board meeting, two additional board members resigned. In the weeks that followed, one additional board member resigned while another board member announced that he would not attend any future board meetings. By January 2011, SRBBA's board was unable to meet due to a lack of quorum. Over the next few months, the SEC's inquiry expanded, with additional requests for information sent to some of the former board members and a DOT staffer who was performing certain administrative functions pursuant to the LPA. SRBBA's attorney also received a letter from the SEC and resigned as a result.[26]

While the SEC has not publically disclosed the reason for its inquiry, it was potentially related to the SRBBA's ongoing failure to meet its continuing disclosure requirements, which have not been provided since Fiscal Year 2000.[27]

Financial Feasibility Report
In 2017, the Legislature required DOT, in consultation with the Division of Bond Finance (Division) to prepare an economic feasibility study related to a potential acquisition of the bridge by the Turnpike.[28]

Analysis of Potential Acquisition
As previously described, the bridge's traffic and revenues have significantly underperformed the original estimates. As a result, SRBBA is currently insolvent, with unpaid liabilities due to both bondholders and the state.[29]

[23] SunPass is the Turnpike Enterprise's electronic toll collection system.
[24] Economic Feasibility Study, p. 19.
[25] *Id.*
[26] *Id.* at B-4
[27] *Id.*
[28] Chapter 2017-42, L O.F.
[29] Economic Feasibility Study, p. 21

Summary of SRBBA's Liabilities

Liability Amount	Liability
$7.9 Million	Outstanding TFRTF Loan as of June 30, 2017
$25.3 Million	Outstanding O&M Costs as of June 30, 2017
$33.2 Million	**Total Owed to DOT**
$135.2 Million	Total Amount Due to Bondholders as of July 1, 2017
$168.4 Million	**Total Long-term Liabilities**

State's Options

The Economic Feasibility Study identified the following three options for legislative consideration: maintain the status quo, tender a bond offer, or a direct acquisition of the bridge by the Turnpike.

STATUS QUO - Under the status quo scenario, DOT continues paying the bridge's O&M expenses under the LPA. All available gross toll revenues would continue to be transferred to the bond trustee, who would use the funds to pay as much of the debt service due on the bonds as possible. DOT is responsible for all of the bridge's O&M costs until the bonds are fully paid. Currently, DOT annually pays approximately $1.5 million of O&M expenses; with DOT estimating that it will grow to approximately $1.8 million per year by Fiscal Year 2027. This projection does not include amounts for capital renovations and repairs, which may be necessary as the bridge ages.[30]

DOT would see a growing annual financial obligation because it is not clear when, or if, toll revenues will be sufficient to fully pay the bonds. Assuming toll revenues grow at one-percent annually, the Division estimates that the bonds would not be fully paid until Fiscal Year 2050. Assuming DOT's O&M expenses grow at two-percent annually, DOT will accrue approximately $94 million in O&M costs by 2050. However, this may understate DOT's costs since the LPA requires DOT to make all necessary and proper repairs, renewals, and replacements so that the bridge remains operational.[31]

BOND TENDER OFFER - A bond tender offer is when a firm makes an offer to its bondholders to repurchase a predetermined number of bonds at a specified price and during a set period of time.[32] Options for a bond tender offer include engaging a broker-dealer to purchase bonds on the secondary market, purchasing bonds directly from bondholders, or a formal published offer to purchase all outstanding bonds. However, a bond tender offer is not likely to produce the lowest price and optimal result for the state and puts the state in a weak bargaining position. Additionally, it is unlikely that the state could purchase 100 percent of the bonds.[33]

DIRECT ACQUISITION OF THE BRIDGE - The Legislature could authorize the Turnpike to issue revenue bonds to purchase the bridge directly from bondholders at a negotiated price. With this option, the state would attempt to negotiate an agreeable purchase price limited to an amount that could be supported by the bridge's current revenues.[34]

If the Legislature determines that acquiring the bridge is desirable, it may also desire the state to take precautions to insulate the Turnpike and the state from financial liability. The Turnpike could base its offer on the amount of proceeds that could be generated by a Turnpike bond issue backed solely by the bridge's toll revenues. The bonds issued to fund the acquisition can be structured so that current toll

[30] *Id.* at 22
[31] *Id.* at 22
[32] *Id.*
[33] *Id.* at 23
[34] *Id.*

revenues provide at least 1.30x-1.50x debt service coverage.[35] This would shield the Turnpike from the risk that future toll revenue growth underperforms projections.[36]

The Turnpike would issue fixed-rate, current interest bonds with a traditional 10-year par call provision. The one exception to the State's Debt Management Policies that would be required is to extend the bond's final maturity. When refinancing debt, the state usually provides that the final maturity of the new debt is the same as the final maturity of the old debt. However, given the extraordinary circumstances, the Turnpike would need to issue new bonds with a 30-year final maturity. Depending on the acquisition's final timing, this would extend the final maturity by approximately 20 years. Prior to any acquisition, DOT would need to verify that the new final maturity does not extend beyond the bridge's anticipated useful life.[37]

Turnpike bonds proceeds will not be sufficient to pay off all of the outstanding bonds. The proposed 30-year, level debt service, 1.30x-1.50x cover Turnpike bonds would generate approximately $75 million to $100 million in gross proceeds.[38] The balance of the bonds currently due and payable is $135.2 million. This means the state's offer would represent a discount to bondholders of approximately $35.2 million to $60.2 million. Further, the $75 million to $100 million of proceeds is based on a bond issue sized using the bridge's gross toll revenues. Meaning that the state would also be committing to continue to incur the bridge's ongoing O&M costs.[39]

In order to pay off the remaining amount due to bondholders, the Turnpike could issue a subordinate limited obligation series of bonds, exclusively secured by the bridge's excess toll revenues; to the extent any excess toll revenues are available after payment of debt service on the senior lien Turnpike acquisition bonds. The subordinated limited obligation debt essentially would be non-recourse, and if there are no residual revenues available in any given year, there would be no payment and neither the Turnpike nor the state would be obligated to make such payment. Failure to make a payment on the subordinate limited obligation bond as a result of inadequate residual revenues would not constitute a default.[40]

Subordinate limited obligation bonds compensate existing bondholders for, and insulate the Turnpike from, the financial risks associated with the bridge. The subordinate bonds would serve to preserve the bondholder's position by requiring all tolls collected to be applied to their payment. If, in future years, the bridge's toll revenues see strong growth, the bondholders will have the right to all of those increased revenues until they have been made whole. After bondholders receive a sufficient amount of residual revenues, the subordinate limited obligation debt would be extinguished, and any further residual revenues could then be used to help cover ongoing O&M costs, reimburse DOT for previous O&M costs, and repay the outstanding TFRTF loans. However, there is no assurance that the residual revenues will be sufficient to pay off the subordinate limited obligation bonds, reimburse O&M costs, and repay the balance of the TFRTF loans prior to the exhaustion of the bridge's useful life. This means that the bondholders and the state may never be fully repaid.[41]

Economic Feasibility

Section 338.221(8), F.S., defines economic feasibility for turnpike projects. That statute defines "economic feasibility" as:

- For a proposed turnpike project, that, as determined by DOT before the issuance of revenue bonds for the project, the estimated net revenues of the proposed turnpike project, excluding feeder roads and turnpike improvements, will be sufficient to pay at least 50 percent of the annual debt service on the bonds associated with the project by the end of the 12th year of

[35] This means that the bridge's current revenues would represent at least 130 to 150 percent of the annual debt service requirements
[36] Economic Feasibility Study, p. 23
[37] *Id.* at 23-24
[38] This is based on DBF's October 2017 estimates.
[39] Economic Feasibility Study, p. 24.
[40] *Id.*
[41] *Id.*

operation and to pay at least 100 percent of the debt service on the bonds by the end of the 30th year of operation. In implementing this provision, up to 50 percent of the adopted work program costs of the project may be funded from turnpike revenues.
- For turnpike projects, except for feeder roads and turnpike improvements, financed from revenues of the turnpike system, such project, or such group of projects, originally financed from revenues of the turnpike system, that the project is expected to generate sufficient revenues to amortize project costs within 15 years of opening to traffic.

Proposed Changes

The bill provides that, subject to DOT's verification of economic feasibility, DOT may acquire the Garcon Point Bridge, including related assets, and as part of the acquisition may purchase outstanding SRBBA bonds. DOT may enter into any agreements necessary to implement the acquisition, including the purchase of SRBBA bonds, and may specify the terms and conditions thereof. Upon acquisition, the Garcon Point Bridge will become a part of the Florida Turnpike System. Pursuant to s. 11(f), Article VII of the State Constitution,[42] the issuance of revenue bonds to finance DOT's acquisition of the Garcon Point Bridge is approved.

The bonds would be issued pursuant to the State Bond Act[43] as are all Turnpike bonds. DOT would request that the Division issue the bonds. A resolution authorizing the issuance of the bonds would then need to be approved by the Governor and Cabinet, sitting as the Division's Governing Board. The fiscal sufficiency of the bonds would also need to be approved by the State Board of Administration. The documents relating to the sale of the bonds would then be prepared by Division staff and the bonds would be sold via competitive sale, all in accordance with DBF's normal execution protocols and policies.[44]

DOT's purchase price must first be used to settle all claims of bondholders of the Santa Rosa Bay Bridge Authority Revenue Bonds, Series 1996.

SRBBA, DOT, or the trustees for bondholders may not impose a toll rate increase in connection with DOT's acquisition of the bridge. Following any acquisition by DOT, an increase in tolls for use of the bridge is not permitted except as required by law[45] or as required to comply with the covenants contained in any resolution under which bonds have been issued.

DOT nor the state may incur any financial obligation for the acquisition of the Garcon Point Bridge in excess of forecasted gross revenues from the operation of the bridge. Therefore, DOT's total acquisition price may not exceed the present value of the gross revenues, calculated without any increase in the toll rate, anticipated to be collected from the operation of the bridge between the date of a purchase agreement and the end of the anticipated remaining useful life of the bridge as it exists as of the date of the purchase agreement.

Upon acquisition of the Garcon Point Bridge, the bill terminates the lease-purchase agreement between SRBBA and DOT dated October 23, 1996, as amended.

The bill also provides upon acquisition of the Garcon Point Bridge, the Santa Rosa Bay Bridge Authority Act in Part IV of Ch. 348, F.S., is repealed.

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[42] Section 11(f), Article VII of the State Constitution requires each project, building, or facility finance with revenue bonds to obtain legislative approval.
[43] Section 215.58 through 215.83, F.S.
[44] Email from Ben Watkins, Director, Division of Bond Finance, January 17, 2018. Copy on file with Transportation & Infrastructure Subcommittee.
[45] Section 338.165(3), F.S., requires DOT, including the Turnpike, to increase tolls to the Consumer Price Index at least once every five years.

B. SECTION DIRECTORY:

Section 1 provides for the acquisition of the Garcon Point Bridge by the Department of Transportation.

Section 2 provides for the repeal of the Santa Rosa Bay Bridge Authority.

Section 3 provides that the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See fiscal comments below.

2. Expenditures:

   See fiscal comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments below.

D. FISCAL COMMENTS:

The bill, upon a finding of economic feasibility, authorizes DOT, through the Turnpike, to acquire the Garcon Point Bridge and purchase SRBBA's bonds. If the transaction comes to fruition, it will be a complex transaction where the state could issue millions in revenue bonds. Not knowing the details of the transaction, actual costs to the state are indeterminate and likely significant. However, as previously stated, the value of the bonds that may be issued is estimated to be between $75 million and $100 million based on a bond issue sized using the bridge's gross toll revenues.

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 action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill repeals the Santa Rosa Bay Bridge Authority upon the Turnpike's acquisition of the Garcon Point Bridge. However, there is nothing in the bill to indicate that the acquisition has taken place and the repeal is in effect.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Garcon Point Bridge; authorizing the Department of Transportation to acquire the Garcon Point Bridge under certain circumstances; authorizing the purchase of bonds; authorizing certain agreements; approving the issuance of revenue bonds; requiring settlement of claims of certain bondholders; prohibiting certain toll rate increases; prohibiting the department and the state from incurring certain financial obligations; providing for the termination of a lease-purchase agreement; providing for the repeal of part IV of ch. 348, F.S., under certain circumstances; providing an effective date.

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

Section 1. Acquisition of Garcon Point Bridge by Department of Transportation.—

(1) Subject to the verification of economic feasibility by the Department of Transportation in accordance with s. 338.221(8), Florida Statutes, the department may acquire the Garcon Point Bridge, including related assets, and as part of such acquisition may purchase outstanding Santa Rosa Bay Bridge Authority bonds. The department may enter into any agreements

necessary to implement the acquisition, including the purchase of Santa Rosa Bay Bridge Authority bonds, and may specify the terms and conditions thereof. Upon acquisition, the Garcon Point Bridge shall become a part of the Florida Turnpike System. Pursuant to s. 11(f), Article VII of the State Constitution, the issuance of revenue bonds to finance the department's acquisition of the Garcon Point Bridge is approved.

(2) The acquisition price paid by the department must first be used to settle all claims of bondholders of the Santa Rosa Bay Bridge Authority Revenue Bonds, Series 1996.

(3) A toll rate increase may not be imposed on the Garcon Point Bridge by the authority, the department, or the trustee for bondholders in connection with the acquisition of the bridge by the department. Following any acquisition by the department, an increase in tolls for use of the bridge shall not be permitted except as required by law or as required to comply with the covenants contained in any resolution under which bonds have been issued.

(4) The department or the state shall not incur any financial obligation for the acquisition of the Garcon Point Bridge in excess of forecasted gross revenues from the operation of the bridge. Therefore, the total acquisition price paid by the department may not exceed the present value of the gross revenues, calculated without any increase in the toll rate, anticipated to be collected from the operation of the bridge

between the date of a purchase agreement in accordance with this section and the end of the anticipated remaining useful life of the bridge as it exists as of the date of the purchase agreement.

(5) Upon acquisition of the Garcon Point Bridge as authorized by this section, the lease-purchase agreement between the authority and the department dated October 23, 1996, as amended, is terminated.

Section 2. Upon acquisition of the Garcon Point Bridge as authorized by section 1 of this act, part IV of chapter 348, Florida Statutes, consisting of ss. 348.965-348.9781, Florida Statutes, is repealed.

Section 3. This act shall take effect upon becoming a law.

STORAGE NAME: h6535.CJC h6535.CJC
DATE: 1/26/2018

January 26, 2018

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6535 - Representative Newton
Relief/Estate of Dr. Sherrill Lynn Aversa/Department of Transportation

THIS IS AN UNCONTESTED CLAIM FOR $650,000 AGAINST THE DEPARTMENT OF TRANSPORTATION BASED ON A STIPULATED SETTLEMENT AGREEMENT IN WHICH THE DEPARTMENT AGREED TO COMPENSATE THE ESTATE OF DR. SHERRILL AVERSA IN THE TOTAL AMOUNT OF $800,000 FOR HER WRONGFUL DEATH. THE DEPARTMENT HAS PAID $150,000.

FINDINGS OF FACT:

On June 21, 1999, around 5:45 p.m., Dr. Sherrill Lynn Aversa was traveling southbound on I-75 in Tampa. Meanwhile, a Department of Transportation (DOT) truck driven by a DOT employee, Domingo Alvarado, Jr., was traveling northbound on I-75. Mr. Alvarado was the DOT electrician on call that evening.

The DOT truck had a 12-foot extension ladder along with cones on the top of the truck. Shortly before Mr. Alvarado reached the I-4 overpass, during rush hour, the ladder fell off his truck. Immediately behind Mr. Alvarado's DOT truck was a Ford Explorer SUV driven by Roxann Hodge. Mrs. Hodge was driving about the speed limit, 70 miles per hour, wearing her seatbelt. To avoid a collision with the ladder, Mrs. Hodge

swerved sharply left,[1] lost control of her vehicle, and crossed the interstate median.[2] Mrs. Hodge's vehicle then exited the median into southbound traffic and struck Dr. Aversa's vehicle head on.[3] The force of the impact caused both cars to rotate, causing a subsequent impact between Hodge's vehicle and a vehicle driven by Christopher Chappell. After rotating around completely, Dr. Aversa's vehicle was hit again by another vehicle. Six vehicles were ultimately involved in the collision, resulting in Dr. Aversa's death and four other injuries.

After realizing the ladder had fallen off his vehicle, Mr. Alvarado pulled off the roadway into the emergency lane on the right side, put on his caution lights, and ran to the ladder. He ultimately retrieved the ladder and cones, which had come to a rest in the center northbound lane, and re-secured the ladder. A witness who stopped to assist Mr. Alvarado pointed out the accident on the other side of the divided highway. Mr. Alvarado was not aware that his ladder had anything to do with the accident and noted that a sheriff was already at the scene. Later that evening, Mr. Alvarado saw news coverage of the accident and called Highway Patrol. DOT ultimately issued Mr. Alvarado a disciplinary letter.

The other drivers in the accident suffered various injuries and settled with DOT for a combined total of $50,000, leaving $150,000 available for payment to Dr. Lee Crandall, as husband and personal representative of the estate of Dr. Sherrill Aversa ("Estate").[4]

Dr. Aversa was a 32-year-old epidemiologist and published researcher in the field of HIV/AIDS at the University of Miami Medical School. Expert testimony was presented that the present value of economic damages alone totaled $2,646,244.

LITIGATION HISTORY:

On May 15, 2000, Dr. Aversa's husband and her estate's personal representative, Dr. Lee Crandall, filed a wrongful death action against DOT. Prior to trial, the parties entered into a stipulated settlement agreement in which Respondent agreed to pay a total of $800,000. The agreement acknowledged Respondent had already paid $50,000 to other parties injured in the accident and that only $150,000 remained under the sovereign immunity cap. Respondent therefore agreed to pay Claimant $150,000 and support a claim bill for $650,000 for up to ten legislative sessions. The court approved the agreement and entered a consent final judgment on June 11, 2003. Respondent has paid Claimant $150,000.

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[1] Mrs. Hodge stated in her deposition that she could not veer right because of another vehicle on the road.
[2] At the point in question, I-75 has three northbound lanes and three southbound lanes.
[3] The Investigative Report by Florida Highway Patrol found that Dr. Aversa was wearing her seatbelt.
[4] Under s. 768.28(5), F.S. (1999), any liability of a governmental entity exceeding $200,000 per occurrence can be paid only as directed by the Legislature through a claim bill.

CLAIMANT'S POSITION: Claimant argues it is entitled to the remaining amount of $650,000 under the stipulated settlement agreement.

RESPONDENT'S POSITION: Respondent entered into a settlement agreement with Claimant in 2003, agreeing to support a claim bill "for up to ten legislative sessions." Because more than ten legislative sessions have passed, Respondent states that it now "takes no position" on this claim bill. Respondent states that the bill erroneously indicates that Respondent has admitted liability for the accident and requests that this statement be removed from the bill.

CONCLUSIONS OF LAW: Regardless of whether there is a jury verdict or settlement, every claim bill must be reviewed *de novo* in light of the elements of negligence.

Duty & Breach

Section 316.520, F.S. (1999), provides that "[a] vehicle may not be driven or moved on any highway unless the vehicle is so constructed or loaded as to prevent any of its load from dropping, shifting, leaking, blowing, or otherwise escaping therefrom . . . ." Under this statute, Mr. Alvarado had a duty to secure the ladder to the DOT truck before operating the truck on the roadway. His failure to do so was a breach of that duty. As an employee of DOT in the course and scope of his employment, his negligence is attributable to DOT under the doctrine of respondeat superior.

Causation

Mr. Alvarado's failure to properly secure the ladder to the DOT truck he was driving was the proximate cause of Dr. Aversa's untimely death. When the ladder fell off the truck into Mrs. Hodge's path, she swerved to avoid the ladder, lost control of her vehicle, careened into the median, and crashed into Dr. Aversa's vehicle head on.

Damages

Dr. Aversa was an intelligent woman with a promising career ahead of her. An expert found that economic damages alone totaled $2,646,244. The amount of damages sought in this claim bill—$650,000—is wholly reasonable considering the outcome of the accident.

ATTORNEY'S/ LOBBYING FEES: Claimant's attorneys will limit their fees to 25 percent of any legislative award. Out of these fees, a lobbyist fee for 6% of the total award will be paid. There are no outstanding costs.

COLLATERAL SOURCES: In addition to the $150,000 paid by DOT, Dr. Aversa's estate has received the following amounts: $153,000 in life and accidental death insurance proceeds; $66,666 in underinsured motorist coverage; and $6,666 in settlement proceeds from

Mrs. Hodge, the driver of the Ford Explorer.[5]

RESPONDENT'S ABILITY TO PAY: Respondent states that if the claim bill passes, funds will be paid out of the State Transportation Trust Fund. Respondent states that it "will make adjustments as necessary to avoid any impact on the Department's Work Program."

SUGGESTED AMENDMENTS: The statement that Respondent admitted liability for the accident should be removed from the bill. Also, the section addressing the limitation on attorney's fees should be amended to provide for specific fee amounts.

LEGISLATIVE HISTORY: This is the twelfth session this claim has been presented to the Legislature over a fifteen-session period. It was initially filed in the 2004 session as HB 245 by Representative Prieguez and SB 10 by Senator Margolis. In 2016, CS/SB 14 was not heard in Senate Appropriations and was never filed in the House.

RECOMMENDATION: I recommend that HB 6535 be reported **FAVORABLY**.

Respectfully submitted,

JORDAN JONES

House Special Master

cc: Representative Newton, House Sponsor
Senator Thurston, Senate Sponsor
Thomas Cibula, Senate Special Master

[5] Dr. Crandall created a Foundation in his late wife's name with the purpose of awarding scholarships to help doctoral students complete their degrees. The Foundation has awarded multiple scholarships over the years.

A bill to be entitled

An act for the relief of the Estate of Dr. Sherrill Lynn Aversa; providing an appropriation to compensate the Estate of Dr. Sherrill Lynn Aversa for Dr. Aversa's death as a result of the negligence of the Department of Transportation; requiring the Executive Office of the Governor to establish spending authority from unappropriated trust fund balances of the department for compensation to the Estate of Dr. Sherrill Lynn Aversa; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on June 21, 1999, an employee of the Department of Transportation was driving a department vehicle north on Interstate 75 in Hillsborough County, and

WHEREAS, on that same day, Dr. Sherrill Lynn Aversa, having completed an interview at the University of South Florida Medical School, was traveling south on Interstate 75, and

WHEREAS, according to departmental policy, employees of the department are required to ensure that all items used by the department and stored on a department vehicle are appropriately secured, and

WHEREAS, one such item used by the department was a 12-foot extension ladder stored on the roof of the truck driven by the

department employee and the employee failed to ensure that the ladder was secured to the vehicle before leaving the department's maintenance yard, and

WHEREAS, as the employee traveled north on Interstate 75 in the department vehicle, the extension ladder flew off the roof into the northbound traffic traveling behind the department vehicle, and

WHEREAS, the driver of the vehicle traveling behind the department vehicle swerved to avoid hitting the ladder and, as a result of the swerving movement, lost control of her vehicle, veered to the left, crossed the Interstate 75 median, and struck Dr. Aversa's southbound vehicle, killing Dr. Aversa instantly, and

WHEREAS, as a result of these events, the Estate of Dr. Sherrill Lynn Aversa brought suit against the department for its negligence in causing the death of Dr. Aversa, and

WHEREAS, after 3 years of litigation, the department admitted liability for the accident and agreed to settle the case, and

WHEREAS, the parties agreed to a consent judgment in the amount of $800,000 solely against the department, with no finding of comparative negligence against any other party, and

WHEREAS, the department has paid $150,000 to the Estate of Dr. Sherrill Lynn Aversa consistent with the statutory limits of liability set forth in s. 768.28, Florida Statutes, NOW,

THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The Executive Office of the Governor is directed to establish spending authority from unappropriated trust fund balances of the Department of Transportation in the amount of $650,000 to a new category titled "Relief: Estate of Dr. Sherrill Lynn Aversa" as compensation to the Estate of Dr. Sherrill Lynn Aversa for the death of Dr. Sherrill Lynn Aversa, which amount includes attorney fees and costs.

Section 3. The Chief Financial Officer is directed to draw a warrant, pursuant to the stipulated settlement agreement executed by the Department of Transportation and the personal representative of the Estate of Dr. Sherrill Lynn Aversa, in the amount of $650,000 upon funds of the Department of Transportation not otherwise encumbered, and the Chief Financial Officer is directed to pay the same sum out of such funds in the State Treasury.

Section 4. The amount paid by the Department of Transportation pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for this excess judgment claim and for all other

present and future claims arising out of the factual situation described in this act which resulted in the death of Dr. Sherrill Lynn Aversa. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $123,500, the total amount paid for lobbying fees may not exceed $39,000, and no amount may be paid for costs or other similar expenses.

Section 5. This act shall take effect upon becoming a law.

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: Transportation & Tourism Appropriations Subcommittee
Representative Ingram offered the following:

Amendment (with title amendment)

Remove lines 57-71 and insert:

Section 2. There is appropriated from the State Transportation Trust Fund to the Department of Transportation the sum of $650,000 for the relief of the Estate of Dr. Sherrill Lynn Aversa for the death of Dr. Sherrill Lynn Aversa, which amount includes attorney fees and costs.

Section 3. The Chief Financial Officer is directed to draw a warrant, pursuant to the stipulated settlement agreement executed by the Department of Transportation and the personal representative of the Estate of Dr. Sherrill Lynn Aversa, in the amount of $650,000 upon funds of the Department of

Transportation in the State Treasury, and the Chief Financial Officer is directed to pay the same sum out of such funds in the State Treasury.

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

Remove lines 6-10 and insert:

Department of Transportation; providing a limitation on the