State Affairs Committee

Monday, March 2, 2020
9:00 AM – 12:00 PM
Morris Hall (17 HOB)

Jose R. Oliva
Speaker

Blaise Ingoglia
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

State Affairs Committee

Start Date and Time:	Monday, March 02, 2020 09:00 am
End Date and Time:	Monday, March 02, 2020 12:00 pm
Location:	Morris Hall (17 HOB)
Duration:	3.00 hrs

Consideration of the following bill(s):

CS/HB 579 Public Financing of Construction Projects by Agriculture & Natural Resources Subcommittee, Aloupis
CS/HB 715 Reclaimed Water by Agriculture & Natural Resources Subcommittee, Maggard
CS/HB 865 Emergency Reporting by Oversight, Transparency & Public Management Subcommittee, Rodriguez, A.
CS/HB 1063 State Hemp Program by Agriculture & Natural Resources Subcommittee, Drake, Massullo
HB 1201 Department of Citrus Employees by Clemons
CS/HB 1265 Verification of Employment Eligibility by Commerce Committee, Byrd, Fitzenhagen
CS/CS/HB 1391 Technology Innovation by Government Operations & Technology Appropriations Subcommittee, Insurance & Banking Subcommittee, Grant, J., Toledo
CS/HB 1393 Pub. Rec./Financial Technology Sandbox by Insurance & Banking Subcommittee, Grant, J.

Consideration of the following bill(s) with proposed committee substitute(s):

PCS for CS/CS/HB 1001 -- Contamination
PCS for CS/HB 1111 -- Government Accountability

NOTICE FINALIZED on 03/01/2020 4:04PM by Denson.Tori

CS/HB 579

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 579 Public Financing of Construction Projects
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Aloupis and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 178

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Melkun	Moore
2) Appropriations Committee	26 Y, 0 N	White	Pridgeon
3) State Affairs Committee		Melkun	Williamson

SUMMARY ANALYSIS

With 1,350 miles of coastline and relatively low elevations, Florida is particularly vulnerable to coastal flooding. One of the primary ways that climate change influences coastal flooding is through sea-level rise. Sea-level rise is an observed increase in the average local sea level or global sea level trend. Florida's coastal communities are experiencing high-tide flooding events with increasing frequency because sea-level rise increases the height of high tides. In the United States, sea-level rise and flooding threaten an estimated $1 trillion in coastal real estate value, and analysts estimate that Florida could lose more than $300 billion in property value by 2100.

Under current law, coastal construction is regulated by the Department of Environmental Protection (DEP) in order to protect beaches and dunes from construction that can jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access.

The bill prohibits a governmental entity from commencing construction of a state-funded coastal structure unless the entity has conducted a sea level impact projection (SLIP) study, submitted the SLIP study to DEP, and received notification from DEP that the SLIP study was received and has been published on DEP's website for at least 30 days.

The bill requires DEP to adopt a standard by rule for conducting the SLIP study and specifies that the standard must require the governmental entity to:

- Use a systematic, interdisciplinary, and scientifically accepted approach in conducting the SLIP study;
- Assess the flooding, inundation, and wave action damage risks relating to the coastal structure over its expected life or 50 years, whichever is less; and
- Provide alternatives for the coastal structure's design and siting, and how such alternatives would impact certain public health and environmental risks as well as the risk and cost associated with maintaining, repairing, and constructing the coastal structure.

If a governmental entity commences construction of a state-funded coastal structure but has not conducted the SLIP study, the bill authorizes DEP to institute a civil action to seek injunctive relief to cease further construction of the coastal structure or enforce compliance or, if the coastal structure has been completed or substantially completed, seek recovery of all or a portion of the state funds expended on the coastal structure.

The bill specifies that the failure to implement what is discussed in the SLIP study does not create a cause of action for damages or otherwise authorize the imposition of penalties by a public entity.

The bill may have an indeterminate negative fiscal impact on DEP, however, the proposed House of Representatives' Fiscal Year 2020-2021 General Appropriations Act appropriates $6,000,353 within DEP for the Florida Resilient Coastline Initiative. The bill may also have an indeterminate positive fiscal impact on state and local governments in the long-term.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Sea-Level Rise and Coastal Flooding

With 1,350 miles of coastline and relatively low elevations, Florida is particularly vulnerable to coastal flooding.[1] One of the primary ways that climate change influences coastal flooding is through sea-level rise.[2] Sea-level rise is an observed increase in the average local sea level or global sea level trend.[3]

The two major causes of global sea-level rise are thermal expansion caused by the warming of the oceans and the loss of land-based ice due to melting.[4] Since 1880, the average global sea level has risen approximately eight to nine inches, and the rate of global sea-level rise has been accelerating.[5] The National Oceanic and Atmospheric Administration (NOAA) utilizes tide gauges to measure changes in sea level and provides data on local sea-level rise trends.[6] Analysis of this data shows that some low-lying areas in the southeastern United States experience higher local rates of sea-level rise than the global average.[7]

Florida's coastal communities are experiencing high-tide flooding events with increasing frequency because sea-level rise increases the height of high tides.[8] In the U.S., sea-level rise and flooding threaten an estimated $1 trillion in coastal real estate value, and analysts estimate that Florida could lose more than $300 billion in property value by 2100.[9] Sea-level rise further affects the salinity of both surface water and groundwater through saltwater intrusion, posing a risk particularly for shallow coastal aquifers.[10] Sea-level rise also pushes saltwater further upstream in tidal rivers and streams, raises coastal groundwater tables, and pushes saltwater further inland at the margins of coastal wetlands.[11]

Storm surge intensity and the intensity and precipitation rates of hurricanes are generally projected to increase,[12] and higher sea levels will cause storm surges to travel farther inland and impact more properties than in the past.[13] Stronger storms and sea-level rise are likely to lead to increased coastal erosion.[14]

Increases in evaporation rates and water vapor in the atmosphere increase rainfall intensity and extreme precipitation events, and the sudden onset of water can overwhelm stormwater

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[1] Florida Division of Emergency Management, *Enhanced State Hazard Mitigation Plan*, *State of Florida* [hereinafter "SHMP"] (2018), 107-108, 162, available at https://www.floridadisaster.org/globalassets/dem/mitigation/mitigate-fl--shmp/shmp-2018-full_final_approved.6.11.2018.pdf (last visited Jan. 27, 2020). This measurement of Florida's coastline increases to over 8,000 miles when considering the intricacies of Florida's coastline, including bays, inlets, and waterways.
[2] *Id.* at 107.
[3] DEP, *Florida Adaptation Planning Guidebook: Glossary* [hereinafter "DEP Guidebook"] (2018), available at https://floridadep.gov/sites/default/files/AdaptationPlanningGuidebook.pdf (last visited Jan. 27, 2020).
[4] National Aeronautics and Space Administration (NASA)*, Facts: Sea Level,* available at https://climate.nasa.gov/vital-signs/sea-level/ (last visited Jan. 27, 2020).
[5] U.S. Global Change Research Program, *Fourth National Climate Assessment* [hereinafter "NCA4"] (2018), 757, available at https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf (last visited Jan. 27, 2020).
[6] NOAA, *What is a Tide Gauge?*, available at https://oceanservice.noaa.gov/facts/tide-gauge.html (last visited Jan. 27, 2020); NOAA, Tides and Currents, *Sea Level Trends*, available at https://tidesandcurrents.noaa.gov/sltrends/ (last visited Jan. 27, 2020).
[7] NCA4 at 757.
[8] SHMP at 108, 101; NOAA, *High-Tide Flooding*, available at https://toolkit.climate.gov/topics/coastal-flood-risk/shallow-coastal-flooding-nuisance-flooding (last visited Jan. 27, 2020).
[9] NCA4 at 324, 758.
[10] SHMP at 106.
[11] *Id.* at 108.
[12] SHMP at 106, 141; NCA4 at 95, 97, 116-117, 1482.
[13] NCA4 at 758; SHMP at 107.
[14] NCA4 at 331, 340-341, 833, 1054, 1495; SHMP at 108, 221.

infrastructure.[15] As sea levels and groundwater levels rise, low areas drain more slowly, and the combined effects of rising sea levels and extreme rainfall events are increasing the frequency and magnitude of coastal and lowland flood events.[16]

State, Regional, and Local Programs
Many state, regional, and local programs and policies are in place that address issues relating to sea-level rise and coastal flooding. For example, the Office of Resilience and Coastal Protection within the Department of Environmental Protection (DEP) implements numerous programs related to sea-level rise and coastal issues, including the Coastal Construction Control Line Program and the Beach Management Funding Assistance Program.[17] DEP also implements the Florida Resilient Coastlines Program, which helps prepare coastal communities and habitats for the effects of climate change, especially sea-level rise, by offering technical assistance and funding to communities dealing with coastal flooding, erosion, and ecosystem changes.[18]

On the regional level, through a collaboration to address climate change, Broward, Miami-Dade, Monroe, and Palm Beach Counties formed the Southeast Florida Regional Climate Change Compact (Compact).[19] The Compact's work includes developing a Regional Climate Action Plan and developing a Unified Sea-Level Rise Projection.[20] Many local governments in southeast Florida have since incorporated the Compact's projections into their planning documents and policies.[21]

Florida's local governments in coastal areas are required to have a coastal management element in their comprehensive plans that uses principles to reduce flood risk and eliminate unsafe development in coastal areas.[22] In certain coastal areas, local governments are authorized to establish an "adaptation action area" designation in their comprehensive plan to develop policies and funding priorities that improve coastal resilience and plan for sea-level rise.[23]

Office of Resilience and Coastal Protection
In January 2019, Governor DeSantis issued Executive Order 19-12, creating the Office of Resilience and Coastal Protection to help prepare Florida's coastal communities and habitats for impacts from sea-level rise by providing funding, technical assistance, and coordination among state, regional, and local entities.[24] In August 2019, the Governor appointed Florida's first Chief Resilience Officer, who reports to the Executive Office of the Governor and collaborates with state agencies, local communities, and stakeholders to prepare for the impacts of sea-level rise and climate change.[25]

Coastal Construction
Under current law, coastal construction is regulated by DEP in order to protect Florida's beaches and dunes from imprudent construction that can jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties,

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[15] SHMP at 99, 106, 116, 141, 181; NCA4 at 88, 762-763.
[16] SHMP at 106; NCA4 at 763.
[17] DEP, *Beaches: About Us*, available at https://floridadep.gov/rcp/beaches (last visited Jan. 27, 2020).
[18] DEP, *Florida Resilient Coastlines Program*, available at https://floridadep.gov/rcp/florida-resilient-coastlines-program (last visited Jan. 27, 2020).
[19] Regional Climate Leadership Summit, *Southeast Florida Regional Climate Change Compact* (2010), available at http://southeastfloridaclimatecompact.org/wp-content/uploads/2014/09/compact.pdf (last visited Jan. 27, 2020); SFRCCC, *What is the Compact?*, available at http://southeastfloridaclimatecompact.org/about-us/what-is-the-compact/ (last visited Jan. 27, 2020).
[20] SFRCCC, *Regional Climate Action Plan*, available at http://southeastfloridaclimatecompact.org/regional-climate-action-plan/ (last visited Jan. 27, 2020).
[21] SFRCCC, *ST-1: Incorporate Projections into Plans*, available at http://southeastfloridaclimatecompact.org/recommendations/incorporate-projections-into-plans/ (last visited Jan. 27, 2020).
[22] Sections 380.24, 163.3177(6)(g), and 163.3178(2)(f), F.S.; *see* Ch. 2015-69, Laws of Fla.
[23] Sections 163.3177(6)(g)10. and 163.3164(1), F.S.; *see* Ch. 2011-139, Laws of Fla.
[24] Office of the Governor, *Executive Order Number 19-12*, 5 (2019), available at https://www.flgov.com/wp-content/uploads/2019/01/EO-19-12-.pdf (last visited Jan. 27, 2020).
[25] Governor Ron DeSantis, *News Releases: Governor Ron DeSantis Announces Dr. Julia Nesheiwat as Florida's First Chief Resilience Officer* (Aug. 1, 2019), available at https://flgov.com/2019/08/01/governor-ron-desantis-announces-dr-julia-nesheiwat-as-floridas-first-chief-resilience-officer/ (last visited Jan. 27, 2020).

or interfere with public beach access.[26] Coastal construction is defined as any work or activity likely to have a material physical effect on existing coastal conditions or natural shore and inlet processes.[27] Florida's coastal local governments may also establish coastal construction zoning and building codes in lieu of the statutory requirements as long as they are approved by DEP.[28]

The coastal construction control line (CCCL) defines the portion of the beach-dune system that is subject to severe fluctuations caused by a 100-year storm surge, storm waves, or other forces such as wind, wave, or water level changes.[29] A 100-year storm is a shore-incident hurricane or any other storm with accompanying wind, wave, and storm surge intensity that has a 1 percent chance of being equaled or exceeded in any given year.[30] Seaward of the CCCL, new construction and improvements to existing structures generally require a CCCL permit from DEP.[31] Due to the potential environmental impacts and greater risk of hazards from wind and flood, the standards for construction seaward of the CCCL are often more stringent than those that apply to the rest of the coastal building zone.[32] Permit applicants must show that the proposed project will not result in a significant adverse impact.[33] CCCLs are set by DEP on a countywide basis and are currently established for the majority of Florida's coast.[34]

The "mean high-water line" is the point on the shore that marks the average height of the high waters over a 19-year period.[35] The mean high-water line is generally the boundary between the publicly owned foreshore (the land alternately covered and uncovered by the tide) and the dry sand above the line, which may be privately owned.[36] Generally, construction is prohibited within 50 feet of the mean high-water line, known as the 50-foot setback.[37] Any structures below the mean high-water line that are determined by DEP to serve no public purpose; endanger human life, health, or welfare; or be considered undesirable or unnecessary must be adjusted, altered, or removed.[38]

Above the mean high-water line is the "seasonal high-water line," which accounts for variations in the local mean high water, such as spring tides that occur twice per month.[39] The seasonal high-water line is used to create 30-year erosion projections of long-term shoreline recession based on historical measurements.[40] DEP makes 30-year erosion projections of the location of the seasonal high-water line on a site-specific basis upon receipt of a CCCL permit application.[41] With certain exceptions, DEP

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[26] Section 161.053(1)(a), F.S.
[27] Section 161.021(6), F.S.
[28] Section 161.053(3), F.S.
[29] Section 161.053, F.S.; r. 62B-33.005(1), F.A.C.; DEP, *The Homeowner's Guide to the Coastal Construction Control Line Program* (2017), 3, available at https://floridadep.gov/sites/default/files/Homeowner%27s%20Guide%20to%20the%20CCCL%20Program%206_2012%20%28002%29_0.pdf (last visited Jan. 27, 2020).
[30] Rule 62B-33.002(41), F.A.C.
[31] Section 161.053, F.S.; chs. 62B-33 and 62B-34, F.A.C.; DEP, *The Homeowner's Guide to the Coastal Construction Control Line Program* (2017), 3, available at https://floridadep.gov/sites/default/files/Homeowner%27s%20Guide%20to%20the%20CCCL%20Program%206_2012%20%28002%29_0.pdf (last visited Jan. 27, 2020); DEP, *ASK - Have Questions about the Coastal Construction Control Line (CCCL)?*, available at https://floridadep.gov/water/coastal-construction-control-line/content/ask-have-questions-about-coastal-construction (last visited Jan. 27, 2020).
[32] Chapter 62B-33, F.A.C.
[33] Rule 62B-33.005, F.A.C.
[34] Section 161.053(2), F.S.; DEP Geospatial Open Data, *Coastal Construction Control Lines (CCCL)*, http://geodata.dep.state.fl.us/datasets/4674ee6d93894168933e99aa2f14b923_2?geometry=-102.41%2C25.011%2C-60.596%2C31.77 (last visited Jan. 27, 2020).
[35] Sections 177.27(14) and (15), F.S.
[36] Section 177.28, F.S.; ss. 161.052(1), 161.151(3), 161.161(3)-(5), and 161.191, F.S. Where an "erosion control line" is established, it serves as the mean high-water line when it is landward of the existing mean high-water line, and all lands seaward of a recorded erosion control line are deemed to be vested in the state.
[37] Rule 62B-33.002(17), F.A.C.
[38] Section 161.061, F.S.
[39] Section 161.053(5)(a)2., F.S., defines "seasonal high-water line" to mean the line formed by the intersection of the rising shore and the elevation of 150 percent of the local mean tidal range above local mean high water; NOAA, *What Are Spring and Neap Tides?*, available at https://oceanservice.noaa.gov/facts/springtide.html (last visited Jan. 27, 2020).
[40] Rules 62B-33.024, F.A.C.
[41] *Id.*

and local governments may not issue CCCL permits for the construction of major structures that are seaward of the 30-year erosion projection.[42]

The Coastal Zone Protection Act
The Legislature enacted the Coastal Zone Protection Act of 1985 (act) to minimize the impacts that activities or construction near the coast have on Florida's coastal areas.[43] The act imposes strict construction standards in Florida's coastal areas to protect the natural environment, private property, and life.[44] The act applies to activities and construction within the coastal building zone, an area stretching landward from the seasonal high-water line to a line 1,500 feet landward from the CCCL.[45]

The act generally requires construction to be located a sufficient distance landward of the beach to allow natural shoreline fluctuations and preserve dune stability.[46] Nonhabitable major structures[47] and minor structures[48] must be designed to produce the minimum adverse impact on the beach and dune system.[49] Minor structures must be designed to produce the minimum adverse impact to adjacent properties and reduce the potential for water- or wind-blown material.[50]

At or prior to the time that a contract is executed for the sale of real property located partially or totally seaward of the CCCL, the seller must give a prospective purchaser a written disclosure statement that states the property may be subject to coastal erosion and to federal, state, and local regulations that govern coastal property.[51] The disclosure statement must indicate that additional information can be obtained from DEP on whether significant erosion conditions are associated with the shoreline of the property being purchased.

Effect of the Bill

The bill defines the terms:
- "Coastal structure" to mean a major structure or nonhabitable major structure within the coastal building zone;
- "Public entity" to mean the state or any of its political subdivisions, or any municipality, county, agency, special district, authority, or other public body corporate of the state that is demonstrated to perform a public function or to serve a governmental purpose that could properly be performed or served by an appropriate governmental unit;
- "SLIP study" to mean a sea level impact projection study as established by DEP;
- "State-financed constructor" to mean a public entity that commissions or manages a construction project using funds appropriated from the state; and

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[42] Section 161.053(5), F.S.; DEP, *The Homeowner's Guide to the Coastal Construction Control Line Program* (2017), 6, available at https://floridadep.gov/sites/default/files/Homeowner%27s%20Guide%20to%20the%20CCCL%20Program%206_2012%20%28002%29_0.pdf (last visited Jan. 27, 2020).
[43] Sections 161.52-161.58, F.S.
[44] Sections 161.53(1), (4), and (5), F.S.
[45] Section 161.54(1), F.S.; s. 161.55(4), F.S. On coastal barrier islands, the coastal building zone stretches 5,000 feet landward from the CCCL.
[46] Section 161.55(3), F.S. The act makes exceptions for certain structures such as piers, beach access ramps, or shore protection structures.
[47] Section 161.54(6)(a), F.S., defines "major structure" to mean houses, mobile homes, apartment buildings, condominiums, motels, hotels, restaurants, towers, other types of residential, commercial, or public buildings, and other construction having the potential for substantial impact on coastal zones. Section 161.54(6)(c), F.S., defines "nonhabitable major structure" to mean swimming pools; parking garages; pipelines; piers; canals, lakes, ditches, drainage structures, and other water retention structures; water and sewage treatment plants; electrical power plants, and all related structures or facilities, transmission lines, distribution lines, transformer pads, vaults, and substations; roads, bridges, streets, and highways; and underground storage tanks.
[48] Section 161.54(6)(b), F.S., defines "minor structure" to mean pile-supported, elevated dune and beach walkover structures; beach access ramps and walkways; stairways; pile-supported, elevated viewing platforms, gazebos, and boardwalks; lifeguard support stands; public and private bathhouses; sidewalks, driveways, parking areas, shuffleboard courts, tennis courts, handball courts, racquetball courts, and other uncovered paved areas; earth retaining walls; and sand fences, privacy fences, ornamental walls, ornamental garden structures, aviaries, and other ornamental construction.
[49] Sections 161.55(1) and 161.55(2), F.S.
[50] Section 161.55(1), F.S.
[51] Section 161.57(2), F.S.

- "Substantial flood damage" to mean flood, inundation, or wave action damage resulting from a single event, such as a flood or tropical weather system, where such damage exceeds 25 percent of the market value of the coastal structure at the time of the event.

The bill prohibits a state-financed constructor from commencing construction of a coastal structure unless the constructor has conducted a SLIP study, submitted the SLIP study to DEP, and received notification from DEP that the SLIP study was received and has been published on DEP's website for at least 30 days.

The bill requires DEP to adopt by rule a standard by which a state-financed constructor must conduct the SLIP study and authorizes the department to require that a professional engineer sign off on the study. The standard adopted by DEP must require a state-financed constructor to:

- Use a systematic, interdisciplinary, and scientifically accepted approach in the natural sciences and construction design in conducting the SLIP study;
- Assess the flooding, inundation, and wave action damage risks relating to the coastal structure over its expected life or 50 years, whichever is less; and
- Provide alternatives for the coastal structure's design and siting, and how such alternatives would impact certain public safety and environmental risks as well as the risk and cost associated with maintaining, repairing, and constructing the coastal structure.

The bill specifically requires the assessment of risks conducted by the state-financed constructor to:

- Take into account potential relative local sea level rise and increased storm risk during the expected life of the coastal structure or 50 years, whichever is less, and, to the extent possible, account for the contribution of sea level rise versus land subsidence to the relative local sea level rise;
- Provide scientific and engineering evidence of the risk to the coastal structure and methods used to mitigate, adapt to, or reduce this risk;
- Use and consider available scientific research and generally accepted industry practices;
- Provide the mean average annual chance of substantial flood damage over the expected life of the coastal structure or 50 years, whichever is less; and
- Analyze potential public safety and environmental impacts resulting from damage to the coastal structure, including leakage of pollutants, electrocution and explosion hazards, and hazards resulting from floating or flying structural debris.

The bill specifies that the state-financed constructor is solely responsible for ensuring that the SLIP study submitted to DEP for publication meets these requirements. The bill requires DEP to publish and maintain a copy of all SLIP studies for at least 10 years after receipt. The bill requires DEP to redact any information exempt from public record requirements before publishing the study.

The bill specifies that if multiple coastal structures are to be built concurrently within one project, a state-financed constructor may conduct and submit one SLIP study for the entire project.

If a state-financed constructor commences construction of a coastal structure but has not conducted the SLIP study, the bill authorizes DEP to institute a civil action to seek injunctive relief to cease further construction of the coastal structure or enforce compliance or, if the coastal structure has been completed or substantially completed, to seek recovery of all or a portion of the state funds expended on the coastal structure.

The bill specifies that the failure to implement what is contained in the SLIP study does not create a cause of action for damages or otherwise authorize the imposition of penalties by a public entity.

B. SECTION DIRECTORY:

Section 1. Creates s. 161.551, F.S., relating to public financing of construction projects within the coastal building zone.

Section 2. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an indeterminate negative fiscal impact on state government in the short-term because the bill requires governmental entities to conduct a SLIP study prior to construction of certain coastal structures. However, the SLIP study will identify risks that could potentially avoid damage and loss of coastal structures that were constructed using state funds, so the bill may result in an indeterminate positive fiscal impact to state government in the long-term.

   The bill may have an indeterminate negative fiscal impact on DEP because it requires DEP to conduct rulemaking and implement new regulations. The proposed House of Representatives' Fiscal Year 2020-2021 General Appropriations Act appropriates $6,000,353 ($5,500,353 in recurring funding) within DEP for the Florida Resilient Coastline Initiative, so DEP can implement the rulemaking and new regulations within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an indeterminate negative fiscal impact on local governments because the bill requires governmental entities to conduct a SLIP study prior to construction of certain coastal structures. The SLIP study will identify risks that could potentially avoid damage and loss of coastal structures, so the bill may result in an indeterminate positive fiscal impact to local governments in the long-term.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill requires DEP to adopt rules to establish requirements for the SLIP study.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Agriculture & Natural Resources Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment required the assessment of risks to take into account potential relative local sea level rise and the contribution of land subsidence to the relative local sea level rise. The amendment also specified that the failure to implement what is contained in the SLIP study does not create a cause of action for damages or authorize the imposition of penalties.

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Subcommittee.

1 A bill to be entitled
2 An act relating to public financing of construction
3 projects; creating s. 161.551, F.S.; providing
4 definitions; prohibiting state-financed constructors
5 from commencing construction of certain structures in
6 coastal areas without first conducting a sea level
7 impact projection study; requiring the Department of
8 Environmental Protection to develop by rule a standard
9 for such studies; requiring the department to publish
10 such studies on its website, subject to certain
11 conditions; providing construction; requiring the
12 department to enforce certain requirements and to
13 adopt rules; providing for enforcement; providing an
14 effective date.
15
16 Be It Enacted by the Legislature of the State of Florida:
17
18 Section 1. Section 161.551, Florida Statutes, is created
19 to read:
20 161.551 Public financing of construction projects within
21 the coastal building zone.—
22 (1) As used in this section, the term:
23 (a) "Coastal structure" means a major structure or
24 nonhabitable major structure within the coastal building zone.
25 (b) "Public entity" means the state or any of its

26 political subdivisions, or any municipality, county, agency,
27 special district, authority, or other public body corporate of
28 the state which is demonstrated to perform a public function or
29 to serve a governmental purpose that could properly be performed
30 or served by an appropriate governmental unit.
31 (c) "SLIP study" means a sea level impact projection study
32 as established by the department pursuant to subsection (3).
33 (d) "State-financed constructor" means a public entity
34 that commissions or manages a construction project using funds
35 appropriated from the state.
36 (e) "Substantial flood damage" means flood, inundation, or
37 wave action damage resulting from a single event, such as a
38 flood or tropical weather system, where such damage exceeds 25
39 percent of the market value of the coastal structure at the time
40 of the event.
41 (2) A state-financed constructor may not commence
42 construction of a coastal structure without:
43 (a) Conducting a SLIP study that meets the requirements
44 established by the department;
45 (b) Submitting the study to the department; and
46 (c) Receiving notification from the department that the
47 study was received and that it has been published on the
48 department's website pursuant to paragraph (6)(a) for at least
49 30 days. The state-financed constructor is solely responsible
50 for ensuring that the study submitted to the department for

51 publication meets the requirements under subsection (3).
52 (3) The department shall develop by rule a standard by
53 which a state-financed constructor must conduct a SLIP study and
54 may require that a professional engineer sign off on the study.
55 At a minimum, the standard must require that a state-financed
56 constructor do all of the following:
57 (a) Use a systematic, interdisciplinary, and
58 scientifically accepted approach in the natural sciences and
59 construction design in conducting the study.
60 (b) Assess the flooding, inundation, and wave action
61 damage risks relating to the coastal structure over its expected
62 life or 50 years, whichever is less.
63 1. The assessment must take into account potential
64 relative local sea level rise and increased storm risk during
65 the expected life of the coastal structure or 50 years,
66 whichever is less, and, to the extent possible, account for the
67 contribution of sea level rise versus land subsidence to the
68 relative local sea level rise.
69 2. The assessment must provide scientific and engineering
70 evidence of the risk to the coastal structure and methods used
71 to mitigate, adapt to, or reduce this risk.
72 3. The assessment must use and consider available
73 scientific research and generally accepted industry practices.
74 4. The assessment must provide the mean average annual
75 chance of substantial flood damage over the expected life of the

76 coastal structure or 50 years, whichever is less.
77 5. The assessment must analyze potential public safety and
78 environmental impacts resulting from damage to the coastal
79 structure including, but not limited to, leakage of pollutants,
80 electrocution and explosion hazards, and hazards resulting from
81 floating or flying structural debris.
82 (c) Provide alternatives for the coastal structure's
83 design and siting, and how such alternatives would impact the
84 risks specified in subparagraph (b)5. as well as the risk and
85 cost associated with maintaining, repairing, and constructing
86 the coastal structure.
87
88 If multiple coastal structures are to be built concurrently
89 within one project, a state-financed constructor may conduct and
90 submit one SLIP study for the entire project for publication by
91 the department.
92 (4) If a state-financed constructor commences construction
93 of a coastal structure but has not complied with the SLIP study
94 requirement under subsection (2), the department may institute a
95 civil action in a court of competent jurisdiction to:
96 (a) Seek injunctive relief to cease further construction
97 of the coastal structure or enforce compliance with this section
98 or with rules adopted by the department pursuant to this
99 section.
100 (b) If the coastal structure has been completed or has

101 been substantially completed, seek recovery of all or a portion
102 of state funds expended on the coastal structure.
103 (5) This section may not be construed to create a cause of
104 action for damages or otherwise authorize the imposition of
105 penalties by a public entity for failure to implement what is
106 contained in the SLIP study.
107 (6) The department:
108 (a) Shall publish and maintain a copy of all SLIP studies
109 submitted pursuant to this section on its website for at least
110 10 years after receipt. However, any portion of a study
111 containing information that is exempt from s. 119.07(1) and s.
112 24(a), Art. I of the State Constitution must be redacted by the
113 department before publication.
114 (b) Shall adopt rules as necessary to administer this
115 section.
116 (7) The department may enforce the requirements of this
117 section.
118 Section 2. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 715 Reclaimed Water
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Maggard
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1656

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	9 Y, 0 N, As CS	Melkun	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	7 Y, 0 N	White	Pigott
3) State Affairs Committee		Melkun	Williamson

SUMMARY ANALYSIS

Reclaimed water is water from a domestic wastewater treatment facility that has received at least secondary treatment and basic disinfection for reuse. Reuse is the deliberate application of reclaimed water for a beneficial purpose. The use of reclaimed water for the purpose of directly or indirectly augmenting drinking water supplies is known as potable reuse. Indirect potable reuse is the planned discharge of reclaimed water to ground or surface waters for the development or supplementation of potable water supply. Direct potable reuse is the introduction of advanced treated reclaimed water into a raw water supply immediately upstream of a drinking water treatment facility or directly into a potable water distribution system.

Although regulations currently exist in Florida for using reclaimed water for indirect potable reuse for augmenting surface water, there are no regulations that address using reclaimed water for indirect potable reuse involving groundwater replenishment or direct potable reuse.

The bill requires the Department of Environmental Protection (DEP) to adopt rules for potable reuse to authorize potable reuse projects; protect the public health and environment; support the use of reclaimed water for potable reuse purposes; implement the recommendations of the Potable Reuse Commission; and require the point of compliance with drinking water standards for potable reuse projects to be the final discharge point for finished water from the water treatment facility. The bill further requires the rules to include certain procedures for the treatment of reclaimed water. The bill requires DEP to initiate rulemaking by December 31, 2020, and submit the adopted rules to the Legislature by December 12, 2021.

The bill states that reclaimed water is deemed a water source for public water supply systems. The bill also declares that potable reuse is an alternative water supply, and potable reuse projects are eligible for alternative water supply funding. The bill specifies that potable reuse projects developed as qualifying public-private partnerships are eligible for expedited permitting beginning January 1, 2025, and are granted an annual tax credit. The bill further specifies that potable reuse projects developed as qualifying public-private partnerships are granted a three-year extension on any deadlines imposed on domestic wastewater treatment disposal and are eligible for priority funding from the Drinking Water State Revolving Fund and water management district cooperative funding.

Beginning January 1, 2026, the bill prohibits domestic wastewater treatment facilities from disposing of effluent, reclaimed water, or reuse water by surface water discharge unless certain exceptions apply.

The bill requires local governments to authorize the use of residential graywater technologies that comply with the Florida Building Code and provide incentives to developers to use such technologies.

The bill may have an indeterminate negative fiscal impact on state and local government.

This 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:

Background

Drinking Water

The federal Safe Drinking Water Act (SDWA) was passed by Congress in 1974 to protect public health by regulating the nation's public drinking water supply.[1] The SDWA applies to all public water systems in the United States that are regulated by the federal Environmental Protection Agency (EPA).[2] However, the most direct oversight of water systems is conducted by state drinking water programs. States can apply to the EPA for "primacy," or the authority to implement the SDWA within their jurisdictions, if they can show that they will adopt standards at least as stringent as the EPA's and ensure their water systems meet these standards. All states and territories, except Wyoming and the District of Columbia, have received primacy.[3]

Florida Safe Water Requirements

The Florida Safe Drinking Water Act[4] (act) establishes the Department of Environmental Protection (DEP) as the agency with primary responsibility for regulating drinking water, with support by the Department of Health and its units, including county health departments. The act is intended to:

- Implement the SDWA;
- Encourage cooperation between federal, state, and local agencies, not only in their enforcement role, but also in their service and assistance roles to city and county elected bodies; and
- Provide for safe drinking water at all times throughout the state, with due regard for economic factors and efficiency in government.[5]

Drinking Water State Revolving Fund

The Drinking Water State Revolving Fund (DWSRF) program is a federal-state partnership created within the SDWA to help ensure safe drinking water. The DWSRF program provides financial support to water systems and to state safe water programs.[6] In Florida, the DWSRF program within DEP provides low-interest loans to local governments and private utilities to plan, design, and build or upgrade drinking water systems.[7]

Wastewater Treatment Facilities

Because domestic wastewater treatment facilities are stationary installations that are reasonably expected to be sources of water pollution, they must be operated, maintained, constructed, expanded, or modified with a permit issued by DEP.[8] Approximately 2,000 domestic wastewater treatment facilities in the state serve roughly two-thirds of the state's population.[9] Each day, over 1.5 billion gallons of treated wastewater effluent[10] and reclaimed water[11] are disposed of from these facilities.[12] Methods of

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[1] United States Environmental Protection Agency, *Understanding the Safe Drinking Water Act* (June 2004), available at https://www.epa.gov/sites/production/files/2015-04/documents/epa816f04030.pdf (last visited Jan. 27, 2020).

[2] Pub. L. No. 93-523, 88 Stat. 1660 (1974). Under the Safe Drinking Water Act, the EPA is authorized to regulate contaminants in public drinking water systems.

[3] EPA, *Understanding the Safe Drinking Water Act* (June 2004), available at https://www.epa.gov/sites/production/files/2015-04/documents/epa816f04030.pdf (last visited Jan. 27, 2020).

[4] Section 403.850, F.S. The act includes ss. 403.850-403.891, F.S.

[5] Section 403.851, F.S.

[6] EPA, *Drinking Water State Revolving Fund (DWSRF)*, available at https://www.epa.gov/dwsrf (last visited Jan. 28, 2020).

[7] DEP, *State Revolving Fund*, available at https://floridadep.gov/wra/srf (last visited Jan. 28, 2020).

[8] Section 403.087(1), F.S.

[9] DEP, *General Facts and Statistics about Wastewater in Florida*, available at https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida (last visited Jan. 23, 2020); the remainder of the state is served by onsite sewage and disposal systems permitted and regulated by the Department of Health.

[10] Rule 62-600.200(22), F.A.C., defines "effluent" to mean, unless specifically stated otherwise, water that is not reused after flowing out of any plant or other works used for the purpose of treating, stabilizing, or holding wastes.

disposal include reuse and land application systems, groundwater disposal by underground injection, groundwater recharge using injection wells, surface water discharges, disposal to coastal and open ocean waters, and wetland discharges.[13]

Most domestic wastewater treatment facilities must meet either basic disinfection or high-level disinfection requirements, dependent upon the type of discharge.[14] Basic disinfection requires the effluent to contain less than 200 fecal coliforms per 100 micrograms per milliliter,[15] while high-level disinfection requires fecal coliforms to be reduced below detection.[16] Domestic wastewater treatment facilities that discharge to surface waters[17] must also obtain a National Pollutant Discharge Elimination System (NPDES) permit, which is established by the Clean Water Act to control point source discharges.[18] NPDES permit requirements for most domestic wastewater facilities are incorporated into the DEP-issued permit.[19]

Consumptive Use Permits

Before using waters of the state,[20] a person must apply for and obtain a consumptive use permit (CUP) from the applicable water management district (WMD)[21] or DEP. The WMD or DEP may impose reasonable conditions necessary to assure that the proposed use is consistent with the overall objectives of the WMD or DEP and is not harmful to the water resources of the area.[22] To obtain a CUP, an applicant must establish that the proposed use of water is a reasonable-beneficial use,[23] will not interfere with any presently existing legal use of water, and is consistent with the public interest.[24]

It is possible for consumptive use to lower the flows and levels of water bodies to a point that the resource values are significantly harmed. To prevent this harm, the WMDs are responsible for identifying and establishing the limit at which further water withdrawals would be significantly harmful to the water resources or ecology of the area, known as the minimum flow[25] and minimum level (MFL).[26]

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[11] Rule 62-600.200(54), F.A.C., defines "reclaimed water" to mean water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.
[12] DEP, *General Facts and Statistics about Wastewater in Florida*, available at https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida (last visited Jan. 23, 2020).
[13] Rule 62-600.440(4), F.A.C.
[14] DEP, *Ultraviolet Disinfection for Domestic Wastewater*, available at https://floridadep.gov/water/domestic-wastewater/content/ultraviolet-uv-disinfection-domestic-wastewater (last visited Jan. 23, 2020).
[15] Rules 62-600.510(1) and 62-600.440(5), F.A.C.
[16] Rule 62-600.440(6), F.A.C.
[17] Section 373.019(21), F.S., defines "surface water" to mean water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs is classified as surface water when it exits from the spring onto the earth's surface; s. 403.031(13), F.S., defines "waters" to mean rivers, lakes, streams, springs, impoundments, wetlands, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters; r. 62-620.200(56), F.A.C.
[18] 33 U.S.C. s. 1342.
[19] Section 403.0885, F.S.; ch. 62-620, F.A.C.; DEP, *Wastewater Permitting*, available at https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting (last visited Jan. 23, 2020); Florida's Water Permitting Portal, *Types of Permits*, available at http://flwaterpermits.com/typesofpermits.html (last visited Jan. 23, 2020).
[20] Section 373.019(22), F.S., defines the term "water" or "waters in the state" to mean any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.
[21] Section 373.216, F.S.; *see* chs. 40A-2, 40B-2, 40C-2, 40D-2, and 40E-2, F.A.C., for CUP permitting requirements.
[22] Section 373.219(1), F.S.; an individual solely using water for domestic consumption is exempt from CUP requirements.
[23] Section 373.019(16), F.S., defines the term "reasonable-beneficial use" to mean the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner that is both reasonable and consistent with the public interest.
[24] Section 373.223(1), F.S.
[25] Section 373.042(1)(a), F.S., provides that the minimum flow for a given watercourse is the limit at which further water withdrawals would be significantly harmful to the water resources or ecology of the area.
[26] Section 373.042(1)(b), F.S., provides that the minimum level is the level of groundwater in an aquifer or the level of a surface waterbody at which further withdrawals will significantly harm the water resources of the area. DEP, *Minimum Flows and Minimum Water Levels and Reservations*, available at https://floridadep.gov/water-policy/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations (last visited Jan. 27, 2020).

For water bodies that are below their MFL, or are projected to fall below it within 20 years, the WMDs must implement a recovery or prevention strategy to ensure the MFL is maintained.[27] A recovery or prevention strategy must include the development of additional water supplies and other actions to achieve recovery to the established MFL as soon as practicable or prevent the existing flow or water level from falling below the established MFL.[28] A recovery or prevention strategy must also include a phased-in approach or a timetable that will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses, including implementation of conservation and other efficiency measures to offset reductions in permitted withdrawals.[29]

Reclaimed Water

Reclaimed water is water from a domestic wastewater[30] treatment facility that has received at least secondary treatment[31] and basic disinfection[32] for reuse.[33] Reuse is the deliberate application of reclaimed water for a beneficial purpose.[34] Current law specifies that encouraging and promoting the reuse of reclaimed water are state objectives and are considered to be in the public interest. In response to these objectives, DEP and the WMDs have implemented a comprehensive reuse program.[35]

Florida law allows reclaimed water to be used in slow-rate land application systems for public access areas (e.g., golf courses, parks, and highway medians), residential irrigation, and edible crops;[36] rapid-rate land application systems;[37] groundwater recharge and indirect potable reuse systems;[38] and overland flow systems.[39] Industrial uses for reclaimed water such as cooling water, wash water, and process water are also authorized.[40] Florida has been utilizing reclaimed water for landscape irrigation and industrial uses since the early 1970s. Currently, Florida is the national leader in water reuse, utilizing 48 percent of the total domestic wastewater in the state for nonpotable uses.[41]

Aquifer Storage and Recovery and Aquifer Recharge

DEP has general regulatory authority over underground water, lakes, rivers, streams, canals, ditches, and coastal waters under the jurisdiction of the state to the extent that the pollution of these waters may impact public health or impair the interests of the public or persons lawfully using the waters.[42] Accordingly, through its Aquifer Protection Program, DEP regulates the disposal of appropriately treated fluids, such as reclaimed water, through underground injection wells while also protecting underground sources of drinking water.[43] The program is aimed at preventing degradation of the quality of aquifers adjacent to the injection zone.[44]

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[27] DEP, *Minimum Flows and Minimum Water Levels and Reservations*, available at https://floridadep.gov/water-policy/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations (last visited Jan. 27, 2020).
[28] Section 373.0421(2), F.S.
[29] *Id*.
[30] Section 367.021(5), F.S., defines the term "domestic wastewater" to mean wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.
[31] Rule 62-610.200(54), F.A.C., defines the term "secondary treatment."
[32] Rule 62-600.440(5), F.A.C., provides the requirements for basic disinfection.
[33] Section 373.019(17), F.S.; r. 62-610.200(48), F.A.C.
[34] Rule 62-610.200(52), F.A.C.
[35] DEP, *Risk Impact Statement* (Dec. 21, 1998), available at https://floridadep.gov/sites/default/files/risreuse_508C.pdf (last visited Jan. 24, 2020).
[36] Chapter 62-610, Part III, F.A.C.
[37] Chapter 62-610, Part IV, F.A.C., includes rapid infiltration basins and absorption fields.
[38] Chapter 62-610, Part V, F.A.C.
[39] Chapter 62-610, Part VI, F.A.C., includes the treatment of domestic wastewater to meet effluent limitations for discharge to surface waters.
[40] Chapter 62-610, Part VII, F.A.C.
[41] PRC, *Framework for the Implementation of Potable Reuse in Florida* (Jan. 2020), xxiii, available at http://prc.watereuseflorida.com/wp-content/uploads/Framework-for-Potable-Reuse-in-Florida-FINAL-January-2020-web10495.pdf (last visited Jan. 27, 2020).
[42] Section 403.062, F.S.
[43] Rule 62-528.200(66), F.A.C., defines the term "underground source of drinking water" to mean aquifer. DEP, *Aquifer Protection Program – UIC*, available at https://floridadep.gov/water/aquifer-protection (last visited Jan. 27, 2020).
[44] DEP, *Aquifer Protection Program – UIC*, available at https://floridadep.gov/water/aquifer-protection (last visited Jan. 27, 2020); *see* ch. 62-528, F.A.C., for underground injection control permitting requirements.

Aquifer storage and recovery (ASR) is the underground injection and storage of water into a subsurface formation for the purpose of withdrawing the water for beneficial purposes at a later date.[45] ASR provides for storage of large quantities of water for both seasonal and long-term storage and ultimate recovery that would otherwise be unavailable due to land limitations, loss to tides, or evaporation.[46] Similar to ASR, aquifer recharge (AR) is the underground injection and storage of water into an aquifer, but the water used to recharge the aquifer is not being stored for the purpose of withdrawing the water from the same facility at a later date.[47] AR is primarily considered a water resource development and conservation strategy used to preserve and enhance water resources and natural systems (e.g., sustain water levels, meet MFLs) and to attenuate flooding.[48]

For both ASR and AR, the aquifer acts as an underground reservoir for the recharged water. Whereas ASR is most commonly utilized near major population centers requiring storage to ensure water system reliability (e.g., public supply and commercial/industrial/mining uses), AR is most effective as a water management strategy in sparsely populated rural areas whose water resources rely on stable regional aquifer levels.[49]

ASR and AR wells are regulated as Class V injection wells, which include all wells that inject non-hazardous fluids into or above formations that contain underground sources of drinking water. While ASR wells are all wells associated with an ASR facility, AR wells include:

- Recharger wells, which replenish, augment, or store water in an aquifer;
- Saltwater intrusion barrier wells, which inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water;
- Subsidence control wells, which inject fluids into a zone that does not produce oil or gas to reduce or eliminate subsidence associated with the overdraft of fresh water; and
- Connector wells, which connect two aquifers to allow the interchange of water between them.[50]

Potable Reuse

The use of reclaimed water for the purpose of directly or indirectly augmenting drinking water supplies is known as potable reuse. Indirect potable reuse is the planned discharge of reclaimed water to ground or surface waters for the development or supplementation of a potable water supply. Direct potable reuse is the introduction of advanced treated reclaimed water into a raw water supply immediately upstream of a drinking water treatment facility or directly into a potable water distribution system.[51]

Although regulations currently exist in Florida for using reclaimed water for indirect potable reuse for augmenting surface water, there are no regulations that address using reclaimed water for indirect potable reuse involving groundwater replenishment or direct potable reuse.[52]

Potable Reuse Commission

The Potable Reuse Commission (PRC) was organized by stakeholders to develop a consensus-based framework to advance the safe implementation of potable reuse in Florida. The framework was developed to safeguard the protection of public health and the environment, provide regulatory and financial certainty to communities considering potable reuse, and ensure consistency in permitting and implementation of potable reuse projects throughout the state.[53]

The PRC final report was published in January 2020, and provided the following recommendations:

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[45] DEP, *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater and Excess Surface Water* (Dec. 1, 2015), 83, available at https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf (last visited Jan. 27, 2020).
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] Rule 62-528.300(1)(e), F.A.C.
[51] *Id.* at xxiv.
[52] *Id.*
[53] *Id.* at iii.

- Move Florida's existing reclaimed water regulations that apply to potable reuse into the appropriate drinking water regulation rule chapters;
- Revise the existing drinking water regulations to specify that reclaimed water is a water supply source;
- Require potable reuse to meet drinking water standards by providing pathogen treatment; and
- Address emerging constituents,[54] such as pharmaceuticals and personal care products, in potable reuse.[55]

Economic-Based Designations
A rural area of opportunity (RAO) is a rural community, or a region composed of rural communities, designated by the Governor that presents a unique economic development opportunity of regional impact or that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster.[56] The three designated RAOs are the:
- Northwest RAO, which includes Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington Counties, and the City of Freeport;
- South Central RAO, which includes DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee Counties, and the Cities of Pahokee, Belle Glade, South Bay, and Immokalee; and
- North Central RAO, which includes Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union Counties.[57]

A fiscally constrained county is a county that is entirely within a RAO or a county for which the value of a mill will raise no more than $5 million in revenue.[58]

Effect of the Bill

The bill defines the following terms:
- "Advanced treated reclaimed water" means the water produced from an advanced water treatment process for potable reuse applications;
- "Advanced treatment technology" means the treatment technology selected by a utility to address emerging constituents and pathogens in reclaimed water as part of a potable reuse project;
- "Direct potable reuse" means the introduction of advanced treated reclaimed water into a raw water supply immediately upstream from a drinking water treatment facility or directly into a potable water supply distribution system;
- "Emerging constituents" means pharmaceuticals, personal care products, and other chemicals not regulated as part of drinking water quality standards;
- "Indirect potable reuse" means the planned delivery or discharge of reclaimed water to groundwater or surface water for the development of, or to supplement, the potable water supply;
- "Off-spec reclaimed water" means reclaimed water that does not meet the standards for potable reuse;
- "Potable reuse" means the augmentation of a drinking water supply with advanced treated reclaimed water from a domestic wastewater treatment facility, and consists of direct potable reuse and indirect potable reuse; and

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[54] Emerging constituents, also known as "emerging substances of concern" and "contaminants of emerging concern," is a catch-all term used to describe a fluid list of contaminants of interest to regulatory agencies on both the state and federal level. DEP, *Emerging Substances of Concern* (Dec. 2008), 2, available at https://floridadep.gov/sites/default/files/esoc_fdep_report_12_8_08.pdf (last visited Jan. 27, 2020).
[55] PRC, *Framework for the Implementation of Potable Reuse in Florida* (Jan. 2020), xxvii-xxviii, available at http://prc.watereuseflorida.com/wp-content/uploads/Framework-for-Potable-Reuse-in-Florida-FINAL-January-2020-web10495.pdf (last visited Jan. 27, 2020).
[56] Section 288.0656(2)(d), F.S.
[57] Florida Department of Economic Opportunity, *RAO*, available at http://www.floridajobs.org/business-growth-and-partnerships/rural-and-economic-development-initiative/rural-areas-of-opportunity (last visited Jan. 16, 2019).
[58] Section 218.67(1), F.S.

- "Reclaimed water" means water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.

The bill requires DEP to adopt rules for potable reuse to:
- Authorize potable reuse projects;
- Protect the public health and environment by ensuring the rules meet federal and state drinking water and water quality standards and, when possible, implement such rules through existing regulatory programs;
- Support the use of reclaimed water for potable reuse purposes;
- Implement the recommendations in the PRC's 2020 report; and
- Require the point of compliance with drinking water standards for potable reuse projects to be the final discharge point for finished water from the water treatment facility.

The bill requires the potable reuse rules to include:
- Implementation of a log reduction credit system using advanced treatment technology to meet pathogen treatment requirements;
- An approach by a public water supplier to meet required pathogen treatment in an engineering report as part of its public water supply permit application for authorization of potable reuse;
- Procedures for using appropriate treatment technology[59] to address emerging constituents in potable reuse projects;
- Appropriate monitoring to evaluate advanced treatment technology performance;
- Industrial pretreatment requirements that match current law; and
- Off-spec reclaimed water requirements for projects that include immediate disposal, temporary storage, alternative nonpotable reuse, or retreatment or disposal of off-spec reclaimed water.

The bill specifies that if an applicant for a reclaimed water ASR well injecting into a receiving groundwater with less than 1,000 mg/L total dissolved solids demonstrates that there are no public supply wells within 3,500 feet of the ASR well, and the applicant has implemented institutional controls to prevent the future construction of public supply wells within 3,500 feet of the ASR well, the rules that apply when reclaimed water is injected into a receiving groundwater that has 1,000 to 3,000 mg/L total dissolved solids are applicable to the ASR well.

The bill requires treatment of reclaimed water, as necessary, to meet existing drinking water rules, including the rules for pathogens.

The bill requires DEP to review existing rules governing reclaimed water and potable reuse to identify obsolete and inconsistent requirements and, in adopting new potable reuse rules, eliminate such inconsistencies. The bill requires DEP to review its AR rules and, if revisions are necessary to ensure continued compliance when reclaimed water is used for AR, adopt such rules.

The bill requires DEP to initiate rulemaking by December 31, 2020, and submit the adopted rules to the Legislature by December 12, 2021, for approval and incorporation into ch. 403, F.S., by the Legislature. The bill prohibits DEP from publishing such rules as administrative rules. The bill requires DEP to convene and lead one or more technical advisory committees to coordinate the rulemaking and review of the rules required by the bill.

The bill requires DEP, by December 31, 2022, to develop and execute a memorandum of agreement with the WMDs that provides the process for a coordinated review of permits associated with the construction and operation of an indirect potable reuse project to ensure a permit's consistency, if a permittee requests such review.

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[59] The advanced treatment technology must be technically and economically feasible and provide flexibility in the processes employed to recognize different project scenarios, emerging constituent concentrations, desired finished water quality, and the treatment capability of the facility.

The bill states that, to comply with drinking water quality standards, reclaimed water is deemed a water source for public water supply systems. The bill also declares that potable reuse is an alternative water supply, and potable reuse projects are eligible for alternative water supply funding.

The bill specifies that potable reuse projects developed as qualifying public-private partnerships are eligible for expedited permitting beginning January 1, 2025, and are granted an annual tax credit. The tax credit applies only to the corporate income tax liability or the premium tax liability generated by or arising out of the qualifying project, and the sum of all tax credits provided may not exceed 100 percent of the eligible capital costs. The bill further specifies that any tax credit granted may not be carried forward or backward.

The bill further specifies that potable reuse projects developed as qualifying public-private partnerships are granted a three-year extension on any deadlines imposed on domestic wastewater treatment disposal and are eligible for priority funding from the Drinking Water State Revolving Fund and WMD cooperative funding.

Beginning January 1, 2026, the bill prohibits domestic wastewater treatment facilities from disposing of effluent, reclaimed water, or reuse water by surface water discharge. However, the prohibition does not apply to:

- Indirect potable reuse projects;
- Domestic wastewater treatment facility discharges during wet weather which occur in accordance with the applicable DEP permit;
- Discharges into a stormwater management system that are subsequently withdrawn by a user for irrigation purposes;
- Domestic wastewater treatment facilities located in fiscally constrained counties;
- Projects where reclaimed water is recovered from an aquifer recharge system and subsequently discharged into a surface water for potable reuse;
- Wetlands creation, restoration, and enhancement projects;
- MFLs recovery or prevention strategy plan projects;
- Domestic wastewater treatment facilities with reuse systems that provide a minimum of 90 percent of a facility's annual average flow for reuse purposes authorized by DEP;
- Domestic wastewater treatment facilities located in municipalities that have less than $10 million in total revenue; or
- Domestic wastewater treatment facilities located in municipalities that are entirely within a RAO.

The bill requires a county, municipality, or special district to authorize the use of residential graywater[60] technologies that comply with the Florida Building Code in their respective jurisdictions. The bill further requires such entities to provide incentives to developers to fully offset the costs of their beneficial reuse of water through graywater technology. Such incentives may include, but are not limited to:

- Allowing the developer density or intensity bonus incentives or more floor space than allowed under the current or proposed future land use designation or zoning; or
- Reducing or waiving fees, such as impact fees or water and sewer charges.

If the local government has already applied one of the previously identified incentives to the development, the bill requires the local government to provide an additional incentive to the developer.

The bill specifies that the Legislature determines the bill fulfills an important state interest.

B. SECTION DIRECTORY:

Section 1. Amends s. 403.064, F.S., relating to the reuse of reclaimed water.

Section 2. Creates s. 403.8531, F.S., relating to potable reuse.

[60] Section 381.0065(2)(e), F.S., defines the term "graywater" to mean the part of domestic sewage that is not blackwater, including waste from the bath, lavatory, laundry, and sink, except kitchen sink waste.

Section 3. Creates s. 403.892, F.S., relating to incentives for graywater technologies.

Section 4. Creates an unnumbered section of law relating to potable reuse and reclaimed water.

Section 5. Creates an unnumbered section of law relating to the reuse of reclaimed water for irrigation purposes.

Section 6. Creates an unnumbered section of law relating to the Division of Law Revision.

Section 7. Provides an important state interest.

Section 8. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may have an indeterminate negative fiscal impact on the state because the bill authorizes an annual corporate income tax credit of 5 percent of the eligible capital costs generated by a qualifying project for a period not to exceed 20 years after the date that project operations begin. The tax credit applies only to the corporate income tax liability or premium tax liability generated by or arising out of the qualifying project, and the sum of all tax credits may not exceed 100 percent of the eligible capital costs. The Revenue Estimating Conference determined the fiscal impact of the tax credit to be negative indeterminate.

2. Expenditures:

   The bill may have an indeterminate negative fiscal impact on DEP that can likely be absorbed through existing resources due to the costs associated with the rulemaking and technical advisory committee requirements.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may have a significant indeterminate negative fiscal impact on local government-owned wastewater treatment facilities that will be required to comply with potable reuse rules adopted by DEP and the prohibition on surface water discharges. The bill may also have an indeterminate negative fiscal impact on local governments because they will be required to provide incentives for the use of graywater technologies.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   The bill may have a significant indeterminate negative fiscal impact on privately-owned wastewater treatment facilities that will be required to comply with potable reuse rules adopted by DEP and the prohibition on surface water discharges.

   The bill may have an indeterminate positive fiscal impact on developers who utilize incentives for the use of graywater technologies.

D. FISCAL COMMENTS:

   None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill prohibits local governments that own wastewater treatment facilities from discharging into surface waters. An exception may apply if the requirement applies to similarly situated persons because the bill provides a legislative finding that the requirements of the bill fulfill an important state interest. If the exception does not apply, 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 requires DEP to adopt rules relating to potable reuse and reclaimed water. DEP appears to have sufficient rulemaking to comply with these requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Agriculture & Natural Resources Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS provided additional exceptions to the prohibition on surface water discharges, removed the requirement that potable reuse rules be ratified by the Legislature, and required local governments, municipalities, and special districts to provide incentives for the use of graywater technologies.

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Subcommittee.

1 A bill to be entitled
2 An act relating to reclaimed water; amending s.
3 403.064, F.S.; prohibiting domestic wastewater
4 treatment facilities from disposing of effluent,
5 reclaimed water, or reuse water by surface water
6 discharge beginning on a specified date; providing
7 exceptions; creating s. 403.8531, F.S.; providing
8 legislative intent; providing definitions; providing
9 that reclaimed water is a water source for public
10 water supply systems; providing specified groundwater
11 and surface water quality protections for potable
12 reuse projects; providing that potable reuse is an
13 alternative water supply and that projects relating to
14 such reuse are eligible for alternative water supply
15 funding; requiring the Department of Environmental
16 Protection to adopt specified rules; requiring the
17 department to review reclaimed water and potable reuse
18 rules and revise them as necessary; requiring the
19 department to review aquifer recharge rules and revise
20 them as necessary; requiring the department to
21 initiate rulemaking and to submit such rules to the
22 Legislature for approval by specified dates; requiring
23 the department and the water management districts to
24 develop and execute, by a specified date, a memorandum
25 of agreement for the coordinated review of specified

26 permits; providing that potable reuse projects by
27 private entities are eligible for certain expedited
28 permitting and tax credits; providing construction;
29 creating s. 403.892; providing definitions; requiring
30 counties, municipalities, and special districts to
31 authorize graywater technologies under certain
32 circumstances and to provide incentives for the
33 implementation of such technologies; requiring the
34 department to adopt rules for the implementation of
35 certain potable reuse projects; requiring the
36 department to convene at least one technical advisory
37 committee for specified purposes; providing for the
38 composition of the technical advisory committee;
39 providing for the applicability of specified reclaimed
40 water aquifer storage and recovery system
41 requirements; providing a directive to the Division of
42 Law Revision; providing a determination and
43 declaration of important state interest; providing an
44 effective date.
45
46 Be It Enacted by the Legislature of the State of Florida:
47
48 Section 1. Subsection (17) is added to section 403.064,
49 Florida Statutes, to read:
50 403.064 Reuse of reclaimed water.—

51 (17) Notwithstanding any other provisions in this section
52 to the contrary, beginning January 1, 2026, domestic wastewater
53 treatment facilities may not dispose of effluent, reclaimed
54 water, or reuse water by surface water discharge, except that
55 this prohibition does not apply to indirect potable reuse
56 projects; domestic wastewater treatment facility discharges
57 during wet weather which occur in accordance with the applicable
58 department permit; discharges into a stormwater management
59 system which are subsequently withdrawn by a user for irrigation
60 purposes; domestic wastewater treatment facilities located in
61 fiscally constrained counties as defined in s. 218.67(1);
62 projects where reclaimed water is recovered from an aquifer
63 recharge system and subsequently discharged into a surface water
64 for potable reuse; wetlands creation, restoration, and
65 enhancement projects; minimum flows and levels recovery or
66 prevention strategy plan projects; domestic wastewater treatment
67 facilities with reuse systems that provide a minimum of 90
68 percent of a facility's annual average flow, as determined by
69 the department using monitoring data for the prior 5 consecutive
70 years, for reuse purposes authorized by the department; domestic
71 wastewater treatment facilities located in municipalities that
72 have less than $10 million in total revenue, as determined by
73 the most recent annual financial report submitted to the
74 Department of Financial Services in accordance with s. 218.32;
75 or domestic wastewater treatment facilities located in

76 municipalities that are entirely within a rural area of
77 opportunity designated under s. 288.0656.
78 Section 2. Section 403.8531, Florida Statutes, is created
79 to read:
80 403.8531 Potable reuse.—
81 (1) Recognizing that sufficient water supply is imperative
82 to the future of the state and that potable reuse is one source
83 of water which may assist in meeting future demands, the
84 Legislature intends for the department to adopt rules for
85 potable reuse which:
86 (a) Protect the public health and environment by ensuring
87 that the potable reuse rules meet federal and state drinking
88 water and water quality standards, including, but not limited
89 to, the Clean Water Act, the Safe Drinking Water Act, and water
90 quality standards under chapter 403, and, when possible,
91 implement such rules through existing regulatory programs.
92 (b) Support reclaimed water being used for potable reuse
93 purposes.
94 (c) Implement the recommendations set forth in the Potable
95 Reuse Commission's 2020 report "Advancing Potable Reuse in
96 Florida: Framework for the Implementation of Potable Reuse in
97 Florida."
98 (d) Require that the point of compliance with drinking
99 water standards for potable reuse projects is the final
100 discharge point for finished water from the water treatment

101 facility.
102 (e) Protect the aquifer and Florida's springs and surface
103 water by ensuring that potable reuse projects do not cause or
104 contribute to violations of water quality standards in surface
105 water, including groundwater discharges that flow by interflow
106 and affect water quality in surface water, and that potable
107 reuse projects shall be designed and operated to ensure
108 compliance with groundwater quality standards.
109 (2) As used in this section, the term:
110 (a) "Advanced treated reclaimed water" means the water
111 produced from an advanced water treatment process for potable
112 reuse applications.
113 (b) "Advanced treatment technology" means the treatment
114 technology selected by a utility to address emerging
115 constituents and pathogens in reclaimed water as part of a
116 potable reuse project.
117 (c) "Direct potable reuse" means the introduction of
118 advanced treated reclaimed water into a raw water supply
119 immediately upstream from a drinking water treatment facility or
120 directly into a potable water supply distribution system.
121 (d) "Emerging constituents" means pharmaceuticals,
122 personal care products, and other chemicals not regulated as
123 part of drinking water quality standards.
124 (e) "Indirect potable reuse" means the planned delivery or
125 discharge of reclaimed water to groundwater or surface water for

126 the development of, or to supplement, the potable water supply.
127 (f) "Off-spec reclaimed water" means reclaimed water that
128 does not meet the standards for potable reuse.
129 (g) "Potable reuse" means the augmentation of a drinking
130 water supply with advanced treated reclaimed water from a
131 domestic wastewater treatment facility, and consists of direct
132 potable reuse and indirect potable reuse.
133 (h) "Reclaimed water" means water that has received at
134 least secondary treatment and basic disinfection and is reused
135 after flowing out of a domestic wastewater treatment facility.
136 (3) To comply with drinking water quality standards,
137 reclaimed water is deemed a water source for public water supply
138 systems.
139 (4) Existing water quality protections that prohibit
140 discharges from causing or contributing to violations of water
141 quality standards in groundwater and surface water apply to
142 potable reuse projects. In addition, when reclaimed water is
143 released or discharged into groundwater or surface water for
144 potable reuse purposes, there shall be a consideration of
145 emerging constituents and impacts to other users of such
146 groundwater or surface water.
147 (5) Potable reuse is an alternative water supply as
148 defined in s. 373.019, and potable reuse projects are eligible
149 for alternative water supply funding. The use of potable reuse
150 water may not be excluded from regional water supply planning

151 under s. 373.709.
152 (6) The department shall:
153 (a) Adopt rules that authorize potable reuse projects that
154 are consistent with this section.
155 (b) Review existing rules governing reclaimed water and
156 potable reuse to identify obsolete and inconsistent requirements
157 and adopt rules that revise existing potable reuse rules to
158 eliminate such inconsistencies, while maintaining existing
159 public health and environmental protections.
160 (c) Review aquifer recharge rules, and, if revisions are
161 necessary to ensure continued compliance with existing public
162 health and environmental protection rules when reclaimed water
163 is used for aquifer recharge, adopt such rules.
164 (d) Initiate rulemaking by December 31, 2020, and submit
165 the adopted rules to the President of the Senate and the Speaker
166 of the House of Representatives by December 12, 2021, for
167 approval and incorporation into chapter 403 by the Legislature.
168 Such rules may not be published as administrative rules by the
169 department.
170 (7) The department and the water management districts
171 shall develop and execute a memorandum of agreement providing
172 for the procedural requirements of a coordinated review of all
173 permits associated with the construction and operation of an
174 indirect potable reuse project. The memorandum of agreement must
175 provide that the coordinated review will occur only if requested

176 by a permittee. The purpose of the coordinated review is to
177 share information, to avoid the redundancy of information
178 requested from the permittee, and to ensure consistency in the
179 permit for the protection of the public health and the
180 environment. The department and the water management districts
181 shall develop and execute the memorandum of agreement by
182 December 31, 2022.
183 (8) To encourage investment in the development of potable
184 reuse projects by private entities, a potable reuse project
185 developed as a qualifying project pursuant to s. 255.065 is:
186 (a) Beginning January 1, 2025, eligible for expedited
187 permitting under s. 403.973.
188 (b) Granted an annual credit against the tax imposed by
189 chapter 220 in an amount equal to 5 percent of the eligible
190 capital costs generated by a qualifying project for a period not
191 to exceed 20 years after the date that project operations begin.
192 The tax credit applies only to the corporate income tax
193 liability or the premium tax liability generated by or arising
194 out of the qualifying project, and the sum of all tax credits
195 provided pursuant to this section may not exceed 100 percent of
196 the eligible capital costs as defined in s. 220.191(1)(c). Any
197 credit granted under this paragraph may not be carried forward
198 or backward.
199 (c) Granted a 3-year extension of any deadlines imposed
200 under s. 403.064(17).

201 (d) Consistent with s. 373.707, eligible for priority
202 funding in the same manner as other alternative water supply
203 projects from the Drinking Water State Revolving Fund, under the
204 Water Protection and Sustainability Program, and for water
205 management district cooperative funding.
206 (9) This section is not intended and may not be construed
207 to supersede s. 373.250(3).
208 Section 3. Section 403.892, Florida Statutes, is created
209 to read:
210 403.892 Incentives for the use of graywater technologies.—
211 (1) As used in this section, the term:
212 (a) "Developer" has the same meaning as in s. 380.031(2).
213 (b) "Graywater" has the same meaning as in s.
214 381.0065(2)(e).
215 (2) To promote the beneficial reuse of water in the state,
216 a county, municipality, or special district shall do all of the
217 following:
218 (a) Authorize the use of residential graywater
219 technologies in their respective jurisdictions which comply with
220 the Florida Building Code; and
221 (b) Provide incentives to developers to fully offset the
222 costs of their beneficial reuse of water contribution through
223 graywater technology. Such incentives may include, but are not
224 limited to:

225 1. Allowing the developer density or intensity bonus
226 incentives or more floor space than allowed under the current or
227 proposed future land use designation or zoning;
228 2. Reducing or waiving fees, such as impact fees or water
229 and sewer charges; or
230 3. Granting other incentives.
231 (3) If the local government has already applied one of the
232 incentives identified in paragraph (2)(b) to the development,
233 the local government must provide the developer with an
234 additional incentive identified in paragraph (2)(b) to meet the
235 requirements of this section.
236 Section 4. (1) In implementing s. 403.8531, Florida
237 Statutes, as created by this act, the Department of
238 Environmental Protection, in coordination with one or more
239 technical working groups pursuant to subsection (2), shall adopt
240 rules for the implementation of potable reuse projects. The
241 department shall:
242 (a) Revise the appropriate chapters in the Florida
243 Administrative Code, including chapter 62-610, Florida
244 Administrative Code, to ensure that all rules implementing
245 potable reuse are in the Florida Administrative Code division 62
246 governing drinking water regulation.
247 (b) Revise existing drinking water rules to include
248 reclaimed water as a source water for the public water supply
249 and require such treatment of the water as is necessary to meet

250 existing drinking water rules, including rules for pathogens.
251 The potable reuse rules must include the implementation of a log
252 reduction credit system using advanced treatment technology to
253 meet pathogen treatment requirements, and must require a public
254 water supplier to provide an approach to meet the required
255 pathogen treatment requirements in an engineering report as part
256 of its public water supply permit application for authorization
257 of potable reuse. To ensure protection of the public health, as
258 part of the public water supply permit application to authorize
259 potable reuse, a public water supplier shall provide a
260 department-specified level of treatment or propose an approach
261 to achieving the log reduction targets based on source water
262 characterization that is sufficient for a pathogen risk of
263 infection which meets the national drinking water criteria of
264 less than 1 x 10-4 annually.
265 (c) Prescribe the means for using appropriate treatment
266 technology to address emerging constituents in potable reuse
267 projects. The advanced treatment technology must be technically
268 and economically feasible and must provide for flexibility in
269 the specific treatment processes employed to recognize different
270 project scenarios, emerging constituent concentrations, desired
271 finished water quality, and the treatment capability of the
272 facility. The advanced treatment technology may also be used for
273 pathogen removal or reduction.
274 1. The rules must require appropriate monitoring to

275 evaluate advanced treatment technology treatment performance,
276 including the monitoring of surrogate parameters and controls,
277 which monitoring must occur either before or after the advanced
278 treatment technologies treatment process, or both, as
279 appropriate.
280 2. For direct potable reuse projects, the rules must
281 require reclaimed water to be included in the source water
282 characterization for a drinking water treatment facility and, if
283 that source water characterization indicates the presence of
284 emerging constituents at levels of public health interest, must
285 specify how appropriate treatment technology will be used to
286 address those emerging constituents.
287 3. For indirect potable reuse projects, the department
288 shall amend the existing monitoring requirements contained
289 within part V of chapter 62-610, Florida Administrative Code, to
290 require monitoring for one or more representative emerging
291 constituents. The utility responsible for the indirect potable
292 reuse project shall develop an emerging constituent monitoring
293 protocol consisting of the selection of one or more
294 representative emerging constituents for monitoring and the
295 identification of action levels associated with such emerging
296 constituents. The monitoring protocol must provide that, if
297 elevated levels of the representative emerging constituent are
298 detected, the utility must report the elevated detection to the
299 department and investigate the source and cause of such elevated

300 emerging constituent. The utility shall submit the monitoring
301 protocol to the department for review and approval and shall
302 implement the monitoring protocol as approved by the department.
303 If the monitoring protocol detects an elevated emerging
304 constituent, and if the utility's investigation indicates that
305 the use of the reclaimed water is the cause of such elevated
306 emerging constituent, the utility must develop a plan to address
307 or remedy that cause. The utility's monitoring results,
308 investigation of any detected elevated emerging constituent
309 levels, determination of cause, and any plan developed to
310 address or remedy the cause must be submitted to the department
311 for review and approval.
312 (d) Specify industrial pretreatment requirements for
313 potable reuse projects. These industrial pretreatment
314 requirements must match the industrial pretreatment requirements
315 contained in chapter 62-625, Florida Administrative Code, as of
316 the effective date of this act. If necessary, the department
317 also must require the utility operating a potable reuse project
318 to implement a source control program, and the utility shall
319 identify the sources that need to be addressed.
320 (e) Provide off-spec reclaimed water requirements for
321 potable reuse projects which include the immediate disposal,
322 temporary storage, alternative nonpotable reuse, or retreatment
323 or disposal of off-spec reclaimed water based on operating
324 protocols established by the public water supplier and approved

325 by the department.
326 (f) Revise existing rules to specify the point of
327 compliance with drinking water standards for potable reuse
328 projects as the point where the finished water is finally
329 discharged from the drinking water treatment facility to the
330 water distribution system.
331 (g) Ensure that, as rules for potable reuse projects are
332 implemented, chapter 62-610.850, Florida Administrative Code, is
333 applicable.
334 (h) Revise the definition of the term "indirect potable
335 reuse" provided in chapter 62-610, Florida Administrative Code,
336 to match the definition provided in s. 403.8531, Florida
337 Statutes.
338 (2) The department shall convene and lead one or more
339 technical advisory committees to coordinate the rulemaking and
340 review of rules required by s. 403.8531, Florida Statutes. The
341 technical advisory committees, which shall assist in the
342 development of such rules, must be composed of knowledgeable
343 representatives of a broad group of interested stakeholders,
344 including, but not limited to, representatives from the water
345 management districts, the wastewater utility industry, the water
346 utility industry, the environmental community, the business
347 community, the public health community, the agricultural
348 community, and consumers.
349 Section 5. To further promote the reuse of reclaimed water

350 for irrigation purposes, the rules that apply when reclaimed
351 water is injected into a receiving groundwater having 1,000 to
352 3,000 mg/L total dissolved solids are applicable to reclaimed
353 water aquifer storage and recovery wells injecting into a
354 receiving groundwater of less than 1,000 mg/L total dissolved
355 solids if the applicant demonstrates that there are no public
356 supply wells within 3,500 feet of the aquifer storage and
357 recovery wells and that it has implemented institutional
358 controls to prevent the future construction of public supply
359 wells within 3,500 feet of the aquifer storage and recovery
360 wells.
361 Section 6. The Division of Law Revision is directed to
362 replace the phrase "the effective date of this act" wherever it
363 occurs in this act with the date the act becomes a law.
364 Section 7. The Legislature determines and declares that
365 this act fulfills an important state interest.
366 Section 8. This act shall take effect upon becoming a law.

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

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1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Maggard offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Subsection (17) is added to section 403.064,
7 Florida Statutes, to read:
8 403.064 Reuse of reclaimed water.—
9 (17) Within one year after the effective date of the
10 department rules addressing potable reuse required by s.
11 403.8531 or by July 1, 2023, whichever is earlier, each domestic
12 wastewater utility that disposes of effluent, reclaimed water,
13 or reuse water by surface water discharge shall submit to the
14 department a plan for eliminating nonbeneficial surface water
15 discharges within 5 years, except as otherwise provided in this
16 subsection. Each plan must be reviewed by the department and, if

17 approved, must be incorporated into the utility's operating
18 permit issued pursuant to s. 403.087.
19 (a) The plan must include:
20 1. The volume of effluent, reclaimed water, or reuse water
21 that will no longer be discharged into surface waters and the
22 date such discharges shall cease;
23 2. The volume of effluent, reclaimed water, or reuse water
24 that will continue to be discharged into surface waters in
25 accordance with the alternatives provided in subparagraphs (b)2.
26 and 3., and the level of treatment that the effluent, reclaimed
27 water, or reuse water will receive before being discharged into
28 a surface water by each alternative; and
29 3. As applicable, the volume of effluent, reclaimed water,
30 or reuse water that will continue to be discharged in accordance
31 with paragraph (c) and the level of treatment that the effluent,
32 reclaimed water, or reuse water will receive before being
33 discharged into a surface water.
34 (b) The department shall approve a plan if one or more of
35 the following conditions are met:
36 1. The plan eliminates surface water discharges from the
37 utility.
38 2. The plan will result in the utility's compliance with
39 the requirements of s. 403.086(7)(a) or s. 403.086(9).
40 3. The plan does not completely eliminate surface water
41 discharges, but provides an affirmative demonstration that:

42 a. The remaining discharge is associated with an indirect
43 potable reuse project;
44 b. The remaining discharge is a wet weather discharge that
45 occurs in accordance with an applicable department permit;
46 c. The remaining discharge flows into a stormwater
47 management system and is subsequently withdrawn by a user for
48 irrigation purposes;
49 d. The utility operates domestic wastewater treatment
50 facilities with reuse systems that provide a minimum of 90
51 percent of a facility's annual average flow, as determined by
52 the department using monitoring data for the prior 5 consecutive
53 years, for reuse purposes authorized by the department; or
54 e. The remaining discharge provides direct ecological or
55 public water supply benefits, such as rehydrating wetlands or
56 implementing the requirements of minimum flows and levels
57 recovery or of a prevention strategy plan.
58 (c) The department shall also approve a plan which
59 demonstrates that:
60 1. It is technically, economically, or environmentally
61 infeasible for the utility to meet any of the conditions
62 provided in paragraph (b) within 5 years after submitting the
63 plan to the department;
64 2. Implementing such alternatives would create a severe
65 undue economic hardship on the community served by the utility,
66 as demonstrated by the impact to utility ratepayers, a lack of a

67 reasonable return on investment, and the unaffordability of
68 implementing any combination of the alternatives; and
69 3. The plan provides a means to eliminate the discharge to
70 the extent feasible.
71 (d) The department shall approve or deny a plan within 9
72 months after receiving the plan. A utility may modify the plan
73 by amendment to the permit, but the department may not extend
74 the time within which a plan must be implemented.
75 (e)1. If the department approves a utility's plan, the
76 utility shall fully implement the approved plan by January 1,
77 2027. If a plan is not timely submitted by a utility or approved
78 by the department, the utility's domestic wastewater treatment
79 facilities may not dispose of effluent, reclaimed water, or
80 reuse water by surface water discharge after January 1, 2027.
81 2. If a utility has included a potable reuse project in
82 the plan and has implemented all other components of the plan,
83 the utility has until January 1, 2029, to implement the potable
84 reuse project.
85 (f) A utility that has had a plan approved by the
86 department pursuant to paragraph (c) shall prepare and submit to
87 the department an updated plan within one year of approval, and
88 annually thereafter until the utility is able to meet one or
89 more of the conditions provided in paragraph (b). The updated
90 annual plan must affirmatively demonstrate that the utility is
91 unable to meet any of the conditions provided in paragraph (b).

92 The department shall review the updated plans to verify that the
93 utility is unable to meet any of the conditions provided in
94 paragraph (b) and that the utility continues to meet the
95 conditions of paragraph (c). If the department determines that
96 the utility is able to meet any of the conditions provided in
97 paragraph (b) and the utility is no longer eligible for approval
98 under paragraph (c), the utility must submit a plan in
99 accordance with paragraph (b) within 9 months after receiving
100 notice of such a determination from the department, and the
101 utility must fully implement such plan within 5 years after
102 receiving an approval by the department.
103 (g) A domestic wastewater utility applying for a permit
104 for a new or expanded surface water discharge shall prepare a
105 plan in accordance with this subsection as part of the permit
106 application. The department may not approve a permit for a new
107 or expanded surface water discharge unless the plan meets one or
108 more of the conditions provided in paragraph (b).
109 (h) By December 31, 2023, and annually thereafter, the
110 department shall submit a report to the President of the Senate
111 and the Speaker of the House of Representatives that provides
112 the information that must be included in the plan pursuant to
113 paragraph (a) for each utility that submitted a plan pursuant to
114 this subsection during the preceding calendar year.
115 (i) This subsection does not apply to:

116 1. A domestic wastewater treatment facility that is
117 located in a fiscally constrained county as described in s.
118 218.67(1).
119 2. A domestic wastewater treatment facility that is
120 located in a municipality that is entirely within a rural area
121 of opportunity as designated pursuant to s. 288.0656.
122 3. A domestic wastewater treatment facility that is
123 located in a municipality that generates less than $10 million
124 in total revenue, as determined by the municipality's most
125 recent annual financial report submitted pursuant to s. 218.32.
126 (j) This subsection may not be construed to exempt a
127 utility from the requirements of water quality standards for
128 surface waters, including groundwater discharges that flow by
129 interflow and affect water quality in surface waters.
130 Section 2. Section 403.8531, Florida Statutes, is created
131 to read:
132 403.8531 Potable reuse.—
133 (1) LEGISLATIVE INTENT.—Recognizing that sufficient water
134 supply is imperative to the future of this state, it is the
135 intent of the Legislature that potable reuse be used as a source
136 of water that may assist in meeting future water supply demands.
137 Further, the Legislature supports the use of reclaimed water for
138 potable reuse purposes so long as such use occurs in a manner
139 that protects the public health and environment.
140 (2) DEFINITIONS.—As used in this section, the term:

141 (a) "Advanced treated reclaimed water" means the water
142 produced from an advanced water treatment process for potable
143 reuse applications.
144 (b) "Advanced treatment technology" means the treatment
145 technology selected by a utility to address emerging
146 constituents and pathogens in reclaimed water as part of a
147 potable reuse project.
148 (c) "Direct potable reuse" means the introduction of
149 advanced treated reclaimed water into a raw water supply
150 immediately upstream from a drinking water treatment facility or
151 directly into a potable water supply distribution system.
152 (d) "Emerging constituents" means pharmaceuticals,
153 personal care products, and other chemicals not regulated as
154 part of drinking water quality standards.
155 (e) "Indirect potable reuse" means the planned delivery or
156 discharge of reclaimed water to groundwater or surface waters
157 for the development of, or to supplement, the potable water
158 supply.
159 (f) "Off-spec reclaimed water" means reclaimed water that
160 does not meet the standards for potable reuse.
161 (g) "Potable reuse" means the augmentation of a drinking
162 water supply with advanced treated reclaimed water from a
163 domestic wastewater treatment facility.
164 (h) "Reclaimed water" has the same meaning as in s.
165 373.019.

166 (3) RULEMAKING.—The department shall initiate rulemaking
167 by December 31, 2020, to adopt rules to create and implement a
168 potable reuse program. Such rules may not take effect until
169 ratified by the Legislature. The rules shall:
170 (a) Implement the recommendations set forth in the Potable
171 Reuse Commission's 2020 report entitled "Advancing Potable Reuse
172 in Florida: Framework for the Implementation of Potable Reuse in
173 Florida."
174 (b) Require potable reuse projects to meet federal and
175 state drinking water and water quality standards, including, but
176 not limited to, the Clean Water Act, the Safe Drinking Water
177 Act, and water quality standards pursuant to chapter 403.
178 (c) Require potable reuse projects to be designed and
179 operated to ensure compliance with groundwater quality
180 standards.
181 (d) Require the point of compliance with drinking water
182 standards for potable reuse projects to be the final discharge
183 point for finished water from the water treatment facility.
184 (e) Create a public water supply permit application that
185 authorizes potable reuse. The permit shall:
186 1. Include the implementation of a log reduction credit
187 system using advanced treatment technology to meet pathogen
188 treatment requirements.
189 2. Require a public water supplier to submit an
190 engineering report as part of its public water supply permit

191 application for authorization of potable reuse that provides an
192 approach to meet the required pathogen treatment requirements.
193 3. Require a public water supplier to provide a level of
194 treatment or proposed approach to achieving log reduction
195 targets based on source water characterization that is
196 sufficient for a pathogen risk of infection which meets the
197 national drinking water criteria of less than 1 x 10-4 annually
198 (f) Provide a process for the use of appropriate treatment
199 technology to address emerging constituents in potable reuse
200 projects, as determined by the department. If a project requires
201 the use of advanced treatment technology, the required treatment
202 shall:
203 1. Be technically and economically feasible.
204 2. Provide flexibility in the specific treatment processes
205 employed to recognize different project scenarios, emerging
206 constituent concentrations, desired finished water quality, and
207 the treatment capability of the facility.
208 3. Be authorized for pathogen removal or reduction.
209 (g) Require appropriate monitoring to evaluate advanced
210 treatment technology performance, including the monitoring of
211 surrogate parameters and controls. Such monitoring may, as
212 determined by the department, occur before or after the advanced
213 treatment process, or both before and after, as appropriate.
214 (h) Provide off-spec reclaimed water requirements for
215 potable reuse projects which include the immediate disposal,

216 temporary storage, alternative nonpotable reuse, or retreatment
217 or disposal of off-spec reclaimed water based on operating
218 protocols established by the public water supplier and approved
219 by the department.
220 (i) Provide industrial pretreatment requirements for
221 potable reuse projects, which must match the industrial
222 pretreatment requirements contained in chapter 62-625, Florida
223 Administrative Code, as of the effective date of this act. If
224 necessary, the department must require the utility operating a
225 potable reuse project to implement a source control program, and
226 the utility must identify the sources that need to be addressed.
227 (j) For direct potable reuse projects, require reclaimed
228 water to be included in the source water characterization for a
229 drinking water treatment facility and, if that source water
230 characterization indicates the presence of emerging constituents
231 at levels of public health interest, require appropriate
232 treatment technology to be used to address those emerging
233 constituents.
234 (k) For indirect potable reuse projects, require the
235 utility responsible for the project to select one or more
236 representative emerging constituents for monitoring and develop
237 an emerging constituent monitoring protocol that identifies
238 action levels associated with such emerging constituents.
239 1. If elevated levels of the representative emerging
240 constituent are detected, the utility shall report the elevated

241 detection to the department and investigate the source and cause
242 of such elevated emerging constituent.
243 2. The utility shall submit the monitoring protocol to the
244 department for review and approval and shall implement the
245 monitoring protocol as approved by the department.
246 3. If the monitoring protocol detects an elevated emerging
247 constituent, and if the utility's investigation indicates that
248 the use of reclaimed water is the cause of such elevated
249 emerging constituent, the utility must develop a plan to address
250 or remedy that cause.
251 4. The utility must submit its monitoring results, a
252 description of the source and cause of the elevated levels, and
253 any plan developed to address or remedy the cause to the
254 department. The department shall develop a process for the
255 review and approval of such plans.
256 (4) MEMORANDUM OF AGREEMENT.—By December 31, 2022, the
257 department and the water management districts shall develop and
258 execute a memorandum of agreement providing for the procedural
259 requirements of a coordinated review of all permits associated
260 with the construction and operation of an indirect potable reuse
261 project. The memorandum of agreement must provide that the
262 coordinated review will occur only if requested by a permittee.
263 (5) POTABLE REUSE PROJECT INCENTIVES.—To encourage
264 investment in the development of potable reuse projects by

265 private entities, a potable reuse project developed as a
266 qualifying project pursuant to s. 255.065 is:
267 (a) Beginning January 1, 2025, eligible for expedited
268 permitting under s. 403.973; and
269 (b) Consistent with s. 373.707, eligible for priority
270 funding, in the same manner as other alternative water supply
271 projects, from the Drinking Water State Revolving Fund, under
272 the Water Protection and Sustainability Program, and for water
273 management district cooperative funding.
274 (6) CONSTRUCTION.—This section is not intended and may not
275 be construed to supersede s. 373.250(3).
276 Section 2. Section 403.892, Florida Statutes, is created
277 to read:
278 403.892 Incentives for the use of graywater technologies.—
279 (1) As used in this section, the term:
280 (a) "Developer" has the same meaning as in s. 380.031.
281 (b) "Graywater" has the same meaning as in s. 381.0065(2).
282 (2) To promote the beneficial reuse of water in the state,
283 a county, municipality, or special district shall:
284 (a) Authorize the use of residential graywater
285 technologies in their respective jurisdictions that meet the
286 requirements of this section, the Florida Building Code, and
287 applicable requirements of the Florida Department of Health and
288 that have received all applicable regulatory permits or
289 authorizations; and

290 (b) Provide density or intensity bonuses to the developer
291 or homebuilder to fully offset the capital costs of the
292 technology and installation costs. If density or intensity
293 bonuses have already been provided to the developer or
294 homebuilder, then more air-conditioned, living floor space of
295 residential homes shall be provided to fully offset the capital
296 costs of the technology and installation costs.
297 (3) To qualify for the incentives, the developer or
298 homebuilder must certify to the applicable government entity as
299 part of its application for development approval or amendment of
300 a development order that:
301 (a) The proposed development has at least 25 single-family
302 residential homes that are either detached or multifamily
303 dwellings. This section does not apply to multifamily projects
304 over five stories in height.
305 (b) Each single-family residential home or residence will
306 have its own residential graywater system.
307 (c) It has submitted a manufacturer's warranty or data
308 providing reasonable assurance that the residential graywater
309 system will function as designed and includes an estimate of
310 anticipated potable water savings for each system. A submittal
311 of the manufacturer's warranty or data from a building code
312 official, government entity, or research institute that has
313 monitored or measured the residential graywater system that is
314 proposed to be installed for such development shall be accepted

315 as reasonable assurance and no further information or assurance
316 is needed.
317 (d) The required maintenance of the graywater system will
318 be the responsibility of the single-family residential homeowner
319 or manufacturer.
320 (e) An operation and maintenance manual for the graywater
321 system will be supplied to the initial homeowner of each single-
322 family home. The manual must provide a method of contacting the
323 installer or manufacturer and must include directions to the
324 residential homeowner that the manual must remain with the
325 residence throughout the life cycle of the system.
326 (4) If subsection (3) has been met, the county or
327 municipality must include the incentives provided for in
328 subsection (2) when it approves the development or amendment of
329 a development order. The approval must also provide the process
330 the developer or homebuilder must follow to verify that such
331 systems have been purchased. Proof of purchase must be provided
332 within 180 days from the issuance of a certificate of occupancy
333 for such single-family residential home that is either detached
334 or under five stories.
335 (5) The installation of residential graywater systems in a
336 county or municipality in accordance with this section shall
337 qualify as a water conservation measure in a public water
338 utility's water conservation plan pursuant to s. 373.227. The
339 efficiency of such measure, as projected in paragraph (3)(c)

340 above, must be commensurate with the amount of potable water
341 savings estimated for each system provided by the developer or
342 homebuilder pursuant to paragraph (3)(c).
343 Section 4. (1) The department shall convene and lead one
344 or more technical advisory groups to coordinate the rulemaking
345 and review of rules required by s. 403.8531, Florida Statutes.
346 The technical advisory groups, which shall assist in the
347 development of such rules, must be composed of knowledgeable
348 representatives of a broad group of interested stakeholders,
349 including, but not limited to, representatives from the water
350 management districts, the wastewater utility industry, the water
351 utility industry, the environmental community, the business
352 community, the public health community, the agricultural
353 community, and consumers.
354 (2) In implementing s. 403.8531, Florida Statutes, as
355 created by this act, the Department of Environmental Protection,
356 in coordination with the technical advisory groups, shall:
357 (a) Revise the appropriate chapters in the Florida
358 Administrative Code, including chapter 62-610, Florida
359 Administrative Code, to ensure that all rules implementing
360 potable reuse are included in the drinking water regulations of
361 the Florida Administrative Code.
362 (b) Revise the definition of the term "indirect potable
363 reuse" provided in chapter 62-610, Florida Administrative Code,

364 to match the definition provided in s. 403.8531, Florida
365 Statutes.
366 (c) Revise existing drinking water rules to include
367 reclaimed water as a source water for the public water supply
368 and require such treatment of the water as is necessary to meet
369 existing drinking water rules, including rules for pathogens.
370 (d) Ensure that, as rules for potable reuse projects are
371 implemented, r. 62-610.850, Florida Administrative Code, is
372 applicable.
373 (e) Review aquifer recharge rules, and, if revisions are
374 necessary to ensure continued compliance with existing public
375 health and environmental protection rules when reclaimed water
376 is used for aquifer recharge, adopt such rules.
377 Section 5. To further promote the reuse of reclaimed water
378 for irrigation purposes, the rules that apply when reclaimed
379 water is injected into a receiving groundwater that has 1,000 to
380 3,000 mg/L total dissolved solids are applicable to reclaimed
381 water aquifer storage and recovery wells injecting into a
382 receiving groundwater of less than 1,000 mg/L total dissolved
383 solids if the applicant demonstrates that it is injecting into a
384 confined aquifer, that there are no public supply wells within
385 3,500 feet of the aquifer storage and recovery wells, and that
386 it has implemented institutional controls to prevent the future
387 construction of public supply wells within 3,500 feet of the
388 aquifer storage and recovery wells. This section does not exempt

389 the reclaimed water aquifer storage and recovery wells from
390 requirements that prohibit causing or contributing to violations
391 of water quality standards in surface water, including
392 groundwater discharges that flow by interflow and affect water
393 quality in surface water.
394 Section 6. The Division of Law Revision is directed to
395 replace the phrase "the effective date of this act" wherever it
396 occurs in this act with the date the act becomes a law.
397 Section 7. The Legislature determines and declares that
398 this act fulfills an important state interest.
399 Section 8. This act shall take effect upon becoming law.
400
401 ---
402 **T I T L E A M E N D M E N T**
403 Remove everything before the enacting clause and insert:
404 An act relating to reclaimed water; amending s. 403.064,
405 F.S.; requiring certain domestic wastewater utilities to
406 submit to the Department of Environmental Protection by a
407 specified date a plan for eliminating nonbeneficial surface
408 water discharge within a specified timeframe; providing
409 requirements for the plan; requiring the department to
410 approve plans that meet certain requirements; requiring the
411 department to make a determination regarding a plan within
412 a specified timeframe; requiring the utilities to implement
413 plans by specified dates; requiring certain utilities to

414 submit updated annual plans until certain conditions are
415 met; requiring the department to submit an annual report to
416 the Legislature by a specified date; providing
417 applicability; providing construction; creating s.
418 403.8531, F.S.; providing legislative intent; providing
419 definitions; requiring the Department of Environmental
420 Protection to adopt specified rules; requiring the
421 department and the water management districts to develop
422 and execute, by a specified date, a memorandum of agreement
423 for the coordinated review of specified permits; providing
424 that potable reuse projects by private entities are
425 eligible for certain expedited permitting and funding
426 priorities; providing construction; creating s. 403.892;
427 providing definitions; requiring counties, municipalities,
428 and special districts to authorize graywater technologies
429 under certain circumstances and to provide incentives for
430 the implementation of such technologies; providing
431 qualifications for such incentives; requiring the
432 department to convene at least one technical advisory group
433 for specified purposes; providing for the composition of
434 the technical advisory group; requiring the department to
435 review reclaimed water, potable reuse, and drinking water
436 rules and revise them as necessary; requiring the
437 department to review aquifer recharge rules and revise them
438 as necessary; providing for the applicability of specified

439 reclaimed water aquifer storage and recovery system
440 requirements; providing a directive to the Division of Law
441 Revision; providing a determination and declaration of
442 important state interest; providing an effective date.

CS/HB 865

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 865 Emergency Reporting
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee, Rodriguez, A. and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 538

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	14 Y, 0 N, As CS	Villa	Smith
2) Appropriations Committee	27 Y, 0 N	Cobb	Pridgeon
3) State Affairs Committee		Villa	Williamson

SUMMARY ANALYSIS

The State Watch Office (SWO) within the Division of Emergency Management is an emergency management watch center that serves as a clearinghouse of information. The primary purpose of the SWO is to record, analyze, and share information with federal, state, and county entities for appropriate response to emergencies. The SWO is manned 24 hours a day, seven days a week, and monitors an array of incidents across the state.

Currently, the SWO maintains and provides to counties and municipalities a list of reportable incidents divided into the following categories:

- Fire or search and rescue;
- Law enforcement incidents and suspicious activity;
- Natural hazards;
- Population protective actions;
- Technical hazards or environmental concerns;
- Transportation incidents;
- Utilities or infrastructure; and
- Military events.

Counties and municipalities are asked to notify the SWO of an incident after the initial response is handled at the local level by first responders. Although counties and municipalities generally participate with the SWO, counties and municipalities are not required to do so.

The bill requires the SWO to create and maintain a list of reportable incidents. The SWO must annually provide the list of reportable incidents to each political subdivision. The bill requires political subdivisions to provide notification to the SWO that an incident specified on the list of reportable incidents has occurred within its jurisdiction as soon as practicable following its initial response to the incident. The bill authorizes the SWO to establish guidelines specifying the method and format a political subdivision must use when reporting an incident.

The bill does not appear to have a fiscal impact to the state and may have an insignificant fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The State Watch Office

The Division of Emergency Management (Division) is responsible for all professional, technical, and administrative support functions necessary to carry out the State's Emergency Management Act.[1,2] The State Watch Office (SWO) within the Division is an emergency management watch center that serves as a clearinghouse of information. The primary purpose of the SWO is to record, analyze, and share information with federal, state, and county entities for appropriate response to emergencies.[3]

The SWO shares information pertaining to emergencies with other governmental entities that can independently act within their own authority and protocols.[4] The SWO is manned by Division personnel 24 hours a day, seven days a week, monitoring an array of incidents including fuel spills, damages from severe weather, and rocket launches from Cape Canaveral.

Reportable Incidents

For National Emergency Accreditation purposes, the SWO maintains and disseminates a list of county and municipality "Reportable Incidents."[5] The list is divided into the following categories:[6]

- Fire or search and rescue;
- Law enforcement incidents and suspicious activity;
- Natural hazards;
- Population protective actions;
- Technical hazards or environmental concerns;
- Transportation incidents;
- Utilities or infrastructure; and
- Military events.

The list also contains information on statewide communication systems, important contact information, the SWO Incident Tracker,[7] and emergency resources.

Counties and municipalities are asked to notify the SWO of an incident after the initial response is handled at the local level by first responders. Initial response action takes precedence. The information is logged into an incident tracking system and then disseminated to local, state, tribal, federal, and private partners to aid in response actions.[8]

Although wastewater and chemical spills are the only incidents required by law to be reported to the SWO,[9] counties and municipalities regularly share information concerning reportable incidents with the SWO.

Effect of the Bill

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[1] Section 14.2016(1), F.S.

[2] Sections 252.31 – 252.63, F.S., are cited as the State Emergency Management Act. Section 252.31, F.S.

[3] Section 14.2016(2), F.S.

[4] *Id.*

[5] Florida Division of Emergency Management, *State Watch Office Guide for Florida County Warning Points and* PSAPs, https://www.floridadisaster.org/globalassets/dem/response/operations/state-watch-office-reportable-incidents-list.pdf (last visited January 21, 2020).

[6] *Id.*

[7] *Id.* The Incident Tracker is a web based situational awareness tool that is used to document all active incidents statewide.

[8] *Id.*

[9] Section 403.077(2), F.S.; *see also* Rules 62-762.411, 62-761.405, 62-780.210, 62S-6.022, and 62S-6.033, F.A.C.

The bill provides for mandatory reporting of certain incidents by counties and municipalities. Specifically, the bill requires the SWO, by December 1, 2020, to create and maintain a list of reportable incidents to include:

- Major fires, including wildfires, commercial or multi-unit residential fires, and industrial fires.
- Search and rescue operations, including structure collapse or urban search and rescue response.
- Bomb threat or threat to inflict harm on a large number of people or significant infrastructure, a suspicious device or device detonation.
- Natural hazards and severe weather, including earthquake, landslide, or ground subsidence or sinkholes.
- Public health and population protective actions, including public health hazards, evacuation orders, or emergency shelter openings.
- Animal or agricultural events, including suspected or confirmed animal disease, suspected or confirmed agricultural disease, crop failure, or food supply contamination.
- Environmental concerns, including an incident of reportable pollution release as required in s. 403.077(2), F.S.
- Nuclear power plant events, including events in process or that have occurred that indicate a potential degradation of the level of safety of the plant or that indicate a security threat to facility protection.
- Major transportation events, including aircraft or airport incidents, passenger or commercial railroad incidents, major road or bridge closures, or marine incidents involving a blocked navigable channel of a major waterway.
- Major utility or infrastructure events, including dam failure or overtopping, drinking water facility breach, or major utility outages or disruptions involving transmission lines or substations.
- Military events, when information regarding such activity is provided to a political subdivision.

The bill requires political subdivisions to provide notification to the SWO that an incident specified on the list of reportable incidents has occurred within its jurisdiction as soon as practicable following its initial response to the incident.

The bill authorizes the SWO to establish guidelines specifying the method and format a political subdivision must use when reporting an incident.

The SWO must annually provide the list of reportable incidents to each political subdivision by December 1.

B. SECTION DIRECTORY:

Section 1 creates s. 252.351, F.S., relating to mandatory reporting of certain incidents by counties and municipalities.

Section 2 provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

There may be an insignificant fiscal impact on local governments due to the potential increased workload relating to the mandatory reporting requirements of the bill. Currently, only wastewater and chemical spills are required to be reported to the SWO. However, counties and municipalities already provide the information required by the bill regularly as part of the list of "Reportable Incidents" that is provided to them by the Division.[10]

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 municipality/county mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because the bill requires counties and municipalities to report certain information to the SWO; however, an exemption may apply because the requirement will likely result in an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the SWO to create a list of reportable incidents. The bill also authorizes the SWO to establish guidelines specifying the method and format a political subdivision must use when reporting an incident. As such, it appears the bill requires the SWO to adopt rules. SWO, however, does not appear to have rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 29, 2020, the Oversight, Transparency & Public Management Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Required the SWO, by December 1, 2020, to create and maintain a list of reportable incidents;
- Required the SWO to annually provide the list of reportable incidents to each political subdivision;
- Authorized the SWO to establish guidelines specifying the method and format a political subdivision must use when reporting an incident; and

[10] Florida Division of Emergency Management, *FDEM Legislative Priorities 2019-2020 (Fla. Stat. § 252)*, on file with the Florida House of Representatives Oversight, Transparency & Public Management Subcommittee.

- As soon as practicable following its initial response to an incident, required a political subdivision to notify the SWO that an incident specified on the list of reportable incidents has occurred within its jurisdiction.

This analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Public Management Subcommittee.

1 A bill to be entitled
2 An act relating to emergency reporting; creating s.
3 252.351, F.S.; requiring the State Watch Office within
4 the Division of Emergency Management to create a list
5 of reportable incidents; requiring a political
6 subdivision to report incidents contained on the list
7 to the State Watch Office; authorizing the State Watch
8 Office to establish guidelines a political subdivision
9 must follow to report an incident; requiring the State
10 Watch Office to annually provide the list of
11 reportable incidents to each political subdivision;
12 providing an effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Section 252.351, Florida Statutes, is created
17 to read:
18 252.351 Mandatory reporting of certain incidents by
19 political subdivisions.-
20 (1) For purposes of this section, the term "office" means
21 the State Watch Office established within the division pursuant
22 to s. 14.2016.
23 (2) The office, to aid in its mission of serving as a
24 clearinghouse for emergency-related information across all
25 levels of government, shall create and maintain a list of

26 reportable incidents. The list shall include, but is not limited
27 to, the following events:
28 (a) Major fires, including wildfires, commercial or multi-
29 unit residential fires, and industrial fires.
30 (b) Search and rescue operations, including structure
31 collapse or urban search and rescue response.
32 (c) Bomb threat or threat to inflict harm on a large
33 number of people or significant infrastructure, a suspicious
34 device or device detonation.
35 (d) Natural hazards and severe weather, including
36 earthquake, landslide, or ground subsidence or sinkholes.
37 (e) Public health and population protective actions,
38 including public health hazards, evacuation orders, or emergency
39 shelter openings.
40 (f) Animal or agricultural events, including suspected or
41 confirmed animal disease, suspected or confirmed agricultural
42 disease, crop failure, or food supply contamination.
43 (g) Environmental concerns, including an incident of
44 reportable pollution release as required in s. 403.077(2).
45 (h) Nuclear power plant events, including events in
46 process or that have occurred that indicate a potential
47 degradation of the level of safety of the plant or that indicate
48 a security threat to facility protection.
49 (i) Major transportation events, including aircraft or
50 airport incidents, passenger or commercial railroad incidents,

51 major road or bridge closures, or marine incident involving a
52 blocked navigable channel of a major waterway.
53 (j) Major utility or infrastructure events, including dam
54 failure or overtopping, drinking water facility breach, or major
55 utility outages or disruptions involving transmission lines or
56 substations.
57 (k) Military events, when information regarding such
58 activity is provided to a political subdivision.
59 (2) As soon as practicable following its initial response
60 to an incident, a political subdivision shall provide
61 notification to the office that an incident specified on the
62 list of reportable incidents has occurred within its
63 geographical boundaries. The office may establish guidelines
64 specifying the method and format a political subdivision must
65 use when reporting an incident.
66 (3) Beginning December 1, 2020, and by December 1 every
67 year thereafter, the office must provide the list of reportable
68 incidents to each political subdivision.
69 Section 2. This act shall take effect July 1, 2020.

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

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1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Rodriguez, A. offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Section 252.351, Florida Statutes, is created
7 to read:
8 252.351 Mandatory reporting of certain incidents by
9 political subdivisions.-
10 (1) For purposes of this section, the term "office" means
11 the State Watch Office established within the division pursuant
12 to s. 14.2016.
13 (2) The division shall create and maintain a list of
14 reportable incidents. The list shall include, but is not limited
15 to, the following events:

16 (a) Major fires, including wildfires, commercial or multi-
17 unit residential fires, and industrial fires.
18 (b) Search and rescue operations, including structure
19 collapse or urban search and rescue response.
20 (c) Bomb threat or threat to inflict harm on a large
21 number of people or significant infrastructure, a suspicious
22 device or device detonation.
23 (d) Natural hazards and severe weather, including
24 earthquake, landslide, or ground subsidence or sinkholes.
25 (e) Public health and population protective actions,
26 including public health hazards, evacuation orders, or emergency
27 shelter openings.
28 (f) Animal or agricultural events, including suspected or
29 confirmed animal disease, suspected or confirmed agricultural
30 disease, crop failure, or food supply contamination.
31 (g) Environmental concerns, including an incident of
32 reportable pollution release as required in s. 403.077(2).
33 (h) Nuclear power plant events, including events in
34 process or that have occurred that indicate a potential
35 degradation of the level of safety of the plant or that indicate
36 a security threat to facility protection.
37 (i) Major transportation events, including aircraft or
38 airport incidents, passenger or commercial railroad incidents,
39 major road or bridge closures, or marine incident involving a
40 blocked navigable channel of a major waterway.

41 (j) Major utility or infrastructure events, including dam
42 failure or overtopping, drinking water facility breach, or major
43 utility outages or disruptions involving transmission lines or
44 substations.
45 (k) Military events, when information regarding such
46 activity is provided to a political subdivision.
47 (2) As soon as practicable following its initial response
48 to an incident, a political subdivision shall provide
49 notification to the office that an incident specified on the
50 list of reportable incidents has occurred within its
51 geographical boundaries. The division may establish guidelines
52 specifying the method and format a political subdivision must
53 use when reporting an incident.
54 (3) Beginning December 1, 2020, and by December 1 every
55 year thereafter, the division must provide the list of
56 reportable incidents to each political subdivision.
57 Section 2. This act shall take effect July 1, 2020.
58
59 ---
60 **T I T L E A M E N D M E N T**
61 Remove everything before the enacting clause and insert:
62 An act relating to emergency reporting; creating s. 252.351,
63 F.S.; requiring the Division of Emergency Management to create a
64 list of reportable incidents; requiring a political subdivision
65 to report incidents contained on the list to the State Watch

66 Office; authorizing the Division of Emergency Management to
67 establish guidelines a political subdivision must follow to
68 report an incident; requiring the Division of Emergency
69 Management to annually provide the list of reportable incidents
70 to each political subdivision; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1063 State Hemp Program
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Drake and Massullo and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Harrington	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	8 Y, 0 N	White	Pigott
3) State Affairs Committee		Harrington	Williamson

SUMMARY ANALYSIS

Hemp is an agricultural commodity that is defined as the plant *Cannabis sativa L.* and any part of that plant, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration that does not exceed 0.3 percent on a dry weight basis. In 2019, the Legislature created the state hemp program within the Department of Agriculture and Consumer Services (DACS) to regulate the cultivation of hemp and required DACS to seek federal approval of the state hemp plan once certain rulemaking has been completed. Currently, DACS is still engaged in the rulemaking process and has not sought federal approval for the state hemp plan.

The bill amends provisions related to the state hemp program. Specifically, the bill:

- Removes the requirement that licensees only use certified hemp seed and cultivars;
- Amends the definition for the term "hemp extract" to clarify that it does not include seeds that are generally recognized as safe by the United States Food and Drug Administration and to provide that it includes substances and compounds intended for ingestion or inhalation containing more than trace amounts of cannabidiols;
- Amends the packaging requirements for hemp extract to provide that the label must include the number of milligrams of each cannabinoid per serving, rather than the number of milligrams of hemp extract;
- Requires DACS to add the total acreage of hemp planted, harvested, and if applicable, disposed of for each licensee to its monthly report to the United States Department of Agriculture (USDA);
- Directs DACS to adopt, by rule, a testing procedure that ensures a representative sample is physically collected no more than 15 days before the anticipated harvest and delivered to a drug enforcement administration-registered laboratory for testing. DACS must also adopt a procedure, by rule, for the disposal of plants grown in violation of the program that complies with the federal controlled substances act and drug enforcement administration regulations;
- Clarifies that members of the Industrial Hemp Advisory Council serve as the sole advisory body for DACS and serve 4-year staggered terms;
- Requires DACS to submit a report to the Legislature recommending a fee or fees for participation in the program, which must take into consideration inspections, testing, and other necessary costs; and
- Provides that if the state plan is denied federal approval and revisions can be made to the plan without statutory changes, DACS, in consultation with and final approval from the Administration Commission, must submit an amended plan to the USDA.

The bill may have an insignificant negative fiscal impact on DACS that can be absorbed within existing resources and does not appear to have a fiscal impact on local governments. *See* Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Hemp

Hemp, also called industrial hemp, is defined as the plant *Cannabis sativa L.* and any part of that plant, including seeds, derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration that does not exceed 0.3 percent on a dry weight basis.[1] While hemp and marijuana are both grown from the *Cannabis sativa L.* plant, they are different varieties that have been genetically bred and grown for different uses. Hemp can be distinguished from marijuana[2] by its lower concentrations of THC, and higher concentrations of cannabidiol (CBD).[3]

Hemp is an agricultural commodity grown and used worldwide to produce a variety of industrial and commercial products, including rope, textiles, clothing, shoes, food, paper, bioplastics, insulation, biofuel, cosmetic products, animal bedding, animal and bird feed, and human food and nutritional supplements.[4] At least 30 countries in Europe, Asia, and North and South America currently permit farmers to grow hemp. In the United States, large-scale commercial production does not exist and the hemp market is largely dependent on imports, both as finished hemp-containing products and as ingredients for use in further processing.[5]

Historically, hemp was produced in the United States with peak production occurring in the 1940s, during World War II, when it was used by the armed forces.[6] The Marijuana Tax Act of 1937[7] and competition with developing synthetic fiber sources negatively impacted hemp production, which sharply declined to the point of elimination by the mid-1950s.[8] The federal Controlled Substances Act of 1970 (Controlled Substances Act)[9] created a single comprehensive statute that placed the control of select plants, drugs, and chemicals under federal jurisdiction.[10] It further defined all varieties of cannabis, regardless of the THC level, as marijuana and classified them as Schedule I controlled substances.[11]

Agriculture Improvement Act of 2018

Section 10113 of the Agriculture Improvement Act of 2018 (2018 Farm Bill) created the Hemp Farming Act to allow the cultivation of hemp. The 2018 Farm Bill removed hemp-derived products from

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[1] 7 U.S.C. s. 5940 (2014); 7 U.S.C. s. 1639o (2018); *see also* s. 581.217, F.S.

[2] Marijuana is identified in the United States drug laws as cannabis having high THC levels that are associated with psychotropic effects and is typically made from the flowering tops and leaves of the *Cannabis sativa L.* plant (sativa or indica varieties). The Controlled Substances Act was enacted as Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970. 84 s. 1236 (1970).

[3] National Conference of State Legislatures (NCSL), *State Industrial Hemp Statutes*, available at http://www.ncsl.org/research/agriculture-and-rural-development/state-industrial-hemp-statutes.aspx (last visited Jan. 29, 2019).

[4] Congressional Research Service (CRS), *Hemp as an Agricultural Commodity*, CRS Report 7-5700 (June 22, 2018), available at https://fas.org/sgp/crs/misc/RL32725.pdf (last visited Jan. 30, 2020).

[5] *Id.*

[6] University of Florida Institute of Food and Agricultural Sciences (IFAS) Research, *The Potential for Industrial Hemp Production in Florida*, (Sept. 15, 2015) available at https://www.votehemp.com/PDF/Potential%20for%20Industrial%20Hemp%20Production%20in%20Florida_9-15-2015.pdf (last visited Jan. 29, 2020).

[7] 50 s. 551 (1937).

[8] Mindy Bridges and Karmen Hanson, *Regulating Hemp and Cannabis-Based Products*, NCSL (October 2017), available at http://www.ncsl.org/research/agriculture-and-rural-development/regulating-hemp-and-cannabis-based-products.aspx (last visited Jan. 29, 2019).

[9] 84 s. 1236 (1970).

[10] 21 U.S.C. s. 801; CRS, *Hemp as an Agricultural Commodity*, CRS Report 7-5700 (June 22, 2018) available at https://fas.org/sgp/crs/misc/RL32725.pdf (last visited Jan. 29, 2020).

[11] 21 U.S.C. s. 801; 21 C.F.R. s. 1308.11.

Schedule I of the Controlled Substances Act. While the law legalized hemp as an agricultural product, the law did not legalize CBD generally.[12] CBD derived from hemp is considered legal if the hemp is grown by a licensed grower, produced in a manner that is consistent with the 2018 Farm Bill, and complies with other federal and state regulations.[13]

The 2018 Farm Bill defined "hemp" to mean the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 THC concentration of not more than 0.3 percent on a dry weight basis.[14]

The 2018 Farm Bill allows a state department of agriculture or an Indian tribe to submit a plan to the Secretary of the United States Department of Agriculture (Secretary) and apply for primary regulatory authority over the production of hemp in their state or tribal territory. A state or tribal plan must include:

- A procedure for tracking land upon which hemp will be cultivated, including a legal land description and global positioning coordinates;
- A procedure for maintaining records for at least three years and reporting to the Secretary;
- Testing procedures that use post-decarboxylation or other similarly reliable methods for determining THC concentration levels of hemp;
- Procedures for methods to effectively dispose of hemp plants, growing or not, and products made from hemp plants grown in violation of the 2018 Farm Bill;
- Annual inspection procedures;
- Violations and corrective actions;
- Enforcement procedures;
- A procedure for submitting information on land where hemp is cultivated to the Secretary not more than 30 days after the date on which the information is received by the state or tribe;
- Certification that the state or tribe has the resources and personnel to carry out the practices and procedures in the state or tribal plan; and
- Any other practice or procedure established by the state or tribe that is consistent with the 2018 Farm Bill.[15]

The 2018 Farm Bill requires the Secretary to approve or disapprove a state or tribal plan within 60 days of receipt. It further requires the Secretary to consult with the United States Attorney General when carrying out the requirements associated with state and tribal plans. The Secretary is authorized to provide technical assistance to states and tribes in the development of a state or tribal plan. The 2018 Farm Bill further authorizes the Secretary to conduct compliance audits of state and tribal plans. If noncompliance is determined, the Secretary is required to collaborate with the state or tribe to develop a corrective action plan in the case of a first instance of noncompliance. The Secretary is authorized to revoke the approval of a state or tribal plan in the case of a second or subsequent instance of noncompliance.[16]

The Secretary must establish a United States Department of Agriculture (USDA) plan to be used where a state or tribal plan is not approved. The 2018 Farm Bill directed the Secretary to promulgate regulations and guidelines to implement the 2018 Farm Bill requirements for hemp production as expeditiously as possible.[17]

USDA Domestic Hemp Program Rules

On October 31, 2019, the USDA published an interim final rule (USDA rule) to administer and oversee the domestic hemp program established by the 2018 Farm Bill.[18] The USDA rules provide specific

[12] 7 U.S.C. s. 1639o (2018).
[13] John Hudak, *The Farm Bill, hemp legalization and the status of CBD: An Explainer*, Brookings Dec. 14, 2018, available online at: https://www.brookings.edu/blog/fixgov/2018/12/14/the-farm-bill-hemp-and-cbd-explainer/ (last visited Jan. 30, 2020).
[14] 7 U.S.C. s. 1639o (2018).
[15] 7 U.S.C. s. 1639p (2018).
[16] *Id.*
[17] *Id.*
[18] 7 C.F.R. s. 990(1) (2019). A copy of the USDA rules can be found online at: https://www.ams.usda.gov/rules-regulations/hemp (last visited Jan. 30, 2020).

details for both federally regulated hemp production and state-approved plans. The USDA rules include provisions for maintaining information on the land where hemp is produced, testing the levels of delta-9 THC, disposing of plants not meeting the definition of hemp, and ensuring compliance with the federal law. Although the USDA rule largely mirrors the 2018 Farm Bill provisions, the USDA rule also requires:

- Monthly updates on the total acreage of hemp planted, harvested, and if applicable, disposed of by a licensee.
- Sampling procedures that ensure a representative sample of hemp is physically collected and delivered by a drug enforcement administration (DEA)-registered laboratory for testing. Such sample must be taken within 15 days of the anticipated harvest by a federal, state, local, or tribal law enforcement agency.
- Disposal of plants grown in violation of the program in accordance with the Controlled Substances Act and DEA regulations because the material constitutes cannabis.

State Hemp Program

In 2019, the Legislature created the state hemp program (program) within the Department of Agriculture and Consumer Services (DACS) to regulate the cultivation of hemp in Florida.[19] Consistent with federal law, the program defines the term "hemp" as the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, that has a total delta-9 THC concentration that does not exceed 0.3 percent on a dry-weight basis.[20]

The program prohibits the cultivation of hemp without a license. As such, any person seeking to cultivate hemp must apply for a license with DACS and provide specified information concerning the legal land description and global positioning coordinates of the area where hemp will be cultivated.

The program provides that a licensee may only use hemp seeds and cultivars certified by a certifying agency or a university conducting an industrial hemp pilot project.

The program allows hemp extract to be distributed and sold in the state only if the product has a certificate of analysis that states the batch does not exceed the total delta-9 THC concentration for hemp and does not contain contaminants unsafe for human consumption. In addition, the packaging for a product containing hemp extract must include a scannable barcode or quick response code linked to the certificate of analysis by an independent testing laboratory, the batch number, the Internet address of a website where batch information may be obtained, the expiration date, the number of milligrams of hemp extract, and a statement that the product contains a total delta-9 THC concentration that does not exceed 0.3 percent on a dry-weight basis.

DACS must maintain a registry of land on which hemp is cultivated, including the global positioning coordinates and legal land description for each location where hemp has been grown within the past three calendar years and submit monthly to the Secretary a report that includes such location and the contact information for each licensee.

DACS must enforce the program and every state attorney, sheriff, police officer, and other appropriate county or municipal officer must enforce, or assist any agent of DACS in the enforcement of, the program and rules adopted by DACS. DACS or its agent may enter any public or private premises during regular business hours in the performance of its duties related to hemp cultivation and DACS must conduct random inspections, at least annually, of each licensee to ensure that only certified hemp seeds are being used and that hemp is being cultivated in compliance with the program.

The program required DACS, in consultation with the Department of Health and the Department of Business and Professional Regulation, to initiate rulemaking by August 1, 2019. The program requires DACS to seek approval of the state plan from the Secretary within 30 days after adopting rules.

[19] Chapter 2019-132, L.O.F.; codified as s. 581.217, F.S.

[20] Section 581.217(3)(d), F.S.

On June 6, 2019, DACS initiated rulemaking by publishing a Notice of Rule Development in the Florida Administrative Register. The USDA rules were published after DACS initiated rulemaking and include requirements that may necessitate revisions to the DACS proposed hemp rules. Although rulemaking was timely initiated by DACS, the rules governing licensure and the regulation of the cultivation of hemp have not been finalized or adopted.[21] Because the rules have not been adopted, DACS has not submitted the state plan for federal approval and cannot issue licenses for the cultivation of hemp.

The Industrial Hemp Advisory Council
The Industrial Hemp Advisory Council (advisory council) was created to provide advice and expertise to DACS with respect to plans, policies, and procedures applicable to the administration of the program.[22] The advisory council must meet at least once annually and is composed of the following members:[23]

- Two members appointed by the Commissioner of Agriculture;
- Two members appointed by the Governor;
- Two members appointed by the President of the Senate;
- Two members appointed by the Speaker of the House of Representatives;
- The dean for research of the Institute of Food and Agricultural Sciences of the University of Florida or his or her designee;
- The president of Florida Agricultural and Mechanical University or his or her designee;
- The executive director of the Department of Law Enforcement;
- The president of the Florida Sheriffs Association or his or her designee;
- The president of the Florida Police Chiefs Association or his or her designee;
- The president of the Florida Farm Bureau Federation or his or her designee; and
- The president of the Florida Fruit and Vegetable Association or his or her designee.

Current law specifies that a majority of the members constitutes a quorum and that the members must serve without compensation and are not entitled to reimbursement for per diem or travel. The law, however, does not specify the terms of the members.

Effect of the Bill

The bill amends provisions related to the state hemp program.

The bill removes the requirement that licensees only use certified hemp seed and cultivars. As a result, licensees will be able to use hemp seeds from any source.

The bill amends the definition for the term “hemp extract” to clarify that it does not include seeds that are generally recognized as safe by the United States Food and Drug Administration and to provide that it includes substances and compounds intended for ingestion or inhalation containing more than trace amounts of cannabidiols. Because of this change, the labeling requirements relating to the distribution and retail sale of hemp extract will not apply to certain foods that do not contain more than trace amounts of cannabidiols, such as hemp seeds.

The bill amends the packaging requirements for hemp extract to provide that the label must include the number of milligrams of each cannabinoid per serving, rather than the number of milligrams of hemp extract.

To comply with the USDA rules, the bill requires DACS to add the total acreage of hemp planted, harvested, and if applicable, disposed of for each licensee to its monthly report to the USDA.

The bill adds provisions to DACS rulemaking requirements under the program. Specifically, the bill directs DACS to adopt, by rule, a testing procedure that ensures a representative sample is physically

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[21] *See* Rule 5B-57.014 titled “Hemp Program.” The Notice of Proposed Rule was published on October 10, 2019, and a notice of correction was filed on October 11, 2019. Since then, the rule has not been changed or filed for adoption. A copy of the notices for the hemp program rule can be found online at: https://www.flrules.org/gateway/ruleNo.asp?id=5B-57.014 (last visited Jan. 30, 2020).
[22] Section 581.217(14), F.S.
[23] *Id*.

collected no more than 15 days before the anticipated harvest and delivered to a DEA-registered laboratory for testing. DACS must also adopt a procedure for the disposal of plants grown in violation of the program that complies with the Controlled Substances Act and DEA regulations.

The bill clarifies that members of the Industrial Hemp Advisory Council serve as the sole advisory body for DACS and serve 4-year staggered terms. The bill provides a mechanism to provide for the initial staggering of the terms of the council. It also provides that the chair must serve for a term of one year.

The bill requires DACS to provide a report to the Legislature recommending a fee or fees for participation in the program, which must take into consideration costs associated with inspections and testing and any other necessary costs.

The bill provides that if the state plan is denied by the Secretary and revisions can be made to the plan without statutory changes, DACS, in consultation with and final approval from the Administration Commission, must submit an amended plan.

B. SECTION DIRECTORY:

Section 1 amends s. 581.217, F.S., relating to the state hemp program.

Section 2 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill clarifies the definition of "hemp extract" to provide that it does not include seeds generally recognized as safe by the United States Food and Drug Administration and must contain more than trace amounts of cannabidiol. As such, the required labeling provisions will not apply to certain food products currently sold and consumed that do not contain more than trace amounts of cannabidiol, such as hemp seeds.

D. FISCAL COMMENTS:

The bill may require DACS to update its hemp rules; however, DACS's rulemaking appears to be ongoing and the updates, if necessary, can be made within the existing resources of the department. The bill also requires DACS to provide a report to the Legislature recommending fees for participation in the program; the costs associated with the report should be minimal and can be absorbed within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill adds provisions to DACS' rulemaking requirements under the program. Specifically, the bill directs DACS to adopt, by rule, a testing procedure that ensures a representative sample is physically collected no more than 15 days before the anticipated harvest and delivered to a DEA-registered laboratory for testing. DACS must also adopt a procedure for the disposal of plants grown in violation of the program that complies with the Controlled Substances Act and DEA regulations.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Agriculture & Natural Resources Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS removed provisions from the bill that required DACS to adopt rules relating to contaminants unsafe for human consumption, changed the THC concentration levels for hemp extract, provided that mislabeled hemp extract is considered adulterated, and required DACS to conduct random annual inspections. The PCS added the following provisions to the bill:

- If the state plan is denied and revisions can be made without statutory changes, the PCS required DACS to, in consultation and with final approval from the Administration Commission, submit an amended plan;
- The PCS required DACS to report the total acreage of hemp planted, harvested, and if applicable, disposed of for each licensee to the USDA;
- The PCS required DACS to, by rule, adopt a procedure for sampling hemp and for disposing of hemp grown in violation of the law;
- The PCS revised provisions related to the advisory council and provides for staggered terms; and
- The PCS required DACS to provide a report to the Legislature recommending fees sufficient to cover the costs of implementing and administering the program.

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Subcommittee.

1 A bill to be entitled
2 An act relating to the state hemp program; amending s.
3 581.217, F.S.; revising definitions; directing the
4 Department of Agriculture and Consumer Services to
5 submit an amended plan for the state program to the
6 United States Secretary of Agriculture under certain
7 circumstances; removing a requirement that licensees
8 only use certain hemp seeds and cultivars; revising
9 requirements for the distribution and retail sale of
10 hemp extract; requiring the department to include
11 additional information in monthly reports to the
12 United States Secretary of Agriculture; conforming
13 provisions to changes made by the act; requiring
14 program rules to include specified sampling and
15 disposal procedures; providing that the Industrial
16 Hemp Advisory Council is the sole advisory body to
17 provide information, advice, and expertise regarding
18 the program to the department; prohibiting the
19 creation of other advisory bodies for such purpose;
20 providing terms for advisory council members and the
21 council chair; providing requirements for filling
22 advisory council vacancies; directing the department
23 to submit a report that provides recommendations for
24 program fees to the Legislature by a specified date;
25 providing an effective date.

26

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

28

29 Section 1. Subsections (7) through (14) of section
30 581.217, Florida Statutes, are renumbered as subsections (6)
31 through (13), respectively, present subsections (3), (4), (6),
32 (7), (9), (11), (12), (13), and (14) are amended, and a new
33 subsection (14) is added to that section, to read:
34 581.217 State hemp program.—
35 (3) DEFINITIONS.—As used in this section, the term:
36 ~~(a) "Certifying agency" has the same meaning as in s.~~
37 ~~578.011(8).~~
38 (a) ~~(b)~~ "Contaminants unsafe for human consumption"
39 includes, but is not limited to, any microbe, fungus, yeast,
40 mildew, herbicide, pesticide, fungicide, residual solvent,
41 metal, or other contaminant found in any amount that exceeds any
42 of the accepted limitations as determined by rules adopted by
43 the Department of Health in accordance with s. 381.986, or other
44 limitation pursuant to the laws of this state, whichever amount
45 is less.
46 (b) ~~(c)~~ "Cultivate" means planting, watering, growing, or
47 harvesting hemp.
48 (c) ~~(d)~~ "Hemp" means the plant Cannabis sativa L. and any
49 part of that plant, including the seeds thereof, and all
50 derivatives, extracts, cannabinoids, isomers, acids, salts, and

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51 salts of isomers thereof, whether growing or not, that has a
52 total delta-9-tetrahydrocannabinol concentration that does not
53 exceed 0.3 percent on a dry-weight basis.
54 (d) ~~(e)~~ "Hemp extract" means a substance or compound
55 intended for ingestion or inhalation containing more than trace
56 amounts of cannabidiol that is derived from or contains hemp and
57 that does not contain other controlled substances. The term does
58 not include seeds that are generally recognized as safe by the
59 United States Food and Drug Administration.
60 (e) ~~(f)~~ "Independent testing laboratory" means a laboratory
61 that:
62 1. Does not have a direct or indirect interest in the
63 entity whose product is being tested;
64 2. Does not have a direct or indirect interest in a
65 facility that cultivates, processes, distributes, dispenses, or
66 sells hemp or hemp extract in the state or in another
67 jurisdiction or cultivates, processes, distributes, dispenses,
68 or sells marijuana, as defined in s. 381.986; and
69 3. Is accredited by a third-party accrediting body as a
70 competent testing laboratory pursuant to ISO/IEC 17025 of the
71 International Organization for Standardization.
72 (4) FEDERAL APPROVAL.—The department shall seek approval
73 of the state plan for the regulation of the cultivation of hemp
74 with the United States Secretary of Agriculture in accordance
75 with 7 U.S.C. s. 1639p within 30 days after adopting rules. If

76 the state plan is not approved by the United States Secretary of
77 Agriculture, the Commissioner of Agriculture, in consultation
78 with and with final approval from the Administration Commission,
79 shall develop a recommendation to amend the state plan and
80 submit the recommendation to the Legislature. If revisions to
81 the state plan can be made without statutory changes, the
82 department, in consultation with and with final approval from
83 the Administration Commission, shall submit an amended plan to
84 the United States Secretary of Agriculture.
85 ~~(6) HEMP SEED.—A licensee may only use hemp seeds and~~
86 ~~cultivars certified by a certifying agency or a university~~
87 ~~conducting an industrial hemp pilot project pursuant to s.~~
88 ~~1004.4473.~~
89 (6) ~~(7)~~ DISTRIBUTION AND RETAIL SALE OF HEMP EXTRACT.—Hemp
90 extract may only be distributed and sold in the state if the
91 product:
92 (a) Has a certificate of analysis prepared by an
93 independent testing laboratory that states:
94 1. The hemp extract is the product of a batch tested by
95 the independent testing laboratory;
96 2. The batch contained a total delta-9-
97 tetrahydrocannabinol concentration that did not exceed 0.3
98 percent on a dry-weight basis pursuant to the testing of a
99 random sample of the batch; and
100 3. The batch does not contain contaminants unsafe for

101 human consumption.
102 (b) Is distributed or sold in packaging that includes:
103 1. A scannable barcode or quick response code linked to
104 the certificate of analysis of the hemp extract by an
105 independent testing laboratory;
106 2. The batch number;
107 3. The Internet address of a website where batch
108 information may be obtained;
109 4. The expiration date;
110 5. The number of milligrams of each cannabinoid per
111 serving ~~hemp extract~~; and
112 6. A statement that the product contains a total delta-9-
113 tetrahydrocannabinol concentration that does not exceed 0.3
114 percent on a dry-weight basis.
115 (8) ~~(9)~~ DEPARTMENT REPORTING.—The department shall submit
116 monthly to the United States Secretary of Agriculture a report
117 of the locations in the state where hemp is cultivated or has
118 been cultivated within the past 3 calendar years. The report
119 must include the contact information for each licensee and the
120 total acreage of hemp planted, harvested, and, if applicable,
121 disposed of, by each licensee.
122 (10) ~~(11)~~ ENFORCEMENT.—
123 (a) The department shall enforce this section.
124 (b) Every state attorney, sheriff, police officer, and
125 other appropriate county or municipal officer shall enforce, or

126 assist any agent of the department in enforcing, this section
127 and rules adopted by the department.
128 (c) The department, or its agent, is authorized to enter
129 any public or private premises during regular business hours in
130 the performance of its duties relating to hemp cultivation.
131 (d) The department shall conduct random inspections, at
132 least annually, of each licensee to ensure that ~~only certified~~
133 ~~hemp seeds are being used and that~~ hemp is being cultivated in
134 compliance with this section.
135 (11) ~~(12)~~ RULES. ~~By August 1, 2019,~~ The department, in
136 consultation with the Department of Health and the Department of
137 Business and Professional Regulation, shall initiate rulemaking
138 to administer the state hemp program. The rules must provide
139 for:
140 (a) A procedure that uses post-decarboxylation or other
141 similarly reliable methods for testing the delta-9-
142 tetrahydrocannabinol concentration of cultivated hemp. The
143 procedure must include sampling procedures to ensure that a
144 representative sample is physically collected and delivered for
145 testing to a laboratory registered with the Drug Enforcement
146 Administration. The sample must be taken no more than 15 days
147 before the anticipated harvest by a federal, state, local, or
148 tribal law enforcement agency.
149 (b) A procedure for the effective disposal of plants,
150 whether growing or not, that are cultivated in violation of this

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151 section or department rules, and products derived from those
152 plants. The procedure must provide for the disposal of such
153 plants in accordance with the federal Controlled Substances Act
154 and regulations of the Drug Enforcement Administration.
155 (12) ~~(13)~~ APPLICABILITY.—Notwithstanding any other law:
156 (a) This section does not authorize a licensee to violate
157 any federal or state law or regulation.
158 (b) This section does not apply to a pilot project
159 developed in accordance with 7 U.S.C. 5940 and s. 1004.4473.
160 (c) A licensee who negligently violates this section or
161 department rules is not subject to any criminal or civil
162 enforcement action by the state or a local government other than
163 the enforcement of violations of this section as authorized
164 under subsection (9) ~~(10)~~.
165 (13) ~~(14)~~ INDUSTRIAL HEMP ADVISORY COUNCIL.—An Industrial
166 Hemp Advisory Council, an advisory council as defined in s.
167 20.03, is established to provide information, advice, and
168 expertise to the department with respect to plans, policies, and
169 procedures applicable to the administration of the state hemp
170 program. Notwithstanding ss. 377.6015 and 570.232, the
171 Industrial Hemp Advisory Council is the sole advisory body to
172 provide information, advice, and expertise related to the state
173 hemp program to the department, and no other advisory body may
174 be created for such purpose.
175 (a) The advisory council is adjunct to the department for

176 administrative purposes.
177 (b) The advisory council shall be composed of all of the
178 following members:
179 1. Two members appointed by the Commissioner of
180 Agriculture.
181 2. Two members appointed by the Governor.
182 3. Two members appointed by the President of the Senate.
183 4. Two members appointed by the Speaker of the House of
184 Representatives.
185 5. The dean for research of the Institute of Food and
186 Agricultural Sciences of the University of Florida or his or her
187 designee.
188 6. The president of Florida Agricultural and Mechanical
189 University or his or her designee.
190 7. The executive director of the Department of Law
191 Enforcement or his or her designee.
192 8. The president of the Florida Sheriffs Association or
193 his or her designee.
194 9. The president of the Florida Police Chiefs Association
195 or his or her designee.
196 10. The president of the Florida Farm Bureau Federation or
197 his or her designee.
198 11. The president of the Florida Fruit and Vegetable
199 Association or his or her designee.
200 <u>(c) Each advisory council member shall be appointed to a</u>

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

201 4-year term, and any vacancy in the membership of the council
202 must be filled in the same manner as the original appointment
203 for the remainder of the unexpired term. For the purpose of
204 achieving staggered terms, the initial members appointed to the
205 council shall serve the following terms:
206 1. Four years for members appointed by the Governor.
207 2. Three years for members appointed by the President of
208 the Senate or the Speaker of the House of Representatives.
209 3. Three years for members appointed by the Commissioner
210 of Agriculture.
211 4. Two years for all other appointed members.
212 (d) ~~(c)~~ The advisory council shall elect by a two-thirds
213 vote of the members one member to serve as chair of the council.
214 The chair shall serve for a term of 1 year.
215 (e) ~~(d)~~ A majority of the members of the advisory council
216 constitutes a quorum.
217 (f) ~~(e)~~ The advisory council shall meet at least once
218 annually at the call of the chair.
219 (g) ~~(f)~~ Advisory council members shall serve without
220 compensation and are not entitled to reimbursement for per diem
221 or travel expenses.
222 (14) FEES.—By December 1, 2020, the department shall
223 submit a report to the President of the Senate and the Speaker
224 of the House of Representatives that provides recommendations
225 for initial license application fees and license renewal fees

226 sufficient to cover the costs of implementing and administering
227 this section. If such fees do not cover the costs of inspections
228 and testing, the department shall include a separate cost
229 breakdown for any other program fees that the department
230 recommends and anticipates are necessary.
231 Section 2. This act shall take effect upon becoming a law.

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		

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1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Drake offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Paragraph (n) of subsection (1) of section
7 500.03, Florida Statutes, is amended to read:
8 500.03 Definitions; construction; applicability.—
9 (1) For the purpose of this chapter, the term:
10 (n) "Food" includes:
11 1. Articles used for food or drink for human consumption;
12 2. Chewing gum;
13 3. Articles used for components of any such article;
14 4. Articles for which health claims are made, which claims
15 are approved by the Secretary of the United States Department of
16 Health and Human Services and which claims are made in

17 accordance with s. 343(r) of the federal act, and which are not
18 considered drugs solely because their labels or labeling contain
19 health claims; ~~and~~
20 5. Dietary supplements as defined in 21 U.S.C. s.
21 321(ff)(1) and (2); and
22 6. Hemp extract as defined in s. 581.217.
23
24 The term includes any raw, cooked, or processed edible
25 substance; ice; any beverage; or any ingredient used, intended
26 for use, or sold for human consumption.
27 Section 2. Paragraph (a) of subsection (1) of section
28 500.12, Florida Statutes, is amended to read:
29 500.12 Food permits; building permits.—
30 (1)(a) A food permit from the department is required of
31 any person who operates a food establishment or retail food
32 store, except:
33 1. Persons operating minor food outlets that sell food,
34 except hemp extract, that is commercially prepackaged, not
35 potentially hazardous, and not time or temperature controlled
36 for safety, if the shelf space for those items does not exceed
37 12 total linear feet and no other food is sold by the minor food
38 outlet.
39 2. Persons subject to continuous, onsite federal or state
40 inspection.

41 3. Persons selling only legumes in the shell, either
42 parched, roasted, or boiled.
43 4. Persons selling sugar cane or sorghum syrup that has
44 been boiled and bottled on a premise located within the state.
45 Such bottles must contain a label listing the producer's name
46 and street address, all added ingredients, the net weight or
47 volume of the product, and a statement that reads, "This product
48 has not been produced in a facility permitted by the Florida
49 Department of Agriculture and Consumer Services."
50 Section 3. Subsections (7) through (14) of section
51 581.217, Florida Statutes, are renumbered as subsections (6)
52 through (13), respectively, present subsections (3), (4), (6),
53 (7), (9), (11), (12), (13), and (14) are amended, and a new
54 subsection (14) is added to that section, to read:
55 581.217 State hemp program.—
56 (3) DEFINITIONS.—As used in this section, the term:
57 ~~(a) "Certifying agency" has the same meaning as in s.~~
58 ~~578.011(8).~~
59 (a) ~~(b)~~ "Contaminants unsafe for human consumption"
60 includes, but is not limited to, any microbe, fungus, yeast,
61 mildew, herbicide, pesticide, fungicide, residual solvent,
62 metal, or other contaminant found in any amount that exceeds any
63 of the accepted limitations as determined by rules adopted by
64 the Department of Health in accordance with s. 381.986, or other

65 limitation pursuant to the laws of this state, whichever amount
66 is less.
67 (b) ~~(c)~~ "Cultivate" means planting, watering, growing, or
68 harvesting hemp.
69 (c) ~~(d)~~ "Hemp" means the plant Cannabis sativa L. and any
70 part of that plant, including the seeds thereof, and all
71 derivatives, extracts, cannabinoids, isomers, acids, salts, and
72 salts of isomers thereof, whether growing or not, that has a
73 total delta-9-tetrahydrocannabinol concentration that does not
74 exceed 0.3 percent on a dry-weight basis.
75 (d) ~~(e)~~ "Hemp extract" means a substance or compound
76 intended for ingestion or inhalation containing more than trace
77 amounts of cannabidiol that is derived from or contains hemp and
78 that does not contain other controlled substances. The term does
79 not include synthetic CBD or seeds or seed-derived ingredients
80 that are generally recognized as safe by the United States Food
81 and Drug Administration.
82 (e) ~~(f)~~ "Independent testing laboratory" means a laboratory
83 that:
84 1. Does not have a direct or indirect interest in the
85 entity whose product is being tested;
86 2. Does not have a direct or indirect interest in a
87 facility that cultivates, processes, distributes, dispenses, or
88 sells hemp or hemp extract in the state or in another

89 jurisdiction or cultivates, processes, distributes, dispenses,
90 or sells marijuana, as defined in s. 381.986; and
91 3. Is accredited by a third-party accrediting body as a
92 competent testing laboratory pursuant to ISO/IEC 17025 of the
93 International Organization for Standardization.
94 (4) FEDERAL APPROVAL.—The department shall seek approval
95 of the state plan for the regulation of the cultivation of hemp
96 with the United States Secretary of Agriculture in accordance
97 with 7 U.S.C. s. 1639p within 30 days after adopting rules. If
98 the state plan is not approved by the United States Secretary of
99 Agriculture, the Commissioner of Agriculture, in consultation
100 with and with final approval from the Administration Commission,
101 shall develop a recommendation to amend the state plan and
102 submit the recommendation to the Legislature. If revisions to
103 the state plan can be made without statutory changes, the
104 department, in consultation with and with final approval from
105 the Administration Commission, shall submit an amended plan to
106 the United States Secretary of Agriculture.
107 ~~(6) HEMP SEED.—A licensee may only use hemp seeds and~~
108 ~~cultivars certified by a certifying agency or a university~~
109 ~~conducting an industrial hemp pilot project pursuant to s.~~
110 ~~1004.4473.~~
111 (6) ~~(7)~~ DISTRIBUTION AND RETAIL SALE OF HEMP EXTRACT.—
112 (a) Hemp extract may only be distributed and sold in the
113 state if the product:

114 1.~~(a)~~ Has a certificate of analysis prepared by an
115 independent testing laboratory that states:
116 a.~~1.~~ The hemp extract is the product of a batch tested by
117 the independent testing laboratory;
118 b.~~2.~~ The batch contained a total delta-9-
119 tetrahydrocannabinol concentration that did not exceed 0.3
120 percent ~~on a dry-weight basis~~ pursuant to the testing of a
121 random sample of the batch; and
122 c.~~3.~~ The batch does not contain contaminants unsafe for
123 human consumption.
124 2.~~(b)~~ Is distributed or sold in a container ~~packaging~~ that
125 includes:
126 a.~~1.~~ A scannable barcode or quick response code linked to
127 the certificate of analysis of the hemp extract batch by an
128 independent testing laboratory;
129 b.~~2.~~ The batch number;
130 c.~~3.~~ The Internet address of a website where batch
131 information may be obtained;
132 d.~~4.~~ The expiration date; and
133 e.~~5.~~ The number of milligrams of each marketed cannabinoid
134 per serving ~~hemp extract; and~~
135 ~~6. A statement that the product contains a total delta-9-~~
136 ~~tetrahydrocannabinol concentration that does not exceed 0.3~~
137 ~~percent on a dry-weight basis~~.

138 (b) Hemp extract distributed or sold in violation of this
139 section shall be considered adulterated or misbranded pursuant
140 to chapter 500, chapter 502, or chapter 580.
141 (8) ~~(9)~~ DEPARTMENT REPORTING.—The department shall submit
142 monthly to the United States Secretary of Agriculture a report
143 of the locations in the state where hemp is cultivated or has
144 been cultivated within the past 3 calendar years. The report
145 must include the contact information for each licensee and the
146 total acreage of hemp planted, harvested, and, if applicable,
147 disposed of, by each licensee.
148 (10) ~~(11)~~ ENFORCEMENT.—
149 (a) The department shall enforce this section.
150 (b) Every state attorney, sheriff, police officer, and
151 other appropriate county or municipal officer shall enforce, or
152 assist any agent of the department in enforcing, this section
153 and rules adopted by the department.
154 (c) The department, or its agent, is authorized to enter
155 any public or private premises during regular business hours in
156 the performance of its duties relating to hemp cultivation.
157 (d) The department shall conduct random inspections, at
158 least annually, of each licensee to ensure that ~~only certified~~
159 ~~hemp seeds are being used and that~~ hemp is being cultivated in
160 compliance with this section. The department may contract with
161 entities to provide sample collection, laboratory testing, and
162 disposal services to implement this section.

163 (11)~~(12)~~ RULES.~~—By August 1, 2019,~~ The department, in
164 consultation with the Department of Health and the Department of
165 Business and Professional Regulation, shall initiate rulemaking
166 to administer the state hemp program. The rules must provide
167 for:
168 (a) A procedure that uses post-decarboxylation or other
169 similarly reliable methods and a measure of uncertainty for
170 testing the delta-9-tetrahydrocannabinol concentration of
171 cultivated hemp. The procedure must include sampling procedures
172 to ensure that a representative sample is physically collected
173 before the anticipated harvest by a federal, state, local, or
174 tribal law enforcement agency.
175 (b) A procedure for the effective disposal of plants,
176 whether growing or not, that are cultivated in violation of this
177 section or department rules, and products derived from those
178 plants.
179 (12)~~(13)~~ APPLICABILITY.—Notwithstanding any other law:
180 (a) This section does not authorize a licensee to violate
181 any federal or state law or regulation.
182 (b) This section does not apply to a pilot project
183 developed in accordance with 7 U.S.C. 5940 and s. 1004.4473.
184 (c) A licensee who negligently violates this section or
185 department rules is not subject to any criminal or civil
186 enforcement action by the state or a local government other than

187 the enforcement of violations of this section as authorized
188 under subsection (9) (10).
189 (13) (14) INDUSTRIAL HEMP ADVISORY COUNCIL.—An Industrial
190 Hemp Advisory Council, an advisory council as defined in s.
191 20.03, is established to provide information, advice, and
192 expertise to the department with respect to plans, policies, and
193 procedures applicable to the administration of the state hemp
194 program. Notwithstanding ss. 377.6015 and 570.232, the
195 Industrial Hemp Advisory Council is the sole advisory body to
196 provide information, advice, and expertise related to the state
197 hemp program to the department, and no other advisory body may
198 be created for such purpose.
199 (a) The advisory council is adjunct to the department for
200 administrative purposes.
201 (b) The advisory council shall be composed of all of the
202 following members:
203 1. Two members appointed by the Commissioner of
204 Agriculture.
205 2. Two members appointed by the Governor.
206 3. Two members appointed by the President of the Senate.
207 4. Two members appointed by the Speaker of the House of
208 Representatives.
209 5. The dean for research of the Institute of Food and
210 Agricultural Sciences of the University of Florida or his or her
211 designee.

212 6. The president of Florida Agricultural and Mechanical
213 University or his or her designee.
214 7. The executive director of the Department of Law
215 Enforcement or his or her designee.
216 8. The president of the Florida Sheriffs Association or
217 his or her designee.
218 9. The president of the Florida Police Chiefs Association
219 or his or her designee.
220 10. The president of the Florida Farm Bureau Federation or
221 his or her designee.
222 11. The president of the Florida Fruit and Vegetable
223 Association or his or her designee.
224 (c) Each advisory council member shall be appointed to a
225 4-year term, and any vacancy in the membership of the council
226 must be filled in the same manner as the original appointment
227 for the remainder of the unexpired term. For the purpose of
228 achieving staggered terms, the initial members appointed to the
229 council shall serve the following terms:
230 1. Four years for members appointed by the Governor.
231 2. Three years for members appointed by the President of
232 the Senate or the Speaker of the House of Representatives.
233 3. Three years for members appointed by the Commissioner
234 of Agriculture.
235 4. Two years for all other appointed members.

236 (d) ~~(c)~~ The advisory council shall elect by a two-thirds
237 vote of the members one member to serve as chair of the council.
238 The chair shall serve for a term of 1 year.
239 (e) ~~(d)~~ A majority of the members of the advisory council
240 constitutes a quorum.
241 (f) ~~(e)~~ The advisory council shall meet at least once
242 annually at the call of the chair.
243 (g) ~~(f)~~ Advisory council members shall serve without
244 compensation and are not entitled to reimbursement for per diem
245 or travel expenses.
246 (14) FEES.—By December 1, 2020, the department shall
247 submit a report to the President of the Senate and the Speaker
248 of the House of Representatives that provides recommendations
249 for initial license application fees and license renewal fees
250 sufficient to cover the costs of implementing and administering
251 this section. If such fees do not cover the costs of inspections
252 and testing, the department shall include a separate cost
253 breakdown for any other program fees that the department
254 recommends and anticipates are necessary.
255 Section 4. This act shall take effect upon becoming a law.
256
257 ---
258 **T I T L E A M E N D M E N T**
259 Remove everything before the enacting clause and insert:

260 An act relating to the state hemp program; amending s.
261 500.03, F.S.; revising the definition of the term "food" to
262 include hemp extract for purposes of the Florida Food
263 Safety Act; amending s. 500.12, F.S.; providing that a
264 person operating a minor food outlet that sells hemp is not
265 exempt from certain food permit requirements; amending s.
266 581.217, F.S.; revising definitions; directing the
267 Department of Agriculture and Consumer Services to submit
268 an amended plan for the state program to the United States
269 Secretary of Agriculture under certain circumstances;
270 removing a requirement that licensees only use certain hemp
271 seeds and cultivars; revising requirements for the
272 distribution and retail sale of hemp extract; providing
273 that hemp extract that does not meet certain requirements
274 will be considered adulterated or misbranded; requiring the
275 department to include additional information in monthly
276 reports to the United States Secretary of Agriculture;
277 conforming provisions to changes made by the act; requiring
278 program rules to include specified sampling procedures;
279 providing that the Industrial Hemp Advisory Council is the
280 sole advisory body to provide information, advice, and
281 expertise regarding the program to the department;
282 prohibiting the creation of other advisory bodies for such
283 purpose; providing terms for advisory council members and
284 the council chair; providing requirements for filling

285 advisory council vacancies; directing the department to
286 submit a report that provides recommendations for program
287 fees to the Legislature by a specified date; providing an
288 effective date.

HB 1201

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1201 Department of Citrus Employees
SPONSOR(S): Clemons
TIED BILLS: **IDEN./SIM. BILLS:** SB 1276

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N	Etheridge	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	8 Y, 0 N	White	Pigott
3) State Affairs Committee		Etheridge	Williamson

SUMMARY ANALYSIS

The Department of Citrus (department) is an executive agency of Florida government charged with the marketing, research, and regulation of the Florida citrus industry. The department is governed by the Florida Citrus Commission (commission), a nine-member board appointed by the Governor to represent citrus growers, processors, and packers. The department must be staffed five days per week, 40 hours per week, as necessary to accommodate industry inquiries. The executive director, with the commission's approval, may establish alternate schedules for individual department employees to ensure maximum efficiencies.

The bill authorizes the department to loan or share department employees with specified state and federal entities. The bill authorizes the department to enter into agreements with such entities under terms and conditions that will benefit the state, subject to prior department approval. The bill also deletes provisions setting out the required work schedule for the department.

The bill may have an indeterminate positive fiscal impact on the state. *See* Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Department of Citrus
The Department of Citrus (department) was established in 1935, with the passage of the Florida Citrus Code.[1] The department is an executive agency of the Florida government charged with the marketing, research, and regulation of the Florida citrus industry.[2] The department is governed by the Florida Citrus Commission (commission), a nine-member board appointed by the Governor to represent citrus growers, processors, and packers.[3] The commission serves in the capacity of a board of directors and agency head for the department and oversees and guides the activities of the department.[4]

Florida's citrus industry employs more than 45,000 people, provides an annual economic impact of $8.6 billion to the state, and contributes hundreds of millions of dollars in tax revenues that help support Florida's schools, roads, and health care services.[5] The department also has extensive regulatory responsibilities, covering every aspect of the citrus industry, including research, production, maturity standards, licensing, transportation, labeling, packing, and processing.[6] The department must be staffed five days per week, 40 hours per week, as necessary to accommodate industry inquiries. The executive director, with the commission's approval, may establish alternate schedules for individual department employees to ensure maximum efficiencies.[7] The department currently has 26 full-time employees.

Intergovernmental Interchange of Public Employees
Florida statutes allow for the interchange of public employees within the government. The state recognizes that intergovernmental cooperation is an essential factor in resolving problems affecting this state and that the interchange of personnel between and among governmental agencies is a significant factor in achieving such cooperation.[8] The details of the interchange must be put into an agreement reported to the Department of Management Services, and such interchange may not last more than two years.[9] For the 2019-2020 fiscal year, the assignment of an employee of a state agency may be made if recommended by the Governor or Chief Justice, as appropriate, and if approved by the chairs of the legislative appropriations committees.[10]

Marketing Orders
In order to effectuate the policy and purposes of the Florida Citrus Marketing Act,[11] the department may enter into, administer, and enforce marketing agreements with handlers and distributors relating to the handling of citrus fruit grown in Florida.[12] Such marketing agreements are only binding on the signatories thereto.[13]

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[1] Ch. 601, F.S.
[2] Florida Department of Citrus, *About the Florida Department of Citrus,* available at https://www.floridacitrus.org/grower/about/florida-department-of-citrus/ (last visited Jan. 15, 2020).
[3] S. 601.04, F.S.; Florida Department of Citrus, *Florida Citrus Commission*, available at https://www.floridacitrus.org/grower/about/florida-citrus-commission/ (last visited Jan. 15, 2020).
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] S. 601.10(3)(b), F.S.
[8] S. 112.25, F.S.
[9] S. 112.24(2), F.S.
[10] S. 112.24(6), F.S.
[11] S. 600.011, F.S.
[12] S. 600.051(1), F.S.
[13] *Id.*

Effect of Proposed Changes

The bill authorizes the department to loan or share department employees with other state and federal agencies, state universities, or the Department of Agriculture and Consumer Services (DACS) for marketing and promotion orders authorized under the authority of DACS or its direct-support organizations or for orders adopted under the authority of the United States Secretary of Agriculture. The bill authorizes the department to enter into agreements with such entity or entities under terms and conditions that will benefit the state, as long as the entity to which a department employee is loaned or shared reimburses the state for all pay and benefits of the employee, not including a service fee for administration.

The bill specifies that if the entity directly pays the loaned or shared employee his or her salary and benefits, an agreement between the entity and the department is not necessary, and the employee may work part-time with the department under terms and conditions mutually agreed upon between the department and the employee. The bill also specifies that all arrangements relating to the loaning or sharing of department employees are subject to prior approval by the department.

The bill deletes provisions setting out the required work schedule for the department.

B. SECTION DIRECTORY:

Section 1. Amends s. 601.10, F.S., authorizing the department to loan or share department employees with specified state and federal entities and enter into agreements with such entities, subject to prior department approval.

Section 2. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill allows the department to loan or share its employees with specified state and federal entities. The department must approve the loan, and the terms and conditions must benefit the state. As such, it appears the bill may have an indeterminate positive fiscal impact on the state.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not grant rulemaking authority, nor does it require a grant of rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to Department of Citrus employees;
3 amending s. 601.10, F.S.; authorizing the Department
4 of Citrus to loan or share department employees with
5 specified state and federal entities; authorizing the
6 department to enter into agreements with such
7 entities; providing that agreements are subject to
8 prior approval by the department; deleting provisions
9 setting out the required work schedule for the
10 department; providing an effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Subsection (3) of section 601.10, Florida
15 Statutes, is amended to read:
16 601.10 Powers of the Department of Citrus.—The department
17 shall have and shall exercise such general and specific powers
18 as are delegated to it by this chapter and other statutes of the
19 state, which powers shall include, but are not limited to, the
20 following:
21 (3) ~~(a)~~ To pay, or participate in the payment of, premiums
22 for health, accident, and life insurance for its full-time
23 employees, pursuant to such rules as the department may adopt,
24 in addition to the regular salaries of such full-time employees.
25 (a) The payment of such or similar benefits to its

26 employees in foreign countries, including, but not limited to,
27 social security, retirement, and other similar fringe benefit
28 costs, may be in accordance with laws in effect in the country
29 of employment, except that no benefits will be payable to
30 employees not authorized for other state employees, as provided
31 in the Career Service System.
32 (b) The department may loan or share department employees
33 with other state and federal agencies, state universities, or
34 the Department of Agriculture and Consumer Services for
35 marketing and promotion orders authorized under the authority of
36 the Department of Agriculture and Consumer Services or its
37 direct support organizations or for orders adopted under the
38 authority of the United States Secretary of Agriculture. The
39 department may enter into agreements with such entity or
40 entities under terms and conditions as will benefit the state,
41 if the agency or entity to which the employee is loaned or
42 shared reimburses the state for all pay and benefits of the
43 employee, not including a service fee for administration. If the
44 entity directly pays the loaned or shared employee his or her
45 salary and benefits, if applicable, an agreement with the
46 department is not necessary and the employee may work part-time
47 with the department under terms and conditions mutually agreed
48 between the department and the employee. All arrangements made
49 pursuant to this paragraph are subject to prior approval by the
50 department ~~Subject to all applicable rules adopted by the~~

51 ~~Department of Management Services, the department shall be~~
52 ~~staffed 5 days per week, 40 hours per week, as necessary to~~
53 ~~accommodate industry inquiries. However, the executive director,~~
54 ~~with the commission's approval, may establish alternative~~
55 ~~schedules for individual department employees to ensure maximum~~
56 ~~efficiencies~~.
57 Section 2. This act shall take effect July 1, 2020.

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Clemons offered the following:
3
4 **Amendment (with title amendment)**
5 Between lines 13 and 14, insert:
6 Section 1. Section 601.041, Florida Statutes, is created
7 to read:
8 601.041 The Friends of Florida Citrus Program; advisory
9 council.—
10 (1) The Friends of Florida Citrus Program is established
11 within the department to provide support and assistance for
12 existing and future programs within the department.
13 (a) Through the program, the department shall:
14 1. Conduct programs and activities related to the
15 protection and enhancement of the quality and reputation of
16 Florida citrus fruit and the canned and concentrated products

17 thereof in domestic and foreign markets.
18 2. Identify and pursue methods to provide resources and
19 materials for the programs.
20 3. Research methods to integrate the resources and
21 materials identified pursuant to subparagraph 2.
22 (b) The department may receive donations from private
23 corporations to support the program. The department shall
24 deposit donations to the program into the Florida Citrus
25 Advertising Trust Fund, as established in s. 601.15(7), and such
26 donations shall be exempt from s. 601.15(7)(a).
27 (2) The Friends of Florida Citrus Advisory Council, an
28 advisory council as defined in s. 20.03(7), is established
29 adjunct to the department. The advisory council shall advise and
30 provide recommendations to the commission regarding the use of
31 any funds received for the Friends of Florida Citrus Program.
32 The advisory council shall operate in a manner consistent with
33 s. 20.052 and shall consist of the following members, appointed
34 by the chair of the commission annually upon the concurrence of
35 the commission:
36 (a) One member of the commission.
37 (b) One member recommended by a consortium of citrus
38 processors in the state.
39 (c) One member recommended by the statewide voluntary
40 Florida citrus growers association with the highest membership.

41 (d) Two at large members, at the discretion of the
42 commission.
43
44 ---
45 **T I T L E A M E N D M E N T**
46 Between lines 2 and 3, insert:
47 creating s. 601.041, F.S.; establishing the Friends of
48 Florida Citrus Program within the Department of
49 Citrus; providing the purpose of the program;
50 providing duties of the department; authorizing the
51 program to receive certain funds; requiring funds to
52 be deposited into the Florida Citrus Advertising Trust
53 Fund; creating the Friends of Florida Citrus Advisory
54 Council adjunct to the department; providing for the
55 membership and duties of the advisory council;

CS/HB 1265

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1265 Verification of Employment Eligibility
SPONSOR(S): Commerce Committee; Byrd; Fitzenhagen and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1822

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Commerce Committee	15 Y, 8 N, As CS	Willson	Hamon
2) State Affairs Committee		Toliver	Williamson

SUMMARY ANALYSIS

Both Florida and federal law prohibit employers from hiring a person who is not authorized to work in the United States. Federal law requires most employers to verify the eligibility of new hires using certain employee-provided documents. Additionally, federal law requires some employers to use E-Verify, an Internet-based system designed to allow employers to electronically confirm the employment eligibility of newly hired employees in the United States. In Florida, state agencies under the direction of the Governor must use E-Verify for all newly hired employees, and contractors and subcontractors are required to use E-Verify for all new hires for the duration of a contract.

The bill provides that, beginning January 1, 2021, public employers, contractors, and subcontractors must register with and use the E-Verify system to verify the work authorization status of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

The bill provides that, beginning January 1, 2021, a private employer must verify the employment eligibility of a person who has accepted an offer of employment or a contract employee upon the renewal or extension of his or her contract by either using the E-Verify system or requiring the person to provide the same documentation required by the United States Citizenship and Immigration Services on its Employment Eligibility Verification form (Form I-9).

The bill provides that if a private employer does not verify the employment eligibility of a current or future employee, the Department of Economic Opportunity (DEO) must require the private employer to provide an affidavit stating:

- The private employer will comply with the employee verification requirements;
- The private employer has terminated the employment of all unauthorized aliens in this state; and
- The employer will not intentionally or knowingly employ an unauthorized alien in this state.

If a private employer does not provide the required affidavit within 30 days, the bill requires DEO to order the appropriate agency to suspend all applicable licenses held by the private employer until the private employer provides DEO with the required affidavit. If a private employer violates the verification of employment eligibility requirements three times within a 36 month period, the bill requires permanent revocation of all licenses held by the private employer specific to the business location where the unauthorized alien performed work.

The bill appears to have an indeterminate, insignificant fiscal impact on the state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Overview

Both federal and Florida law prohibit a person from employing a person who is not authorized to work in the United States. Additionally, federal law requires some employers to use E-Verify and requires most employers to verify the eligibility of new hires using certain employee-provided documents.

E-Verify is a free, Internet-based system through which an employer can verify that a newly hired employee is authorized to work in the U.S.[1] E-Verify electronically compares the information from an employee's Form I-9 with records available to the Social Security Administration (SSA) and the U.S. Department of Homeland Security (DHS) to verify the identity and employment eligibility of newly hired employees.[2]

Florida Law

A person may not knowingly employ, hire, recruit, or refer an alien for private or public employment within the state if the alien is not authorized to work under the immigration laws or by the U.S. Attorney General.[3] A first offense of this prohibition is a noncriminal violation punishable by a fine of up to $500; each subsequent offense is a second degree misdemeanor,[4] punishable by up to 60 days in jail[5] and a fine not to exceed $500.[6]

Moreover, Executive Order 11-116 (2011) requires state agencies under the direction of the Governor to use E-Verify for all newly hired employees. The executive order also requires an agency to include a provision in each contract requiring a contractor to use E-Verify for all new hires. These same requirements must be included in the contractor's contracts with subcontractors.[7]

Federal Law

The federal Immigration Reform and Control Act of 1986 (IRCA)[8] made it illegal for any U.S. employer to knowingly:

- Hire, recruit, or refer for a fee an alien knowing he or she is unauthorized to work;
- Continue to employ an alien knowing he or she has become unauthorized; or
- Hire, recruit or, refer for a fee, any person (citizen or alien) without following the record keeping requirements of the IRCA.[9]

The IRCA established a procedure employers must follow to verify that employees are authorized to work in the U.S.[10] The procedure requires employees to present documents establishing both the worker's identity and eligibility to work, and requires employers to complete a Form I-9 for each new employee hired.[11] The IRCA provides for sanctions to be imposed on employers who knowingly employ

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[1] U.S. Citizenship and Immigration Services (USCIS), *How do I use E-Verify?* https://www.e-verify.gov/sites/default/files/everify/guides/E4en.pdf (last visited Mar. 1, 2020).
[2] DHS and USCIS, *E-Verify User Manual,* https://www.e-verify.gov/e-verify-user-manual-10-introduction/11-background-and-overview (last visited Mar. 1, 2020).
[3] S. 448.09(1), F.S.
[4] S. 448.09(2), F.S.
[5] S. 775.082(4)(b), F.S.
[6] S. 775.083(1)(e), F.S.
[7] Exec. Order No. 11-116 (May 2011), available at http://edocs.dlis.state.fl.us/fldocs/governor/orders/2011/11-116-suspend.pdf (last visited Mar. 1, 2020).
[8] P.L. 99-603, 100 Stat. 3359.
[9] 8 U.S.C. § 1324a.
[10] *Id.*
[11] *Id.*

aliens who are not authorized to work.[12] Federal law contains no criminal sanction for working without authorization, although document fraud is a civil violation.[13] The U.S. Citizenship and Immigration Services (USCIS) enforces these provisions.[14]

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA),[15] which created various employment eligibility verification programs, including the Basic Pilot program. Originally, the Basic Pilot program (now referred to as E-Verify) was available in five of the seven states that had the highest populations of unauthorized aliens and was initially authorized for only four years. However, Congress has consistently extended the program's life. It expanded the program in 2003, making it available in all 50 states. In 2008, the federal government began requiring any entity that maintained or applied for federal contracts to use E-Verify.[16]

Using E-Verify

The Process
E-Verify is the last step in a larger eligibility-verification process. This process begins when an employee accepts an offer of employment.[17] Between this point and the employee's first day on the job, he or she must complete Section 1 of the Form I-9, which requires providing his or her name, address, social security number (SSN), and citizenship status under penalty of perjury.[18] By the end of the third day on the job, the employer is required to complete Section 2, stating under penalty of perjury that he or she has reviewed certain employee-provided documents that establish the employee's eligibility.[19] This is where the required verification of employment eligibility stops for most employers.

Before using E-Verify for the first time, an employer must enroll via DHS's website.[20] At the end of the enrollment process, the employer must sign a Memorandum of Understanding that provides the terms of agreement between the employer and DHS.[21]

Once enrolled, an employer uses E-Verify by opening a "case" for an employee and entering basic information from the employee's Form I-9 (name, address, SSN) into the case.[22] Then E-Verify compares that information to records available to DHS and the SSA, and usually within seconds, issues one of several possible results to the employer.[23] A result of "Employment Authorized" indicates that the employee may work in the U.S. Other results include:

- Verification In Process - This case was referred to DHS for further verification.
- Tentative Nonconfirmation (TNC) - Information did not match records available to SSA or DHS. Additional action is required.
- Case in Continuance - The employee has visited an SSA field office or contacted DHS, but more time is needed to determine a final case result.
- Close Case and Resubmit - SSA or DHS requires the employer to close the case and create a new case for this employee. This result may be issued when the employee's U.S. passport, passport card, or driver license information is incorrect.

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[12] *Id.* at 1324a(a)(1)-(2).
[13] *Id.* at 1324c.
[14] *Id.* at 1324a.
[15] P.L. 104-208.
[16] DHS and USCIS, *History and Milestones [of E-Verify*], http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=84979589cdb76210VgnVCM100000b92ca60aRCRD&vgnextchannel=84979589cdb76210VgnVCM100000b92ca60aRCRD (last visited Feb. 22, 2020).
[17] USCIS, *Complete and Correct Form I-9*, https://www.uscis.gov/i-9-central/complete-and-correct-form-i-9, (last visited Feb. 22, 2020).
[18] *See* 8 C.F.R. § 274a.2(b)(1)(i)(A).
[19] *See* 8 C.F.R. § 274a.2(b)(1)(ii).
[20] DHS and USCIS, *The Enrollment Process*, https://www.e-verify.gov/employers/enrolling-in-e-verify/the-enrollment-process (last visited Feb. 22, 2020).
[21] *The E-Verify Memorandum for Employers*, available at https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf (last visited Mar. 1, 2020).
[22] DHS and USCIS, *ABOUT E-Verify*, https://www.e-verify.gov/about-e-verify (last visited Mar. 1, 2020).
[23] *Id.*

- Final Nonconfirmation - E-Verify cannot confirm the employee's employment eligibility after the employee visited SSA or contacted DHS.[24]

If the result is TNC, the employer must notify the employee, who must take further action to verify his or her eligibility.[25] If the result is Verification in Process or Case in Continuance, the E-Verify system needs more time to process the case.[26] Lastly, a result of "Final Nonconfirmation" (FNC) indicates there is no further action to be taken by any party and that E-Verify will not confirm that the employee is authorized to work in the U.S.[27]

Results in Fiscal Year 2019
In fiscal year 2019, E-Verify processed 38,930,405 cases, 98.51 percent of which were automatically confirmed as "work authorized" and another 0.23 percent were confirmed after an initial "mismatch."[28] For the remaining 1.27 percent of cases, the employees were not found to be authorized to work in the U.S.[29]

Accuracy
The most recent independent report of E-Verify's accuracy appears to have been completed in 2012, relying on data from 2009 and before.[30] The report found that E-Verify was 94 percent accurate in its final disposition of cases. E-Verify confirmed 94 percent of employees who were in fact authorized to work in the U.S.; 94 percent of FNCs issued were for people who were not authorized to work. As such, according to the report, 6 percent of people who were authorized to work in the U.S. received a FNC from E-Verify.[31]

Mandatory Use of E-Verify in Other States
At least 19 other states require the use of E-Verify by public employers, contractors or subcontractors of public employers, or private employers. The following states require private employers, as well as public employers and their contractors and subcontractors, to use E-Verify:

- North Carolina[32]
- Mississippi[33]
- Georgia[34]
- Arizona[35]
- Alabama[36]
- Utah[37]
- South Carolina[38]

The following states require only public employers and their contractors to use E-Verify:

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[24] DHS and USCIS, *Verification Process*, https://www.e-verify.gov/employers/verification-process (last visited Mar. 1, 2020).
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] DHS and USCIS, *E-Verify Performance*, https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-performance (last visited Mar. 1, 2020).
[29] *Id.*
[30] Westat, *Evaluation of the Accuracy of E-Verify Findings,* (July, 2012) available at https://www.e-verify.gov/sites/default/files/everify/data/FindingsEVerifyAccuracyEval2012.pdf.
[31] *Id.*
[32] N.C.G.S. § 160A-169.1 (municipalities); 153A-99.1 (counties); 143-48.5, 143-133.3 (public contractors); 64-26 (private employers that have more than 25 employees); 126-7.1 (state agencies).
[33] Miss. Code § 71-11-3.
[34] Ga. Code § 13-10-91 (public employers and contractors); 36-60-6 (private employers that have more than 10 employees).
[35] Ariz. Rev. Stat. § 41-4401 (public contractors); 23-214 (private and public employers).
[36] Ala. Code § 31-13-15.
[37] Utah Code § 63G-12-301 (private employers having 15 or more employees, unless the employee has a guest worker permit), 63G-12-302 (public employers and contractors). Under both statutes, the employers may use E-Verify or another federal verification program.
[38] S.C. Code § 41-8-20 (private employers); 8-14-20 (public employers and contractors).

- Indiana[39]
- Nebraska[40]
- Missouri[41]
- Colorado[42]
- Oklahoma[43]
- Texas[44]
- Virginia[45]

Approaches by some states do not fall squarely into the above categories. For example, Tennessee requires only private employers that have 50 or more employees to use E-Verify.[46] Pennsylvania requires public contractors and private *construction* employers to use E-Verify.[47] In Michigan, only contractors of the Michigan Department of Transportation must use E-Verify.[48] Finally, West Virginia requires contractors whose employees work on the Capitol grounds to use E-Verify.[49]

Effect of the Bill

Public Employers, Contractors, and Subcontractors

The bill provides that, beginning January 1, 2021, public employers,[50] contractors,[51] and subcontractors[52] must register with and use the E-Verify system to verify the work authorization status of all newly hired employees.[53] The bill specifies that a public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

Subcontractors must provide contractors with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and the contractor must maintain a copy of the affidavit for the duration of the contract.

The bill provides that a public employer, contractor, or subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly employed, hired, recruited or referred an unauthorized alien[54] must terminate the contract with the person or entity. Furthermore, if a public employer has a good faith belief that a subcontractor has knowingly violated relevant portions of the bill, but the contractor has otherwise complied, the public employer must promptly notify the contractor

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[39] Ind. Code § 22-5-1.7-11.1.
[40] Nev. Rev. St. § 4-114.
[41] Miss. Stat. § 285.530.
[42] Colo. Rev. Stat. § 8-17.5-102.
[43] 25 Okl. St. § 1313 (public employers and contractors must use E-Verify or another federal verification program).
[44] Tex. Nat. Res. Code § 81.072 (public contractors); Tex. Gov. Code § 673.002 (state agencies)
[45] Va. Code § 40.1-11.2 (state agencies), 2.2-4308.2 (public contractors).
[46] Tenn. Code § 50-1-703.
[47] 43 Penn. Stat. § 167.3 (public contractors); 43 Penn. Stat. §168.3 (private construction employers).
[48] Act 200, Public Acts of 2012, Sec. 381.
[49] W. Va. Code, § 15-2D-3.
[50] The bill defines the term "public employer" to mean an agency within state, regional, county, local, or municipal government, whether executive, judicial, or legislative, or any public school, community college, or state university that employs persons who perform labor or services for that employer in exchange for salary, wages, or other remuneration or that enters or attempts to enter into a contract with a contractor.
[51] The bill defines the term "contractor" to mean a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration.
[52] The bill defines the term "subcontractor" to mean a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.
[53] The bill defines the term "employees" to mean a person filling an authorized and established position who performs labor or services for a public or private employer in exchange for salary, wages, or other remuneration.
[54] The bill defines the term "unauthorized alien" to mean a person who is not authorized under federal law to be employed in the U.S., as described in 8 U.S.C. § 1324a(h)(3). The term shall be interpreted consistently with that section and any applicable federal rules or regulations.

and order the contractor to immediately terminate the contract with the subcontractor. The bill specifies that a termination of a contract for either of these reasons may not be considered a breach of contract.

Actions to challenge such terminations must be filed no later than 20 calendar days after the termination date. If a public employer terminates a contract with a contractor, the contractor may not be awarded a public contract for at least one year after the date on which the contract was terminated, and the contractor is liable for any additional costs incurred by the public employer as a result of the contract termination.

Private Employers

The bill provides that, beginning January 1, 2021, a private employer[55] must verify the employment eligibility of a person who has accepted an offer of employment or a contract employee upon the renewal or extension of his or her contract. The bill specifies that private employers are not required to verify the employment eligibility of employees hired before January 1, 2021.

A private employer must verify a person's employment eligibility by:

- Using the E-Verify system; or
- Requiring the person to provide the same documentation that is required by USCIS on its Employment Eligibility Verification form (Form I-9).

The private employer must retain a copy of such documentation for at least three years after the person's initial date of employment.

The bill provides that a private employer who complies with the requirements of the bill may not be held civilly or criminally liable under state law for hiring, continuing to employ, or refusing to hire an unauthorized alien if the proper protocol was followed to verify that the person's work authorization status was not that of an unauthorized alien. The bill specifies that compliance with proper protocol creates a rebuttable presumption that a private employer did not knowingly employ an unauthorized alien.

The bill requires a private employer to provide copies of any document used to verify a person's employment eligibility, upon request, to the following state entities:

- The Department of Law Enforcement.
- The Attorney General.
- The state attorney.
- The statewide prosecutor.

These entities must rely upon the federal government to verify a person's employment eligibility, and may not independently make a final determination as to whether a person is an unauthorized alien.

The bill provides that, if a private employer does not verify the employment eligibility of a current or future employee in accordance with the requirements above, DEO must require the private employer to provide DEO with an affidavit stating:

- The private employer will comply with the employee verification requirements,
- The private employer has terminated the employment of all unauthorized aliens in this state, and
- The employer will not intentionally or knowingly employ an unauthorized alien in this state.

If the private employer does not provide the required affidavit within 30 days, the bill requires DEO to order the appropriate agency to suspend all applicable licenses[56] held by the private employer until the

[55] The bill defines the term "private employer" to mean a person or entity that transacts business in this state, that has a license issued by an agency in this state, and that employs persons to perform labor or services in exchange for salary, wages, or other remuneration.

[56] The bill defines the term "license" to mean a franchise, a permit, a certificate, an approval, a registration, a charter, or any similar form of authorization required by state law and issued by an agency for the purpose of operating a business in this state.

private employer provides DEO with the required affidavit. The bill specifies that the licenses subject to suspension include all licenses held by the employer specific to the business location where the unauthorized alien performed work. If the employer does not hold a license specific to that business location, but a license is necessary to operate the employer's business in general, the licenses that are subject to suspension are all licenses that are held by the employer at the employer's primary place of business.

For any private employer found to have violated the above requirements three times within any 36 month period, DEO must order the appropriate agencies to permanently revoke all licenses held by the private employer specific to the business location where the unauthorized alien performed work. If the private employer does not hold a license specific to that business location, but a license is necessary to operate the private employer's business in general, DEO must order the appropriate agencies to permanently revoke all licenses held by the private employer at the private employer's primary place of business.

The bill specifies that the requirements provided for in the bill be enforced without regard to race, color, or national origin and be construed in a manner so as to be fully consistent with any applicable federal laws or regulations.

Economic Development Incentives

The bill amends s. 288.061, F.S., relating to the economic development incentive application process. Beginning July 1, 2020, the bill specifies that the executive director of DEO may not approve an economic development incentive application unless the application includes proof that the applicant is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees. If DEO determines that an awardee is not complying with this requirement, DEO must notify the awardee by certified mail of its determination of noncompliance and the awardee's right to appeal the determination. On a final determination of noncompliance, the awardee must repay DEO all monies received as an economic development incentive within 30 days of the final determination.

B. SECTION DIRECTORY:

Section 1 Amends s. 288.061, F.S., requiring that certain information be included in the economic development incentive application process.

Section 2 Amends s. 448.095, F.S., relating to the verification of employment eligibility by certain employers.

Section 3 Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill requires DEO to enforce the suspension of the license of an employer that fails to verify a person's employment eligibility. This enforcement may occur at the local government level and at specific state agencies. This additional enforcement duty will likely result in additional costs to DEO.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   The bill could increase costs for employers that do not currently verify a person's employment eligibility. Using E-Verify or requiring an employer to verify an individual's employment eligibility by means of document review could increase the labor involved in hiring an employee, especially if E-Verify is used and the initial response for that employee is not "Employment Authorized."

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:

   The bill does not confer any rulemaking authority nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 27, 2020, the Commerce Committee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS:

- Specified use of the E-Verify system for new hires as a condition for the approval of economic development incentive applications.
- Defined the terms "agency", "department", and "license".
- Provided clarification relating to the documentation that a private employer may use to verify a person's employment eligibility.
- Streamlined redundant language relating to private employers as contractors.
- Authorized FDLE, the Attorney General, the state attorney, and the statewide prosecutor to request copies of any document used by a private employer to verify a person's employment eligibility.
  - Such entities must rely upon the federal government to verify a person's employment eligibility, and may not independently make a final determination as to whether a person is an unauthorized alien.
- Added the affidavit and license sanction provisions for certain violations relating to private employer compliance with employment eligibility verification requirements.

This analysis is drafted to the committee substitute as approved by the Commerce Committee.

1 A bill to be entitled
2 An act relating to the verification of employment
3 eligibility; amending s. 288.061, F.S.; prohibiting
4 the approval of certain economic development incentive
5 applications after a specified date; requiring an
6 awardee to repay certain moneys within a specified
7 timeframe under certain circumstances; creating s.
8 448.095, F.S.; providing definitions; requiring public
9 employers, contractors, and subcontractors to register
10 with and use the E-Verify system; prohibiting such
11 entities from entering into a contract unless each
12 party to the contract registers with and uses the E-
13 Verify system; requiring a subcontractor to provide a
14 contractor with a certain affidavit; requiring a
15 contractor to maintain a copy of such affidavit;
16 authorizing the termination of a contract under
17 certain conditions; providing that such termination is
18 not a breach of contract; authorizing a challenge to
19 such termination; providing certain liability for
20 contractors if a contract is terminated; requiring
21 private employers to verify the employment eligibility
22 of newly hired employees beginning on a specified
23 date; providing an exception; providing acceptable
24 methods for verifying employment eligibility;
25 requiring a private employer to maintain certain

26 documentation for a specified time period; providing
27 specified immunity and nonliability for private
28 employers; creating a rebuttable presumption for
29 private employers; requiring private employers to
30 provide copies of certain documentation, upon request,
31 to specified persons and entities for certain
32 purposes; prohibiting specified persons and entities
33 from making a determination as to whether a person is
34 an unauthorized alien; requiring a specified affidavit
35 from certain private employers; providing for the
36 suspension or permanent revocation of certain licenses
37 under certain circumstances; providing construction;
38 providing an effective date.
39
40 Be It Enacted by the Legislature of the State of Florida:
41
42 Section 1. Subsection (6) of section 288.061, Florida
43 Statutes, is renumbered as subsection (7), and a new subsection
44 (6) is added to that section to read:
45 288.061 Economic development incentive application
46 process.—
47 (6) Beginning July 1, 2020, the executive director may not
48 approve an economic development incentive application unless the
49 application includes proof to the department that the applicant
50 business is registered with and uses the E-Verify system, as

51 defined in s. 448.095, to verify the work authorization status
52 of all newly hired employees. If the department determines that
53 an awardee is not complying with this subsection, the department
54 must notify the awardee by certified mail of the department's
55 determination of noncompliance and the awardee's right to appeal
56 the determination. Upon a final determination of noncompliance,
57 the awardee must repay all moneys received as an economic
58 development incentive to the department within 30 days after the
59 final determination.
60 Section 2. Section 448.095, Florida Statutes, is created
61 to read:
62 448.095 Employment eligibility.—
63 (1) DEFINITIONS.—As used in this section, the term:
64 (a) "Agency" means any agency, department, board, or
65 commission of this state or a county or municipality in this
66 state that issues a license to operate a business in this state.
67 (b) "Contractor" means a person or entity that has entered
68 or is attempting to enter into a contract with a public employer
69 to provide labor, supplies, or services to such employer in
70 exchange for salary, wages, or other remuneration.
71 (c) "Department" means the Department of Economic
72 Opportunity.
73 (d) "Employee" means a person filling an authorized and
74 established position who performs labor or services for a public
75 or private employer in exchange for salary, wages, or other

76 remuneration.
77 (e) "E-Verify system" means an Internet-based system
78 operated by the United States Department of Homeland Security
79 that allows participating employers to electronically verify the
80 employment eligibility of newly hired employees.
81 (f) "Legal alien" means a person who is or was lawfully
82 present or permanently residing legally in the United States and
83 allowed to work at the time of employment and remains so
84 throughout the duration of that employment.
85 (g) "License" means a franchise, a permit, a certificate,
86 an approval, a registration, a charter, or any similar form of
87 authorization required by state law and issued by an agency for
88 the purpose of operating a business in this state. The term
89 includes, but is not limited to:
90 1. An article of incorporation.
91 2. A certificate of partnership, a partnership
92 registration, or an article of organization.
93 3. A grant of authority issued pursuant to state or
94 federal law.
95 4. A transaction privilege tax license.
96 (h) "Private employer" means a person or entity that
97 transacts business in this state, has a license issued by an
98 agency, and employs persons to perform labor or services in this
99 state in exchange for salary, wages, or other remuneration. The
100 term does not include:

101 1. A public employer;
102 2. The occupant or owner of a private residence who hires:
103 a. Casual labor, as defined in s. 443.036, to be performed
104 entirely within the private residence; or
105 b. A licensed independent contractor, as defined in
106 federal laws or regulations, to perform a specified portion of
107 labor or services; or
108 3. An employee leasing company licensed under part XI of
109 chapter 468 that enters into a written agreement or
110 understanding with a client company which places the primary
111 obligation for compliance with this section upon the client
112 company. In the absence of a written agreement or understanding,
113 the employee leasing company is responsible for compliance with
114 this section. Such employee leasing company shall, at all times,
115 remain an employer as otherwise defined in federal laws or
116 regulations.
117 (i) "Public employer" means an entity within state,
118 regional, county, local, or municipal government, whether
119 executive, judicial, or legislative, or any public school,
120 community college, or state university that employs persons who
121 perform labor or services for that employer in exchange for
122 salary, wages, or other remuneration or that enters or attempts
123 to enter into a contract with a contractor.
124 (j) "Subcontractor" means a person or entity that provides
125 labor, supplies, or services to or for a contractor or another

126 subcontractor in exchange for salary, wages, or other
127 remuneration.
128 (k) "Unauthorized alien" means a person who is not
129 authorized under federal law to be employed in the United
130 States, as described in 8 U.S.C. s. 1324a(h)(3). The term shall
131 be interpreted consistently with that section and any applicable
132 federal rules or regulations.
133 (2) PUBLIC EMPLOYERS, CONTRACTORS, AND SUBCONTRACTORS.—
134 (a) Beginning January 1, 2021, every public employer,
135 contractor, and subcontractor shall register with and use the E-
136 Verify system to verify the work authorization status of all
137 newly hired employees. A public employer, contractor, or
138 subcontractor may not enter into a contract unless each party to
139 the contract registers with and uses the E-Verify system.
140 (b)1. If a contractor enters into a contract with a
141 subcontractor, the subcontractor must provide the contractor
142 with an affidavit stating that the subcontractor does not
143 employ, contract with, or subcontract with an unauthorized
144 alien.
145 2. The contractor shall maintain a copy of such affidavit
146 for the duration of the contract.
147 (c)1. A public employer, contractor, or subcontractor who
148 has a good faith belief that a person or entity with which it is
149 contracting has knowingly violated s. 448.09(1) shall terminate
150 the contract with the person or entity.

151 2. A public employer that has a good faith belief that a
152 subcontractor knowingly violated this subsection, but the
153 contractor otherwise complied with this subsection, shall
154 promptly notify the contractor and order the contractor to
155 immediately terminate the contract with the subcontractor.
156 3. A contract terminated under subparagraph 1. or
157 subparagraph 2. is not a breach of contract and may not be
158 considered as such.
159 (d) A public employer, contractor, or subcontractor may
160 file an action with a circuit or county court to challenge a
161 termination under paragraph (c) no later than 20 calendar days
162 after the date on which the contract was terminated.
163 (e) If a public employer terminates a contract with a
164 contractor under paragraph (c), the contractor may not be
165 awarded a public contract for at least 1 year after the date on
166 which the contract was terminated.
167 (f) A contractor is liable for any additional costs
168 incurred by a public employer as a result of the termination of
169 a contract.
170 (3) PRIVATE EMPLOYERS.—
171 (a) Beginning January 1, 2021, a private employer shall,
172 after making an offer of employment which has been accepted by a
173 person, verify such person's employment eligibility. A private
174 employer is not required to verify the employment eligibility of
175 a continuing employee hired before January 1, 2021. However, if

176 a person is a contract employee retained by a private employer,
177 the private employer must verify the employee's employment
178 eligibility upon the renewal or extension of his or her
179 contract.
180 (b) A private employer shall verify a person's employment
181 eligibility by:
182 1. Using the E-Verify system; or
183 2. Requiring the person to provide the same documentation
184 that is required by the United States Citizenship and
185 Immigration Services on its Employment Eligibility Verification
186 form (Form I-9).
187
188 The private employer must retain a copy of the documentation
189 provided under this subparagraph for at least 3 years after the
190 person's initial date of employment.
191 (c) A private employer that complies with this subsection
192 may not be held civilly or criminally liable under state law for
193 hiring, continuing to employ, or refusing to hire an
194 unauthorized alien if the information obtained under paragraph
195 (b) indicates that the person's work authorization status was
196 not that of an unauthorized alien.
197 (d) For purposes of this subsection, compliance with
198 paragraph (b) creates a rebuttable presumption that a private
199 employer did not knowingly employ an unauthorized alien in
200 violation of s. 448.09(1).

201 (e) For the purpose of enforcement of this section, the
202 following persons or entities may request, and a private
203 employer must provide, copies of any documentation relied upon
204 by the private employer for the verification of a person's
205 employment eligibility, including, but not limited to, any
206 documentation required under paragraph (b):
207 1. The Department of Law Enforcement.
208 2. The Attorney General.
209 3. The state attorney.
210 4. The statewide prosecutor.
211
212 A person or entity that makes a request under this paragraph
213 must rely upon the federal government to verify a person's
214 employment eligibility and may not independently make a final
215 determination as to whether a person is an unauthorized alien.
216 (f) If a private employer does not comply with paragraph
217 (b), the department shall require the private employer to
218 provide an affidavit to the department stating that the private
219 employer will comply with paragraph (b), the private employer
220 has terminated the employment of all unauthorized aliens in this
221 state, and the employer will not intentionally or knowingly
222 employ an unauthorized alien in this state. If the private
223 employer does not provide the required affidavit within 30 days
224 after the department's request, the department must order the
225 appropriate agency to suspend all applicable licenses held by

226 the private employer until the private employer provides the
227 department with the required affidavit. For purposes of this
228 paragraph, the licenses that are subject to suspension under
229 this paragraph are all licenses that are held by the private
230 employer specific to the business location where the
231 unauthorized alien performed work. If the private employer does
232 not hold a license specific to the business location where the
233 unauthorized alien performed work, but a license is necessary to
234 operate the private employer's business in general, the licenses
235 that are subject to suspension under this paragraph are all
236 licenses that are held by the private employer at the private
237 employer's primary place of business.
238 (g) For any private employer found to have violated
239 paragraph (f) three times within any 36 month period, the
240 department shall order the appropriate agencies to permanently
241 revoke all licenses that are held by the private employer
242 specific to the business location where the unauthorized alien
243 performed work. If the private employer does not hold a license
244 specific to the business location where the unauthorized alien
245 performed work, but a license is necessary to operate the
246 private employer's business in general, the department shall
247 order the appropriate agencies to permanently revoke all
248 licenses that are held by the private employer at the private
249 employer's primary place of business.
250 (4) CONSTRUCTION.—This section shall be enforced without

251 regard to race, color, or national origin and shall be construed
252 in a manner so as to be fully consistent with any applicable
253 federal laws or regulations.
254 Section 3. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1391 Technology Innovation
SPONSOR(S): Government Operations & Technology Appropriations Subcommittee; Insurance & Banking Subcommittee; Grant, J. and Toledo
TIED BILLS: CS/HB 1393, CS/HB 1395 **IDEN./SIM. BILLS:** CS/SB 1870

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Hinshelwood	Cooper
2) Government Operations & Technology Appropriations Subcommittee	9 Y, 2 N, As CS	Mullins	Topp
3) State Affairs Committee		Toliver	Williamson

SUMMARY ANALYSIS

The Division of State Technology (DST) within the Department of Management Services (DMS) oversees information technology governance and security for the executive branch of state government. The bill:

- Abolishes DST, establishes the Florida Digital Service (FDS) in its place, and creates the Division of Telecommunications within DMS.
- Places new duties and responsibilities under the newly created FDS and expands the duties and responsibilities currently assigned to DMS and DST, including the development and implementation of enterprise information technology systems.
- Tasks FDS with procuring a credential service provider for identity management and verification services.
- Requires that revenue generated from allowing qualified entities to utilize state identity data be deposited into the working capital trust fund.
- Removes the option for cabinet agencies to adopt alternative information technology architecture, project management, and reporting standards than those developed by DMS, and requires cabinet agencies to adhere to enterprise architecture standards developed by FDS.
- Creates the Enterprise Architecture Advisory Council as a 13-member advisory council within DMS.
- Removes DST as the head of the E911 system in Florida, and places the Division of Telecommunications as its new head.

The Office of Financial Regulation (OFR) regulates money services businesses, which include money transmitters and payment instrument sellers. The bill creates the Financial Technology Sandbox (sandbox) within OFR to allow a person to make an innovative financial product or service available to consumers as a money transmitter or payment instrument seller during a sandbox period that is initially not longer than 24 months but which can be extended one time for up to 12 months. The sandbox provides regulatory flexibility by permitting OFR to waive specified statutes and corresponding rule requirements. OFR may initially authorize a sandbox participant to provide the financial product or service to a maximum of 15,000 consumers but may authorize up to 25,000 consumers if the sandbox participant demonstrates adequate financial capitalization, risk management process, and management oversight. In addition to other statutes that OFR may waive, OFR may modify the net worth, corporate surety bond, and collateral deposit amounts required for money transmitters and payment instrument sellers. The modified amounts must be in such lower amounts that OFR determines to be commensurate with specified considerations regarding the sandbox application and commensurate with the maximum number of consumers authorized to receive the product or service under the sandbox.

The bill has no fiscal impact on local governments and an indeterminate fiscal impact on state government and the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Department of Management Services

Information Technology Management

The Department of Management Services (DMS)[1] oversees information technology (IT)[2] governance and security for the executive branch of state government. The Division of State Technology (DST) within DMS, established in 2019 through the merger of the former Agency for State Technology (AST) and the Division of Telecommunications,[3] implements DMS' duties and policies in this area.[4]

The head of DST is appointed by the Secretary of Management Services[5] and serves as the state chief information officer (CIO).[6] The CIO must be a proven effective administrator with at least 10 years of executive level experience in the public or private sector.[7] DST "provides the State with guidance and strategic direction on a variety of transformational technologies, such as cybersecurity and data analytics, while also providing the following critical services: voice, data, software, and much more."[8]

The duties and responsibilities of DMS and DST include:

- Developing IT policy for the management of the state's IT resources;
- Establishing IT architecture standards and assisting state agencies[9] in complying with those standards;
- Establishing project management and oversight standards with which state agencies must comply when implementing IT projects. The standards must include:
  - Performance measurements and metrics that reflect the status of an IT project based on a defined and documented project scope, cost, and schedule;
  - Methodologies for calculating acceptable variances in the projected versus actual scope, schedule, or cost of an IT project; and
  - Reporting requirements;
- Performing project oversight of all state agency IT projects that have a total cost of $10 million or more, as well as cabinet agency IT projects that have a total cost of $25 million or more, and are funded in the General Appropriations Act or any other law;
- Recommending potential methods for standardizing data across state agencies, which will promote interoperability and reduce the collection of duplicative data;
- Recommending open data[10] technical standards and terminologies for use by state agencies;

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[1] *See* s. 20.22, F.S.

[2] The term "information technology" means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form. S. 282.0041(14), F.S.

[3] Ch. 2019-118, L.O.F.

[4] S. 20.22(2)(a), F.S.

[5] The Secretary of Management Services serves as the head of DMS and is appointed by the Governor, subject to confirmation by the Senate. S. 20.22(1), F.S.

[6] S. 20.22(2)(b), F.S.

[7] *Id.*

[8] *State Technology*, DMS, https://www.dms.myflorida.com/business_operations/state_technology (last visited Jan. 27, 2020).

[9] *See* s. 282.0041(27), F.S.

[10] The term "open data" means data collected or created by a state agency and structured in a way that enables the data to be fully discoverable and usable by the public. The term does not include data that are restricted from public distribution based on federal or state privacy, confidentiality, and security laws and regulations or data for which a state agency is statutorily authorized to assess a fee for its distribution. S. 282.0041(18), F.S.

- Establishing best practices for the procurement of IT products and cloud-computing services in order to reduce costs, increase the quality of data center services, or improve government services; and
- Establishing a policy for all IT-related state contracts, including state term contracts for IT commodities, consultant services, and staff augmentation services.[11]

State Data Center and the Cloud-First Policy

In 2008, the Legislature created the State Data Center (SDC) system, established two primary data centers,[12] and required that agency data centers be consolidated into the two primary data centers.[13] Data center consolidation was completed in fiscal year (FY) 2013-14. In 2014, the two primary data centers were merged to create the SDC.[14] The SDC is established within DMS and DMS provides operational management and oversight of the SDC.[15]

The SDC relies heavily on the use of state-owned equipment installed at the SDC facility located in the state's Capital Circle Office Center in Tallahassee for the provision of data center services. The SDC is led by the director of the SDC.[16] The SDC must:

- Offer, develop, and support the services and applications defined in service-level agreements executed with its customer entities;[17]
- Maintain performance of the state data center by ensuring proper data backup, data backup recovery, disaster recovery, and appropriate security, power, cooling, fire suppression, and capacity;
- Develop and implement business continuity and disaster recovery plans, and annually conduct a live exercise of each plan;
- Enter into a service-level agreement with each customer entity to provide the required type and level of service or services;
- Assume administrative access rights to resources and equipment, including servers, network components, and other devices, consolidated into the SDC;
- Show preference, in its procurement process, for cloud-computing solutions that minimize or do not require the purchasing, financing, or leasing of SDC infrastructure, and that meet the needs of customer agencies, that reduce costs, and that meet or exceed the applicable state and federal laws, regulations, and standards for IT security; and
- Assist customer entities in transitioning from SDC services to third-party cloud-computing services procured by a customer entity.

A state agency is prohibited, unless exempted[18] elsewhere in law, from:

- Creating a new agency computing facility or data center;
- Expanding the capability to support additional computer equipment in an existing agency computing facility or data center; or
- Terminating services with the SDC without giving written notice of intent to terminate 180 days before termination.[19]

Cloud computing is "a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g. networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service

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[11] S. 282.0051, F.S.
[12] The Northwood Shared Resource Center and the Southwood Shared Resource Center. Ss. 282.204-282.205, F.S. (2008).
[13] Ch. 2008-116, L.O.F.
[14] Ch. 2014-221, L.O.F.
[15] *See* s. 282.201, F.S.
[16] S. 282.201, F.S.
[17] The term "customer entity" means an entity that obtains services from DMS. S. 282.0041(7), F.S.
[18] The following entities are exempt from the use of the SDC: the Department of Law Enforcement, the Department of the Lottery's Gaming Systems Design and Development in the Office of Policy and Budget, regional traffic management centers, the Office of Toll Operations of the Department of Transportation, the State Board of Administration, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, and the Florida Housing Finance Corporation. S. 282.201(2), F.S.
[19] S. 282.201(3), F.S.

provider interaction."[20] In 2019, the Legislature mandated that each agency adopt a cloud-first policy that first considers cloud computing solutions in its technology sourcing strategy for technology initiatives or upgrades whenever possible or feasible.[21] Each agency must, just like the SDC, show a preference for cloud-computing solutions in its procurement process and adopt formal procedures for the evaluation of cloud-computing options for existing applications, technology initiatives, or upgrades.[22]

IT Security

The IT Security Act[23] establishes requirements for the security of state data and IT resources.[24] DMS must designate a state chief information security officer (CISO) to oversee state IT security.[25] The CISO must have expertise in security and risk management for communications and IT resources.[26] DMS is tasked with the following duties regarding IT security:

- Establishing standards and processes consistent with generally accepted best practices for IT security, including cybersecurity.
- Adopting rules that safeguard an agency's data, information, and IT resources to ensure availability, confidentiality, and integrity and to mitigate risks.
- Developing, and annually updating, a statewide IT security strategic plan that includes security goals and objectives for the strategic issues of IT security policy, risk management, training, incident management, and disaster recovery planning including:
  - Identifying protection procedures to manage the protection of an agency's information, data, and IT resources;
  - Detecting threats through proactive monitoring of events, continuous security monitoring, and defined detection processes; and
  - Recovering information and data in response to an IT security incident.
- Developing and publishing for use by state agencies an IT security framework.
- Reviewing the strategic and operational IT security plans of executive branch agencies annually.[27]

The IT Security Act requires the heads of state agencies to designate an information security manager to administer the IT security program of the state agency.[28] In part, the heads of state agencies must annually submit to DMS the state agency's strategic and operational IT security plans; conduct and update every three years, a comprehensive risk assessment to determine the security threats to the data, information, and IT resources of the state agency; develop, and periodically update, written internal policies and procedures; and ensure that periodic internal audits and evaluations of the agency's IT security program for the data, information, and IT resources of the state agency are conducted.[29]

[20] *Special Publication 800-145*, National Institute of Standards and Technology, https://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf (last visited Jan. 27, 2020). The term "cloud computing" has the same meaning as provided in Special Publication 800-145 issued by the National Institute of Standards and Technology (NIST). S. 282.0041(5), F.S.
[21] S. 282.206(1), F.S.
[22] S. 282.206(2) and (3), F.S.
[23] S. 282.318, F.S., is cited as the "Information Technology Security Act."
[24] S. 282.318, F.S.
[25] S. 282.318(3), F.S.
[26] *Id.*
[27] S. 282.318(3), F.S.
[28] S. 282.318(4)(a), F.S.
[29] S. 282.318(4), F.S.

United States Digital Service

In 2014, President Obama created the United States Digital Service (USDS) to help federal agencies improve the digital services they provide to the public.[30] The USDS has two primary responsibilities, distributing guidance related to IT development and procurement to other federal agencies, and actively helping federal agencies develop digital services by embedding teams within the agencies' in-house technology divisions. USDS has created two guidebooks to help federal agencies improve and develop better digital services: the digital services playbook and the TechFAR handbook. The digital services playbook is designed to help government agencies build effective digital services that work well for users by utilizing private and public sector best practices.[31] The TechFAR handbook explains to federal agencies how they can execute the digital services playbook in ways consistent with federal procurement policy.[32]

Enhanced 911 (E911) System

DST oversees the E911 system in Florida.[33] DST must develop, maintain, and implement the statewide emergency communications E911 system plan.[34] The plan must provide for:

- The public agency emergency communications requirements for each entity of local government[35] in the state.
- A system to meet specific local government requirements, which must include law enforcement, firefighting, and emergency medical services, and may include other emergency services such as poison control, suicide prevention, and emergency management services.
- Identification of the mutual aid agreements necessary to obtain an effective E911 system.
- A funding provision that identifies the cost to implement the E911 system.[36]

DST is responsible for implementing and coordinating the plan, and must adopt any necessary rules and schedules related to public agencies[37] implementing and coordinating the plan.[38]

The Secretary of Management Services, or his or her designee, is the director of the E911 system and serves as chair of the E911 Board.[39] The director of the E911 system is authorized to coordinate the activities of the system with state, county, local, and private agencies.[40] The director must consult, cooperate, and coordinate with local law enforcement agencies.[41] An "E911 Board," composed of 11 members, administers funds derived from fees imposed on each user of voice communications service with a Florida billing address (place of primary use).[42] The Governor appoints five members who are county 911 coordinators and five members from the telecommunications industry.[43] The E911 Board

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[30] White House, *Delivering a Customer-Focused Government Through Smarter IT*, https://obamawhitehouse.archives.gov/blog/2014/08/11/delivering-customer-focused-government-through-smarter-it (last visited Feb. 24, 2020).

[31] USDS, *Digital Services Playbook*, https://playbook.cio.gov/ (last visited Feb. 24, 2020).

[32] White House, *Delivering a Customer-Focused Government Through Smarter IT,* https://obamawhitehouse.archives.gov/blog/2014/08/11/delivering-customer-focused-government-through-smarter-it (last visited Feb. 24, 2020); *see also* USDS, *TechFAR Hub*, https://techfarhub.cio.gov/ (last visited Feb. 24, 2020).

[33] S. 365.171, F.S. Prior to 2019, the Division of Telecommunications, established in statute as the Technology Program within DMS, was the entity with oversight over E911. *See* ch. 2019-118, L.O.F.

[34] S. 365.171(4), F.S.

[35] The term "local government" means any city, county, or political subdivision of the state and its agencies. S. 365.171(3)(b), F.S.

[36] S. 365.171(4), F.S.

[37] The term "public agency" means the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services. S. 365.171(3)(c), F.S.

[38] S. 365.171(4), F.S.

[39] S. 365.172(5)(a), F.S.

[40] S. 365.171(5), F.S.

[41] *Id.*

[42] S. 365.172(5), F.S.

[43] S. 365.172(5)(b), F.S.

makes disbursements from the Emergency Communications Number E911 System Trust Fund to county governments and wireless providers.[44]

Agency Procurements

Agency[45] procurements of commodities or contractual services exceeding $35,000 are governed by statute and rule and require use of one of the following three types of competitive solicitations,[46] unless otherwise authorized by law:[47]

- Invitation to bid (ITB): An agency must use an ITB when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.[48]
- Request for proposals (RFP): An agency must use an RFP when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables.[49]
- Invitation to negotiate (ITN): An ITN is a solicitation used by an agency that is intended to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value.[50]

DMS is responsible for procuring state term contracts for commodities and contractual services from which state agencies must make purchases.[51]

Digital Driver License

Current law provides for the establishment of a digital proof of driver license. Specifically, the Department of Highway Safety and Motor Vehicles (DHSMV) must begin to review and prepare for the development of a secure and uniform system for issuing an optional digital proof of driver license.[52]

The digital proof of driver license must be in such a format as to allow law enforcement to verify the authenticity of the digital proof of driver license.[53] DHSMV may adopt rules to ensure valid authentication of digital driver licenses by law enforcement.[54] A person may not be issued a digital proof of driver license until he or she has satisfied all of the statutory requirements relating to the issuance of a physical driver license.[55]

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[44] S. 365.172(5) and (6), F.S.
[45] The term "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges. S. 287.012(1), F.S.
[46] The term "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement. S. 287.012(6), F.S.
[47] *See* s. 287.057, F.S.
[48] S. 287.057(1)(a), F.S.
[49] S. 287.057(1)(b), F.S.
[50] S. 287.057(1)(c), F.S.
[51] Ss. 287.042(2)(a) and 287.056(1), F.S.
[52] S. 322.032(1), F.S.
[53] *Id.*
[54] *Id.*
[55] S. 322.032(3), F.S.

Current law also establishes certain penalties for a person who manufacturers or possesses a false digital proof of driver license.[56] Specifically, a person who:

- Manufactures a false digital proof of driver license commits a felony of the third degree, punishable by up to five years in prison[57] and a fine not to exceed $5,000,[58] or punishable under the habitual felony offender statute.[59]
- Possesses a false digital proof of driver license commits a misdemeanor of the second degree, punishable by up to 60 days in prison[60] and a fine not to exceed $500.[61]

The 2019 General Appropriations Act in Specific Appropriation 2743 provides funding for DHSMV to procure a credential service provider.[62] On December 17, 2019, DHSMV issued a Request for Quotes (RFQ) for a credential service provider solution to support digital driver license qualified entities and electronic credential service providers. DHSMV intends to contract for this service by March 2020.[63]

Regulation of Money Transmitters and Payment Instrument Sellers

State Regulation

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[64] The Division of Consumer Finance within OFR licenses and regulates various aspects of the non-depository financial services industries, including money services businesses (MSBs) regulated under ch. 560, F.S. Money transmitters and payment instrument sellers are two types of MSBs, and both are regulated under part II of ch. 560, F.S.

A money transmitter receives currency,[65] monetary value,[66] or payment instruments[67] for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country.[68] A payment instrument seller sells, issues, provides, or delivers a payment instrument.[69] State and federally chartered financial depository institutions, such as banks and credit unions, are exempt from licensure as an MSB.[70]

An applicant for a MSB license under ch. 560, F.S., must file an application with OFR and pay an application fee of $375.[71] The license must be renewed every two years by paying a renewal fee of $750.[72] Money transmitters and payment instrument sellers may operate through authorized vendors by providing OFR with specified information about the authorized vendor and by paying a fee of $38

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[56] S. 322.032(4), F.S.
[57] S. 775.082, F.S.
[58] S. 775.083(1)(c), F.S.
[59] S.775.084, F.S.
[60] S. 775.082, F.S.
[61] S. 775.083(1)(e), F.S.
[62] Operational Work Plan for proviso in ch. 2019-115, s. 2743, Laws of Florida, submitted on Dec. 16, 2019, by DHSMV (on file with the Government Operations & Technology Appropriations Subcommittee).
[63] DHSMV RFQ, FLHSMV-RFQ-078-19 (on file with the Government Operations & Technology Appropriations Subcommittee).
[64] S. 20.121(3)(a)2., F.S.
[65] The term "currency" means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country. S. 560.103(11), F.S.
[66] The term "monetary value" means a medium of exchange, whether or not redeemable in currency. S. 560.103(21), F.S.
[67] The term "payment instrument" means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit. S. 560.103(29), F.S.
[68] S. 560.103(23), F.S.
[69] S. 560.103(30) and (34), F.S.; *supra* note 62.
[70] S. 560.104, F.S.
[71] Ss. 560.141 and 560.143, F.S.
[72] *Id.*; s. 560.142, F.S.

per authorized vendor location at the time of application and renewal.[73] A money transmitter or payment instrument seller may also engage in the activities authorized for check cashers[74] and foreign currency exchangers[75] without paying additional licensing fees.[76]

A money transmitter or payment instrument seller must at all times:

- Have a net worth of at least $100,000 and an additional net worth of $10,000 per location in this state, up to a maximum of $2 million.[77]
- Have a corporate surety bond in an amount between $50,000 and $2 million depending on the financial condition, number of locations, and anticipated volume of the licensee.[78] In lieu of a corporate surety bond, the licensee may deposit collateral such as cash or interest-bearing stocks and bonds with a federally insured financial institution.[79]
- Possess permissible investments, such as cash and certificates of deposit, with an aggregate market value of at least the aggregate face amount of all outstanding money transmissions and payment instruments issued or sold by the licensee or an authorized vendor in the United States.[80] OFR may waive the permissible investments requirement if the dollar value of a licensee's outstanding payment instruments and money transmitted do not exceed the bond or collateral deposit.[81]

While MSBs are generally subject to federal anti-money laundering laws,[82] Florida law contains many of the same anti-money laundering reporting requirements and recordkeeping requirements with the added benefit of state enforcement. An MSB applicant must have an anti-money laundering program that meets the requirements of federal law.[83]

Pursuant to the Florida Control of Money Laundering in Money Services Business Act, an MSB must maintain certain records of each transaction involving currency or payment instruments in order to deter the use of a money services business to conceal proceeds from criminal activity and to ensure the availability of such records for criminal, tax, or regulatory investigations or proceedings.[84] An MSB must keep records of each transaction occurring in this state which it knows to involve currency or other payment instruments having a greater value than $10,000; to involve the proceeds of specified unlawful activity; or to be designed to evade the reporting requirements of ch. 896, F.S., or the Florida Control of Money Laundering in Money Services Business Act.[85] OFR may take administrative action against an MSB for failure to maintain or produce documents required by ch. 560, F.S., or federal anti-money laundering laws.[86] OFR may also take administrative action against an MSB for other violations of federal anti-money laundering laws such as failure to file suspicious activity reports.[87]

A money transmitter or payment instrument seller must maintain specified records for at least five years, including the following:[88]

- A daily record of payment instruments sold and money transmitted.
- A general ledger containing all asset, liability, capital, income, and expense accounts, which must be posted at least monthly.

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[73] *Id.*; ss. 560.203, 560.205, and 560.208, F.S.
[74] The term "check casher" means a person who sells currency in exchange for payment instruments received, except travelers checks. S. 560.103(6), F.S.
[75] The term "foreign currency exchanger" means a person who exchanges, for compensation, currency of the United States or a foreign government to currency of another government. S. 560.103(17), F.S.
[76] S. 560.204(2), F.S.
[77] S. 560.209, F.S.
[78] *Id.*
[79] *Id.*
[80] S. 560.210, F.S.
[81] *Id.*
[82] 31 C.F.R. pt. 1022.
[83] S. 560.1401, F.S.
[84] S. 560.123, F.S.
[85] *Id.*
[86] S. 560.114, F.S.
[87] *Id.*
[88] Ss. 560.1105 and 560.211, F.S.

- Daily settlement records received from authorized vendors.
- Monthly financial institution statements and reconciliation records.
- Records of outstanding payment instruments and money transmitted.
- Records of each payment instrument paid and money transmission delivered.
- A list of the names and addresses of all of the licensee's authorized vendors.
- Records that document the establishment, monitoring, and termination of relationships with authorized vendors and foreign affiliates.
- Any additional records, as prescribed by rule, designed to detect and prevent money laundering.

Federal Regulation

The Financial Crimes Enforcement Network of the United States Department of Treasury (FinCEN) serves as the nation's financial intelligence unit and is charged with safeguarding the United States financial system from the abuses of money laundering, terrorist financing, and other financial crimes.[89] The basic concept underlying FinCEN's core activities is "follow the money" because criminals leave financial trails as they try to launder the proceeds of crimes or attempt to spend their ill-gotten profits.[90] To that end, FinCEN administers the Bank Secrecy Act (BSA).[91] BSA regulations require banks and other financial institutions, including MSBs, to take a number of precautions against financial crime.[92] BSA regulations require financial institutions to establish an anti-money laundering program (such as verifying customer identity), maintain certain records (such as transaction related data), and file reports (such as suspicious activity reports and currency transaction reports) that have been determined to have a high degree of usefulness in criminal, tax, and regulatory investigations, as well as in certain intelligence and counter-terrorism matters.[93]

Generally, an MSB is required to register with FinCEN, regardless of whether the MSB is licensed with the state, if it conducts more than $1,000 in business with one person in one or more transactions on the same day, in one or more of the following services: money orders, traveler's checks, check cashing, currency dealing, or exchange.[94] However, an MSB must register with FinCEN if it provides money transfer services in any amount.[95]

BSA regulations define "money transmission services" as "the acceptance of currency, funds, or *other value that substitutes for currency* from one person and the transmission of currency, funds, or *other value that substitutes for currency* to another location or person by any means."[96] Depending on the facts and circumstances surrounding a transaction, a person transmitting virtual currency may fall under FinCEN's BSA regulations.[97]

Federal law criminalizes money transmission if the money transmitting business:[98]

- Is operated without a license in a state where such unlicensed activity is subject to criminal sanctions;
- Fails to register with FinCEN; or
- Otherwise involves the transportation or transmission of funds that are known to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity.

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[89] FinCEN, *What We Do*, https://www.fincen.gov/what-we-do (last visited Feb. 20, 2020).
[90] *Id.*
[91] Many of the federal provisions of the BSA have been codified in ch. 560, F.S., which has provided OFR with additional compliance and enforcement tools.
[92] *Supra* note 87.
[93] *Id.*
[94] 31 C.F.R. § 1010.100 and 1022.380.
[95] *Id.*
[96] 31 C.F.R. § 1010.100.
[97] FinCEN Guidance, *Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies, FIN-2019-G001* (May 9, 2019), https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf (last visited Jan. 31, 2020).
[98] 31 U.S.C. § 1960.

Financial Technology

Financial technology, often referred to as "FinTech", encompasses a wide array of innovation in the financial services space. FinTech is technology-enabled innovation in financial services that could result in new business models, applications, processes, or products with an associated material effect on the provision of financial services.[99] Technological innovation holds great promise for the provision of financial services, with the potential to increase market access, the range of product offerings, and convenience while also lowering costs to clients.[100] Greater competition and diversity in lending, payments, insurance, trading, and other areas of financial services can create a more efficient and resilient financial system.[101] Drivers of FinTech innovations include technology, regulation, and evolving consumer preferences, including customization.[102]

FinTech innovation is often thought to be synonymous with disruption of the traditional financial services market structure and its providers, such as banks. However, to date, the relationship between incumbent financial institutions and FinTech firms appears to be largely complementary and cooperative in nature.[103] FinTech firms have generally not had sufficient access to the low-cost funding or the customer base necessary to pose a serious competitive threat to established financial institutions in mature financial market segments.[104] Partnering allows FinTech firms to viably operate while still being relatively small and, depending on the jurisdiction and the business model, unburdened by some financial regulation while still benefitting from access to incumbents' client base.[105] At the same time, incumbents benefit from access to innovative technologies that provide a competitive edge.[106] Yet there are exceptions to this trend, as some FinTech firms have established inroads in credit provision and payments.[107]

Effect of the Bill

State Information Technology

The bill abolishes DST and establishes the Florida Digital Service (FDS) in its place. FDS is a subdivision of DMS. The bill provides that the mission of FDS is to "create innovative solutions that securely modernize state government and achieve value through digital transformation and interoperability." The bill expands the duties and responsibilities currently assigned to DMS and DST and assigns new duties and responsibilities to FDS. The bill provides that FDS is tasked with the following *new* duties and responsibilities:

- Creating and maintaining a comprehensive indexed data catalog.
- Developing and publishing a data dictionary for each agency.
- Developing solutions for authorized, mandated, or encouraged use cases in collaboration with the enterprise.[108]
- Reviewing and documenting use cases across the enterprise architecture (EA).[109]

[99] Financial Stability Board, *FinTech and market structure in financial services: Market developments and potential financial stability implications* (Feb. 14, 2019), https://www.fsb.org/2019/02/fintech-and-market-structure-in-financial-services-market-developments-and-potential-financial-stability-implications/ (last visited Jan. 31, 2020).
[100] *Id.*
[101] *Id.*
[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] *Id.*
[106] *Id.*
[107] *Id.*
[108] The bill defines "enterprise" to mean the collection of state agencies as defined in s. 282.0041, F.S., except that the term includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, the Department of Financial Services, and the judicial branch of government.
[109] The bill defines "enterprise architecture" to mean a comprehensive operational framework that contemplates the needs and assets of the enterprise to support interoperability across state government.

- Developing, publishing, and managing an application programming interface to facilitate integration throughout the enterprise.
- Facilitating collaborative analysis of EA data to improve service delivery.
- Providing a testing environment in which any newly developed solution can be tested for compliance with the EA and for functionality assurance before deployment.
- Creating the functionality necessary for a secure ecosystem of data interoperability that is compliant with the EA and allowing a qualified entity to access the stored data.
- Developing a process to receive written notice from state agencies within the enterprise of any planned or existing procurement of an IT project that is subject to governance by the EA.
- Developing a process to intervene in any planned procurement so that it complies with the EA.
- Requiring FDS to report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on any IT project within the judicial branch that does not comply with the EA.
- Requiring the state CIO appoint a chief data officer (CDO). The CDO reports to the CIO and is included in the Senior Management Service class of the Florida Retirement System.
- Requiring FDS to develop a comprehensive EA for the enterprise that:
    - Recognizes the unique needs of those within the enterprise and results in the publication of standards and terminologies, procurement guidelines, and the facilitation of digital interoperability;
    - Supports the state's cloud-first policy; and
    - Addresses how IT infrastructure may be modernized to achieve current and future cloud-first objectives.
- Requiring FDS to develop and deploy applications or solutions to existing enterprise obligations in a controlled and phased approach including:
    - Digital licenses, including full identification management;
    - Interoperability that enables supervisors of elections to authenticate voter eligibility in real time at the point of service;
    - The criminal justice database;
    - Motor vehicle insurance cancellation integration between insurers and DHSMV;
    - Interoperability solutions between agencies including, but not limited to, the Department of Health, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Education, the Department of Elderly Affairs, and the Department of Children and Families; and
    - Interoperability solutions to support military members and their families.

The bill makes the following changes to the duties and responsibilities of FDS currently in law:

- Expands the types of agency projects over which FDS has oversight from state agency IT projects that have a total cost of $10 million or more and cabinet agency IT projects that have a total cost of $25 million or more, to projects meeting those thresholds with *any* technology component;
- Requires FDS to identify opportunities for standardization and consolidation of IT services that support interoperability and the state's cloud-first policy;
- Requires FDS to develop and implement other payment mechanisms to recover the cost of SDC services through charges to the applicable customer entities; and
- Eliminates the requirement that FDS conduct an annual market analysis to determine whether the state's approach to SDC services is the most effective and cost-efficient manner by which customer entities can acquire such services.

In addition to the duties described above, FDS also must procure a credential service provider (CSP), pursuant to legislative authorization and subject to appropriation. The CSP is a provider that supplies secure identity management and verification services based on open standards to qualified entities. DMS is required to enter into agreements with electronic credential providers (ECP) that have the technological capabilities necessary to integrate with the CSP as well as:

- Ensure secure validation and authentication of data;
- Meet usage criteria;

- Agree to terms and conditions, privacy policies, and uniform remittance terms relating to the consumption of a digital driver license or identification; and
- Include clear, enforceable, and significant penalties for violating the agreements.

The bill provides that the agreements between DMS and the CSP, ESP, and qualified entities[110] must be based on the per-data-call[111] or subscription charges to validate and authenticate a digital license or identification card. All revenue generated must be remitted to DMS and deposited in the DMS Operating Trust Fund for distribution pursuant to legislative appropriation. However, the revenue may not be derived from sources other than the per-data-call or subscription charges.

Once a qualified entity or an ECP signs the EA terms of service and privacy policy, the FDS must provide appropriate access to the stored data to facilitate authorized integrations to collaboratively solve enterprise use cases.

The bill creates the Enterprise Architecture Advisory Council (Council) as an advisory council[112] within DMS. The Council is composed of 13 members appointed to staggered terms of four years. The Council consists of:

- Four members appointed by the Governor;
- The director of the Office of Policy and Budget in the Executive Office of the Governor, or the person acting in the director's capacity should the position be vacant;
- The Secretary of Management Services or the person acting in the secretary's capacity should the position be vacant;
- The state CIO or the person acting in the CIO's capacity should the position be vacant;
- One member appointed by the Chief Justice of the Florida Supreme Court;
- One member appointed by the President of the Senate;
- One member appointed by the Speaker of the House of Representatives;
- The CIO of the Department of Financial Services or the person acting in the CIO's capacity should the position be vacant;
- The CIO of the Department of Legal Affairs or the person acting in the CIO's capacity should the position be vacant;
- The CIO of the Department of Agriculture and Consumer Services or the person acting in the CIO's capacity should the position be vacant.

The Council must meet semiannually beginning October 1, 2020, to discuss implementation, management, and coordination of the EA; identify potential issues and threats with specific use cases; and recommend proactive solutions.

The bill re-establishes the Division of Telecommunications within DMS and places the Division of Telecommunications as the new head of the E911 system in Florida.

Financial Technology Sandbox

The bill creates the Financial Technology Sandbox (sandbox) within OFR to allow financial technology innovators to test new products and services in a supervised, flexible regulatory sandbox, using waivers of specified general law and corresponding rule requirements under defined conditions.

The sandbox allows a person to make an innovative financial product or service available to consumers as a money transmitter or payment instrument seller during a period that is initially not longer than 24

[110] The bill defines "qualified entity" to mean a public or private entity or individual that enters into a binding agreement with DMS, meets usage criteria, agrees to terms and conditions, and is subsequently and prescriptively authorized by the department to access data under the terms of that agreement.
[111] The bill defines "data-call" to mean an electronic transaction with the CSP that verifies the authenticity of a digital identity by querying enterprise data.
[112] The term " council" or "advisory council" means an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives. S. 20.03(7), F.S.

months but which can be extended one time for up to 12 months. A “financial product or service” is a product or service related to money transmitters and payment instrument sellers, including mediums of exchange that are in electronic or digital form, which is subject to general law or corresponding rule requirements in the enumerated statutes that may be waived by OFR. “Innovative” means new or emerging technology, or new uses of existing technology, which provides a product, service, business model, or delivery mechanism to the public.

The bill authorizes OFR to waive the following statutes and corresponding rule requirements for purposes of the sandbox:

- Section 560.1105, F.S., relating to records retention.
- Section 560.118, F.S., relating to reports.
- Section 560.125, F.S., relating to unlicensed activity; penalties. However, OFR may not waive the portion of the statute that permits only a money services business licensed as a money transmitter or payment instrument seller to appoint an authorized vendor.
- Section 560.128, F.S., relating to customer contacts; license display.
- Section 560.1401, F.S., relating to licensing standards. However, OFR may not waive the portions of the statute that require an applicant to be legally authorized to do business in this state, to be licensed with FinCEN (if applicable), and to have an anti-money laundering program in place.
- Section 560.141, F.S., relating to license application. However, OFR may not waive the portions of the statute that impose a licensing fee, require fingerprints and background checks, and require the applicant to provide a copy of the applicant’s anti-money laundering program.
- Section 560.142, F.S., relating to license renewal. However, OFR may prorate, but may not entirely waive, the license renewal fees for an extension granted under the sandbox.
- Section 560.143(2), F.S., relating to license renewal fees, to the extent necessary for proration of the renewal fee.
- Section 560.205, F.S., relating to additional license application requirements. However, OFR may not waive portions of the statute requiring an applicant to provide a sample authorized vendor contract (if applicable) and documents demonstrating that the net worth and bond requirements have been fulfilled.
- Section 560.208, F.S., relating to conduct of business. However, OFR may not waive portions of the statute making a licensee responsible for the acts of its authorized vendors, requiring a licensee to place customer assets in a segregated account in a federally insured financial institution, and requiring a licensee to ensure that money transmitted is available to the designated recipient within 10 business days after receipt.
- Section 560.209, F.S., relating to net worth; corporate surety bond; collateral deposit in lieu of bond. However, OFR may modify, but may not entirely waive, the net worth, corporate surety bond, and collateral deposit amounts. The modified amounts must be in such lower amounts that OFR determines to be commensurate with specified considerations regarding the sandbox application and commensurate with the maximum number of consumers authorized to receive the financial product or service under the sandbox.

OFR may grant a waiver if the general law or corresponding rule currently prevents the innovative financial product or service to be made available to consumers. No provision relating to the liability of an incorporator, director, or officer of the applicant is eligible for a waiver. The waiver must not be broader than necessary to accomplish the purposes and standards of the sandbox, as determined by OFR.

Before filing a sandbox application, a substantially affected person may seek a declaratory statement regarding the applicability of a statute, rule, or agency order to the petitioner’s particular set of circumstances. Before a person applies on behalf of a business entity intending to make an innovative financial product or service available to consumers, the person must obtain the consent of the business entity. A business entity filing an application must be a domestic corporation or other organized domestic entity with a physical presence, other than that of a registered office or agent or virtual mailbox, in this state.

In the sandbox application, the applicant must specify the general law or rule requirements for which a waiver is sought, and the reasons why these requirements prevent the innovative financial product or service from being made available to consumers. The application must also contain the following information, which OFR must consider in deciding whether to approve or deny an application:

- The nature of the innovative financial product or service proposed to be made available to consumers in the sandbox, including all relevant technical details.
- The potential risk to consumers and the methods that will be used to protect consumers and resolve complaints during the sandbox period.
- The business plan proposed by the applicant, including a statement regarding the applicant's current and proposed capitalization.
- Whether the applicant has the necessary personnel, adequate financial and technical expertise, and a sufficient plan to test, monitor, and assess the innovative financial product or service.
- Whether any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service has pled no contest to, has been convicted or found guilty of, or is currently under investigation for, fraud, a state or federal securities violation, a property-based offense, or a crime involving moral turpitude or dishonest dealing. A plea of no contest, a conviction, or a finding of guilt must be reported under this subparagraph regardless of adjudication.
- A copy of specified disclosures that will be provided to consumers.
- The financial responsibility of any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service.
- Any other factor OFR determines to be relevant.

OFR may not approve an application if:

- The applicant had a prior sandbox application that was approved and that related to a substantially similar financial product or service; or
- Any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service was substantially involved in such with another sandbox applicant whose application was approved and whose application related to a substantially similar financial product or service.

OFR must approve or deny in writing an application within 60 days after receiving the completed application, though OFR and the applicant may jointly agree to extend the time beyond 60 days. OFR may impose conditions on any approval, consistent with the sandbox. Upon approval of an application, OFR must specify the general law or rule requirements, or portions thereof, for which a waiver is granted during the sandbox period and the length of the initial sandbox period, not to exceed 24 months.

A person whose sandbox application is approved must be deemed licensed under part II of ch. 560, F.S., unless the person's authorization to make the financial product or service available to consumers under the sandbox has been revoked or suspended.

OFR must post on its website notice of the approval of the application, a summary of the innovative financial product or service, and the contact information of the person making the financial product or service available.

OFR may, on a case-by-case basis, specify the maximum number of consumers authorized to receive an innovative financial product or service, after consultation with the person who makes the financial product or service available to consumers. OFR may not authorize more than 15,000 consumers to receive the financial product or service until the sandbox participant has filed the first report required under the sandbox. After the filing of the report, if the person demonstrates adequate financial capitalization, risk management process, and management oversight, OFR may authorize up to 25,000 consumers to receive the financial product or service.

The person making the financial product or service available must provide a written statement to the consumer, which must contain an acknowledgement from the consumer, of all of the following information:

- The name and contact information of the person making the financial product or service available to consumers.
- That the financial product or service has been authorized to be made available to consumers for a temporary period by OFR under the laws of Florida.
- That the state does not endorse the financial product or service.
- That the financial product or service is undergoing testing, may not function as intended, and may entail financial risk.
- That the person making the financial product or service available to consumers is not immune from civil liability for any losses or damages caused by the financial product or service.
- The expected end date of the sandbox period.
- The contact information for the office, and notification that suspected legal violations, complaints, or other comments related to the financial product or service may be submitted to the office.
- Any other statements or disclosures required by rule of the Financial Services Commission (commission), which are necessary to further the purposes of this section.

OFR may enter into an agreement with a state, federal, or foreign regulatory agency to allow persons who make an innovative financial product or service available in this state through the sandbox to make their products or services available in other jurisdictions.

A sandbox participant must maintain comprehensive records relating to the innovative financial product or service and must keep these records for at least five years after the conclusion of the sandbox period. The commission may specify by rule additional records requirements. OFR may examine these records at any time, with or without notice.

A sandbox participant may apply for an extension of the initial sandbox period for up to 12 additional months. An application for an extension must cite one of the following reasons as the basis for the application and must provide all relevant supporting information that:

- Amendments to general law or rules are necessary to offer the innovative financial product or service in this state permanently.
- An application for a license that is required in order to offer the innovative financial product or service in this state permanently has been filed with OFR, and approval is pending.

A complete application for an extension must be filed at least 90 days before the conclusion of the initial sandbox period. OFR must approve or deny the application for extension in writing at least 35 days before the conclusion of the initial sandbox period. In deciding to approve or deny an application for extension of the sandbox period, OFR must, at a minimum, consider the current status of the factors previously considered at the time of application for the initial sandbox period.

At least 30 days before the conclusion of the initial sandbox period or the extension, whichever is later, the sandbox participant must provide written notification to consumers regarding the conclusion of the initial sandbox period or the extension and may not make the financial product or service available to any new consumers after the conclusion of the initial sandbox period or the extension, whichever is later, until legal authority outside of the sandbox exists to make the financial product or service available to consumers. After the conclusion of the sandbox period or the extension, whichever is later, the person may:

- Collect and receive money owed to the person or pay money owed by the person, based on agreements with consumers made before the conclusion of the sandbox period or the extension.
- Take necessary legal action.
- Take other actions authorized by commission rule, which are not inconsistent with the sandbox.

A sandbox participant must submit a report to OFR twice a year as prescribed by rule. The report must, at a minimum, include financial reports and the number of consumers who have received the financial product or service.

A sandbox participant is not immune from civil damages and is subject to all criminal and consumer protection laws.

OFR may, by order, revoke or suspend authorization granted to a sandbox participant if:

- The sandbox participant has violated or refused to comply with the sandbox statute, a rule of the commission, an order of OFR, or a condition placed by OFR on the approval of the person's sandbox application;
- A fact or condition exists that, if it had existed or become known at the time that the sandbox application was pending, would have warranted denial of the application or the imposition of material conditions;
- A material error, false statement, misrepresentation, or material omission was made in the sandbox application; or
- After consultation with the person, continued testing of the innovative financial product or service would be likely to harm consumers or would no longer serve the purposes of the sandbox because of the financial or operational failure of the financial product or service.

Written notice of a revocation or suspension order must be served using any means authorized by law. If the notice relates to a suspension, the notice must include any condition or remedial action that the person must complete before OFR lifts the suspension. OFR may refer any suspected violation of law to an appropriate state or federal agency for investigation, prosecution, civil penalties, and other appropriate enforcement actions. If service of process on a sandbox participant is not feasible, service on OFR is deemed service on such person.

The commission must adopt rules to administer the sandbox. OFR may issue all necessary orders to enforce the sandbox statute and may enforce these orders in accordance with ch. 120, F.S., or in any court of competent jurisdiction. These orders include, but are not limited to, orders for payment of restitution for harm suffered by consumers as a result of an innovative financial product or service.

B. SECTION DIRECTORY:

Section 1. Amends s. 20.22, F.S., relating to DMS.

Section 2. Amends s. 282.0041, F.S., creating definitions for “credential service provider,” “data-call,” “electronic,” “electronic credential,” “electronic credential provider,” “enterprise,” “enterprise architecture,” “interoperability,” and “qualified entity.”

Section 3. Amends s. 282.0051, F.S., relating to FDS; powers, duties, and functions.

Section 4. Amends s. 282.00515, F.S., relating to the EA Advisory Council.

Section 5. Amends s. 282.318, F.S., relating to security of data and IT.

Section 6. Amends s. 287.0591, F.S., relating to IT.

Section 7. Amends s. 365.171, F.S., relating to emergency communications number E911 state plan.

Section 8. Amends s. 365.172, F.S., relating to emergency communications number "E911."

Section 9. Amends s. 365.173, F.S., relating to Communications Number E911 System Fund.

Section 10. Amends s. 943.0415, F.S., relating to Cybercrime Office.

Section 11. Creates s. 560.214, F.S., relating to the sandbox.

Section 12. For FY 2020-2021, provides an appropriation to OFR to implement the sandbox.

Section 13. Provides an effective date of January 1, 2021, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may result in a positive fiscal impact on state government revenues as it requires certain entities that use the newly created electronic credential functionality to pay a per-use fee or purchase a subscription in order to verify the authenticity of a digital identity. The bill specifies that all revenue generated must be remitted to DMS and deposited in the DMS Operating Trust Fund for distribution pursuant to legislative appropriation.

   The bill may also result in a negative impact on state agencies that currently derive revenues from data transactions such as DHSMV (driver license related data), the Department of Health (vital statistics certificates), and the Florida Department of Law Enforcement (criminal history records). In FY 2018-19, DHSMV received $82.8 million related to public records requests for driver license related data, as authorized in Florida Statutes. This includes the records and fees authorized in ss. 322.20 and 320.05(3)(b)8., F.S. This revenue supports DHSMV operations including the Florida Highway Patrol.[113]

2. Expenditures:

   The bill will have a negative, significant fiscal impact on state government expenditures as it considerably expands the current duties of DMS, and its subdivisions, relating to state IT management, and places new responsibilities on DMS. It is unclear what if any of the bill's requirements could be absorbed within DMS's current resources. The current DST has no resources or staffing for application development nor for the implementation and maintenance of procured systems. The current Office of the State CIO within DST has four staff for project oversight – a task that is considerably expanded in the bill. The bill also adds review of all planned state agency information technology procurements subject to the EA, a significant workload that cannot be handled with the five current strategic planning coordinators within DST.

   The bill may have a negative, significant fiscal impact on cabinet agencies, each of which are currently authorized in law to optionally develop its own standards for IT infrastructure, project management, and reporting, independent from those standards established by DST. It is unknown as to the scope and cost of remediation that may be necessary for these agencies to adhere to new enterprise standards developed by FDS.

   The bill may have a negative, significant fiscal impact on state agencies and the judicial branch. It is unknown as to the scope and cost of remediation that may be necessary for these entities to adhere to new EA standards developed by FDS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   The impact of the sandbox on the private sector is indeterminate, as it is unknown how many businesses may participate, what types of products or services such businesses would offer, and how many consumers in total would be offered the products or services.

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[113] Email from Suzie Carey, Chief Financial Officer for DHSMV (Feb. 7, 2020).

D. FISCAL COMMENTS:

No funding has been requested by DMS or provided in the bill for the new and expanded responsibilities identified in the bill, except for the establishment of a data catalog as requested in DMS' FY 2020-21 legislative budget request, which has been funded in both the House of Representatives and Senate appropriations bills. Most of the new FDS duties are subject to legislative appropriation.

The bill will have a negative fiscal impact on OFR. Under the sandbox, the fees will be the same as under the existing license in part II of ch. 560, F.S., except that the renewal fee can be prorated because the sandbox can only be extended for up to one year, whereas the renewed license under part II of ch. 560, F.S., is for a two-year period. Depending on the number of participants and the complexity of oversight, OFR may need more staff. Additionally, OFR will need to make changes to its IT infrastructure in order to administer the program. According to OFR, such changes will cost an estimated $250,115.[114] The bill appropriates $50,000 in nonrecurring funds for FY 2020-2021 from the Administrative Trust Fund for the amount that cannot be funded out of existing appropriations within OFR.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill requires the commission[115] to adopt rules to administer the sandbox. Section 560.105(2), F.S., appears to grant the commission with sufficient authority to promulgate the rules required by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- The bill expands DMS project oversight from "information technology projects" to projects with an "information technology component," which is not defined in the bill or in current law.
- The bill requires FDS to create functionality that allows qualified entities to "access stored data," but "stored data" is not defined, and the bill does not provide authority for FDS to access, share, or monetize other agencies' data, which would be needed for FDS to procure a CSP and to enter into revenue sharing agreements.
- DHSMV has already been funded in the 2019 General Appropriations Act to procure a CSP and plans to execute a contract by March 2020. The bill does not address this duplication of effort.
- The bill does not identify what types or combinations of state data are authorized to be provided to qualified entities, nor does it identify usage criteria or for what authorized purposes qualified entities may be provided certain state data.
- There are no provisions in the bill to ensure the authorized use of state data. DHSMV and other states' departments of motor vehicles have had to revoke records access with requesting parties for misuse or abuse of data.[116]
- While the bill does require that agreements with ECPs include clear, enforceable, and significant penalties for violations of the agreements, it is unknown what penalty mechanisms are available

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[114] Email from Alex Anderson, Director of Governmental Relations for the OFR, RE: PCS for HB 1391 Fiscal Impact (Feb. 3, 2020).
[115] The commission is composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. S. 20.121(3), F.S. The commission members are OFR's agency head for the purpose of rulemaking. S. 20.121(3)(c), F.S.
[116] *See* Joseph Cox, *DMVs Are Selling Your Data to Private Investigators*, VICE NEWS (Sept. 5, 2019), https://www.vice.com/en_us/article/43kxzq/dmvs-selling-data-private-investigators-making-millions-of-dollars (last visited Feb. 20, 2020).

to FDS for violations. Additionally, this penalty language in the bill only applies to ECPs and not to qualified entities.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Insurance & Banking Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute:

- Creates the EA Advisory Council.
- Removes a provision that allowed FDS to use best practices instead of the procurement procedures in ch. 287, F.S.
- Requires DMS to enter into agreements with certain entities regarding digital licenses and requires that revenues resulting from the agreements be deposited into the working capital trust fund.
- Removes a provision requiring the CISO to have 10 years of experience.
- Provides additional definitions.
- Narrows the scope of the sandbox to focus on money transmitters and payment instrument sellers.
- Makes other technical and conforming changes.

On February 11, 2020, the Government Operations & Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Removes provisions governing the experience required for the State Chief Information Officer.
- Removes provisions governing the experience required for the Chief Data Officer.
- Requires that certain duties of the FDS be pursuant to legislative appropriation.
- Requires that procurement of a credential service provider and agreements with qualified entities be pursuant to legislative authorization and subject to appropriation.
- Requires all revenues generated from agreements with the credential service provider and qualified entities be remitted to DMS.
- Changes the fund for the depositing of revenues from the working capital trust fund to the DMS Operating Trust Fund.
- Clarifies the contract with the credential service provider allow the enterprise to use the service at no cost.
- Requires FDS to report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on any IT project within the judicial branch that does not comply with the enterprise architecture.
- Changes the membership of the Enterprise Architecture Advisory Council.
- Makes other technical and conforming changes.

The analysis is drafted to the committee substitute as approved by the Government Operations & Technology Appropriations Subcommittee.

1 A bill to be entitled
2 An act relating to technology innovation; amending s.
3 20.22, F.S.; renaming the Division of State Technology
4 within the Department of Management Services; adding
5 the Florida Digital Service to the department;
6 amending s. 282.0041, F.S.; providing definitions;
7 amending s. 282.0051, F.S.; establishing the Florida
8 Digital Service within the department; transferring
9 specified powers, duties, and functions; providing
10 appointments and duties of the state chief information
11 officer and chief data officer of the Florida Digital
12 Service; requiring the Florida Digital Service to
13 develop a comprehensive enterprise architecture;
14 providing requirements for such enterprise
15 architecture; providing powers and duties of the
16 Florida Digital Service; providing powers and duties
17 of the department under certain circumstances;
18 providing requirements for the procurement terms of
19 contract under certain circumstances; prohibiting
20 costs to the enterprise and law enforcement for using
21 services provided by credential service providers
22 under certain circumstances; providing requirements
23 for agreements between the department and credential
24 service providers, electronic credential providers,
25 and qualified entities under certain circumstances;

26 providing disposition of revenues generated from such
27 agreements under certain circumstances; providing
28 report requirements; providing rulemaking authority;
29 amending s. 282.00515, F.S.; deleting provisions
30 relating to specified duties and powers of the
31 Department of Legal Affairs, the Department of
32 Financial Services, and the Department of Agriculture
33 and Consumer Services; establishing the Enterprise
34 Architecture Advisory Council; requiring the council
35 to comply with specified requirements; providing
36 membership and meeting requirements and duties of the
37 council; amending ss. 282.318, 287.0591, 365.171,
38 365.172, 365.173, and 943.0415, F.S.; conforming
39 provisions to changes made by the act; creating s.
40 560.214, F.S.; providing a short title; creating the
41 Financial Technology Sandbox; providing definitions;
42 providing certain waivers of requirements to specified
43 persons under certain circumstances; requiring an
44 application for the program for persons who want to
45 make innovative financial products or services
46 available to consumers; providing application
47 requirements; providing standards for application
48 approval or refusal; requiring the Office of Financial
49 Regulation to perform certain actions upon approval of
50 an application; providing operation of the sandbox;

51 providing limitations on the number of consumers of
52 innovative financial products or services; authorizing
53 the office to enter into agreement with certain
54 regulatory agencies for specified purposes; providing
55 recordkeeping requirements; providing rulemaking
56 authority; authorizing the office to examine specified
57 records; providing extension and conclusion of the
58 sandbox period; requiring written notification to
59 consumers at the end of an extension or conclusion of
60 the sandbox period; providing acts that persons who
61 make innovative financial products or services
62 available to consumers may and may not engage in at
63 the end of an extension or conclusion of the sandbox
64 period; requiring such persons to submit a report;
65 providing construction; providing that such persons
66 are not immune from civil damages and are subject to
67 criminal and consumer protection laws; providing
68 penalties; providing service of process; requiring the
69 Financial Services Commission to adopt rules;
70 authorizing the office to issue certain orders and to
71 enforce them under ch. 120, F.S., or in court;
72 authorizing the office to issue and enforce orders for
73 payment of restitution; providing an appropriation;
74 providing effective dates.
75

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

77

78 Section 1. Subsection (2) of section 20.22, Florida
79 Statutes, is amended to read:

80 20.22 Department of Management Services.—There is created
81 a Department of Management Services.

82 (2) The ~~following divisions and programs within the~~
83 Department of Management Services shall consist of the following
84 ~~are established~~:

85 (a) The Facilities Program.

86 (b) The Division of Telecommunications ~~State Technology,~~
87 ~~the director of which is appointed by the secretary of the~~
88 ~~department and shall serve as the state chief information~~
89 ~~officer. The state chief information officer must be a proven,~~
90 ~~effective administrator who must have at least 10 years of~~
91 ~~executive-level experience in the public or private sector,~~
92 ~~preferably with experience in the development of information~~
93 ~~technology strategic planning and the development and~~
94 ~~implementation of fiscal and substantive information technology~~
95 ~~policy and standards~~.

96 (c) The Workforce Program.

97 (d)1. The Support Program.

98 2. The Federal Property Assistance Program.

99 (e) The Administration Program.

100 (f) The Division of Administrative Hearings.

101 (g) The Division of Retirement.
102 (h) The Division of State Group Insurance.
103 (i) The Florida Digital Service.
104 Section 2. Section 282.0041, Florida Statutes, is amended
105 to read:
106 282.0041 Definitions.—As used in this chapter, the term:
107 (1) "Agency assessment" means the amount each customer
108 entity must pay annually for services from the Department of
109 Management Services and includes administrative and data center
110 services costs.
111 (2) "Agency data center" means agency space containing 10
112 or more physical or logical servers.
113 (3) "Breach" has the same meaning as provided in s.
114 501.171.
115 (4) "Business continuity plan" means a collection of
116 procedures and information designed to keep an agency's critical
117 operations running during a period of displacement or
118 interruption of normal operations.
119 (5) "Cloud computing" has the same meaning as provided in
120 Special Publication 800-145 issued by the National Institute of
121 Standards and Technology.
122 (6) "Computing facility" or "agency computing facility"
123 means agency space containing fewer than a total of 10 physical
124 or logical servers, but excluding single, logical-server
125 installations that exclusively perform a utility function such

126 as file and print servers.
127 (7) "Credential service provider" means a provider
128 competitively procured by the department to supply secure
129 identity management and verification services based on open
130 standards to qualified entities.
131 (8) ~~(7)~~ "Customer entity" means an entity that obtains
132 services from the Department of Management Services.
133 (9) ~~(8)~~ "Data" means a subset of structured information in
134 a format that allows such information to be electronically
135 retrieved and transmitted.
136 (10) "Data-call" means an electronic transaction with the
137 credential service provider that verifies the authenticity of a
138 digital identity by querying enterprise data.
139 (11) ~~(9)~~ "Department" means the Department of Management
140 Services.
141 (12) ~~(10)~~ "Disaster recovery" means the process, policies,
142 procedures, and infrastructure related to preparing for and
143 implementing recovery or continuation of an agency's vital
144 technology infrastructure after a natural or human-induced
145 disaster.
146 (13) "Electronic" means technology having electrical,
147 digital, magnetic, wireless, optical, electromagnetic, or
148 similar capabilities.
149 (14) "Electronic credential" means an electronic
150 representation of a physical driver license or identification

151 card that is viewable in an electronic format and is capable of
152 being verified and authenticated.
153 (15) "Electronic credential provider" means a qualified
154 entity contracted with the department to provide electronic
155 credentials to eligible driver license or identification card
156 holders.
157 (16) "Enterprise" means the collection of state agencies.
158 The term includes the Department of Legal Affairs, the
159 Department of Agriculture and Consumer Services, the Department
160 of Financial Services, and the judicial branch.
161 (17) "Enterprise architecture" means a comprehensive
162 operational framework that contemplates the needs and assets of
163 the enterprise to support interoperability across state
164 government.
165 (18) ~~(11)~~ "Enterprise information technology service" means
166 an information technology service that is used in all agencies
167 or a subset of agencies and is established in law to be
168 designed, delivered, and managed at the enterprise level.
169 (19) ~~(12)~~ "Event" means an observable occurrence in a
170 system or network.
171 (20) ~~(13)~~ "Incident" means a violation or imminent threat
172 of violation, whether such violation is accidental or
173 deliberate, of information technology resources, security,
174 policies, or practices. An imminent threat of violation refers
175 to a situation in which the state agency has a factual basis for

176 believing that a specific incident is about to occur.
177 (21) ~~(14)~~ "Information technology" means equipment,
178 hardware, software, firmware, programs, systems, networks,
179 infrastructure, media, and related material used to
180 automatically, electronically, and wirelessly collect, receive,
181 access, transmit, display, store, record, retrieve, analyze,
182 evaluate, process, classify, manipulate, manage, assimilate,
183 control, communicate, exchange, convert, converge, interface,
184 switch, or disseminate information of any kind or form.
185 (22) ~~(15)~~ "Information technology policy" means a definite
186 course or method of action selected from among one or more
187 alternatives that guide and determine present and future
188 decisions.
189 (23) ~~(16)~~ "Information technology resources" has the same
190 meaning as provided in s. 119.011.
191 (24) ~~(17)~~ "Information technology security" means the
192 protection afforded to an automated information system in order
193 to attain the applicable objectives of preserving the integrity,
194 availability, and confidentiality of data, information, and
195 information technology resources.
196 (25) "Interoperability" means the technical ability to
197 share and use data across and throughout the enterprise.
198 (26) ~~(18)~~ "Open data" means data collected or created by a
199 state agency and structured in a way that enables the data to be
200 fully discoverable and usable by the public. The term does not

201 include data that are restricted from public distribution based
202 on federal or state privacy, confidentiality, and security laws
203 and regulations or data for which a state agency is statutorily
204 authorized to assess a fee for its distribution.
205 (27) ~~(19)~~ "Performance metrics" means the measures of an
206 organization's activities and performance.
207 (28) ~~(20)~~ "Project" means an endeavor that has a defined
208 start and end point; is undertaken to create or modify a unique
209 product, service, or result; and has specific objectives that,
210 when attained, signify completion.
211 (29) ~~(21)~~ "Project oversight" means an independent review
212 and analysis of an information technology project that provides
213 information on the project's scope, completion timeframes, and
214 budget and that identifies and quantifies issues or risks
215 affecting the successful and timely completion of the project.
216 (30) "Qualified entity" means a public or private entity
217 or individual that enters into a binding agreement with the
218 department, meets usage criteria, agrees to terms and
219 conditions, and is subsequently and prescriptively authorized by
220 the department to access data under the terms of that agreement.
221 (31) ~~(22)~~ "Risk assessment" means the process of
222 identifying security risks, determining their magnitude, and
223 identifying areas needing safeguards.
224 (32) ~~(23)~~ "Service level" means the key performance
225 indicators (KPI) of an organization or service which must be

226 regularly performed, monitored, and achieved.
227 (33) ~~(24)~~ "Service-level agreement" means a written
228 contract between the Department of Management Services and a
229 customer entity which specifies the scope of services provided,
230 service level, the duration of the agreement, the responsible
231 parties, and service costs. A service-level agreement is not a
232 rule pursuant to chapter 120.
233 (34) ~~(25)~~ "Stakeholder" means a person, group,
234 organization, or state agency involved in or affected by a
235 course of action.
236 (35) ~~(26)~~ "Standards" means required practices, controls,
237 components, or configurations established by an authority.
238 (36) ~~(27)~~ "State agency" means any official, officer,
239 commission, board, authority, council, committee, or department
240 of the executive branch of state government; the Justice
241 Administrative Commission; and the Public Service Commission.
242 The term does not include university boards of trustees or state
243 universities. As used in part I of this chapter, except as
244 otherwise specifically provided, the term does not include the
245 Department of Legal Affairs, the Department of Agriculture and
246 Consumer Services, or the Department of Financial Services.
247 (37) ~~(28)~~ "SUNCOM Network" means the state enterprise
248 telecommunications system that provides all methods of
249 electronic or optical telecommunications beyond a single
250 building or contiguous building complex and used by entities

251 authorized as network users under this part.
252 (38) ~~(29)~~ "Telecommunications" means the science and
253 technology of communication at a distance, including electronic
254 systems used in the transmission or reception of information.
255 (39) ~~(30)~~ "Threat" means any circumstance or event that has
256 the potential to adversely impact a state agency's operations or
257 assets through an information system via unauthorized access,
258 destruction, disclosure, or modification of information or
259 denial of service.
260 (40) ~~(31)~~ "Variance" means a calculated value that
261 illustrates how far positive or negative a projection has
262 deviated when measured against documented estimates within a
263 project plan.
264 Section 3. Section 282.0051, Florida Statutes, is amended
265 to read:
266 282.0051 Florida Digital Service ~~Department of Management~~
267 ~~Services; powers, duties, and functions~~.—There is established
268 the Florida Digital Service within the department to create
269 innovative solutions that securely modernize state government,
270 achieve value through digital transformation and
271 interoperability, and fully support the cloud-first policy as
272 specified in s. 282.206.
273 (1) The Florida Digital Service ~~department~~ shall have the
274 following powers, duties, and functions:
275 (a) ~~(1)~~ Develop and publish information technology policy

276 for the management of the state's information technology
277 resources.
278 (b) ~~(2)~~ Establish and publish information technology
279 architecture standards to provide for the most efficient use of
280 ~~the state's~~ information technology resources and to ensure
281 compatibility and alignment with the needs of state agencies.
282 The Florida Digital Service ~~department~~ shall assist state
283 agencies in complying with the standards.
284 (c) ~~(3)~~ Establish project management and oversight
285 standards with which state agencies must comply when
286 implementing projects that have an information technology
287 component ~~projects~~. The Florida Digital Service ~~department~~ shall
288 provide training opportunities to state agencies to assist in
289 the adoption of the project management and oversight standards.
290 To support data-driven decisionmaking, the standards must
291 include, but are not limited to:
292 1. ~~(a)~~ Performance measurements and metrics that
293 objectively reflect the status of a project with an information
294 technology component ~~project~~ based on a defined and documented
295 project scope, cost, and schedule.
296 2. ~~(b)~~ Methodologies for calculating acceptable variances
297 in the projected versus actual scope, schedule, or cost of a
298 project with an information technology component ~~project~~.
299 3. ~~(c)~~ Reporting requirements, including requirements
300 designed to alert all defined stakeholders that a project with

301 an information technology <u>component</u> ~~project~~ has exceeded
302 acceptable variances defined and documented in a project plan.
303 <u>4.</u>~~(d)~~ Content, format, and frequency of project updates.
304 <u>(d)</u>~~(4)~~ Perform project oversight on all state agency
305 ~~information technology~~ projects that have <u>an information</u>
306 <u>technology component with a</u> total project <u>cost</u> ~~costs~~ of $10
307 million or more and that are funded in the General
308 Appropriations Act or any other law. The <u>Florida Digital Service</u>
309 ~~department~~ shall report at least quarterly to the Executive
310 Office of the Governor, the President of the Senate, and the
311 Speaker of the House of Representatives on any <u>project with an</u>
312 information technology <u>component</u> ~~project~~ that the <u>Florida</u>
313 <u>Digital Service</u> ~~department~~ identifies as high-risk due to the
314 project exceeding acceptable variance ranges defined and
315 documented in a project plan. The report must include a risk
316 assessment, including fiscal risks, associated with proceeding
317 to the next stage of the project, and a recommendation for
318 corrective actions required, including suspension or termination
319 of the project.
320 <u>(e)</u>~~(5)~~ Identify opportunities for standardization and
321 consolidation of information technology services that support
322 <u>interoperability and the cloud-first policy as specified in s.</u>
323 <u>282.206,</u> business functions and operations, including
324 administrative functions such as purchasing, accounting and
325 reporting, cash management, and personnel, and that are common

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326 across state agencies. The Florida Digital Service ~~department~~
327 shall biennially on April 1 provide recommendations for
328 standardization and consolidation to the Executive Office of the
329 Governor, the President of the Senate, and the Speaker of the
330 House of Representatives.
331 (f) ~~(6)~~ Establish best practices for the procurement of
332 information technology products and cloud-computing services in
333 order to reduce costs, increase the quality of data center
334 services, or improve government services.
335 (g) ~~(7)~~ Develop standards for information technology
336 reports and updates, including, but not limited to, operational
337 work plans, project spend plans, and project status reports, for
338 use by state agencies.
339 (h) ~~(8)~~ Upon request, assist state agencies in the
340 development of information technology-related legislative budget
341 requests.
342 (i) ~~(9)~~ Conduct annual assessments of state agencies to
343 determine compliance with all information technology standards
344 and guidelines developed and published by the Florida Digital
345 Service ~~department~~ and provide results of the assessments to the
346 Executive Office of the Governor, the President of the Senate,
347 and the Speaker of the House of Representatives.
348 (j) ~~(10)~~ Provide operational management and oversight of
349 the state data center established pursuant to s. 282.201, which
350 includes:

351 1.~~(a)~~ Implementing industry standards and best practices
352 for the state data center's facilities, operations, maintenance,
353 planning, and management processes.
354 2.~~(b)~~ Developing and implementing cost-recovery or other
355 payment mechanisms that recover the full direct and indirect
356 cost of services through charges to applicable customer
357 entities. Such cost-recovery or other payment mechanisms must
358 comply with applicable state and federal regulations concerning
359 distribution and use of funds and must ensure that, for any
360 fiscal year, no service or customer entity subsidizes another
361 service or customer entity.
362 3.~~(c)~~ Developing and implementing appropriate operating
363 guidelines and procedures necessary for the state data center to
364 perform its duties pursuant to s. 282.201. The guidelines and
365 procedures must comply with applicable state and federal laws,
366 regulations, and policies and conform to generally accepted
367 governmental accounting and auditing standards. The guidelines
368 and procedures must include, but need not be limited to:
369 a.~~1.~~ Implementing a consolidated administrative support
370 structure responsible for providing financial management,
371 procurement, transactions involving real or personal property,
372 human resources, and operational support.
373 b.~~2.~~ Implementing an annual reconciliation process to
374 ensure that each customer entity is paying for the full direct
375 and indirect cost of each service as determined by the customer

376 entity's use of each service.
377 c.~~3.~~ Providing rebates that may be credited against future
378 billings to customer entities when revenues exceed costs.
379 d.~~4.~~ Requiring customer entities to validate that
380 sufficient funds exist in the appropriate data processing
381 appropriation category or will be transferred into the
382 appropriate data processing appropriation category before
383 implementation of a customer entity's request for a change in
384 the type or level of service provided, if such change results in
385 a net increase to the customer entity's cost for that fiscal
386 year.
387 e.~~5.~~ By November 15 of each year, providing to the Office
388 of Policy and Budget in the Executive Office of the Governor and
389 to the chairs of the legislative appropriations committees the
390 projected costs of providing data center services for the
391 following fiscal year.
392 f.~~6.~~ Providing a plan for consideration by the Legislative
393 Budget Commission if the cost of a service is increased for a
394 reason other than a customer entity's request made pursuant to
395 sub-subparagraph d. ~~subparagraph 4.~~ Such a plan is required only
396 if the service cost increase results in a net increase to a
397 customer entity for that fiscal year.
398 g.~~7.~~ Standardizing and consolidating procurement and
399 contracting practices.
400 4.~~(d)~~ In collaboration with the Department of Law

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401 Enforcement, developing and implementing a process for
402 detecting, reporting, and responding to information technology
403 security incidents, breaches, and threats.
404 5.~~(e)~~ Adopting rules relating to the operation of the
405 state data center, including, but not limited to, budgeting and
406 accounting procedures, cost-recovery or other payment
407 methodologies, and operating procedures.
408 ~~(f) Conducting an annual market analysis to determine~~
409 ~~whether the state's approach to the provision of data center~~
410 ~~services is the most effective and cost-efficient manner by~~
411 ~~which its customer entities can acquire such services, based on~~
412 ~~federal, state, and local government trends; best practices in~~
413 ~~service provision; and the acquisition of new and emerging~~
414 ~~technologies. The results of the market analysis shall assist~~
415 ~~the state data center in making adjustments to its data center~~
416 ~~service offerings.~~
417 (k)~~(11)~~ Recommend other information technology services
418 that should be designed, delivered, and managed as enterprise
419 information technology services. Recommendations must include
420 the identification of existing information technology resources
421 associated with the services, if existing services must be
422 transferred as a result of being delivered and managed as
423 enterprise information technology services.
424 (l)~~(12)~~ In consultation with state agencies, propose a
425 methodology and approach for identifying and collecting both

426 current and planned information technology expenditure data at
427 the state agency level.
428 (m)1. ~~(13)(a)~~ Notwithstanding any other law, provide
429 project oversight on any project with an information technology
430 component ~~project~~ of the Department of Financial Services, the
431 Department of Legal Affairs, and the Department of Agriculture
432 and Consumer Services which has a total project cost of $25
433 million or more and which impacts one or more other agencies.
434 Such projects with an information technology component ~~projects~~
435 must also comply with the applicable information technology
436 architecture, project management and oversight, and reporting
437 standards established by the Florida Digital Service ~~department~~.
438 2. ~~(b)~~ When performing the project oversight function
439 specified in subparagraph 1. ~~paragraph (a)~~, report at least
440 quarterly to the Executive Office of the Governor, the President
441 of the Senate, and the Speaker of the House of Representatives
442 on any project with an information technology component ~~project~~
443 that the Florida Digital Service ~~department~~ identifies as high-
444 risk due to the project exceeding acceptable variance ranges
445 defined and documented in the project plan. The report shall
446 include a risk assessment, including fiscal risks, associated
447 with proceeding to the next stage of the project and a
448 recommendation for corrective actions required, including
449 suspension or termination of the project.
450 (n) ~~(14)~~ If a project with an information technology

451 component ~~project~~ implemented by a state agency must be
452 connected to or otherwise accommodated by an information
453 technology system administered by the Department of Financial
454 Services, the Department of Legal Affairs, or the Department of
455 Agriculture and Consumer Services, consult with these
456 departments regarding the risks and other effects of such
457 projects on their information technology systems and work
458 cooperatively with these departments regarding the connections,
459 interfaces, timing, or accommodations required to implement such
460 projects.
461 (o)~~(15)~~ If adherence to standards or policies adopted by
462 or established pursuant to this section causes conflict with
463 federal regulations or requirements imposed on a state agency
464 and results in adverse action against the state agency or
465 federal funding, work with the state agency to provide
466 alternative standards, policies, or requirements that do not
467 conflict with the federal regulation or requirement. The Florida
468 Digital Service ~~department~~ shall annually report such
469 alternative standards to the Governor, the President of the
470 Senate, and the Speaker of the House of Representatives.
471 (p)1.~~(16)(a)~~ Establish an information technology policy
472 for all information technology-related state contracts,
473 including state term contracts for information technology
474 commodities, consultant services, and staff augmentation
475 services. The information technology policy must include:

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476 a.~~1~~. Identification of the information technology product
477 and service categories to be included in state term contracts.
478 b.~~2~~. Requirements to be included in solicitations for
479 state term contracts.
480 c.~~3~~. Evaluation criteria for the award of information
481 technology-related state term contracts.
482 d.~~4~~. The term of each information technology-related state
483 term contract.
484 e.~~5~~. The maximum number of vendors authorized on each
485 state term contract.
486 2.~~(b)~~ Evaluate vendor responses for information
487 technology-related state term contract solicitations and
488 invitations to negotiate.
489 3.~~(c)~~ Answer vendor questions on information technology-
490 related state term contract solicitations.
491 4.~~(d)~~ Ensure that the information technology policy
492 established pursuant to subparagraph 1. ~~paragraph (a)~~ is
493 included in all solicitations and contracts that are
494 administratively executed by the department.
495 (q)~~(17)~~ Recommend potential methods for standardizing data
496 across state agencies which will promote interoperability and
497 reduce the collection of duplicative data.
498 (r)~~(18)~~ Recommend open data technical standards and
499 terminologies for use by state agencies.
500 (2)(a) The Secretary of Management Services shall appoint

501 a state chief information officer, who shall administer the
502 Florida Digital Service and is included in the Senior Management
503 Service.
504 (b) The state chief information officer shall appoint a
505 chief data officer, who shall report to the state chief
506 information officer and is included in the Senior Management
507 Service.
508 (3) The Florida Digital Service shall develop a
509 comprehensive enterprise architecture that:
510 (a) Recognizes the unique needs of those included within
511 the enterprise that results in the publication of standards,
512 terminologies, and procurement guidelines to facilitate digital
513 interoperability.
514 (b) Supports the cloud-first policy as specified in s.
515 282.206.
516 (c) Addresses how information technology infrastructure
517 may be modernized to achieve cloud-first objectives.
518 (4) The Florida Digital Service shall, pursuant to
519 legislative appropriation:
520 (a) Create and maintain a comprehensive indexed data
521 catalog that lists what data elements are housed within the
522 enterprise and in which legacy system or application these data
523 elements are located.
524 (b) Develop and publish, in collaboration with the
525 enterprise, a data dictionary for each agency that reflects the

526 nomenclature in the comprehensive indexed data catalog.
527 (c) Review and document use cases across the enterprise
528 architecture.
529 (d) Develop, publish, and manage an application
530 programming interface to facilitate integration throughout the
531 enterprise.
532 (e) Facilitate collaborative analysis of enterprise
533 architecture data to improve service delivery.
534 (f) Provide a testing environment in which any newly
535 developed solution can be tested for compliance within the
536 enterprise architecture and for functionality assurance before
537 deployment.
538 (g) Create the functionality necessary for a secure
539 ecosystem of data interoperability that is compliant with the
540 enterprise architecture and allows for a qualified entity to
541 access the stored data under the terms of the agreement with the
542 department.
543 (h) Develop and deploy applications or solutions to
544 existing enterprise obligations in a controlled and phased
545 approach, including, but not limited to:
546 1. Digital licenses, including full identification
547 management.
548 2. Interoperability that enables supervisors of elections
549 to authenticate voter eligibility in real time at the point of
550 service.

551 3. The criminal justice database.
552 4. Motor vehicle insurance cancellation integration
553 between insurers and the Department of Highway Safety and Motor
554 Vehicles.
555 5. Interoperability solutions between agencies, including,
556 but not limited to, the Department of Health, the Agency for
557 Health Care Administration, the Agency for Persons with
558 Disabilities, the Department of Education, the Department of
559 Elderly Affairs, and the Department of Children and Families.
560 6. Interoperability solutions to support military members,
561 veterans, and their families.
562 (5) Pursuant to legislative authorization and subject to
563 appropriation:
564 (a) The department may procure a credential service
565 provider through a competitive process pursuant to s. 287.057.
566 The terms of the contract developed from such procurement must
567 pay for the value on a per-data-call or subscription basis, and
568 there shall be no cost to the enterprise or law enforcement for
569 using the services provided by the credential service provider.
570 (b) The department may enter into agreements with
571 electronic credential providers that have the technological
572 capabilities necessary to integrate with the credential service
573 provider; ensure secure validation and authentication of data;
574 meet usage criteria; and agree to terms and conditions, privacy
575 policies, and uniform remittance terms relating to the

576 consumption of an electronic credential. These agreements must
577 include clear, enforceable, and significant penalties for
578 violations of the agreements.
579 (c) The department may enter into agreements with
580 qualified entities that meet usage criteria and agree to the
581 enterprise architecture terms of service and privacy policies.
582 These agreements must include clear, enforceable, and
583 significant penalties for violations of the agreements.
584 (d) The terms of the agreements between the department and
585 the credential service provider, the electronic credential
586 providers, and the qualified entities shall be based on the per-
587 data-call or subscription charges to validate and authenticate
588 an electronic credential and allow the department to recover any
589 state costs for implementing and administering an electronic
590 credential solution. Credential service provider, electronic
591 credential provider, and qualifying entity revenues may not be
592 derived from any other transactions that generate revenue for
593 the enterprise outside of the per-data-call or subscription
594 charges.
595 (e) All revenues generated from the agreements with the
596 credential service provider, electronic credential providers,
597 and qualified entities shall be remitted to the department, and
598 the department shall deposit these revenues into the Department
599 of Management Services Operating Trust Fund for distribution
600 pursuant to a legislative appropriation and department

601 agreements with the credential service provider, electronic
602 credential providers, and qualified entities.
603 (f) Upon the signing of the agreement and the enterprise
604 architecture terms of service and privacy policies with a
605 qualified entity or an electronic credential provider, the
606 department shall provide to the qualified entity or the
607 electronic credential provider, as applicable, appropriate
608 access to the stored data to facilitate authorized integrations
609 to collaboratively solve enterprise use cases.
610 (6) The Florida Digital Service may develop a process to:
611 (a) Receive written notice from the state agencies within
612 the enterprise of any planned or existing procurement of an
613 information technology project that is subject to governance by
614 the enterprise architecture.
615 (b) Intervene in any planned procurement by a state agency
616 so that the procurement complies with the enterprise
617 architecture.
618 (c) Report to the Governor, the President of the Senate,
619 and the Speaker of the House of Representatives on any
620 information technology project within the judicial branch that
621 does not comply with the enterprise architecture.
622 (7) (19) The Florida Digital Service may adopt rules to
623 administer this section.
624 Section 4. Section 282.00515, Florida Statutes, is amended
625 to read:

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

626 282.00515 Enterprise Architecture Advisory Council ~~Duties~~
627 ~~of Cabinet Agencies.—The Department of Legal Affairs, the~~
628 ~~Department of Financial Services, and the Department of~~
629 ~~Agriculture and Consumer Services shall adopt the standards~~
630 ~~established in s. 282.0051(2), (3), and (7) or adopt alternative~~
631 ~~standards based on best practices and industry standards, and~~
632 ~~may contract with the department to provide or perform any of~~
633 ~~the services and functions described in s. 282.0051 for the~~
634 ~~Department of Legal Affairs, the Department of Financial~~
635 ~~Services, or the Department of Agriculture and Consumer~~
636 ~~Services.~~
637 (1)(a) The Enterprise Architecture Advisory Council, an
638 advisory council as defined in s. 20.03(7), is established
639 within the Department of Management Services. The council shall
640 comply with the requirements of s. 20.052, except as otherwise
641 provided in this section.
642 (b) The council shall consist of the following members:
643 1. Four members appointed by the Governor.
644 2. One member appointed by the President of the Senate.
645 3. One member appointed by the Speaker of the House of
646 Representatives.
647 4. One member appointed by the Chief Justice of the
648 Supreme Court.
649 5. The director of the Office of Policy and Budget in the
650 Executive Office of the Governor, or the person acting in the

651 director's capacity should the position be vacant.
652 6. The Secretary of Management Services, or the person
653 acting in the secretary's capacity should the position be
654 vacant.
655 7. The state chief information officer, or the person
656 acting in the state chief information officer's capacity should
657 the position be vacant.
658 8. The chief information officer of the Department of
659 Financial Services, or the person acting in the chief
660 information officer's capacity should the position be vacant.
661 9. The chief information officer of the Department of
662 Legal Affairs, or the person acting in the chief information
663 officer's capacity should the position be vacant.
664 10. The chief information officer of the Department of
665 Agriculture and Consumer Services, or the person acting in the
666 chief information officer's capacity should the position be
667 vacant.
668 (2)(a) The appointments made by the Governor, the
669 President of the Senate, the Speaker of the House of
670 Representatives, and the Chief Justice of the Supreme Court are
671 for terms of 4 years. However, for the purpose of providing
672 staggered terms:
673 1. The appointments made by the Governor, the President of
674 the Senate, and the Speaker of the House of Representatives are
675 for initial terms of 2 years.

676 2. The appointment made by the Chief Justice is for an
677 initial term of 3 years.
678 (b) A vacancy on the council among members appointed under
679 subparagraph (1)(b)1., subparagraph (1)(b)2., subparagraph
680 (1)(b)3., or subparagraph (1)(b)4. shall be filled in the same
681 manner as the original appointment for the remainder of the
682 unexpired term.
683 (c) The council shall elect a chair from among its
684 members.
685 (d) The council shall meet at least semiannually,
686 beginning October 1, 2020, to discuss implementation,
687 management, and coordination of the enterprise architecture as
688 defined in s. 282.0041; identify potential issues and threats
689 with specific use cases; and recommend proactive solutions. The
690 council may conduct its meetings through teleconferences or
691 other similar means.
692 Section 5. Paragraph (a) of subsection (3) of section
693 282.318, Florida Statutes, is amended to read:
694 282.318 Security of data and information technology.—
695 (3) The department is responsible for establishing
696 standards and processes consistent with generally accepted best
697 practices for information technology security, to include
698 cybersecurity, and adopting rules that safeguard an agency's
699 data, information, and information technology resources to
700 ensure availability, confidentiality, and integrity and to

701 mitigate risks. The department shall also:
702 (a) Designate a state chief information security officer
703 who shall report to the state chief information officer of the
704 Florida Digital Service and is in the Senior Management Service.
705 The state chief information security officer must have
706 experience and expertise in security and risk management for
707 communications and information technology resources.
708 Section 6. Subsection (4) of section 287.0591, Florida
709 Statutes, is amended to read:
710 287.0591 Information technology.—
711 (4) If the department issues a competitive solicitation
712 for information technology commodities, consultant services, or
713 staff augmentation contractual services, the Florida Digital
714 Service ~~Division of State Technology~~ within the department shall
715 participate in such solicitations.
716 Section 7. Paragraph (a) of subsection (3) of section
717 365.171, Florida Statutes, is amended to read:
718 365.171 Emergency communications number E911 state plan.—
719 (3) DEFINITIONS.—As used in this section, the term:
720 (a) "Office" means the Division of Telecommunications
721 ~~State Technology~~ within the Department of Management Services,
722 as designated by the secretary of the department.
723 Section 8. Paragraph (s) of subsection (3) of section
724 365.172, Florida Statutes, is amended to read:
725 365.172 Emergency communications number "E911."—

726 (3) DEFINITIONS.—Only as used in this section and ss.
727 365.171, 365.173, 365.174, and 365.177, the term:
728 (s) "Office" means the Division of Telecommunications
729 ~~State Technology~~ within the Department of Management Services,
730 as designated by the secretary of the department.
731 Section 9. Paragraph (a) of subsection (1) of section
732 365.173, Florida Statutes, is amended to read:
733 365.173 Communications Number E911 System Fund.—
734 (1) REVENUES.—
735 (a) Revenues derived from the fee levied on subscribers
736 under s. 365.172(8) must be paid by the board into the State
737 Treasury on or before the 15th day of each month. Such moneys
738 must be accounted for in a special fund to be designated as the
739 Emergency Communications Number E911 System Fund, a fund created
740 in the Division of Telecommunications ~~State Technology~~, or other
741 office as designated by the Secretary of Management Services.
742 Section 10. Subsection (5) of section 943.0415, Florida
743 Statutes, is amended to read:
744 943.0415 Cybercrime Office.—There is created within the
745 Department of Law Enforcement the Cybercrime Office. The office
746 may:
747 (5) Consult with the Florida Digital Service ~~Division of~~
748 ~~State Technology~~ within the Department of Management Services in
749 the adoption of rules relating to the information technology
750 security provisions in s. 282.318.

751 Section 11. Section 560.214, Florida Statutes, is created
752 to read:
753 560.214 Financial Technology Sandbox.—
754 (1) SHORT TITLE.—This section may be cited as the
755 "Financial Technology Sandbox."
756 (2) CREATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—There is
757 created the Financial Technology Sandbox within the office to
758 allow financial technology innovators to test new products and
759 services in a supervised, flexible regulatory sandbox, using
760 waivers of specified general law and corresponding rule
761 requirements under defined conditions. The creation of a
762 supervised, flexible regulatory sandbox provides a welcoming
763 business environment for technology innovators and may lead to
764 significant business growth.
765 (3) DEFINITIONS.—As used in this section, the term:
766 (a) "Consumer" means a person in this state, whether a
767 natural person or a business entity, who purchases, uses,
768 receives, or enters into an agreement to purchase, use, or
769 receive an innovative financial product or service made
770 available through the Financial Technology Sandbox.
771 (b) "Financial product or service" means a product or
772 service related to money transmitters and payment instrument
773 sellers, as defined in s. 560.103, including mediums of exchange
774 that are in electronic or digital form, which is subject to
775 general law or corresponding rule requirements in the sections

776 enumerated in paragraph (4)(a) and which is under the
777 jurisdiction of the office.
778 (c) "Financial Technology Sandbox" means the program
779 created in this section which allows a person to make an
780 innovative financial product or service available to consumers
781 as a money transmitter or payment instrument seller, as defined
782 in s. 560.103, during a sandbox period through a waiver of
783 general laws or rule requirements, or portions thereof, as
784 specified in this section.
785 (d) "Innovative" means new or emerging technology, or new
786 uses of existing technology, which provides a product, service,
787 business model, or delivery mechanism to the public.
788 (e) "Office" means, unless the context clearly indicates
789 otherwise, the Office of Financial Regulation.
790 (f) "Sandbox period" means the period, initially not
791 longer than 24 months, in which the office has:
792 1. Authorized an innovative financial product or service
793 to be made available to consumers.
794 2. Granted the person who makes the innovative financial
795 product or service available a waiver of general law or
796 corresponding rule requirements, as determined by the office, so
797 that the authorization under subparagraph 1. is possible.
798 (4) WAIVERS OF GENERAL LAW AND RULE REQUIREMENTS.—
799 (a) If all the conditions in this section are met, the
800 office may approve the application and grant the applicant a

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801 waiver of a requirement, or a portion thereof, which is imposed
802 by a general law or corresponding rule in any of the following
803 sections:
804 1. Section 560.1105.
805 2. Section 560.118.
806 3. Section 560.125, except for s. 560.125(2).
807 4. Section 560.128.
808 5. Section 560.1401, except for s. 560.1401(2)-(4).
809 6. Section 560.141, except for s. 560.141(1)(b)-(d).
810 7. Section 560.142, except that the office may prorate,
811 but may not entirely waive, the license renewal fees provided in
812 ss. 560.142 and 560.143 for an extension granted under
813 subsection (7).
814 8. Section 560.143(2) to the extent necessary for
815 proration of the renewal fee under subparagraph 7.
816 9. Section 560.205, except for s. 560.205(1) and (3).
817 10. Section 560.208, except for s. 560.208(3)-(6).
818 11. Section 560.209, except that the office may modify,
819 but may not entirely waive, the net worth, corporate surety
820 bond, and collateral deposit amounts required under s. 560.209.
821 The modified amounts must be in such lower amounts that the
822 office determines to be commensurate with the considerations
823 under paragraph (5)(e) and the maximum number of consumers
824 authorized to receive the financial product or service under
825 this section.

826 (b) The office may grant, during a sandbox period, a
827 waiver of a requirement, or a portion thereof, imposed by a
828 general law or corresponding rule in any section enumerated in
829 paragraph (a), if all of the following conditions are met:
830 1. The general law or corresponding rule currently
831 prevents the innovative financial product or service to be made
832 available to consumers.
833 2. The waiver is not broader than necessary to accomplish
834 the purposes and standards specified in this section, as
835 determined by the office.
836 3. No provision relating to the liability of an
837 incorporator, director, or officer of the applicant is eligible
838 for a waiver.
839 4. The other requirements of this section are met.
840 (5) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS
841 FOR APPROVAL.—
842 (a) Before filing an application under this section, a
843 substantially affected person may seek a declaratory statement
844 pursuant to s. 120.565 regarding the applicability of a statute,
845 rule, or agency order to the petitioner's particular set of
846 circumstances.
847 (b) Before making an innovative financial product or
848 service available to consumers in the Financial Technology
849 Sandbox, a person must file an application with the office. The
850 commission shall, by rule, prescribe the form and manner of the

851 application.
852 1. In the application, the person must specify the general
853 law or rule requirements for which a waiver is sought, and the
854 reasons why these requirements prevent the innovative financial
855 product or service from being made available to consumers.
856 2. The application must also contain the information
857 specified in paragraph (e).
858 (c) A business entity filing an application under this
859 section must be a domestic corporation or other organized
860 domestic entity with a physical presence, other than that of a
861 registered office or agent or virtual mailbox, in this state.
862 (d) Before a person applies on behalf of a business entity
863 intending to make an innovative financial product or service
864 available to consumers, the person must obtain the consent of
865 the business entity.
866 (e) The office shall approve or deny in writing a
867 Financial Technology Sandbox application within 60 days after
868 receiving the completed application. The office and the
869 applicant may jointly agree to extend the time beyond 60 days.
870 The office may impose conditions on any approval, consistent
871 with this section. In deciding to approve or deny an
872 application, the office must consider each of the following:
873 1. The nature of the innovative financial product or
874 service proposed to be made available to consumers in the
875 Financial Technology Sandbox, including all relevant technical

876 details.
877 2. The potential risk to consumers and the methods that
878 will be used to protect consumers and resolve complaints during
879 the sandbox period.
880 3. The business plan proposed by the applicant, including
881 a statement regarding the applicant's current and proposed
882 capitalization.
883 4. Whether the applicant has the necessary personnel,
884 adequate financial and technical expertise, and a sufficient
885 plan to test, monitor, and assess the innovative financial
886 product or service.
887 5. Whether any person substantially involved in the
888 development, operation, or management of the applicant's
889 innovative financial product or service has pled no contest to,
890 has been convicted or found guilty of, or is currently under
891 investigation for, fraud, a state or federal securities
892 violation, a property-based offense, or a crime involving moral
893 turpitude or dishonest dealing. A plea of no contest, a
894 conviction, or a finding of guilt must be reported under this
895 subparagraph regardless of adjudication.
896 6. A copy of the disclosures that will be provided to
897 consumers under paragraph (6)(c).
898 7. The financial responsibility of any person
899 substantially involved in the development, operation, or
900 management of the applicant's innovative financial product or

901 service.
902 8. Any other factor that the office determines to be
903 relevant.
904 (f) The office may not approve an application if:
905 1. The applicant had a prior Financial Technology Sandbox
906 application that was approved and that related to a
907 substantially similar financial product or service; or
908 2. Any person substantially involved in the development,
909 operation, or management of the applicant's innovative financial
910 product or service was substantially involved in such with
911 another Financial Technology Sandbox applicant whose application
912 was approved and whose application related to a substantially
913 similar financial product or service.
914 (g) Upon approval of an application, the office shall
915 specify the general law or rule requirements, or portions
916 thereof, for which a waiver is granted during the sandbox period
917 and the length of the initial sandbox period, not to exceed 24
918 months. The office shall post on its website notice of the
919 approval of the application, a summary of the innovative
920 financial product or service, and the contact information of the
921 person making the financial product or service available.
922 (6) OPERATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—
923 (a) A person whose Financial Technology Sandbox
924 application is approved may make an innovative financial product
925 or service available to consumers during the sandbox period.

926 (b) The office may, on a case-by-case basis, specify the
927 maximum number of consumers authorized to receive an innovative
928 financial product or service, after consultation with the person
929 who makes the financial product or service available to
930 consumers. The office may not authorize more than 15,000
931 consumers to receive the financial product or service until the
932 person who makes the financial product or service available to
933 consumers has filed the first report required under subsection
934 (8). After the filing of the report, if the person demonstrates
935 adequate financial capitalization, risk management process, and
936 management oversight, the office may authorize up to 25,000
937 consumers to receive the financial product or service.
938 (c)1. Before a consumer purchases, uses, receives, or
939 enters into an agreement to purchase, use, or receive an
940 innovative financial product or service through the Financial
941 Technology Sandbox, the person making the financial product or
942 service available must provide a written statement of all of the
943 following to the consumer:
944 a. The name and contact information of the person making
945 the financial product or service available to consumers.
946 b. That the financial product or service has been
947 authorized to be made available to consumers for a temporary
948 period by the office, under the laws of this state.
949 c. That the state does not endorse the financial product
950 or service.

951 d. That the financial product or service is undergoing
952 testing, may not function as intended, and may entail financial
953 risk.
954 e. That the person making the financial product or service
955 available to consumers is not immune from civil liability for
956 any losses or damages caused by the financial product or
957 service.
958 f. The expected end date of the sandbox period.
959 g. The contact information for the office, and
960 notification that suspected legal violations, complaints, or
961 other comments related to the financial product or service may
962 be submitted to the office.
963 h. Any other statements or disclosures required by rule of
964 the commission which are necessary to further the purposes of
965 this section.
966 2. The written statement must contain an acknowledgement
967 from the consumer, which must be retained for the duration of
968 the sandbox period by the person making the financial product or
969 service available.
970 (d) The office may enter into an agreement with a state,
971 federal, or foreign regulatory agency to allow persons who make
972 an innovative financial product or service available in this
973 state through the Financial Technology Sandbox to make their
974 products or services available in other jurisdictions.
975 (e)1. A person whose Financial Technology Sandbox

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976 application is approved by the office shall maintain
977 comprehensive records relating to the innovative financial
978 product or service. The person shall keep these records for at
979 least 5 years after the conclusion of the sandbox period. The
980 commission may specify by rule additional records requirements.
981 2. The office may examine the records maintained under
982 subparagraph 1. at any time, with or without notice.
983 (7) EXTENSIONS AND CONCLUSION OF SANDBOX PERIOD.—
984 (a) A person who is authorized to make an innovative
985 financial product or service available to consumers may apply
986 for an extension of the initial sandbox period for up to 12
987 additional months for a purpose specified in subparagraph (b)1.
988 or subparagraph (b)2. A complete application for an extension
989 must be filed with the office at least 90 days before the
990 conclusion of the initial sandbox period. The office shall
991 approve or deny the application for extension in writing at
992 least 35 days before the conclusion of the initial sandbox
993 period. In deciding to approve or deny an application for
994 extension of the sandbox period, the office must, at a minimum,
995 consider the current status of the factors previously considered
996 under paragraph (5)(e).
997 (b) An application for an extension under paragraph (a)
998 must cite one of the following reasons as the basis for the
999 application and must provide all relevant supporting information
1000 that:

1001 1. Amendments to general law or rules are necessary to
1002 offer the innovative financial product or service in this state
1003 permanently.
1004 2. An application for a license that is required in order
1005 to offer the innovative financial product or service in this
1006 state permanently has been filed with the office, and approval
1007 is pending.
1008 (c) At least 30 days before the conclusion of the initial
1009 sandbox period or the extension, whichever is later, a person
1010 who makes an innovative financial product or service available
1011 shall provide written notification to consumers regarding the
1012 conclusion of the initial sandbox period or the extension and
1013 may not make the financial product or service available to any
1014 new consumers after the conclusion of the initial sandbox period
1015 or the extension, whichever is later, until legal authority
1016 outside of the Financial Technology Sandbox exists to make the
1017 financial product or service available to consumers. After the
1018 conclusion of the sandbox period or the extension, whichever is
1019 later, the person may:
1020 1. Collect and receive money owed to the person or pay
1021 money owed by the person, based on agreements with consumers
1022 made before the conclusion of the sandbox period or the
1023 extension.
1024 2. Take necessary legal action.
1025 3. Take other actions authorized by commission rule which

1026 are not inconsistent with this subsection.
1027 (8) REPORT.—A person authorized to make an innovative
1028 financial product or service available to consumers under this
1029 section shall submit a report to the office twice a year as
1030 prescribed by commission rule. The report must, at a minimum,
1031 include financial reports and the number of consumers who have
1032 received the financial product or service.
1033 (9) CONSTRUCTION.—A person whose Financial Technology
1034 Sandbox application is approved shall be deemed licensed under
1035 part II of this chapter unless the person's authorization to
1036 make the financial product or service available to consumers
1037 under this section has been revoked or suspended.
1038 (10) VIOLATIONS AND PENALTIES.—
1039 (a) A person who makes an innovative financial product or
1040 service available to consumers in the Financial Technology
1041 Sandbox is:
1042 1. Not immune from civil damages for acts and omissions
1043 relating to this section.
1044 2. Subject to all criminal and consumer protection laws.
1045 (b)1. The office may, by order, revoke or suspend
1046 authorization granted to a person to make an innovative
1047 financial product or service available to consumers if:
1048 a. The person has violated or refused to comply with this
1049 section, a rule of the commission, an order of the office, or a
1050 condition placed by the office on the approval of the person's

1051 Financial Technology Sandbox application;
1052 b. A fact or condition exists that, if it had existed or
1053 become known at the time that the Financial Technology Sandbox
1054 application was pending, would have warranted denial of the
1055 application or the imposition of material conditions;
1056 c. A material error, false statement, misrepresentation,
1057 or material omission was made in the Financial Technology
1058 Sandbox application; or
1059 d. After consultation with the person, continued testing
1060 of the innovative financial product or service would:
1061 (I) Be likely to harm consumers; or
1062 (II) No longer serve the purposes of this section because
1063 of the financial or operational failure of the financial product
1064 or service.
1065 2. Written notice of a revocation or suspension order made
1066 under subparagraph 1. shall be served using any means authorized
1067 by law. If the notice relates to a suspension, the notice must
1068 include any condition or remedial action that the person must
1069 complete before the office lifts the suspension.
1070 (c) The office may refer any suspected violation of law to
1071 an appropriate state or federal agency for investigation,
1072 prosecution, civil penalties, and other appropriate enforcement
1073 actions.
1074 (d) If service of process on a person making an innovative
1075 financial product or service available to consumers in the

1076 Financial Technology Sandbox is not feasible, service on the
1077 office shall be deemed service on such person.
1078 (11) RULES AND ORDERS.—
1079 (a) The commission shall adopt rules to administer this
1080 section.
1081 (b) The office may issue all necessary orders to enforce
1082 this section and may enforce these orders in accordance with
1083 chapter 120 or in any court of competent jurisdiction. These
1084 orders include, but are not limited to, orders for payment of
1085 restitution for harm suffered by consumers as a result of an
1086 innovative financial product or service.
1087 Section 12. Effective July 1, 2020, for the 2020-2021
1088 fiscal year, the sum of $50,000 in nonrecurring funds is
1089 appropriated from the Administrative Trust Fund to the Office of
1090 Financial Regulation to implement s. 560.214, Florida Statutes,
1091 as created by this act.
1092 Section 13. Except as otherwise expressly provided in this
1093 act and except for this section, which shall take effect upon
1094 this act becoming a law, this act shall take effect January 1,
1095 2021.

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		

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1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Grant, J. offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Subsection (2) of section 20.22, Florida
7 Statutes, is amended to read:
8 20.22 Department of Management Services.—There is created
9 a Department of Management Services.
10 (2) The following divisions, ~~and~~ programs, and services
11 within the Department of Management Services are established:
12 (a) The Facilities Program.
13 (b) The Florida Digital Service ~~Division of State~~
14 ~~Technology, the director of which is appointed by the secretary~~
15 ~~of the department and shall serve as the state chief information~~
16 ~~officer. The state chief information officer must be a proven,~~

17 ~~effective administrator who must have at least 10 years of~~
18 ~~executive-level experience in the public or private sector,~~
19 ~~preferably with experience in the development of information~~
20 ~~technology strategic planning and the development and~~
21 ~~implementation of fiscal and substantive information technology~~
22 ~~policy and standards~~.
23 (c) The Workforce Program.
24 (d)1. The Support Program.
25 2. The Federal Property Assistance Program.
26 (e) The Administration Program.
27 (f) The Division of Administrative Hearings.
28 (g) The Division of Retirement.
29 (h) The Division of State Group Insurance.
30 (i) The Division of Telecommunications.
31 Section 2. Paragraph (e) of subsection (2) of section
32 110.205, Florida Statutes is amended to read:
33 (2) EXEMPT POSITIONS.—The exempt positions that are not
34 covered by this part include the following:
35 (e) The state chief information officer, the state chief
36 data officer, and the state chief information security officer.
37 ~~Unless otherwise fixed by law,~~ The Department of Management
38 Services shall set the salary and benefits of these positions ~~is~~
39 ~~position~~ in accordance with the rules of the Senior Management
40 Service.

41 Section 3. Section 282.0041, Florida Statutes, is amended
42 to read:
43 282.0041 Definitions.—As used in this chapter, the term:
44 (1) "Agency assessment" means the amount each customer
45 entity must pay annually for services from the Department of
46 Management Services and includes administrative and data center
47 services costs.
48 (2) "Agency data center" means agency space containing 10
49 or more physical or logical servers.
50 (3) "Breach" has the same meaning as provided in s.
51 501.171.
52 (4) "Business continuity plan" means a collection of
53 procedures and information designed to keep an agency's critical
54 operations running during a period of displacement or
55 interruption of normal operations.
56 (5) "Cloud computing" has the same meaning as provided in
57 Special Publication 800-145 issued by the National Institute of
58 Standards and Technology.
59 (6) "Computing facility" or "agency computing facility"
60 means agency space containing fewer than a total of 10 physical
61 or logical servers, but excluding single, logical-server
62 installations that exclusively perform a utility function such
63 as file and print servers.
64 (7) "Customer entity" means an entity that obtains
65 services from the Department of Management Services.

66 (8) "Data" means a subset of structured information in a
67 format that allows such information to be electronically
68 retrieved and transmitted.
69 (9) "Data governance" means the practice of organizing,
70 classifying, securing, and implementing policies, procedures,
71 and standards for the effective use of an organization's data.
72 (10) ~~(9)~~ "Department" means the Department of Management
73 Services.
74 (11) ~~(10)~~ "Disaster recovery" means the process, policies,
75 procedures, and infrastructure related to preparing for and
76 implementing recovery or continuation of an agency's vital
77 technology infrastructure after a natural or human-induced
78 disaster.
79 (12) "Electronic" means technology having electrical,
80 digital, magnetic, wireless, optical, electromagnetic, or
81 similar capabilities.
82 (13) "Electronic credential" means an electronic
83 representation of the identity of a person, organization,
84 application, or device.
85 (14) "Enterprise" means state agencies and the Department
86 of Legal Affairs, the Department of Agriculture and Consumer
87 Services, and the Department of Financial Services.
88 (15) "Enterprise architecture" means a comprehensive
89 operational framework that contemplates the needs and assets of
90 the enterprise to support interoperability.

91 (16)~~(11)~~ "Enterprise information technology service" means
92 an information technology service that is used in all agencies
93 or a subset of agencies and is established in law to be
94 designed, delivered, and managed at the enterprise level.
95 (17)~~(12)~~ "Event" means an observable occurrence in a
96 system or network.
97 (18)~~(13)~~ "Incident" means a violation or imminent threat
98 of violation, whether such violation is accidental or
99 deliberate, of information technology resources, security,
100 policies, or practices. An imminent threat of violation refers
101 to a situation in which the state agency has a factual basis for
102 believing that a specific incident is about to occur.
103 (19)~~(14)~~ "Information technology" means equipment,
104 hardware, software, firmware, programs, systems, networks,
105 infrastructure, media, and related material used to
106 automatically, electronically, and wirelessly collect, receive,
107 access, transmit, display, store, record, retrieve, analyze,
108 evaluate, process, classify, manipulate, manage, assimilate,
109 control, communicate, exchange, convert, converge, interface,
110 switch, or disseminate information of any kind or form.
111 (20)~~(15)~~ "Information technology policy" means a definite
112 course or method of action selected from among one or more
113 alternatives that guide and determine present and future
114 decisions.

115 (21) ~~(16)~~ "Information technology resources" has the same
116 meaning as provided in s. 119.011.
117 (22) ~~(17)~~ "Information technology security" means the
118 protection afforded to an automated information system in order
119 to attain the applicable objectives of preserving the integrity,
120 availability, and confidentiality of data, information, and
121 information technology resources.
122 (23) "Interoperability" means the technical ability to
123 share and use data across and throughout the enterprise.
124 (24) ~~(18)~~ "Open data" means data collected or created by a
125 state agency, the Department of Legal Affairs, the Department of
126 Agriculture and Consumer Services, or the Department of
127 Financial Services, and structured in a way that enables the
128 data to be fully discoverable and usable by the public. The term
129 does not include data that are restricted from public disclosure
130 ~~distribution~~ based on federal or state privacy, confidentiality,
131 and security laws and regulations or data for which a state
132 agency, the Department of Legal Affairs, the Department of
133 Agriculture and Consumer Services, or the Department of
134 Financial Services is statutorily authorized to assess a fee for
135 its distribution.
136 (25) ~~(19)~~ "Performance metrics" means the measures of an
137 organization's activities and performance.
138 (26) ~~(20)~~ "Project" means an endeavor that has a defined
139 start and end point; is undertaken to create or modify a unique

140 product, service, or result; and has specific objectives that,
141 when attained, signify completion.
142 (27) ~~(21)~~ "Project oversight" means an independent review
143 and analysis of an information technology project that provides
144 information on the project's scope, completion timeframes, and
145 budget and that identifies and quantifies issues or risks
146 affecting the successful and timely completion of the project.
147 (28) ~~(22)~~ "Risk assessment" means the process of
148 identifying security risks, determining their magnitude, and
149 identifying areas needing safeguards.
150 (29) ~~(23)~~ "Service level" means the key performance
151 indicators (KPI) of an organization or service which must be
152 regularly performed, monitored, and achieved.
153 (30) ~~(24)~~ "Service-level agreement" means a written
154 contract between the Department of Management Services and a
155 customer entity which specifies the scope of services provided,
156 service level, the duration of the agreement, the responsible
157 parties, and service costs. A service-level agreement is not a
158 rule pursuant to chapter 120.
159 (31) ~~(25)~~ "Stakeholder" means a person, group,
160 organization, or state agency involved in or affected by a
161 course of action.
162 (32) ~~(26)~~ "Standards" means required practices, controls,
163 components, or configurations established by an authority.

164 (33)~~(27)~~ "State agency" means any official, officer,
165 commission, board, authority, council, committee, or department
166 of the executive branch of state government; the Justice
167 Administrative Commission; and the Public Service Commission.
168 The term does not include university boards of trustees or state
169 universities. As used in part I of this chapter, except as
170 otherwise specifically provided, the term does not include the
171 Department of Legal Affairs, the Department of Agriculture and
172 Consumer Services, or the Department of Financial Services.
173 (34)~~(28)~~ "SUNCOM Network" means the state enterprise
174 telecommunications system that provides all methods of
175 electronic or optical telecommunications beyond a single
176 building or contiguous building complex and used by entities
177 authorized as network users under this part.
178 (35)~~(29)~~ "Telecommunications" means the science and
179 technology of communication at a distance, including electronic
180 systems used in the transmission or reception of information.
181 (36)~~(30)~~ "Threat" means any circumstance or event that has
182 the potential to adversely impact a state agency's operations or
183 assets through an information system via unauthorized access,
184 destruction, disclosure, or modification of information or
185 denial of service.
186 (37)~~(31)~~ "Variance" means a calculated value that
187 illustrates how far positive or negative a projection has

188 deviated when measured against documented estimates within a
189 project plan.
190 Section 4. Section 282.0051, Florida Statutes, is amended
191 to read:
192 282.0051 Florida Digital Service ~~Department of Management~~
193 ~~Services; powers, duties, and functions~~.—There is established
194 the Florida Digital Service within the department to create
195 innovative solutions that securely modernize state government,
196 achieve value through digital transformation and
197 interoperability, and fully support the cloud-first policy as
198 specified in s. 282.206.
199 (1) The Florida Digital Service, housed within the
200 department, shall have the following powers, duties, and
201 functions:
202 (a) ~~(1)~~ Develop and publish information technology policy
203 for the management of the state's information technology
204 resources.
205 (b) ~~(2)~~ Develop an enterprise architecture that: ~~Establish~~
206 ~~and publish information technology architecture standards to~~
207 ~~provide for the most efficient use of the state's information~~
208 ~~technology resources and to ensure compatibility and alignment~~
209 ~~with the needs of state agencies. The department shall assist~~
210 ~~state agencies in complying with the standards.~~

211 1. Acknowledges the unique needs of the entities within
212 the enterprise in the development and publication of standards
213 and terminologies to facilitate digital interoperability.
214 2. Supports the cloud-first policy as specified in s.
215 282.206.
216 3. Addresses how information technology infrastructures
217 may be modernized to achieve cloud-first objectives.
218 (c) ~~(3)~~ Establish project management and oversight
219 standards with which state agencies must comply when
220 implementing information technology projects. The department,
221 acting through the Florida Digital Service, shall provide
222 training opportunities to state agencies to assist in the
223 adoption of the project management and oversight standards. To
224 support data-driven decisionmaking, the standards must include,
225 but are not limited to:
226 1. ~~(a)~~ Performance measurements and metrics that
227 objectively reflect the status of an information technology
228 project based on a defined and documented project scope, cost,
229 and schedule.
230 2. ~~(b)~~ Methodologies for calculating acceptable variances
231 in the projected versus actual scope, schedule, or cost of an
232 information technology project.
233 3. ~~(c)~~ Reporting requirements, including requirements
234 designed to alert all defined stakeholders that an information

235 technology project has exceeded acceptable variances defined and
236 documented in a project plan.
237 4. ~~(d)~~ Content, format, and frequency of project updates.
238 (d) ~~(4)~~ Perform project oversight on all state agency
239 information technology projects that have total project costs of
240 $10 million or more and that are funded in the General
241 Appropriations Act or any other law. The department, acting
242 through the Florida Digital Service, shall report at least
243 quarterly to the Executive Office of the Governor, the President
244 of the Senate, and the Speaker of the House of Representatives
245 on any information technology project that the Florida Digital
246 Service ~~department~~ identifies as high-risk due to the project
247 exceeding acceptable variance ranges defined and documented in a
248 project plan. The report must include a risk assessment,
249 including fiscal risks, associated with proceeding to the next
250 stage of the project, and a recommendation for corrective
251 actions required, including suspension or termination of the
252 project.
253 (e) ~~(5)~~ Identify opportunities for standardization and
254 consolidation of information technology services that support
255 interoperability and the cloud-first policy, as specified in s.
256 282.206, and business functions and operations, including
257 administrative functions such as purchasing, accounting and
258 reporting, cash management, and personnel, and that are common
259 across state agencies. The department, acting through the

260 Florida Digital Service, shall biennially on April 1 provide
261 recommendations for standardization and consolidation to the
262 Executive Office of the Governor, the President of the Senate,
263 and the Speaker of the House of Representatives.
264 (f) ~~(6)~~ Establish best practices for the procurement of
265 information technology products and cloud-computing services in
266 order to reduce costs, increase the quality of data center
267 services, or improve government services.
268 (g) ~~(7)~~ Develop standards for information technology
269 reports and updates, including, but not limited to, operational
270 work plans, project spend plans, and project status reports, for
271 use by state agencies.
272 (h) ~~(8)~~ Upon request, assist state agencies in the
273 development of information technology-related legislative budget
274 requests.
275 (i) ~~(9)~~ Conduct annual assessments of state agencies to
276 determine compliance with all information technology standards
277 and guidelines developed and published by the department and
278 provide results of the assessments to the Executive Office of
279 the Governor, the President of the Senate, and the Speaker of
280 the House of Representatives.
281 (j) ~~(10)~~ Provide operational management and oversight of
282 the state data center established pursuant to s. 282.201, which
283 includes:

284 1.~~(a)~~ Implementing industry standards and best practices
285 for the state data center's facilities, operations, maintenance,
286 planning, and management processes.
287 2.~~(b)~~ Developing and implementing cost-recovery or other
288 payment mechanisms that recover the full direct and indirect
289 cost of services through charges to applicable customer
290 entities. Such cost-recovery or other payment mechanisms must
291 comply with applicable state and federal regulations concerning
292 distribution and use of funds and must ensure that, for any
293 fiscal year, no service or customer entity subsidizes another
294 service or customer entity.
295 3.~~(c)~~ Developing and implementing appropriate operating
296 guidelines and procedures necessary for the state data center to
297 perform its duties pursuant to s. 282.201. The guidelines and
298 procedures must comply with applicable state and federal laws,
299 regulations, and policies and conform to generally accepted
300 governmental accounting and auditing standards. The guidelines
301 and procedures must include, but need not be limited to:
302 a.~~1.~~ Implementing a consolidated administrative support
303 structure responsible for providing financial management,
304 procurement, transactions involving real or personal property,
305 human resources, and operational support.
306 b.~~2.~~ Implementing an annual reconciliation process to
307 ensure that each customer entity is paying for the full direct

308 and indirect cost of each service as determined by the customer
309 entity's use of each service.
310 c.~~3.~~ Providing rebates that may be credited against future
311 billings to customer entities when revenues exceed costs.
312 d.~~4.~~ Requiring customer entities to validate that
313 sufficient funds exist in the appropriate data processing
314 appropriation category or will be transferred into the
315 appropriate data processing appropriation category before
316 implementation of a customer entity's request for a change in
317 the type or level of service provided, if such change results in
318 a net increase to the customer entity's cost for that fiscal
319 year.
320 e.~~5.~~ By November 15 of each year, providing to the Office
321 of Policy and Budget in the Executive Office of the Governor and
322 to the chairs of the legislative appropriations committees the
323 projected costs of providing data center services for the
324 following fiscal year.
325 f.~~6.~~ Providing a plan for consideration by the Legislative
326 Budget Commission if the cost of a service is increased for a
327 reason other than a customer entity's request made pursuant to
328 sub-subparagraph d. ~~subparagraph 4.~~ Such a plan is required only
329 if the service cost increase results in a net increase to a
330 customer entity for that fiscal year.
331 g.~~7.~~ Standardizing and consolidating procurement and
332 contracting practices.

333 4.~~(d)~~ In collaboration with the Department of Law
334 Enforcement, developing and implementing a process for
335 detecting, reporting, and responding to information technology
336 security incidents, breaches, and threats.
337 5.~~(e)~~ Adopting rules relating to the operation of the
338 state data center, including, but not limited to, budgeting and
339 accounting procedures, cost-recovery or other payment
340 methodologies, and operating procedures.
341 6.~~(f)~~ Conducting an annual market analysis to determine
342 whether the state's approach to the provision of data center
343 services is the most effective and cost-efficient manner by
344 which its customer entities can acquire such services, based on
345 federal, state, and local government trends; best practices in
346 service provision; and the acquisition of new and emerging
347 technologies. The results of the market analysis shall assist
348 the state data center in making adjustments to its data center
349 service offerings.
350 (k)~~(11)~~ Recommend other information technology services
351 that should be designed, delivered, and managed as enterprise
352 information technology services. Recommendations must include
353 the identification of existing information technology resources
354 associated with the services, if existing services must be
355 transferred as a result of being delivered and managed as
356 enterprise information technology services.

357 (l) ~~(12)~~ In consultation with state agencies, propose a
358 methodology and approach for identifying and collecting both
359 current and planned information technology expenditure data at
360 the state agency level.
361 (m)1. ~~(13)(a)~~ Notwithstanding any other law, provide
362 project oversight on any information technology project of the
363 Department of Financial Services, the Department of Legal
364 Affairs, and the Department of Agriculture and Consumer Services
365 which has a total project cost of $25 million or more and which
366 impacts one or more other agencies. Such information technology
367 projects must also comply with the applicable information
368 technology architecture, project management and oversight, and
369 reporting standards established by the department, acting
370 through the Florida Digital Service.
371 2. ~~(b)~~ When performing the project oversight function
372 specified in subparagraph 1. ~~paragraph (a)~~, report at least
373 quarterly to the Executive Office of the Governor, the President
374 of the Senate, and the Speaker of the House of Representatives
375 on any information technology project that the department,
376 acting through the Florida Digital Service, identifies as high-
377 risk due to the project exceeding acceptable variance ranges
378 defined and documented in the project plan. The report shall
379 include a risk assessment, including fiscal risks, associated
380 with proceeding to the next stage of the project and a

381 recommendation for corrective actions required, including
382 suspension or termination of the project.
383 (n) ~~(14)~~ If an information technology project implemented
384 by a state agency must be connected to or otherwise accommodated
385 by an information technology system administered by the
386 Department of Financial Services, the Department of Legal
387 Affairs, or the Department of Agriculture and Consumer Services,
388 consult with these departments regarding the risks and other
389 effects of such projects on their information technology systems
390 and work cooperatively with these departments regarding the
391 connections, interfaces, timing, or accommodations required to
392 implement such projects.
393 (o) ~~(15)~~ If adherence to standards or policies adopted by
394 or established pursuant to this section causes conflict with
395 federal regulations or requirements imposed on an entity within
396 the enterprise ~~a state agency~~ and results in adverse action
397 against the entity ~~state agency~~ or federal funding, work with
398 the entity ~~state agency~~ to provide alternative standards,
399 policies, or requirements that do not conflict with the federal
400 regulation or requirement. The department, acting through the
401 Florida Digital Service, shall annually report such alternative
402 standards to the Governor, the President of the Senate, and the
403 Speaker of the House of Representatives.
404 (p)1. ~~(16)(a)~~ Establish an information technology policy
405 for all information technology-related state contracts,

406 including state term contracts for information technology
407 commodities, consultant services, and staff augmentation
408 services. The information technology policy must include:
409 a.~~1.~~ Identification of the information technology product
410 and service categories to be included in state term contracts.
411 b.~~2.~~ Requirements to be included in solicitations for
412 state term contracts.
413 c.~~3.~~ Evaluation criteria for the award of information
414 technology-related state term contracts.
415 d.~~4.~~ The term of each information technology-related state
416 term contract.
417 e.~~5.~~ The maximum number of vendors authorized on each
418 state term contract.
419 2.~~(b)~~ Evaluate vendor responses for information
420 technology-related state term contract solicitations and
421 invitations to negotiate.
422 3.~~(c)~~ Answer vendor questions on information technology-
423 related state term contract solicitations.
424 4.~~(d)~~ Ensure that the information technology policy
425 established pursuant to subparagraph 1. ~~paragraph (a)~~ is
426 included in all solicitations and contracts that are
427 administratively executed by the department.
428 (q)~~(17)~~ Recommend potential methods for standardizing data
429 across state agencies which will promote interoperability and
430 reduce the collection of duplicative data.

431 (r) ~~(18)~~ Recommend open data technical standards and
432 terminologies for use by the enterprise ~~state agencies~~.
433 (s) Ensure that enterprise information technology
434 solutions are capable of using an electronic credential and
435 comply with the enterprise architecture standards.
436 (2)(a) The Secretary of Management Services shall
437 designate a state chief information officer, who shall
438 administer the Florida Digital Service. Before being appointed,
439 the state chief information officer must have at least 5 years
440 of experience in the development of information system strategic
441 planning and development of information technology policy and,
442 preferably, have leadership-level experience in the design,
443 development, and deployment of interoperable software and data
444 solutions.
445 (b) The state chief information officer, in consultation
446 with the Secretary of Management Services, shall designate a
447 state chief data officer. The state chief data officer must be a
448 proven, effective administrator who must have significant and
449 substantive experience in data management, data governance,
450 interoperability, and security.
451 (3) Pursuant to legislative appropriation, the Florida
452 Digital Service shall:
453 (a) In collaboration with the enterprise, create and
454 maintain a comprehensive indexed data catalog that lists the
455 data elements housed within the enterprise and the legacy system

456 or application in which these data elements are located. The
457 data catalog must, at a minimum, specifically identify all data
458 that is restricted from public disclosure based on federal or
459 state laws and regulations, and require that all such
460 information be protected in accordance with s. 282.318.
461 (b) In collaboration with the enterprise, develop and
462 publish, a data dictionary for each agency that reflects the
463 nomenclature in the comprehensive indexed data catalog.
464 (c) Review and document use cases across the enterprise
465 architecture.
466 (d) Develop and publish standards that support the
467 creation and deployment of an application programming interface
468 to facilitate integration throughout the enterprise.
469 (e) Publish standards necessary to facilitate a secure
470 ecosystem of interoperability that is compliant with the
471 enterprise architecture.
472 (f) Publish standards that facilitate the deployment of
473 applications or solutions to existing enterprise systems in a
474 controlled and phased approach, including, but not limited to:
475 1. Interoperability that enables supervisors of elections
476 to authenticate voter eligibility in real time at the point of
477 service.
478 2. The criminal justice database.

479 3. Motor vehicle insurance cancellation integration
480 between insurers and the Department of Highway Safety and Motor
481 Vehicles.
482 4. Interoperability solutions between agencies, including,
483 but not limited to, the Department of Health, the Agency for
484 Health Care Administration, the Agency for Persons with
485 Disabilities, the Department of Education, the Department of
486 Elderly Affairs, and the Department of Children and Families.
487 5. Interoperability solutions to support military members,
488 veterans, and their families.
489 (4) Upon the adoption of the enterprise architecture
490 standards, the department, acting through the Florida Digital
491 Service, may develop a process to:
492 (a) Receive written notice from the entities within the
493 enterprise of any planned procurement of an information
494 technology project that is subject to enterprise architecture
495 standards.
496 (b) Participate in the development of specifications and
497 recommend modifications to any planned procurement by state
498 agencies so that the procurement complies with the enterprise
499 architecture.
500 (5) The department, acting through the Florida Digital
501 Service, may not retrieve or disclose any data without a data-
502 sharing agreement in place between the Florida Digital Service
503 and the enterprise entity that has primary custodial

504 responsibility of, or data sharing responsibility for, that
505 data.
506 (6) ~~(19)~~ The department, acting through the Florida Digital
507 Service, may adopt rules to administer this section.
508 Section 5. Section 282.00515, Florida Statutes, is amended
509 to read:
510 282.00515 Duties of Cabinet Agencies.—
511 (1) The Department of Legal Affairs, the Department of
512 Financial Services, and the Department of Agriculture and
513 Consumer Services shall adopt the enterprise architecture
514 standards established in s. 282.0051(1)(b), (1)(c), (1)(r), and
515 (3)(e) ~~s. 282.0051(2),(3),and (7)~~ or adopt alternative standards
516 based on best practices and industry standards that allow for
517 open data interoperability.
518 (2) If the Department of Legal Affairs, the Department of
519 Financial Services, or the Department of Agriculture and
520 Consumer Services adopts alternative standards in lieu of the
521 enterprise architecture standards in s. 282.0051, each
522 department must notify the Governor, the President of the
523 Senate, and the Speaker of the House of Representatives in
524 writing of the adoption of the alternative standards. The
525 notification must be submitted annually and must include the
526 following:
527 (a) A detailed plan of how the agency will comply with
528 interoperability requirements referenced in this chapter.

529 (b) An estimated cost and time difference between adopting
530 alternative standards and adhering to the enterprise
531 architecture standards.
532 (c) A detailed security risk assessment of adopting the
533 alternative standards versus adhering to the enterprise
534 architecture standards.
535 (d) Certification by the agency head or his or her
536 designee that the agency's strategic and operational information
537 technology security plans as required by s. 282.318(4) include
538 provisions related to interoperability.
539 (3) The Department of Legal Affairs, the Department of
540 Financial Services, or the Department of Agriculture and
541 Consumer Services~~, and~~ may contract with the department to
542 provide or perform any of the services and functions described
543 in s. 282.0051 ~~for the Department of Legal Affairs, the~~
544 ~~Department of Financial Services, or the Department of~~
545 ~~Agriculture and Consumer Services~~.
546 (4)(a) Nothing in this section or in s. 282.0051 requires
547 the Department of Legal Affairs, the Department of Financial
548 Services, or the Department of Agriculture and Consumer Services
549 to integrate with information technology outside its own
550 department or with the Florida Digital Service.
551 (b) The Florida Digital Service may not retrieve or
552 disclose data without a data-sharing agreement in place between
553 the Florida Digital Service and the Department of Legal Affairs,

554 the Department of Financial Services, or the Department of
555 Agriculture and Consumer Services.
556 Section 6. Paragraph (a) of subsection (3) of section
557 282.318, Florida Statutes, is amended to read:
558 282.318 Security of data and information technology.—
559 (3) The department is responsible for establishing
560 standards and processes consistent with generally accepted best
561 practices for information technology security, to include
562 cybersecurity, and adopting rules that safeguard an agency's
563 data, information, and information technology resources to
564 ensure availability, confidentiality, and integrity and to
565 mitigate risks. The department shall also:
566 (a) Designate a state chief information security officer
567 who shall report to the state chief information officer. The
568 state chief information security officer must have experience
569 and expertise in security and risk management for communications
570 and information technology resources.
571 Section 7. Subsection (4) of section 287.0591, Florida
572 Statutes, is amended to read:
573 287.0591 Information technology.—
574 (4) If the department issues a competitive solicitation
575 for information technology commodities, consultant services, or
576 staff augmentation contractual services, the Florida Digital
577 Service ~~Division of State Technology~~ within the department shall
578 participate in such solicitations.

579 Section 8. Paragraph (a) of subsection (3) of section
580 365.171, Florida Statutes, is amended to read:
581 365.171 Emergency communications number E911 state plan.—
582 (3) DEFINITIONS.—As used in this section, the term:
583 (a) "Office" means the Division of Telecommunications
584 ~~State Technology~~ within the Department of Management Services,
585 as designated by the secretary of the department.
586 Section 9. Paragraph (s) of subsection (3) of section
587 365.172, Florida Statutes, is amended to read:
588 365.172 Emergency communications number "E911."—
589 (3) DEFINITIONS.—Only as used in this section and ss.
590 365.171, 365.173, 365.174, and 365.177, the term:
591 (s) "Office" means the Division of Telecommunications
592 ~~State Technology~~ within the Department of Management Services,
593 as designated by the secretary of the department.
594 Section 10. Paragraph (a) of subsection (1) of section
595 365.173, Florida Statutes, is amended to read:
596 365.173 Communications Number E911 System Fund.—
597 (1) REVENUES.—
598 (a) Revenues derived from the fee levied on subscribers
599 under s. 365.172(8) must be paid by the board into the State
600 Treasury on or before the 15th day of each month. Such moneys
601 must be accounted for in a special fund to be designated as the
602 Emergency Communications Number E911 System Fund, a fund created

603 in the Division of Telecommunications ~~State Technology~~, or other
604 office as designated by the Secretary of Management Services.
605 Section 11. Subsection (5) of section 943.0415, Florida
606 Statutes, is amended to read:
607 943.0415 Cybercrime Office.—There is created within the
608 Department of Law Enforcement the Cybercrime Office. The office
609 may:
610 (5) Consult with the Florida Digital Service ~~Division of~~
611 ~~State Technology~~ within the Department of Management Services in
612 the adoption of rules relating to the information technology
613 security provisions in s. 282.318.
614 Section 12. If House Bill 821 or similar legislation
615 becomes law, the Division of Law Revision is directed to replace
616 the term "Division of State Technology" wherever it occurs in s.
617 282.318, Florida Statutes, with the term "Florida Digital
618 Service."
619 Section 13. Effective January 1, 2021, section 559.952,
620 Florida Statutes, is created to read:
621 559.952 Financial Technology Sandbox.—
622 (1) SHORT TITLE.—This section may be cited as the
623 "Financial Technology Sandbox."
624 (2) CREATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—There is
625 created the Financial Technology Sandbox within the Office of
626 Financial Regulation to allow financial technology innovators to
627 test new products and services in a supervised, flexible

628 regulatory sandbox using exceptions to specified general law and
629 waivers of the corresponding rule requirements under defined
630 conditions. The creation of a supervised, flexible regulatory
631 sandbox provides a welcoming business environment for technology
632 innovators and may lead to significant business growth.
633 (3) DEFINITIONS.—As used in this section, the term:
634 (a) "Business entity" means a domestic corporation or
635 other organized domestic entity with a physical presence, other
636 than that of a registered office or agent or virtual mailbox, in
637 the state.
638 (b) "Commission" means the Financial Services Commission.
639 (c) "Consumer" means a person in the state, whether a
640 natural person or a business organization, who purchases, uses,
641 receives, or enters into an agreement to purchase, use, or
642 receive an innovative financial product or service made
643 available through the Financial Technology Sandbox.
644 (d) "Control person" means an individual, a partnership, a
645 corporation, a trust, or other organization that possesses the
646 power, directly or indirectly, to direct the management or
647 policies of a company, whether through ownership of securities,
648 by contract, or through other means. A person is presumed to
649 control a company if, with respect to a particular company, that
650 person:

651 1. Is a director, a general partner, or an officer
652 exercising executive responsibility or having similar status or
653 functions;
654 2. Directly or indirectly may vote 10 percent or more of a
655 class of a voting security or sell or direct the sale of 10
656 percent or more of a class of voting securities; or
657 3. In the case of a partnership, may receive upon
658 dissolution or has contributed 10 percent or more of the
659 capital.
660 (e) "Corresponding rule requirements" mean the commission
661 rules, or portions thereof, which implement the general laws
662 enumerated in paragraph (4)(a).
663 (f) "Financial product or service" means a product or
664 service related to a consumer finance loan, as defined in s.
665 516.01, or a money transmitter or payment instrument seller, as
666 those terms are defined in s. 560.103, including mediums of
667 exchange that are in electronic or digital form, which is
668 subject to the general laws enumerated in paragraph (4)(a) and
669 corresponding rule requirements and which is under the
670 jurisdiction of the office.
671 (g) "Financial Technology Sandbox" means the program
672 created by this section which allows a licensee to make an
673 innovative financial product or service available to consumers
674 during a sandbox period through exceptions to general laws and
675 waivers of corresponding rule requirements.

676 (h) "Innovative" means new or emerging technology or new
677 uses of existing technology which provide a product, service,
678 business model, or delivery mechanism to the public and which
679 are not known to have a comparable offering in the state outside
680 the Financial Technology Sandbox.
681 (i) "Licensee" means a business entity that has been
682 approved by the office to participate in the Financial
683 Technology Sandbox.
684 (j) "Office" means, unless the context clearly indicates
685 otherwise, the Office of Financial Regulation.
686 (k) "Sandbox period" means:
687 1. The initial 24-month period in which the office has
688 authorized a licensee to make an innovative financial product or
689 service available to consumers.
690 2. Any extension granted pursuant to subsection (7).
691 (4) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE
692 REQUIREMENTS.—
693 (a) Notwithstanding any other law, upon approval of a
694 Financial Technology Sandbox application, the following
695 provisions and corresponding rule requirements are not
696 applicable to the licensee during the sandbox period:
697 1. Section 516.03(1), except for the application fee, the
698 investigation fee, the requirement to provide the social
699 security numbers of control persons, evidence of liquid assets
700 of at least $25,000, and the office's authority to investigate

701 the applicant's background. The office may prorate the license
702 renewal fee for an extension granted under subsection (7).
703 2. Sections 516.05(1) and (2), except that the office must
704 investigate the applicant's background.
705 3. Section 560.109, only to the extent that section
706 requires the office to examine a licensee at least once every 5
707 years.
708 4. Section 560.118(2).
709 5. Section 560.125(1), only to the extent that subsection
710 would prohibit a licensee from engaging in the business of a
711 money transmitter or payment instrument seller during the
712 sandbox period.
713 6. Section 560.125(2), only to the extent that subsection
714 would prohibit a licensee from appointing an authorized vendor
715 during the sandbox period. Any authorized vendor of such a
716 licensee during the sandbox period remains liable to the holder
717 or remitter.
718 7. Section 560.128.
719 8. Section 560.141, excluding s. 560.141(1)(a)1., 3., and
720 7.-10. and (1)(b), (c), and (d).
721 9. Section 560.142(1) and (2), except that the office may
722 prorate, but may not entirely eliminate, the license renewal
723 fees in s. 560.143 for an extension granted under subsection
724 (7).

725 10. Section 560.143(2), only to the extent necessary for
726 proration of the renewal fee under subparagraph 9.
727 11. Section 560.204(1), only to the extent that subsection
728 would prohibit a licensee from engaging in, or advertising that
729 it engages in, the selling or issuing of payment instruments or
730 in the activity of a money transmitter during the sandbox
731 period.
732 12. Section 560.205(2).
733 13. Section 560.208(2).
734 14. Section 560.209, only to the extent that the office
735 may modify, but may not entirely eliminate, the net worth,
736 corporate surety bond, and collateral deposit amounts required
737 under that section. The modified amounts must be in such lower
738 amounts that the office determines to be commensurate with the
739 factors under paragraph (5)(c) and the maximum number of
740 consumers authorized to receive the financial product or service
741 under this section.
742 (b) The office may approve a Financial Technology Sandbox
743 application if one or more of the general laws enumerated in
744 paragraph (a) currently prevent the innovative financial product
745 or service from being made available to consumers and if all
746 other requirements of this section are met.
747 (c) A licensee may conduct business through electronic
748 means, including through the Internet or a software application.

749 (5) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS
750 FOR APPROVAL.—
751 (a) Before filing an application for licensure under this
752 section, a substantially affected person may seek a declaratory
753 statement pursuant to s. 120.565 regarding the applicability of
754 a statute, a rule, or an agency order to the petitioner's
755 particular set of circumstances or a variance or waiver of a
756 rule pursuant to s. 120.542.
757 (b) Before making an innovative financial product or
758 service available to consumers in the Financial Technology
759 Sandbox, a business entity must file with the office an
760 application for licensure under the Financial Technology
761 Sandbox. The commission shall, by rule, prescribe the form and
762 manner of the application and the standards for the office to
763 evaluate and apply each factor specified in paragraph (c).
764 1. The application must specify each provision of general
765 law enumerated in paragraph (4)(a) which currently prevents the
766 innovative financial product or service from being made
767 available to consumers and the reasons why such provisions of
768 general law prevent the innovative financial product or service
769 from being made available to consumers.
770 2. The application must contain sufficient information for
771 the office to evaluate the factors specified in paragraph (c).
772 3. An application submitted on behalf of a business entity
773 must include evidence that the business entity has authorized

774 the person to submit the application on behalf of the business
775 entity intending to make an innovative financial product or
776 service available to consumers.
777 4. The application must specify the maximum number of
778 consumers, which may not exceed the number of consumers
779 specified in paragraph (f), to whom the applicant proposes to
780 provide the innovative financial product or service.
781 5. The application must include a proposed draft of the
782 statement meeting the requirements of paragraph (6)(b) which the
783 applicant proposes to provide to consumers.
784 (c) The office shall approve or deny in writing a
785 Financial Technology Sandbox application within 60 days after
786 receiving the completed application. The office and the
787 applicant may jointly agree to extend the time beyond 60 days.
788 Consistent with this section, the office may impose conditions
789 on any approval. In deciding whether to approve or deny an
790 application for licensure, the office must consider each of the
791 following:
792 1. The nature of the innovative financial product or
793 service proposed to be made available to consumers in the
794 Financial Technology Sandbox, including all relevant technical
795 details.
796 2. The potential risk to consumers and the methods that
797 will be used to protect consumers and resolve complaints during
798 the sandbox period.

799 3. The business plan proposed by the applicant, including
800 company information, market analysis, and financial projections
801 or pro forma financial statements, and evidence of the financial
802 viability of the applicant.
803 4. Whether the applicant has the necessary personnel,
804 adequate financial and technical expertise, and a sufficient
805 plan to test, monitor, and assess the innovative financial
806 product or service.
807 5. Whether any control person of the applicant, regardless
808 of adjudication, has pled no contest to, has been convicted or
809 found guilty of, or is currently under investigation for, fraud,
810 a state or federal securities violation, a property-based
811 offense, or a crime involving moral turpitude or dishonest
812 dealing, in which case the application to the Financial
813 Technology Sandbox must be denied.
814 6. A copy of the disclosures that will be provided to
815 consumers under paragraph (6)(b).
816 7. The financial responsibility of the applicant and any
817 control person, including whether the applicant or any control
818 person has a history of unpaid liens, unpaid judgments, or other
819 general history of nonpayment of legal debts, including, but not
820 limited to, having been the subject of a petition for bankruptcy
821 under the United States Bankruptcy Code within the past 7
822 calendar years.

823 8. Any other factor that the office determines to be
824 relevant.
825 (d) The office may not approve an application if:
826 1. The applicant had a prior Financial Technology Sandbox
827 application that was approved and that related to a
828 substantially similar financial product or service;
829 2. Any control person of the applicant was substantially
830 involved in the development, operation, or management with
831 another Financial Technology Sandbox applicant whose application
832 was approved and whose application related to a substantially
833 similar financial product or service; or
834 3. The applicant or any control person has failed to
835 affirmatively demonstrate financial responsibility.
836 (e) Upon approval of an application, the office shall
837 notify the licensee that the licensee is exempt from the
838 provisions of general law enumerated in paragraph (4)(a) and the
839 corresponding rule requirements during the sandbox period. The
840 office shall post on its website notice of the approval of the
841 application, a summary of the innovative financial product or
842 service, and the contact information of the licensee.
843 (f) The office, on a case-by-case basis, must specify the
844 maximum number of consumers authorized to receive an innovative
845 financial product or service, after consultation with the
846 Financial Technology Sandbox applicant. The office may not
847 authorize more than 15,000 consumers to receive the financial

848 product or service until the licensee has filed the first report
849 required under subsection (8). After the filing of that report,
850 if the licensee demonstrates adequate financial capitalization,
851 risk management processes, and management oversight, the office
852 may authorize up to 25,000 consumers to receive the financial
853 product or service.
854 (g) A licensee has a continuing obligation to promptly
855 inform the office of any material change to the information
856 provided under paragraph (b).
857 (6) OPERATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—
858 (a) A licensee under this section may make an innovative
859 financial product or service available to consumers during the
860 sandbox period.
861 (b)1. Before a consumer purchases, uses, receives, or
862 enters into an agreement to purchase, use, or receive an
863 innovative financial product or service through the Financial
864 Technology Sandbox, the licensee must provide a written
865 statement of all of the following to the consumer:
866 a. The name and contact information of the licensee.
867 b. That the financial product or service has been
868 authorized to be made available to consumers for a temporary
869 period by the office, under the laws of the state.
870 c. That the state does not endorse the financial product
871 or service.

872 d. That the financial product or service is undergoing
873 testing, may not function as intended, and may entail financial
874 risk.
875 e. That the licensee is not immune from civil liability
876 for any losses or damages caused by the financial product or
877 service.
878 f. The expected end date of the sandbox period.
879 g. The contact information for the office and notification
880 that suspected legal violations, complaints, or other comments
881 related to the financial product or service may be submitted to
882 the office.
883 h. Any other information or disclosures required by rule
884 of the commission which are necessary to further the purposes of
885 this section.
886 2. The written statement under subparagraph 1. must
887 contain an acknowledgment from the consumer, which must be
888 retained for the duration of the sandbox period by the licensee.
889 (c) The office may enter into an agreement with a state,
890 federal, or foreign regulatory agency to allow licensees under
891 the Financial Technology Sandbox to make their products or
892 services available in other jurisdictions. The commission shall
893 adopt rules to implement this paragraph.
894 (d) The office may examine the records of a licensee at
895 any time, with or without prior notice.
896 (7) EXTENSION AND CONCLUSION OF SANDBOX PERIOD.—

897 (a) A licensee may apply for one extension of the initial
898 24-month sandbox period for 12 additional months for a purpose
899 specified in subparagraph (b)1. or subparagraph (b)2. A complete
900 application for an extension must be filed with the office at
901 least 90 days before the conclusion of the initial sandbox
902 period. The office shall approve or deny the application for
903 extension in writing at least 35 days before the conclusion of
904 the initial sandbox period. In deciding to approve or deny an
905 application for extension of the sandbox period, the office
906 must, at a minimum, consider the current status of the factors
907 previously considered under paragraph (5)(c).
908 (b) An application for an extension under paragraph (a)
909 must cite one of the following reasons as the basis for the
910 application and must provide all relevant supporting information
911 that:
912 1. Amendments to general law or rules are necessary to
913 offer the innovative financial product or service in the state
914 permanently.
915 2. An application for a license that is required in order
916 to offer the innovative financial product or service in the
917 state permanently has been filed with the office, and approval
918 is pending.
919 (c) At least 30 days before the conclusion of the initial
920 24-month sandbox period or the extension, whichever is later, a
921 licensee shall provide written notification to consumers

922 regarding the conclusion of the initial sandbox period or the
923 extension and may not make the financial product or service
924 available to any new consumers after the conclusion of the
925 initial sandbox period or the extension, whichever is later,
926 until legal authority outside of the Financial Technology
927 Sandbox exists for the licensee to make the financial product or
928 service available to consumers. After the conclusion of the
929 sandbox period or the extension, whichever is later, the
930 business entity formerly licensed under the Financial Technology
931 Sandbox may:
932 1. Collect and receive money owed to the business entity
933 or pay money owed by the business entity, based on agreements
934 with consumers made before the conclusion of the sandbox period
935 or the extension.
936 2. Take necessary legal action.
937 3. Take other actions authorized by commission rule which
938 are not inconsistent with this section.
939 (8) REPORT.—A licensee shall submit a report to the office
940 twice a year as prescribed by commission rule. The report must,
941 at a minimum, include financial reports and the number of
942 consumers who have received the financial product or service.
943 (9) CONSTRUCTION.—A business entity whose Financial
944 Technology Sandbox application is approved under this section:

945 (a) Is licensed under chapter 516, chapter 560, or both
946 chapters 516 and 560, as applicable to the business entity's
947 activities.
948 (b) Is subject to any provision of chapter 516 or chapter
949 560 not specifically excepted under paragraph (4)(a), as
950 applicable to the business entity's activities, and must comply
951 with such provisions.
952 (c) May not engage in activities authorized under part III
953 of chapter 560, notwithstanding s. 560.204(2).
954 (10) VIOLATIONS AND PENALTIES.—
955 (a) A licensee who makes an innovative financial product
956 or service available to consumers in the Financial Technology
957 Sandbox remains subject to:
958 1. Civil damages for acts and omissions arising from or
959 related to any innovative financial product or services provided
960 or made available by the licensee or relating to this section.
961 2. All criminal and consumer protection laws and any other
962 statute not specifically excepted under paragraph (4)(a).
963 (b)1. The office may, by order, revoke or suspend a
964 licensee's approval to participate in the Financial Technology
965 Sandbox if:
966 a. The licensee has violated or refused to comply with
967 this section, any statute not specifically excepted under
968 paragraph (4)(a), a rule of the commission that has not been
969 waived, an order of the office, or a condition placed by the

970 office on the approval of the licensee's Financial Technology
971 Sandbox application;
972 b. A fact or condition exists that, if it had existed or
973 become known at the time that the Financial Technology Sandbox
974 application was pending, would have warranted denial of the
975 application or the imposition of material conditions;
976 c. A material error, false statement, misrepresentation,
977 or material omission was made in the Financial Technology
978 Sandbox application; or
979 d. After consultation with the licensee, the office
980 determines that continued testing of the innovative financial
981 product or service would:
982 (I) Be likely to harm consumers; or
983 (II) No longer serve the purposes of this section because
984 of the financial or operational failure of the financial product
985 or service.
986 2. Written notice of a revocation or suspension order made
987 under subparagraph 1. must be served using any means authorized
988 by law. If the notice relates to a suspension, the notice must
989 include any condition or remedial action that the licensee must
990 complete before the office lifts the suspension.
991 (c) The office may refer any suspected violation of law to
992 an appropriate state or federal agency for investigation,
993 prosecution, civil penalties, and other appropriate enforcement
994 action.

995 (d) If service of process on a licensee is not feasible,
996 service on the office is deemed service on the licensee.
997 (11) RULES AND ORDERS.—
998 (a) The commission must adopt rules to administer this
999 section before approving any application under this section.
1000 (b) The office may issue all necessary orders to enforce
1001 this section and may enforce these orders in accordance with
1002 chapter 120 or in any court of competent jurisdiction. These
1003 orders include, but are not limited to, orders for payment of
1004 restitution for harm suffered by consumers as a result of an
1005 innovative financial product or service.
1006 Section 14. For the 2020-2021 fiscal year, the sum of
1007 $50,000 in nonrecurring funds is appropriated from the
1008 Administrative Trust Fund to the Office of Financial Regulation
1009 for the purposes of implementing s. 559.952, Florida Statutes,
1010 as created by this act.
1011 Section 15. The creation of s. 559.952, Florida Statutes,
1012 and the appropriation to implement s. 559.952, Florida Statutes,
1013 by this act shall take effect only if CS/HB 1393 or similar
1014 legislation takes effect and if such legislation is adopted in
1015 the same legislative session or an extension thereof and becomes
1016 a law.
1017 Section 16. Except as otherwise expressly provided in this
1018 act, this act shall take effect July 1, 2020.
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1025 **T I T L E A M E N D M E N T**
1026 Remove everything before the enacting clause and insert:
1027 A bill to be entitled
1028 An act relating to technology innovation; amending s.
1029 20.22, F.S.; deleting the Division of State Technology
1030 from, and adding the Florida Digital Service and the
1031 Division of Telecommunications to, the Department of
1032 Management Services; amending s. 110.205, F.S.;
1033 providing additional positions that are exempt from
1034 certain requirements in the career service system;
1035 requiring the department to set the salary and
1036 benefits of such positions; amending s. 282.0041,
1037 F.S.; providing definitions; amending s. 282.0051,
1038 F.S.; establishing and housing the Florida Digital
1039 Service within the department; providing purpose;
1040 transferring and revising specified powers, duties,
1041 and functions of the Division of State Technology to
1042 the Florida Digital Service; requiring the Florida
1043 Digital Service to develop an enterprise architecture;
1044 providing requirements for such enterprise

1045 architecture; requiring the department to act through
1046 the Florida Digital Service for certain duties and
1047 powers; requiring designations and duties of specified
1048 officers; providing experience requirements for such
1049 officers; providing powers and duties of the Florida
1050 Digital Service; prohibiting the department from
1051 retrieving or disclosing data under circumstances;
1052 authorizing the department to adopt rules through the
1053 Florida Digital Service; amending s. 282.00515, F.S.;
1054 revising certain standards that the Department of
1055 Legal Affairs, the Department of Financial Services,
1056 and the Department of Agriculture and Consumer
1057 Services must adopt; requiring the departments to
1058 notify the Governor and the Legislature if the
1059 departments adopt alternative standards in lieu of
1060 enterprise architecture standards; providing
1061 requirements for the notification; providing
1062 construction; prohibiting the Florida Digital Service
1063 from retrieving or disclosing data under certain
1064 circumstances; amending ss. 282.318, 287.0591,
1065 365.171, 365.172, 365.173, and 943.0415, F.S.;
1066 conforming provisions to changes made by the act;
1067 providing a directive to the Division of Law Revision;
1068 creating s. 559.952, F.S.; providing a short title;
1069 creating the Financial Technology Sandbox within the

1070 Office of Financial Regulation; providing definitions;
1071 providing certain exceptions to general law and
1072 certain waivers of rule requirements to specified
1073 persons under certain circumstances; providing
1074 circumstances under which the office may approve a
1075 Financial Technology Sandbox application; authorizing
1076 licensees to conduct business through electronic
1077 means; requiring certain persons to seek a declaratory
1078 statement before filing an application for the
1079 program; requiring an application for the program for
1080 business entities to make innovative financial
1081 products or services available to consumers; providing
1082 application requirements; providing standards for
1083 application approval or refusal; providing limitations
1084 on the number of consumers of innovative financial
1085 products or services; providing a licensee's
1086 continuing obligation; providing operation of the
1087 sandbox; requiring a licensee to provide written
1088 statements to consumers under certain circumstances;
1089 authorizing the office to enter into an agreement with
1090 certain regulatory agencies for specified purposes;
1091 authorizing the office to examine specified records;
1092 providing extension and conclusion of the sandbox
1093 period; requiring written notification to consumers
1094 within a timeframe before the end of an extension or

1095 the conclusion of the sandbox period; providing acts
1096 that licensees may and may not engage in at the end of
1097 an extension or the conclusion of the sandbox period;
1098 requiring licensees to submit a report; providing
1099 report requirements; providing construction; providing
1100 that licensees are not immune from civil damages and
1101 are subject to criminal and consumer protection laws
1102 and certain general laws; providing penalties;
1103 providing service of process; requiring the Financial
1104 Services Commission to adopt rules; authorizing the
1105 office to issue certain orders and to enforce them in
1106 accordance with ch. 120, F.S., or in court; providing
1107 that such orders include orders for payment of
1108 restitution; providing an appropriation; providing
1109 that specified provisions of the act are contingent
1110 upon passage of other provisions addressing public
1111 records; providing effective dates.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1393 Pub. Rec./Financial Technology Sandbox
SPONSOR(S): Insurance & Banking Subcommittee; Grant, J.; Toledo
TIED BILLS: CS/CS/HB 1391 **IDEN./SIM. BILLS:** CS/CS/SB 1872

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Hinshelwood	Cooper
2) State Affairs Committee		Toliver	Williamson

SUMMARY ANALYSIS

CS/CS/HB 1391 (2020), with which this bill is linked, creates the Financial Technology Sandbox (sandbox) within the Office of Financial Regulation (OFR). The sandbox is intended to allow financial technology innovators to test innovative financial products or services in a supervised, flexible, regulatory sandbox, using waivers of specified general law and corresponding rule requirements under defined conditions.

The bill creates public record exemptions for certain records related to the sandbox. Specifically, the bill provides that the following records are confidential and exempt from public record requirements:

- The reasons why the general law or rule requirements for which a waiver is sought prevent the innovative financial product or service from being made available to consumers;
- Specified applicant information that the OFR must consider in deciding whether to approve or deny an application for the sandbox;
- Comprehensive records that a sandbox participant must keep relating to the innovative financial product or service; and
- Any information related to the consultation between OFR and a sandbox participant regarding the maximum number of consumers authorized to receive the innovative financial product or service.

The bill provides that this information may be released to appropriate state and federal agencies for the purposes of investigation.

The bill provides for repeal of the exemptions on October 2, 2025, unless reviewed and saved from repeal by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill does not appear to have a fiscal impact on local governments and may have an insignificant fiscal impact on the state.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates public record exemptions; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records
Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Record Exemptions
The Legislature may provide by general law for the exemption of records from the requirements of Article I, s. 24(a).[1] The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no more broad than necessary to accomplish its purpose.[2]

Furthermore, the Open Government Sunset Review Act[3] provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. The exemption may be no more broad than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[4]

The Open Government Sunset Review Act requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.[5]

CS/CS/HB 1391 (2020)
CS/CS/HB 1391 (2020), with which this bill is linked, creates the Financial Technology Sandbox (sandbox) within the Office of Financial Regulation (OFR). The sandbox is intended to allow financial technology innovators to test innovative financial products or services in a supervised, flexible, regulatory sandbox, using waivers of specified general law and corresponding rule requirements under defined conditions.

Before making an innovative financial product or service available in the sandbox, CS/CS/HB 1391 requires a person to file an application with OFR. In the application, the person must specify the general law or rule requirements for which a waiver is sought, and the reasons why these requirements prevent the innovative financial product or service from being made available to consumers. The application must also contain the following information (specified applicant information):

- The nature of the innovative financial product or service proposed to be made available to consumers in the sandbox, including all relevant technical details.
- The potential risk to consumers and the methods that will be used to protect consumers and resolve complaints during the sandbox period.

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[1] Art. I, s. 24(c), FLA. CONST.
[2] Art. I, s. 24(c), FLA. CONST.
[3] S. 119.15, F.S.
[4] S. 119.15(6)(b), F.S.
[5] S. 119.15(3), F.S.

- The business plan proposed by the applicant, including a statement regarding the applicant's current and proposed capitalization.
- Whether the applicant has the necessary personnel, adequate financial and technical expertise, and a sufficient plan to test, monitor, and assess the innovative financial product or service.
- Whether any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service has pled no contest to, has been convicted or found guilty of, or is currently under investigation for, fraud, a state or federal securities violation, a property-based offense, or a crime involving moral turpitude or dishonest dealing.
- A copy of the disclosures that will be provided to consumers.
- The financial responsibility of any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service.
- Any other factor OFR determines to be relevant.

CS/CS/HB 1391 provides that if the application is approved, OFR may, on a case-by-case basis, specify the maximum number of consumers authorized to receive an innovative financial product or service, after consultation with the person who makes the financial product or service. CS/CS/HB 1391 also requires an applicant, if the product or service is approved, to maintain comprehensive records relating to the innovative product or service. The records must be kept for at least five years after the conclusion of the sandbox period.

Effect of the Bill

The bill creates public record exemptions for certain records related to the sandbox. Specifically, the bill provides that the following records are confidential and exempt[6] from public record requirements:

- The reasons why the general law or rule requirements for which a waiver is sought prevent the innovative financial product or service from being made available to consumers;
- Specified applicant information that OFR must consider in deciding whether to approve or deny an application for the sandbox;
- Comprehensive records that a sandbox participant must keep relating to the innovative financial product or service; and
- Any information related to the consultation between OFR and a sandbox participant regarding the maximum number of consumers authorized to receive the innovative financial product or service.

The bill provides that this information may be released to appropriate state and federal agencies for the purposes of investigation.

The public record exemptions are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025, unless reviewed and saved from repeal by the Legislature. Finally, the bill provides a public necessity statement as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1. Amends s. 560.214, F.S., as created in HB 1391 (2020), relating to the sandbox.

Section 2. Provides a public necessity statement as required by the State Constitution.

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[6] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 85-62 (1985).

Section 3. Provides that the bill will take effect on the same date that CS/CS/HB 1391 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill could have a minimal fiscal impact on OFR in handling records that qualify for the exemptions created by the bill. Staff responsible for complying with public record requirements may require training related to implementation of the exemptions. The costs, however, would likely be absorbed, as they are part of the day-to-day responsibilities of an agency.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Vote Requirement
   Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates new public record exemptions; thus, it requires a two-thirds vote for final passage.

   Public Necessity Statement
   Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates new public record exemptions and includes a statement supporting the public necessity for these exemptions.

   Breadth of Exemption
   Article I, s. 24(c) of the State Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates public record exemptions for certain records related to the sandbox, which may include proprietary business information. Disclosure of this information would impair competition in the financial technology

industry and competitors could use the information to impede full and fair competition in the financial technology industry to the disadvantage of consumers.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Necessity Statement
The public necessity statement provides that it is necessary to protect an applicant's proprietary business information as it relates to their financial product or service. The bill, however, protects information that may not constitute proprietary business information.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Insurance & Banking Subcommittee adopted an amendment, and reported the bill favorably as a committee substitute. The amendment removed the statutes or rules waived under the Financial Technology Sandbox from the exemption. The amendment also made other technical changes to conform to the committee substitute for HB 1391.

The analysis is drafted to the committee substitute as approved by the Insurance & Banking Subcommittee.

1 A bill to be entitled
2 An act relating to public records; amending s.
3 560.214, F.S.; providing exemptions from public
4 records requirements for certain information made
5 available to the Office of Financial Regulation in
6 Financial Technology Sandbox applications, certain
7 records maintained by specified providers of
8 innovative financial products or services, and
9 information relating to specified discussions;
10 providing for future legislative review and repeal of
11 the exemptions; providing a statement of public
12 necessity; providing a contingent effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Paragraph (h) is added to subsection (5) of
17 section 560.214, Florida Statutes, as created by CS/HB 1391,
18 2020 Regular Session, and paragraph (f) is added to subsection
19 (6) of that section, to read:
20 560.214 Financial Technology Sandbox.—
21 (5) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS
22 FOR APPROVAL.—
23 (h)1. The following information made available to the
24 office in a Financial Technology Sandbox application under this
25 subsection is confidential and exempt from s. 119.07(1) and s.

26 24(a), Art. I of the State Constitution:
27 a. The reasons why the general law or rule requirements
28 for which a waiver is sought prevent the innovative financial
29 product or service from being made available to consumers.
30 b. The information specified in paragraph (e).
31
32 However, the information made available to the office under this
33 subparagraph may be released to appropriate state and federal
34 agencies for the purposes of investigation.
35 2. This paragraph is subject to the Open Government Sunset
36 Review Act in accordance with s. 119.15 and shall stand repealed
37 on October 2, 2025, unless reviewed and saved from repeal
38 through reenactment by the Legislature.
39 (6) OPERATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—
40 (f)1. The comprehensive records relating to the innovative
41 financial product or service maintained under paragraph (e) and
42 any information relating to the consultation described in
43 paragraph (b) are confidential and exempt from s. 119.07(1) and
44 s. 24(a), Art. I of the State Constitution. However, such
45 records and information may be released to appropriate state and
46 federal agencies for the purposes of investigation.
47 2. This paragraph is subject to the Open Government Sunset
48 Review Act in accordance with s. 119.15 and shall stand repealed
49 on October 2, 2025, unless reviewed and saved from repeal
50 through reenactment by the Legislature.

51 Section 2. The Legislature finds that it is a public
52 necessity that proprietary business information in innovative
53 financial technology sandbox be expressly made confidential and
54 exempt from public records requirements. The disclosure of the
55 proprietary business information relating to the innovative
56 financial technology products and services could adversely
57 affect the business interests of the financial technology
58 sandbox applicants. Those entities and individuals who would
59 otherwise disclose proprietary business information in their
60 applications to the Office of Financial Regulation to start a
61 business in this state or who would maintain records relating to
62 their innovative financial products or services were they
63 already established here would hesitate to cooperate with the
64 office, and this lack of cooperation would impair the effective
65 and efficient administration of governmental functions. Further,
66 disclosure of such information would impair competition in the
67 financial technology industry because competitors could use the
68 information to impede full and fair competition in the financial
69 technology industry to the disadvantage of consumers. Without
70 the exemption from public records requirements that would
71 protect their proprietary business information, financial
72 technology innovators might elect to establish their business in
73 another state with a more secure business environment.
74 Therefore, the Legislature finds that any proprietary business
75 information in the Financial Technology Sandbox applications,

76 any records maintained by financial technology innovators
77 relating to their financial products or services, and specified
78 discussions with the office on their financial products or
79 services must be held confidential and exempt from disclosure
80 under s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
81 the State Constitution.
82 Section 3. This act shall take effect on the same date
83 that CS/HB 1391 or similar legislation takes effect, if such
84 legislation is adopted in the same legislative session or an
85 extension thereof and becomes a law.

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

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1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Grant, J. offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Paragraph (h) is added to subsection (5) of
7 section 559.952, Florida Statutes, as created by CS/CS/HB 1391,
8 2020 Regular Session, to read:
9 559.952 Financial Technology Sandbox.-
10 (5) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS
11 FOR APPROVAL.-
12 (h)1. The following information provided to and held by
13 the office in a Financial Technology Sandbox application under
14 this subsection is confidential and exempt from s. 119.07(1) and
15 s. 24(a), Art. I of the State Constitution:

16 a. The reasons why a general law enumerated in paragraph
17 (4)(a) prevents the innovated financial product or service from
18 being made available to consumers.
19 b. The information specified in subparagraph (b)2. and
20 paragraph (c).
21
22 However, the confidential and exempt information may be released
23 to appropriate state and federal agencies for the purposes of
24 investigation.
25 2. This paragraph is subject to the Open Government Sunset
26 Review Act in accordance with s. 119.15 and shall stand repealed
27 on October 2, 2025, unless reviewed and saved from repeal
28 through reenactment by the Legislature.
29 Section 2. The Legislature finds that it is a public
30 necessity that information provided to and held by the Office of
31 Financial Regulation to evaluate a Financial Technology Sandbox
32 application be made confidential and exempt from s. 119.07(1),
33 Florida Statutes, and s. 24(a), Article I of the State
34 Constitution. The disclosure of such information could adversely
35 affect the business interests of the Financial Technology
36 Sandbox applicant and could injure the applicant in the
37 marketplace if the information is made available to competitors.
38 Divulgence of this information would destroy its value to the
39 business entity potentially causing a financial loss. Without
40 this protection of application information, financial technology

41 innovators might elect to establish their business in another
42 state with a more secure business environment. Therefore, it is
43 necessary that information provided to and held by the Office of
44 Financial Regulation to evaluate a Financial Technology Sandbox
45 application be made confidential and exempt from public record
46 requirements.
47 Section 3. This act shall take effect on the same date
48 that CS/CS/HB 1391 or similar legislation takes effect, if such
49 legislation is adopted in the same legislative session or an
50 extension thereof and becomes a law.
51
52
53 ---
54 **T I T L E A M E N D M E N T**
55 Remove everything before the enacting clause and insert:
56 An act relating to public records; amending s. 559.952, F.S.;
57 providing exemptions from public records requirements for
58 certain information provided to and held by the Office of
59 Financial Regulation in Financial Technology Sandbox
60 applications; providing an exception to the public record
61 exemption; providing for future legislative review and repeal of
62 the exemptions; providing a statement of public necessity;
63 providing a contingent effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/CS/HB 1001 Contamination
SPONSOR(S): State Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1350

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee		Melkun	Williamson

SUMMARY ANALYSIS

A brownfield is a property of which the expansion, redevelopment, or reuse may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. The Brownfields Program within the Department of Environmental Protection (DEP) created a process for designating brownfield areas as well as environmental contamination cleanup criteria, eligibility criteria, and liability protections that apply to brownfields in the state. The program also provides incentives, such as tax credits, to redevelop abandoned or underused real property, which was complicated by real or perceived environmental contamination.

Current law provides that a person can bring a cause of action in court for all damages resulting from specified discharges or other conditions of pollution if the discharge was not authorized pursuant to DEP regulations.

The bill removes the requirement that a claim for a tax credit on an additional 25 percent of the total rehabilitation costs for a brownfield site must be made in the final year of cleanup. Instead, the bill specifies that the tax credit may only be claimed if DEP has approved the applicant's annual site rehabilitation applications. The bill further requires the applicant to submit the claim within two years of receiving the "No Further Action" order for the site.

The bill requires DEP to inform tax credit applicants of their eligibility status and the amount of the tax credit due by June 1 of each year, rather than May 1.

The bill revises the conditions that, when met, require a local government to designate a site as a brownfield area.

The bill specifies that liability protections for brownfield sites are considered defenses against causes of action for all damages resulting from a discharge or certain other conditions of pollution. The bill further specifies that liability protections apply to any subsequent property owner of the brownfield site if such owner maintains compliance, as applicable, with any institutional controls or engineering controls required for site rehabilitation.

For a cause of action brought for damages resulting from a discharge or other condition of pollution, the bill specifies that such damages may include damages to real or personal property directly resulting from the pollution rather than all damages resulting from the pollution.

The bill may have an indeterminate fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Brownfields

A brownfield is a property of which the expansion, redevelopment, or reuse may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.[1] Unsafe levels of environmental contamination on a brownfield may result from past or current industrial, commercial, residential, agricultural, or recreational uses and practices. Contaminants may be found in soil, water or air.[2]

In 1995, the United States Environmental Protection Agency (EPA) initiated a program to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and reuse brownfields.[3] Under the program, states and tribes use a risk-based approach to determine the required level of cleanup necessary at brownfield properties. Cleaning up contaminants on a brownfield reduces or eliminates potential health risks to residents, workers, pets, and the surrounding environment. The degree of cleanup necessary depends on the specific contaminants found at the brownfield, the extent of contamination, and how the property will be reused.[4]

In 1997, the Legislature enacted the Brownfields Redevelopment Act[5] (act) to create a state program within the Department of Environmental Protection (DEP) for designating brownfield areas as well as environmental contamination cleanup criteria, eligibility criteria, and liability protections that apply to brownfields in the state.[6] The program also provides incentives for private sector entities to redevelop abandoned or underused real property, which may be complicated by real or perceived environmental contamination.[7]

Brownfield Designations

A brownfield area is a contiguous area of one or more brownfield sites,[8] portions of which may not be contaminated, that has been designated by local government resolution. Brownfield areas may include all or portions of community redevelopment areas, enterprise zones, empowerment zones, other similarly designated economically deprived communities and areas, and EPA-designated brownfield pilot projects.[9]

The designation of a brownfield area may be initiated by a local government to encourage redevelopment of an area of specific interest to the community or by a person with a plan to rehabilitate and redevelop a brownfield site.[10] To designate a brownfield area, a local government must pass a local resolution specifying the exact area to be designated. Once a brownfield area has been

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[1] EPA, *Overview of EPA's Brownfields Program*, available at https://www.epa.gov/brownfields/overview-epas-brownfields-program (last visited Jan. 27, 2020).

[2] EPA, *Cleaning Up Brownfields Sites*, available at https://www.epa.gov/sites/production/files/2019-10/documents/cleaning_up_brownfield_sites.pdf (last visited Jan. 28, 2020).

[3] EPA, *Brownfields Community Reinvestment Fact Sheet*, available at https://www.epa.gov/brownfields/brownfields-community-reinvestment-act-cra-fact-sheet (last visited Jan. 27, 2020).

[4] EPA, *Cleaning Up Brownfields Sites*, available at https://www.epa.gov/sites/production/files/2019-10/documents/cleaning_up_brownfield_sites.pdf (last visited Jan. 28, 2020).

[5] Ch. 97-277, L.O.F.; codified at ss. 376.77 – 376.86, F.S., are known as the "Brownfields Redevelopment Act."

[6] The act authorizes various financial, regulatory, and technical assistance to persons and businesses involved in the redevelopment of brownfields, including the Brownfield Areas Loan Guarantee Program under s. 376.86, F.S. *See* ss. 376.78 – 376.84, F.S.

[7] Section 376.78, F.S.

[8] Section 376.79(4), F.S., defines "brownfield sites" as real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination.

[9] Section 376.79(4), F.S.

[10] Section 376.80, F.S.

designated, the local government must notify DEP and attach a map that clearly identifies the parcels proposed for designation. If a property owner within the proposed area requests in writing to have his or her property removed from the proposed designation, then the local government must grant the request.[11]

If a local government proposes to designate a brownfield area that is outside a community redevelopment area, enterprise zone, empowerment zone, closed military base, or designated brownfield pilot project area, the local government must provide notice, adopt the resolution, and conduct public hearings.[12] At least one of the required public hearings must be conducted as close as reasonably practicable to the area proposed for designation to provide an opportunity for the public to provide input as to the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, neighborhood residents' considerations, and other local issues.[13]

When determining the area to be designated, the local government must consider whether: the brownfield area warrants economic development and has a reasonable potential for such activities; the proposed area to be designated represents a reasonable focused approach and is not overly large in geographic coverage; the area has potential to interest the private sector in participating in rehabilitation; and the area contains sites or parts of sites suitable for limited recreational open space, cultural or historical preservation purposes.[14]

A local government must designate a site as a brownfield area when all of the following requirements are met:

- The person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate the site;
- Redevelopment and rehabilitation of the proposed brownfield site will result in economic productivity of the area and will create at least five new permanent jobs at the brownfield site;[15]
- Redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permittable use under the applicable local land development regulations;
- Notice has been provided to neighbors and nearby residents of the proposed area to be designated, and the person proposing the area for designation has provided the neighbors and residents an opportunity to comment and make suggestions about rehabilitation; and
- The person proposing the area for designation has provided reasonable assurance that there are sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment of the brownfield area.[16]

Eligibility Criteria

A person who has not caused or contributed to the contamination of a brownfield site on or after July 1, 1997, is eligible to participate in the brownfield program.[17] However, areas that are subject to an ongoing formal judicial or administrative enforcement or corrective action pursuant to federal authority or have obtained or are required to obtain a hazardous waste operation, storage, or disposal facility permit are not eligible.[18] Such areas may become eligible for participation if:

- The proposed site is currently idle or underutilized as a result of the contamination, and participation in the program would immediately result in increased economic productivity at the site, including the creation of 10 new permanent jobs; and
- The person is complying in good faith with the terms of an existing consent order or DEP-approved corrective action plan.[19]

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[11] Section 376.80(1), F.S.
[12] Section 376.80(2)(a), F.S.
[13] *Id.*
[14] Sections 376.80(2)(a)1.- 4., F.S.
[15] The full-time positions must not be associated with the implementation of the brownfield site rehabilitation agreement or the redevelopment project's demolition or construction activities pursuant to the redevelopment of the proposed brownfield site or area.
[16] Section 376.80(2)(b) 1.-5., F.S.
[17] Section 376.82(1), F.S.
[18] Section 376.82(1)(a), F.S.
[19] Section 376.82(1)(b), F.S.

Brownfield Site Rehabilitation Agreements

Any person responsible for brownfield site rehabilitation must enter into a brownfield site rehabilitation agreement (BSRA) with DEP or an approved local pollution control program if actual contamination exists at the brownfield site.[20] BSRAs provide DEP and the public assurance that site rehabilitation will be conducted in accordance with current law and provides liability protection for the responsible person.[21] BSRAs must include:

- A brownfield site rehabilitation schedule;
- A commitment to conduct site rehabilitation activities under the observation of professional engineers or geologists who are registered in accordance with applicable law;
- A commitment to conduct site rehabilitation in accordance with DEP quality assurance rules;
- A commitment to conduct site rehabilitation consistent with the brownfield site contamination cleanup criteria;
- Timeframes for DEP's review of technical reports and plans submitted in accordance with the BSRA;
- A commitment to secure site access for DEP or the approved local pollution control program to all brownfield sites within the eligible brownfield area for activities associated with site rehabilitation;
- A commitment to consider appropriate pollution prevention measures and to implement those that are reasonable and cost-effective, taking into account the ultimate use or uses of the brownfield site;
- Certification that the person responsible for brownfield site rehabilitation has consulted with the local government about the proposed redevelopment of the brownfield site, that the local government approves the proposed redevelopment, and that the proposed redevelopment complies with applicable laws and requirements for such redevelopment; and
- Any other provisions that the person responsible for brownfield site rehabilitation and DEP agree upon.[22]

A person, including his or her successors and assigns, who executes, implements, and complies with a BSRA is relieved of further liability for remediation of the site or sites to the state and to third parties; liability in contribution to any other party who has or may incur cleanup liability for the contaminated site or sites; and liability for claims of property damages.[23] Until a person successfully completes a BSRA, liability protection may be revoked.[24] In an effort to secure federal liability protection for those persons willing to undertake remediation responsibility at a brownfield site, DEP must attempt to negotiate an agreement with the EPA to forego federal enforcement of corrective action authority.[25]

Since the program's inception in 1997, Florida has amassed 481 designated brownfield areas in 151 communities across the state, averaging 22 newly designated brownfield areas each year.[26] From those designations, 137 contaminated sites have been cleaned up, approximately 66,600 confirmed and projected direct and indirect jobs have been created, and $2.86 billion in capital investment is projected in designated brownfield areas.[27]

Brownfields Tax Credit

In 1998, the Legislature granted DEP the authority to issue tax credits as an additional incentive to encourage site rehabilitation in brownfield areas and to encourage voluntary cleanup of certain other types of contaminated sites.[28] This corporate income tax credit may be claimed in the amount of 50

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[20] Section 376.80(5), F.S. Section 379.79(12), F.S., defines "local pollution control program" as a local pollution control program that has received delegated authority from DEP to administer the brownfield program within their jurisdictions.
[21] DEP, *Brownfield Sites*, available at https://geodata.dep.state.fl.us/datasets/brownfield-sites (last visited Jan. 28, 2020),
[22] Section 376.80(5), F.S.
[23] Sections 376.82(2)(a) and 376.82(2)(d), F.S.
[24] Section 376.80(8), F.S.
[25] Section 376.82(2)(g), F.S.
[26] DEP, *Florida Brownfields Redevelopment Program Annual Report* (Aug. 2019), 4, available at https://floridadep.gov/sites/default/files/Florida%20Brownfields%20Annual%20Report%20August%201%2C%202019.pdf (last visited Jan. 29, 2020).
[27] *Id* at 1.
[28] Chapter 98-189, Laws of Fla.

percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at a brownfield site in a designated brownfield area.[29]

Eligible tax credit applicants may receive up to $500,000 per site per year in tax credits.[30] Due to concern that some participants in a voluntary cleanup might only conduct enough work to eliminate or minimize their exposure to third party lawsuits, current law also provides a completion incentive in the form of an additional 25 percent supplemental tax credit, capped at $500,000, for those applicants that have completed site rehabilitation and have received a "No Further Action" order from DEP.[31]

In order to encourage the construction of affordable housing, applicants are allowed a one-time application for an additional 25 percent of the total site rehabilitation costs, up to $500,000, for brownfield sites at which the land use is restricted to affordable housing.[32] Applicants may also submit a one-time application claiming 50 percent of the costs, up to $500,000, for the removal, transportation, and disposal of solid waste at a brownfield site.[33] A solid waste disposal area is defined as a landfill, dump, or other area where solid waste has been disposed.[34] To qualify for the credit, the applicant must submit an affidavit to DEP or the local pollution control program that states the brownfield site was never operated as a permitted solid waste disposal area and was never operated for monetary compensation.[35]

Site rehabilitation tax credit applications must be submitted by January 31 of each year and DEP must, by May 1 of each year, inform each tax credit applicant of their eligibility status and the amount of any tax credit due.[36] The total amount of tax credits for all sites that may be granted by DEP is capped at $10 million annually.[37] In the event that approved tax credit applications exceed the $10 million annual authorization, remaining applications roll over into the next fiscal year to receive tax credits in first come, first served order from the next year's authorization.[38]

Between 2008 and 2013, the approved tax credits exceeded the available authorization. As a result, the Legislature increased the annual tax credit authorization from the initial amount of $2 million to $5 million in 2011, and then to $10 million in 2017. Additionally, there have been multiple one-time, supplemental authorizations to address the growing backlog of approved tax credits.[39] As of July 1, 2018, there was approximately $21.6 million in approved tax credits, with $3.2 million carried over as backlog. DEP received 135 voluntary cleanup tax credit applications for the 2018 calendar year with $14.6 million allocated for tax credits for 122 brownfield sites.[40]

Affordable Housing

Affordable housing is generally defined in relation to the annual area median household income adjusted for family size. Section 420.0004, F.S., defines the term "affordable" to mean that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of the amount that represents the percentage of the median adjusted gross annual income for:

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[29] Section 220.1845(2)(a), F.S.
[30] Sections 220.1845(2)(b) and 376.30781(3)(b), F.S.
[31] Sections 220.1845(2)(h) and 376.30781(3)(c), F.S.
[32] Sections 220.1845(2)(i) and 376.30781(3)(d), F.S.
[33] Sections 220.1845(2)(j) and 376.30781(3)(e), F.S.
[34] Section 376.30781(3)(e)1., F.S.
[35] Section 376.30781(3)(e), F.S.
[36] Sections 220.1845(1) and 376.30781(9), F.S.
[37] Section 220.1845(2)(f), F.S.
[38] DEP, Voluntary Cleanup Tax Credit, available at https://floridadep.gov/waste/waste-cleanup/content/voluntary-cleanup-tax-credit (last visited Jan. 29, 2020).
[39] DEP, *Florida Brownfields Redevelopment Program Annual Report* (Aug. 2019), 1, available at https://floridadep.gov/sites/default/files/Florida%20Brownfields%20Annual%20Report%20August%201%2C%202019.pdf (last visited Jan. 29, 2020).
[40] *Id.* at 7.

- Extremely-low-income households, i.e., total annual household income does not exceed 30 percent of the median annual adjusted gross income for households within the state;[41]
- Very-low-income households, i.e., total annual gross household income does not exceed 50 percent of the median annual income within the state or the metropolitan statistical area, whichever is greater;[42]
- Low-income households, i.e., total annual gross household income does not exceed 80 percent of the median annual income within the state or the area, whichever is greater;[43]
- Moderate-income households, i.e., total annual gross household income does not exceed 120 percent of the median annual income within the state or the area, whichever is greater.[44]

Damages for Pollutant Discharges
Section 376.313, F.S., provides that a person can bring a cause of action in court for all damages resulting from a discharge or other condition of pollution covered by ss. 376.30-376.317, F.S. (relating to various types of pollution, such as discharges caused by petroleum storage, drycleaning facilities, or wholesale supply facilities), if the discharge was not authorized pursuant to DEP regulations.

To state a claim under s. 376.313, F.S., a person is only required to allege damages and that a prohibited discharge or other pollutive condition occurred.[45] In many cases, it is not necessary for such person to allege that negligence has occurred. In the case of a discharge of petroleum, petroleum products, or drycleaning solvents, the owner of the facility is liable for any discharges unless the owner can establish that he or she acquired title to property contaminated by the activities of a previous owner or operator or other third party, that he or she did not cause or contribute to the discharge, and that he or she did not know of the polluting condition at the time the owner acquired title.[46]

Effect of the Bill

The bill removes the requirement that a claim for a tax credit on an additional 25 percent of the total rehabilitation costs for a brownfield site must be made in the final year of cleanup. Instead, the bill specifies that the tax credit may only be claimed if DEP has approved the applicant's annual site rehabilitation applications. The bill further requires the applicant to submit the claim within two years of receiving the "No Further Action" order for the site.

The bill removes the requirement for an applicant claiming the rehabilitation cost tax credit for costs for solid waste removal to submit an affidavit that states the brownfield site was never operated for monetary compensation and instead requires the applicant to meet the eligibility criteria for participation in the brownfields program.

The bill requires DEP to inform tax credit applicants of their eligibility status and the amount of the tax credit due by June 1 of each year, rather than May 1.

The bill specifies that liability protections for brownfield sites are considered defenses against causes of action for all damages resulting from certain discharges or other conditions of pollution mitigation and prevention.

The bill removes the requirement that the identification of a person responsible for brownfield site rehabilitation entitles the identified person to negotiate a BSRA.

The bill revises the conditions that, when met, require a local government to designate a site as a brownfield area. Specifically, the bill states the job creation requirement does not apply to the

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[41] Section 420.0004(9), F.S. Florida Housing Finance Corporation may adjust this amount annually by rule to provide that in lower income counties, extremely low income may exceed 30 percent of area median income and that in higher income counties, extremely low income may be less than 30 percent of area median income.
[42] Section 420.0004(17), F.S.
[43] Section 420.0004(11), F.S.
[44] Section 420.0004(12), F.S.
[45] Section 376.313(3), F.S.
[46] Section 376.308(1)(c), F.S.

rehabilitation and redevelopment of a brownfield site that will create recreational areas, conservation areas, or parks; be maintained for cultural or historical preservation purposes; or provide affordable housing.

The bill specifies that liability protections apply to any person who executes and implements to successful completion a BSRA, his or her successors and assigns, and any subsequent property owner of the brownfield site if such owner maintains compliance, as applicable, with any institutional controls or engineering controls required for site rehabilitation.

For a cause of action brought under s. 376.313, F.S., for damages resulting from a discharge or other condition of pollution, the bill specifies that such damages may include damages to real or personal property directly resulting from the pollution rather than *all* damages resulting from the pollution.

B. SECTION DIRECTORY:

Section 1. Amends s. 376.30781, F.S., relating to tax credits for brownfields.

Section 2. Amends s. 376.313, F.S., relating to nonexclusiveness of remedies and individual cause of action for damages.

Section 3. Amends s. 376.78, F.S., relating to legislative intent.

Section 4. Amends s. 376.80, F.S., relating to the brownfield program administration process.

Section 5. Amends s. 376.82, F.S., relating to eligibility criteria and liability protection.

Section 6. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an indeterminate fiscal impact on DEP for the costs to implement the provisions of the bill; however, such costs would likely be absorbed through existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an indeterminate fiscal impact on local government pollution control programs for the costs to implement the provisions of the bill; however, such costs would likely be absorbed through existing resources.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate positive fiscal impact on the members of the private sector that will become eligible for the tax credit under the provisions of the bill.

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 expenditure 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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to contamination; amending s.
3 376.30781, F.S.; revising the conditions under which
4 an applicant that has rehabilitated a contaminated
5 site may submit and claim certain tax credits;
6 specifying a timeframe within which such tax credit
7 applications must be submitted; revising the criteria
8 for determining applicants who are redeveloping
9 brownfield sites who may be eligible for certain tax
10 credits; revising the date by which the Department of
11 Environmental Protection must issue annual site
12 rehabilitation tax credit certificate awards; amending
13 s. 376.313, F.S.; revising available damages and
14 exceptions to specified causes of action concerning
15 certain discharges or other types of pollution
16 resulting from certain discharges or pollution;
17 amending s. 376.78, F.S.; conforming provisions to
18 changes made by the act; amending s. 376.80, F.S.;
19 revising the entities that may propose brownfield
20 designations using specified criteria; removing the
21 requirement that certain persons be identified before
22 negotiating a brownfield site rehabilitation
23 agreement; amending s. 376.82, F.S.; exempting certain
24 job creation requirements otherwise needed for
25 eligibility for specified brownfield site

26 rehabilitation agreements; providing an effective
27 date.
28
29 Be It Enacted by the Legislature of the State of Florida:
30
31 Section 1. Paragraphs (c), (d), and (e) of subsection (3)
32 and subsection (9) of section 376.30781, Florida Statutes, are
33 amended to read:
34 376.30781 Tax credits for rehabilitation of drycleaning-
35 solvent-contaminated sites and brownfield sites in designated
36 brownfield areas; application process; rulemaking authority;
37 revocation authority.—
38 (3)
39 (c) In order to encourage completion of site
40 rehabilitation at contaminated sites that are being voluntarily
41 cleaned up and that are eligible for a tax credit under this
42 section, the tax credit applicant may claim an additional 25
43 percent of the total site rehabilitation costs, not to exceed
44 $500,000, if the Department of Environmental Protection has
45 approved the applicant's annual site rehabilitation applications
46 and has issued ~~in the final year of cleanup as evidenced by the~~
47 ~~Department of Environmental Protection issuing~~ a "No Further
48 Action" order for that site. The tax credit applicant must
49 submit the claim for the additional 25 percent within 2 years of
50 receipt of the "No Further Action" order for that site.

51 (d) In order to encourage the construction of housing that
52 meets the definition of affordable provided in s. 420.0004, an
53 applicant for the tax credit may claim an additional 25 percent
54 of the total site rehabilitation costs that are eligible for tax
55 credits under this section, not to exceed $500,000. To receive
56 this additional tax credit, the applicant must provide a
57 certification letter from the Florida Housing Finance
58 Corporation, the local housing authority, or other governmental
59 agency that is a party to the use agreement indicating that the
60 construction on the brownfield site has received a certificate
61 of occupancy and ~~the brownfield site~~ has a properly recorded
62 instrument that limits the use of the property to housing.
63 Notwithstanding that only one application may be submitted each
64 year for each site, an application for the additional credit
65 provided for in this paragraph shall be submitted after all
66 requirements to obtain the additional tax credit have been met.
67 (e) In order to encourage the redevelopment of a
68 brownfield site, as defined in the brownfield site
69 rehabilitation agreement, that is hindered by the presence of
70 solid waste, as defined in s. 403.703, costs related to solid
71 waste removal may also be claimed under this section. A tax
72 credit applicant, or multiple tax credit applicants working
73 jointly to clean up a single brownfield site, may also claim
74 costs to address the solid waste removal as defined in this
75 paragraph in accordance with department rules. Multiple tax

76 credit applicants shall be granted tax credits in the same
77 proportion as each applicant's contribution to payment of solid
78 waste removal costs. These costs are eligible for a tax credit
79 provided the applicant meets the eligibility requirements of s.
80 376.82(1) and ~~submits an affidavit stating that, after~~
81 ~~consultation with appropriate local government officials and the~~
82 ~~department, to the best of the applicant's knowledge based upon~~
83 ~~such consultation and available historical records,~~ the
84 brownfield site was never operated as a permitted solid waste
85 disposal area under chapter 62-701, Florida Administrative Code,
86 or the predecessor rules ~~or was never operated for monetary~~
87 ~~compensation, and the applicant submits all other documentation~~
88 ~~and certifications required by this section~~. In this section,
89 where reference is made to "site rehabilitation," the department
90 shall instead consider whether the costs claimed are for solid
91 waste removal. Tax credit applications claiming costs pursuant
92 to this paragraph shall not be subject to the calendar-year
93 limitation and January 31 annual application deadline, and the
94 department shall accept a one-time application filed subsequent
95 to the completion by the tax credit applicant of the applicable
96 requirements listed in this subsection. A tax credit applicant
97 may claim 50 percent of the costs for solid waste removal, not
98 to exceed $500,000, after the applicant has determined solid
99 waste removal is completed for the brownfield site. A solid
100 waste removal tax credit application may be filed only once per

101 brownfield site. For the purposes of this section, the term:
102 1. "Solid waste disposal area" means a landfill, dump, or
103 other area where solid waste has been disposed.
104 ~~2. "Monetary compensation" means the fees that were~~
105 ~~charged or the assessments that were levied for the disposal of~~
106 ~~solid waste at a solid waste disposal area.~~
107 2.~~3.~~ "Solid waste removal" means removal of solid waste
108 from the land surface or excavation of solid waste from below
109 the land surface and removal of the solid waste from the
110 brownfield site. The term also includes:
111 a. Transportation of solid waste to a licensed or exempt
112 solid waste management facility or to a temporary storage area.
113 b. Sorting or screening of solid waste prior to removal
114 from the site.
115 c. Deposition of solid waste at a permitted or exempt
116 solid waste management facility, whether the solid waste is
117 disposed of or recycled.
118 (9) On or before June ~~May~~ 1, the Department of
119 Environmental Protection shall inform each tax credit applicant
120 that is subject to the January 31 annual application deadline of
121 the applicant's eligibility status and the amount of any tax
122 credit due. The department shall provide each eligible tax
123 credit applicant with a tax credit certificate that must be
124 submitted with its tax return to the Department of Revenue to
125 claim the tax credit or be transferred pursuant to s.

126 220.1845(2)(g). The June ~~May~~ 1 deadline for annual site
127 rehabilitation tax credit certificate awards shall not apply to
128 any tax credit application for which the department has issued a
129 notice of deficiency pursuant to subsection (8). The department
130 shall respond within 90 days after receiving a response from the
131 tax credit applicant to such a notice of deficiency. Credits may
132 not result in the payment of refunds if total credits exceed the
133 amount of tax owed.
134 Section 2. Subsection (3) of section 376.313, Florida
135 Statutes, is amended to read:
136 376.313 Nonexclusiveness of remedies and individual cause
137 of action for damages under ss. 376.30-376.317.—
138 (3) Except as provided in s. 376.3078(3) and (11), nothing
139 contained in ss. 376.30-376.317 prohibits any person from
140 bringing a cause of action in a court of competent jurisdiction
141 for all damages to real or personal property directly resulting
142 from a discharge or other condition of pollution covered by ss.
143 376.30-376.317 and which was not authorized by any government
144 approval or permit ~~pursuant to chapter 403~~. Nothing in this
145 chapter shall prohibit or diminish a party's right to
146 contribution from other parties jointly or severally liable for
147 a prohibited discharge of pollutants or hazardous substances or
148 other pollution conditions. Except as otherwise provided in
149 subsection (4) or subsection (5), in any such suit, it is not
150 necessary for such person to plead or prove negligence in any

151 form or manner. Such person need only plead and prove the fact
152 of the prohibited discharge or other pollutive condition and
153 that it has occurred. The only <u>strict-liability exceptions</u>
154 ~~defenses~~ to such cause of action shall be those specified in s.
155 376.308 <u>or s. 376.82</u>.
156 Section 3. Subsection (1) of section 376.78, Florida
157 Statutes, is amended to read:
158 376.78 Legislative intent.—The Legislature finds and
159 declares the following:
160 (1) The reduction of public health and environmental
161 hazards on existing ~~commercial and industrial~~ sites is vital to
162 their use and reuse as sources of employment, housing,
163 recreation, and open space areas. The reuse of industrial land
164 is an important component of sound land use policy for
165 productive urban purposes which will help prevent the premature
166 development of farmland, open space areas, and natural areas,
167 and reduce public costs for installing new water, sewer, and
168 highway infrastructure.
169 Section 4. Subsections (1) and (2) of section 376.80,
170 Florida Statutes, are amended to read:
171 376.80 Brownfield program administration process.—
172 (1) The following general procedures apply to brownfield
173 designations:
174 (a) The local government with jurisdiction over a proposed
175 brownfield area shall designate such area pursuant to this

176 section.
177 (b) For a brownfield area designation proposed by:
178 1. The jurisdictional local government, the designation
179 criteria under paragraph (2)(a) apply, except if the local
180 government proposes to designate as a brownfield area a
181 specified redevelopment area as provided in paragraph (2)(b).
182 2. Any person, ~~other than a governmental entity,~~
183 including, but not limited to, individuals, corporations,
184 partnerships, trusts, limited liability companies, community-
185 based organizations, or not-for-profit corporations, the
186 designation criteria under paragraph (2)(c) apply.
187 (c) Except as otherwise provided, the following provisions
188 apply to all proposed brownfield area designations:
189 1. Notification to department following adoption.—A local
190 government with jurisdiction over the brownfield area must
191 notify the department, and, if applicable, the local pollution
192 control program under s. 403.182, of its decision to designate a
193 brownfield area for rehabilitation for the purposes of ss.
194 376.77-376.86. The notification must include a resolution
195 adopted by the local government body. The local government shall
196 notify the department, and, if applicable, the local pollution
197 control program under s. 403.182, of the designation within 30
198 days after adoption of the resolution.
199 2. Resolution adoption.—The brownfield area designation
200 must be carried out by a resolution adopted by the

201 jurisdictional local government, which includes a map adequate
202 to clearly delineate exactly which parcels are to be included in
203 the brownfield area or alternatively a less-detailed map
204 accompanied by a detailed legal description of the brownfield
205 area. For municipalities, the governing body shall adopt the
206 resolution in accordance with the procedures outlined in s.
207 166.041, except that the notices ~~procedures~~ for the public
208 hearings on the proposed resolution must be in the form
209 established in s. 166.041(3)(c) 2. For counties, the governing
210 body shall adopt the resolution in accordance with the
211 procedures outlined in s. 125.66, except that the notices
212 ~~procedures~~ for the public hearings on the proposed resolution
213 shall be in the form established in s. 125.66(4)(b).
214 3. Right to be removed from proposed brownfield area.—If a
215 property owner within the area proposed for designation by the
216 local government requests in writing to have his or her property
217 removed from the proposed designation, the local government
218 shall grant the request.
219 4. Notice and public hearing requirements for designation
220 of a proposed brownfield area outside a redevelopment area or by
221 a nongovernmental entity. Compliance with the following
222 provisions is required before designation of a proposed
223 brownfield area under paragraph (2)(a) or paragraph (2)(c):
224 a. At least one of the required public hearings shall be
225 conducted as closely as is reasonably practicable to the area to

226 be designated to provide an opportunity for public input on the
227 size of the area, the objectives for rehabilitation, job
228 opportunities and economic developments anticipated,
229 neighborhood residents' considerations, and other relevant local
230 concerns.
231 b. Notice of a public hearing must be made in a newspaper
232 of general circulation in the area, must be made in ethnic
233 newspapers or local community bulletins, must be posted in the
234 affected area, and must be announced at a scheduled meeting of
235 the local governing body before the actual public hearing.
236 (2)(a) Local government-proposed brownfield area
237 designation outside specified redevelopment areas.—If a local
238 government proposes to designate a brownfield area that is
239 outside a community redevelopment area, enterprise zone,
240 empowerment zone, closed military base, or designated brownfield
241 pilot project area, the local government shall provide notice,
242 adopt the resolution, and conduct public hearings pursuant to
243 paragraph (1)(c). At a public hearing to designate the proposed
244 area as a brownfield area, as defined in s. 376.79, the local
245 government must consider:
246 1. Whether the brownfield area warrants economic
247 development and has a reasonable potential for such activities;
248 2. Whether the proposed area to be designated represents a
249 reasonably focused approach and is not overly large in
250 geographic coverage;

251 3. Whether the area has potential to interest the private
252 sector in participating in rehabilitation; and
253 4. Whether the area contains sites or parts of sites
254 suitable for limited recreational open space, cultural, or
255 historical preservation purposes.
256 (b) Local government-proposed brownfield area designation
257 within specified redevelopment areas.—Paragraph (a) does not
258 apply to a proposed brownfield area if the local government
259 proposes to designate the brownfield area inside a community
260 redevelopment area, enterprise zone, empowerment zone, closed
261 military base, or designated brownfield pilot project area and
262 the local government complies with paragraph (1)(c).
263 (c) Brownfield area designation proposed by specified
264 persons ~~other than a governmental entity~~.—For designation of a
265 brownfield area that is proposed by a person under this
266 subsection ~~other than the local government~~, the local government
267 with jurisdiction over the proposed brownfield area shall
268 provide notice and adopt a resolution to designate the
269 brownfield area pursuant to paragraph (1)(c) if, at the public
270 hearing to adopt the resolution, the person establishes all of
271 the following with respect to the proposed brownfield area:
272 1. A person who owns or controls a potential brownfield
273 site is requesting the designation and has agreed to
274 rehabilitate and redevelop the brownfield site.
275 2. The rehabilitation and redevelopment of the proposed

276 brownfield site will result in economic productivity of the
277 area, along with the creation of at least 5 new permanent jobs
278 at the brownfield site that are full-time equivalent positions
279 not associated with the implementation of the brownfield site
280 rehabilitation agreement and that are not associated with
281 redevelopment project demolition or construction activities
282 pursuant to the redevelopment of the proposed brownfield site or
283 area. However, the job creation requirement does not apply to
284 the rehabilitation and redevelopment of a brownfield site that
285 will provide affordable housing as defined in s. 420.0004 or the
286 creation of recreational areas, conservation areas, or parks.
287 3. The redevelopment of the proposed brownfield site is
288 consistent with the local comprehensive plan and is a
289 permittable use under the applicable local land development
290 regulations.
291 4. Notice of the proposed rehabilitation of the brownfield
292 area has been provided to neighbors and nearby residents of the
293 proposed area to be designated pursuant to paragraph (1)(c), and
294 the person proposing the area for designation has afforded to
295 those receiving notice the opportunity for comments and
296 suggestions about rehabilitation. Notice pursuant to this
297 subparagraph must be posted in the affected area.
298 5. The person proposing the area for designation has
299 provided reasonable assurance that he or she has sufficient
300 financial resources to implement and complete the rehabilitation

301 agreement and redevelopment of the brownfield site.
302 (d) Negotiation of brownfield site rehabilitation
303 agreement.—The designation of a brownfield area ~~and the~~
304 ~~identification of a person responsible for brownfield site~~
305 ~~rehabilitation~~ simply entitles a ~~the identified~~ person to
306 negotiate a brownfield site rehabilitation agreement with the
307 department or approved local pollution control program.
308 Section 5. Paragraph (b) of subsection (1) and paragraphs
309 (a), (c), and (d) of subsection (2) of section 376.82, Florida
310 Statutes, are amended to read:
311 376.82 Eligibility criteria and liability protection.—
312 (1) ELIGIBILITY.—Any person who has not caused or
313 contributed to the contamination of a brownfield site on or
314 after July 1, 1997, is eligible to participate in the brownfield
315 program established in ss. 376.77-376.85, subject to the
316 following:
317 (b) Persons who have not caused or contributed to the
318 contamination of a brownfield site on or after July 1, 1997, and
319 who, prior to the department's approval of a brownfield site
320 rehabilitation agreement, are subject to ongoing corrective
321 action or enforcement under state authority established in this
322 chapter or chapter 403, including those persons subject to a
323 pending consent order with the state, are eligible for
324 participation in a brownfield site rehabilitation agreement if:
325 1. The proposed brownfield site is currently idle or

326 underutilized as a result of the contamination, and
327 participation in the brownfield program will immediately, after
328 cleanup or sooner, result in increased economic productivity at
329 the site, including at a minimum the creation of 10 new
330 permanent jobs, whether full-time or part-time, which are not
331 associated with implementation of the brownfield site
332 rehabilitation agreement. However, the job creation requirement
333 does not apply to the rehabilitation and redevelopment of a
334 brownfield site that will provide affordable housing as defined
335 in s. 420.0004 or create recreational areas, conservation areas,
336 or parks, or be maintained for cultural or historical
337 preservation purposes; and
338 2. The person is complying in good faith with the terms of
339 an existing consent order or department-approved corrective
340 action plan, or responding in good faith to an enforcement
341 action, as evidenced by a determination issued by the department
342 or an approved local pollution control program.
343 (2) LIABILITY PROTECTION.—
344 (a) Any person, including his or her successors and
345 assigns, who executes and implements to successful completion a
346 brownfield site rehabilitation agreement, his or her successors
347 and assigns, and any subsequent property owner of the brownfield
348 site, is relieved of:
349 1. Further liability for remediation of the contaminated
350 site or sites to the state and to third parties.

351 2. Liability in contribution to any other party who has or
352 may incur cleanup liability for the contaminated site or sites.
353 3. Liability for claims of property damages, including,
354 but not limited to, diminished value of real property or
355 improvements; lost or delayed rent, sale, or use of real
356 property or improvements; or stigma to real property or
357 improvements caused by contamination addressed by a brownfield
358 site rehabilitation agreement. Notwithstanding any other
359 provision of this chapter, this subparagraph applies to causes
360 of action accruing on or after July 1, 2014. This subparagraph
361 does not apply to a person who discharges contaminants on
362 property subject to a brownfield site rehabilitation agreement,
363 who commits fraud in demonstrating site conditions or completing
364 site rehabilitation of a property subject to a brownfield site
365 rehabilitation agreement, or who exacerbates contamination of a
366 property subject to a brownfield site rehabilitation agreement
367 in violation of applicable laws which causes property damages.
368 4. Statutory causes of action arising under s. 376.313(3).
369 (c) This section does ~~shall~~ not affect the ability or
370 authority to seek contribution from any person who may have
371 liability with respect to the contaminated site and who did not
372 receive cleanup liability protection under this act.
373 (d) The liability protection provided under this section
374 shall become effective upon execution of a brownfield site
375 rehabilitation agreement and shall remain effective as to any

376 person responsible for brownfield site rehabilitation, provided
377 each ~~the~~ person responsible for brownfield site rehabilitation
378 complies with the terms of the site rehabilitation agreement,
379 and as to any subsequent property owner of the brownfield site,
380 such owner maintains compliance, as applicable, with any
381 institutional controls or engineering controls required for site
382 rehabilitation. Any statute of limitations that would bar the
383 department from pursuing relief in accordance with its existing
384 authority is tolled from the time the agreement is executed
385 until site rehabilitation is completed or immunity is revoked
386 pursuant to s. 376.80(8).
387 Section 6. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 1111 Government Accountability
SPONSOR(S): State Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1538

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee		Etheridge	Williamson

SUMMARY ANALYSIS

The bill includes various provisions designed to promote integrity in government and identify and eliminate fraud, waste, abuse, mismanagement, and misconduct in government. Specifically, the bill:

- Creates the Florida Integrity Office (FIO) under the Auditor General for the purpose of ensuring accountability and integrity in state and local government and facilitating the elimination of fraud, waste, abuse, mismanagement, and misconduct in government.
- Requires the Chief Inspector General (CIG) and agency inspectors general to determine whether there is reasonable probability that fraud, waste, abuse, mismanagement, or misconduct in government has occurred within six months of initiating an investigation of such activity.
- Specifies the vote required for appointing an executive director for the Department of Law Enforcement and the Department of Veterans' Affairs.
- Provides a mechanism for the state to recover funds when the CIG or an agency inspector general determines a public official, independent contractor, or agency has committed fraud, waste, abuse, mismanagement, or misconduct in government.
- Requires the Chief Financial Officer (CFO) to regularly forward to the Florida Integrity Officer (Officer) copies of suggestions and information submitted through the state's "Get Lean" hotline.
- Provides a financial incentive for agency employees to file "Whistle-blower's Act" complaints and participate in investigations that lead to the recovery of funds.
- Requires specified terms be included in all contracts with public agencies.
- Broadens the competitive solicitation exemption for statewide broadcasting of public service announcements.
- Prohibits state or local tax incentive funds from being used to award or pay a state contractor for services provided or expenditures incurred pursuant to a state contract.
- Prohibits a state employee from lobbying for an appropriation and also participating in awarding any contract funded by the appropriation. The bill provides an exception for a state employee who is an agency head, employed in the Executive Office of the Governor or the Office of Policy and Budget, or an employee who is required to register as a lobbyist but whose primary job responsibilities do not include lobbying.

The bill is projected to have a significant fiscal impact to expenditures of the Auditor General. Provisions of the bill related to the creation of the FIO under the Auditor General are anticipated to cost approximately $2.5 million annually to implement. However, the bill authorizes the Auditor General to use existing carryforward funds to cover any projected expenditures. The fiscal impact of other provisions of the bill on other state agencies are indeterminate, but likely insignificant, and are expected to be absorbed within existing agency resources. *See* Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Integrity Office (Sections 1 and 12)

Current Situation

The position of Auditor General is established by Art. III, s. 2 of the State Constitution. The Auditor General is appointed to office to serve at the pleasure of the Legislature, by a majority vote of the members of the Legislative Auditing Committee, subject to confirmation by both houses of the Legislature.[1] The appointment of the Auditor General may be terminated at any time by a majority vote of both houses of the Legislature.[2]

The Auditor General conducts audits, examinations, and reviews of government programs as well as audits the accounts and records of state agencies, state universities, state colleges, district school boards, and others as directed by the Legislative Auditing Committee.[3] The Auditor General conducts operational and performance audits on public records and information technology systems and reviews all audit reports of local governmental entities, charter schools, and charter technical career centers.[4]

Current law authorizes the Legislature, through its committees, to inspect and investigate the books, records, papers, documents, data, operation, and physical plant of any public agency in the state, including any confidential information.[5] Current law also authorizes the Legislature, through its committees, to issue subpoena and other necessary process to compel the attendance of witnesses and issue subpoena duces tecum to compel the production of any books, letters, or other documentary evidence, including any confidential information, in reference to any matter under investigation.[6]

Effect of Proposed Changes

The bill creates the Florida Integrity Office (FIO) under the Auditor General. FIO will be led by the Florida Integrity Officer (Officer), who will be appointed by and serve at the pleasure of the Auditor General. Pursuant to the bill's provisions, the Officer may receive and investigate any complaint alleging fraud, waste, abuse, mismanagement, or misconduct in connection with the expenditure of public funds. The following individuals may submit a complaint: the President of the Senate; the Speaker of the House of Representatives; the chair of an appropriations committee of the Senate or House of Representatives; and the Auditor General.

Upon receipt of a valid complaint, the bill requires the Officer to determine whether the complaint is supported by sufficient information indicating a reasonable probability of fraud, waste, abuse, mismanagement, or misconduct. If the Officer determines that the complaint is not supported by sufficient information indicating a reasonable probability of fraud, waste, abuse, mismanagement, or misconduct, the Officer must notify the complainant in writing, and the complaint must be closed.

If the complaint is supported by sufficient information indicating a reasonable probability of fraud, waste, abuse, mismanagement, or misconduct, the bill requires the Officer to determine whether the matter is under investigation by a law enforcement agency, the Commission on Ethics, the Chief Financial Officer, the Office of the Chief Inspector General, or the applicable agency inspector general. If such an investigation has been initiated, the Officer must notify the complainant in writing, and the complaint may be closed. If such an investigation has not been initiated, the bill requires the Officer to conduct an

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[1] S. 11.42(2), F.S.
[2] S. 11.42(5), F.S.
[3] S. 11.45, F.S.
[4] *Id.*
[5] S. 11.143(2), F.S.
[6] S. 11.143(3), F.S.

investigation and issue a report of the investigative findings to the President of the Senate and the Speaker of the House of Representatives. The Officer may also refer the matter to the Auditor General, the appropriate law enforcement agency, the Chief Financial Officer, the Office of the Chief Inspector General, or the applicable agency inspector general.

Similar to the current authority given to legislative committees,[7] the bill gives the Officer the authority to inspect and investigate the books, records, papers, documents, data, operation, and physical location of any public agency in the state, including any confidential information. The bill also gives the Officer the authority to investigate the public records of any entity that has received direct appropriations.

The bill authorizes the Officer to request the Legislative Auditing Committee or any legislative committee to exercise existing powers[8] to issue subpoenas and subpoenas duces tecum to compel testimony or the production of evidence when deemed necessary to an authorized investigation. The bill also provides the means of enforcing any subpoena issued pursuant to the bill's provisions.

Beginning with fiscal year (FY) 2021–2022, the bill requires the Auditor General and the Officer to, within available resources, randomly select and review appropriations projects appropriated in the prior FY and, if appropriate, investigate and recommend an audit of such project. The bill requires that, at a minimum, the investigation or audit must include an evaluation of whether the recipient of the appropriations project administered the project in an efficient and effective manner. Pursuant to the bill, the term "appropriations project" means a specific appropriation or proviso providing funding for a specified entity that is a local government, private entity, or privately-operated program that is named or described. The term does not include an appropriation:

- Specifically authorized by statute;
- That is part of a statewide distribution to local governments;
- Recommended by a commission, council, or other similar entity created in statute to make annual funding recommendations, provided that such appropriation does not exceed the amount of funding recommended by the commission, council, or other similar entity;
- For a specific transportation facility that was part of the Department of Transportation's five-year work program submitted pursuant to s. 339.135, F.S.;
- For an education fixed capital outlay project that was submitted pursuant to s. 1013.60, F.S., or s. 1013.64, F.S.; or
- For a specified program, research initiative, institute, center, or similar entity at a specific state college or university recommended by the Board of Governors or the State Board of Education in its Legislative Budget Request.

The bill's definition of "appropriations project" mirrors the definition of the term in Joint Rule 2.2,[9] adopted for the 2018–2020 biennium.

Beginning with FY 2021–2022, the bill requires the Auditor General and the Officer, within available resources, to select and review, audit, or investigate the financial activities of:

- Political subdivisions, special districts, public authorities, public hospitals, state and local councils or commissions, units of local government, or public education entities in the state; and
- Any authorities, councils, commissions, direct-support organizations, institutions, foundations, or similar entities created by law or ordinance to pursue a public purpose, entitled by law or ordinance to any distribution of tax or fee revenues, or organized for the sole purpose of supporting one of the public entities listed above.

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[7] *See* s. 11.143(2), F.S.
[8] *See* s. 11.143(3), F.S.
[9] J.R. 2.2(4), 2018–2020.

Auditor General Responsibilities (Section 2)

Current Situation

The United States Government Accountability Office (GAO) is an independent, nonpartisan agency that works for Congress.[10] Often called the "congressional watchdog," the GAO examines how taxpayer dollars are spent and provides Congress and federal agencies with objective, reliable information to help the government save money and work more efficiently.[11] GAO's publication, *Government Auditing Standards* (known as the "Yellow Book") provides "a framework for performing high-quality audit work with competence, integrity, objectivity, and independence to provide accountability and to help improve government operations and services."[12] Among other things, the Yellow Book provides a standard definition for "abuse."[13]

The Florida Department of Management Services (DMS) has promulgated rules that set forth the minimum standards of conduct that apply to all employees in the State Personnel System, the violation of which may result in dismissal.[14]

Current law requires the Auditor General to conduct operational audits[15] of state agencies, state universities, state colleges, district school boards, the Florida Clerks of Court Operations Corporation, water management districts, and the Florida School for the Deaf and the Blind at least every three years.[16] Current law also requires the Auditor General to conduct a financial audit[17] of all state universities and state colleges on an annual basis.[18] The Auditor General is required to perform a financial audit of district school boards in counties that have populations of 150,000 or more at least once every three years and annually in counties with populations of fewer than 150,000.[19]

If an operational or financial audit report indicates a district school board, state university, or state college has failed to take full corrective action in response to a recommendation that was included in the two preceding operational or financial audit reports, the Auditor General is required to notify the Legislative Auditing Committee.[20] In such cases, the Legislative Auditing Committee may initiate actions that require the audited organization to demonstrate the steps it has taken towards corrective

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[10] GAO, https://www.gao.gov/about (last visited Feb. 14, 2020).
[11] *Id.*
[12] GAO, Government Auditing Standards 1 (July 2018).
[13] *Id.* at 114. The GAO defines "abuse" as behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances. The term includes the misuse of authority or position for personal gain or for the gain of an immediate or close family member or business associate.
[14] R. 60L-36.005, F.A.C., defines "misconduct" as conduct which, though not illegal or inappropriate for a state employee generally, is inappropriate for a person in the employee's particular position.
[15] S. 11.45(1)(g), F.S., defines an "operational audit" as an audit whose purpose is to evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines. Operational audits must be conducted in accordance with government auditing standards. Such audits examine internal controls that are designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets, and identify weaknesses in those internal controls.
[16] S. 11.45(2)(f), F.S.
[17] S. 11.45(1)(c), F.S., defines a "financial audit" as an examination of financial statements in order to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements. Financial audits must be conducted in accordance with auditing standards generally accepted in the United States and government auditing standards as adopted by the Board of Accountancy. When applicable, the scope of financial audits must encompass the additional activities necessary to establish compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. ss. 7501-7507, and other applicable federal law.
[18] S. 11.45(2)(c), F.S.
[19] S. 11.45(2)(d) and (e), F.S.
[20] S. 11.45(7)(j), F.S.

action.[21] This reporting cycle may result in the Legislative Auditing Committee not being notified of one of the above referenced entity's failure to take full corrective action for six or more years.

Effect of Proposed Changes

The bill codifies a definition for "misconduct" and revises the definition for "abuse." The bill defines the term "'abuse"' as behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances. The term includes the misuse of authority or position for personal gain or for the gain of an immediate or close family member or business associate. The bill defines the term "misconduct" as conduct that, though not illegal, is inappropriate for a person in his or her specified position. The definition for "abuse" mirrors the definition used by GAO in the Yellow Book. The definition for 'misconduct' mirrors the definition promulgated by DMS rule.

The bill revises the Auditor General's notification responsibilities with respect to a district school board, state university, or state college failing to take full corrective action on an audit finding by shortening the cycle from three to two successive operational audits.

The bill requires the Auditor General to publish a report consolidating common operational audit findings for all state agencies, all state universities, all state colleges, and all district school boards at the conclusion of each three-year cycle.

Inspectors General (Sections 3 and 6)

Current Situation

The Office of Chief Inspector General (CIG) is responsible for promoting accountability, integrity, and efficiency in agencies under the Governor's jurisdiction.[22] The CIG monitors the activities of the agency inspectors general under the Governor's jurisdiction and is required to do the following:

- Initiate, supervise, and coordinate investigations, recommend policies, and carry out other activities designed to deter, detect, prevent, and eradicate fraud, waste, abuse, mismanagement, and misconduct in government;
- Investigate, upon receipt of a complaint or for cause, any administrative action of any agency the administration of which is under the direct supervision of the Governor;
- Request such assistance and information as may be necessary for the performance of the CIG's duties;
- Examine the records and reports of any agency the administration of which is under the direct supervision of the Governor;
- Coordinate complaint-handling activities with agencies;
- Coordinate the activities of the Whistle-blower's Act and maintain the whistle-blower's hotline to receive complaints and information concerning the possible violation of law or administrative rules, mismanagement, fraud, waste, abuse of authority, malfeasance, or a substantial or specific danger to the health, welfare, or safety of the public;
- Report expeditiously to and cooperate fully with the Department of Law Enforcement, the Department of Legal Affairs, and other law enforcement agencies when there are recognizable grounds to believe that there has been a violation of criminal law or that a civil action should be initiated;
- Act as liaison with outside agencies and the federal government to promote accountability, integrity, and efficiency in state government;
- Act as liaison and monitor the activities of the inspectors general in the agencies under the Governor's jurisdiction;
- Review, evaluate, and monitor the policies, practices, and operations of the Executive Office of the Governor; and

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[21] *Id.*
[22] S. 14.32(1), F.S.

- Conduct special investigations and management reviews at the request of the Governor.[23]

Authorized under s. 20.055, F.S., an Office of Inspector General (OIG) is established in each state agency[24] to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. Each agency OIG is responsible for the following:

- Advising in the development of performance measures, standards, and procedures for the evaluation of state agency programs;
- Assessing the reliability and validity of information provided by the agency on performance measures and standards;
- Reviewing the actions taken by the agency to improve agency performance, and making recommendations, if necessary;
- Supervising and coordinating audits, investigations, and reviews relating to the programs and operations of the state agency;
- Conducting, supervising, or coordinating other activities carried out or financed by the agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;
- Providing central coordination of efforts to identify and remedy waste, abuse, and deficiencies to the agency head,[25] or the CIG for agencies under the jurisdiction of the Governor; recommending corrective action concerning fraud, abuses, and deficiencies; and reporting on the progress made in implementing corrective action;
- Coordinating agency-specific audit activities between the Auditor General, federal auditors, and other governmental bodies to avoid duplication;
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact;
- Ensuring that an appropriate balance is maintained between audit, investigative, and other accountability activities; and
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.[26]

With respect to investigations, each OIG must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government.[27] For these purposes, each inspector general must do the following:

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act;
- Receive and consider the complaints that do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the inspector general deems appropriate;
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, when the inspector general has reasonable grounds to believe there has been a violation of criminal law;

[23] S. 14.32(2), F.S.
[24] S. 20.055(1)(d), F.S., defines the term "state agency" as each department created pursuant to ch. 20, F.S., and the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, the Agency for State Technology, the Office of Early Learning, and the state courts system.
[25] S. 20.055(1)(a), F.S., defines the term "agency head" as the Governor, a Cabinet officer, a secretary as defined in s. 20.03(5), F.S., or an executive director as defined in s. 20.03(6), F.S. It also includes the chair of the Public Service Commission, the Director of the Office of Insurance Regulation of the Financial Services Commission, the Director of the Office of Financial Regulation of the Financial Services Commission, the board of directors of the Florida Housing Finance Corporation, the executive director of the Office of Early Learning, and the Chief Justice of the State Supreme Court.
[26] S. 20.055(2), F.S.
[27] S. 20.055(7), F.S.

- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general's office. This must include freedom from any interference with investigations and timely access to records and other sources of information;
- At the conclusion of an investigation, the subject of which is an entity contracting with the state or an individual substantially affected, submit the findings to the contracting entity or the individual substantially affected, who must be advised that they may submit a written response to the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report; and
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.[28]

Effect of Proposed Changes

The bill requires the CIG and agency inspectors general to make a reasonable probability determination within six months of initiating an investigation of fraud, waste, abuse, mismanagement, or misconduct in government. Pursuant to the bill's provisions, if the investigation continues in the absence of reasonable probability that fraud, waste, abuse, mismanagement, or misconduct has occurred, the CIG or any agency inspector general must make a new determination every three months until the investigation is closed or reasonable probability is found. The bill provides definitions for the terms "fraud,"[29] "waste,"[30] "abuse,"[31] and "misconduct."[32] The definitions for "fraud," "waste," and "abuse" mirror the definitions used by GAO, as provided in the *Standards for Internal Control in the Federal Government* (known as the "Green Book").[33] The definition for "misconduct" mirrors the definition promulgated by DMS in r. 60L-36.005, F.A.C.

If the CIG or an agency inspector general determines there is reasonable probability to believe a public official, independent contractor, or agency has committed fraud, waste, abuse, mismanagement, or misconduct in government, the bill requires the applicable inspector general to report such determination to the Officer. Pursuant to the bill, such public officer, independent contractor, or agency employee responsible for the fraud, waste, abuse, mismanagement, or misconduct in government is liable for repayment of the funds diverted or lost. If the person liable fails to repay such funds voluntarily and the state does not agree to a settlement, the bill requires the CFO to bring a civil action to recover the funds.

Chief Financial Officer's Office of Fiscal Integrity (Section 4)

Current Situation

The Chief Financial Officer (CFO) is an elected constitutional Cabinet member.[34] The CFO serves as the chief fiscal officer of the state and is responsible for settling and approving accounts against the state and keeping all state funds and securities.[35] Such responsibilities include, but are not limited to,

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[28] *Id.*
[29] The bill defines the term "fraud" as obtaining something of value through willful misrepresentation, including, but not limited to, the intentional misstatements or intentional omissions of amounts or disclosures in financial statements to deceive users of financial statements, theft of an entity's assets, bribery, or the use of one's position for personal enrichment through the deliberate misuse or misapplication of an entity's resources.
[30] The bill defines the term "waste" as the act of using or expending resources unreasonably, carelessly, extravagantly, or for no useful purpose.
[31] The bill defines the term "abuse" as behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances. The term includes the misuse of authority or position for personal gain.
[32] The bill defines the term "misconduct" as conduct which, though not illegal, is inappropriate for a person in his or her specified position.
[33] GAO, Standards for Internal Control in the Federal Government 40 (September 2014).
[34] Art. IV, s. 4(a), Fla. Const.
[35] Art. IV, s. 4(c), Fla. Const.; s. 17.001, F.S.

auditing and adjusting accounts of officers and those indebted to the state,[36] paying state employee salaries,[37] and reporting all disbursements of funds administered by the CFO.[38]

The CFO's Office of Fiscal Integrity (OFI) is a criminal justice agency[39] with full statutory subpoena power.[40] OFI's mission is to detect and investigate the misappropriation or misuse of state assets in a manner that safeguards the interests of the state and its taxpayers.[41]

According to OFI, it conducts criminal investigations into misbehavior by state employees that have been under review by their respective agency inspector general. Upon receiving the referral on the state employee, OFI may begin a full criminal investigation. If criminal charges are warranted, OFI will refer the matter to the proper charging authority.

According to OFI, it does not currently have the authority to commence an investigation based on a complaint from an employee of a state agency or state contractor.

Effect of Proposed Changes

The bill authorizes the CFO to commence an investigation based on a complaint or referral from any source, including an employee of a state agency or state contractor. The bill also explicitly authorizes an employee of a state agency or state contractor who has knowledge of suspected misuse of state funds to report such information to the CFO.

Chief Financial Officer's "Get Lean" Program (Section 5)

Current Situation

The CFO is required to operate a 24-hour statewide toll-free hotline to receive information or suggestions from state residents on how to improve the operation of government, increase governmental efficiency, and eliminate waste in government.[42] The hotline consists of a telephone hotline and website. The CFO is required to advertise the hotline by posting notices in conspicuous places in state agency offices, city halls, county courthouses, and places in which there is exposure to significant numbers of the general public, including, but not limited to, local convenience stores, shopping malls, shopping centers, gas stations, or restaurants.[43] Additionally, the law allows the CFO to advertise the availability of the hotline in newspapers of general circulation within the state.[44] When advertising the hotline, the CFO must use the slogan, "Tell us where we can 'Get Lean.'"[45]

Those that provide tips through the hotline may remain anonymous, but if the tipper provides his or her name, the name is kept confidential.[46] By law, the tipper is immune from liability for any use of the information and may not be subject to any retaliation by any state employee for providing the tip.[47]

When a tip comes in to the hotline, the CFO's office is required to conduct an evaluation to determine if the tip is appropriate to be processed.[48] If the tip is appropriate to be processed, the CFO's office is required to keep a record of each suggestion or item of information received in the tip.[49]

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36 S. 17.04, F.S.
37 S. 17.09, F.S.
38 S. 17.11, F.S.
39 S. 20.121(2)(e), F.S.
40 S. 17.05(2), F.S.
41 Office of Fiscal Integrity, https://myfloridacfo.com/Division/DIFS/OFI/default.htm (last visited Feb. 19, 2020).
42 S. 17.325(1), F.S.
43 S. 17.325(2), F.S.
44 *Id.*
45 *Id.*
46 S. 17.325(3), F.S.
47 S. 17.325(4), F.S.
48 S. 17.325(3), F.S.
49 *Id.*

If the tipper discloses that he or she is a state employee, the CFO's office may refer any information or suggestion from the tipper to an existing state awards program administered by the impacted agency.[50] If forwarded, the impacted agency must conduct a preliminary evaluation of the efficacy of the suggestion or information and provide the CFO's office with a preliminary determination of the amount of revenue the state might save by implementing the suggestion or making use of the information.[51]

Effect of Proposed Changes

The bill requires the CFO's office to provide a copy of each suggestion or item of information processed through the "Get Lean" hotline to the Officer by the 15th of the month following receipt of the suggestion or item of information.

Florida Whistle-blower's Act (Sections 10, 16 - 18)

Current Situation

The "Whistle-blower's Act"[52] protects government employees from adverse actions from their employers or an independent contractor for reporting any act (or suspected act) of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty; or any violation (or suspected violation) of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor that creates and presents a substantial and specific danger to the public's health, safety, or welfare.[53] The Whistle-blower's Act, codified in ss. 112.3187 – 112.31895, F.S., governs the complaint filing and resolution process, provides investigatory procedures upon receipt of a complaint and in response to prohibited personnel actions, and provides for confidentiality of the complainant's name or identity.

Effect of Proposed Changes

The bill broadens the category of complaints that may be covered by the Whistle-blower's Act. Specifically, the bill covers complaints alleging "mismanagement," "waste of public funds," and "neglect of duty" as opposed to "gross mismanagement," "gross waste of public funds," and "gross neglect of duty" as under current law. The bill makes conforming changes to other portions of the Whistle-blower's Act consistent with the revised definitions and broader category of complaints.

Vote Requirement – Executive Director (Sections 7 and 8)

Current Situation

The head of both the Department of Law Enforcement (FDLE) and the Department of Veterans' Affairs (DVA) is the Governor and Cabinet.[54] The position of executive director within both agencies is appointed by the Governor with the approval of all three members of the Cabinet, subject to confirmation by the Senate.[55]

Effect of Proposed Changes

The bill specifies that the position of executive director within FDLE and DVA must be appointed by the Governor with approval of two or more members of the Cabinet, subject to Senate confirmation.

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[50] *Id.*
[51] *Id.*
[52] Ss. 112.3187–112.31895, F.S.
[53] S. 112.3187(4) and (5), F.S.
[54] Art. IV, ss. 4(g) and 11, Fla. Const.
[55] *See* ss. 20.201 and 20.37, F.S.

Savings Sharing Program (Section 9)

Current Situation

Florida law provides a state "Savings Sharing Program" for the purpose of providing a process by which state agencies can retain a portion of their budget for implementing internally generated program efficiencies and cost reductions and then redirect the savings to employees.[56] By law, DMS must adopt rules that prescribe procedures for the program.[57]

Each state agency is eligible to participate in the Savings Sharing Program, and each agency head is responsible for recommending employees individually or by group to be awarded an amount of money, which must be directly related to the cost savings realized.[58] Each proposed award must be approved by the Legislative Budget Commission before distribution.[59] All employees within the Career Service and Selected Exempt Service are eligible to receive awards, provided they meet the statutory eligibility criteria.[60]

Additionally, the law allows the Chief Justice to establish a savings sharing program for employees in the judicial branch.[61]

Effect of Proposed Changes

The bill creates a reward system for state employees whose reports under the Whistle-blower's Act result in savings or recovery of public funds in excess of $1,000. The amount of the award will be determined by the amount saved or recovered, the employee's employment classification, and when more than one employee makes a relevant report, in proportion to each employee's contribution to the investigation that led to the recovery of such funds. The bill sets the following award amounts:

- Career Service Employee – 10 percent of savings or recovery certified, but not less than $500 and not more than a total of $50,000 in any year.
- Selected Exempt Service Employees and Senior Management Service – 5 percent of savings or recovery certified, but not more than $1,000 in any year.

The agency head must recommend the employee or employees for awards and requires the funds be paid from the specific appropriation or trust fund from which the savings or recovery resulted. The bill provides that these awards are not bonuses and do not require approval by the Legislative Budget Commission.

To protect the identity of the whistle-blower, the bill allows employees to authorize an agent, trustee, or custodian to collect any award for which the employee is eligible on the employee's behalf.

Contracts and the Procurement of Commodities and Services (Sections 11 and 12)

Current Situation

Chapter 287, F.S., regulates state agency[62] procurement of personal property and services. DMS is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and

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[56] S. 110.1245, F.S.
[57] S. 110.1245(1)(a), F.S.
[58] S. 110.1245(1)(b) and (c), F.S.
[59] S. 110.1245(1)(b), F.S.
[60] S. 110.1245(1)(c) and (2)(b), F.S.
[61] *Id.*
[62] S. 287.012(1), F.S., defines the term "agency" as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. The term does not include the university and college boards of trustees or the state universities and colleges.

information technology.[63] DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.[64]

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:[65]

- Invitations to bid – used when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required. In such cases, the contract is awarded to the responsible and responsive vendor who submits the lowest responsive bid;
- Requests for proposal – used when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables. Various combinations or versions of commodities or contractual services may be proposed by a responsive vendor to meet the specifications of the solicitation document. In such cases, the contract is awarded to the responsible and responsive vendor whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and other criteria set forth in the request for proposals; and
- Invitations to negotiate – used when the agency intends to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value; and

For contracts for commodities or services in excess of $35,000, agencies must utilize a competitive solicitation process.[66] However, certain contractual services and commodities are exempt from this requirement.[67] A contract for commodities or contractual services may be awarded without competition if state or federal law prescribes with whom the agency must contract,[68] or the rate of payment or the recipient of the fund may be established during the appropriations process.[69]

Current law contains an exemption from the competitive solicitation requirement for statewide public service announcement programs provided by a Florida statewide nonprofit corporation under s. 501(c)(6) of the Internal Revenue Code that have a guaranteed documented match of at least $3 to $1.[70]

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[63] *See* ss. 287.032 and 287.042, F.S.
[64] *Id.*
[65] *See* ss. 287.012(6) and 287.057, F.S.
[66] S. 287.057(1), F.S., requires all projects that exceed the Category Two ($35,000) threshold in s. 287.017, F.S., be competitively bid.
[67] *See* s. 287.057(3), F.S.
[68] S. 287.057(10), F.S.
[69] *Id.*
[70] S. 287.057(3)(e)(13), F.S.

Effect of Proposed Changes

The bill requires all contracts between a contractor and a public agency entered into or amended on or after July 1, 2020, to provide that the public agency may inspect:

- Financial records, papers, and documents of the contractor directly related to the execution of the contract or the expenditure of state funds; and
- Programmatic records, papers, and documents of the contractor that are necessary to monitor the performance of the contract or ensure that the terms of the contract are being met, as determined by the public agency.

The bill specifies that the contract provision must require the contractor to provide any such documents within 10 business days of the request from the public agency.

The bill expands the competitive solicitation exemption for statewide public service announcements. Specifically, the bill removes the provision that required the public service announcement to be statewide and provided by a 501(c)(6) corporation.

The bill also prohibits a state employee from lobbying for funding for a contract and participating in the awarding of such contract. This provision of the bill does not apply to a state employee who is an agency head, employed in the Executive Office of the Governor or the Office of Policy and Budget, or an employee who is required to register as a lobbyist but whose primary job responsibilities do not include lobbying.

Tax Incentives (Section 13)

Current Situation

Chapter 288, F.S., governs the operation of numerous economic development programs, some of which provide tax credits, tax refunds, sales tax exemptions, cash grants, and other similar programs.

Effect of Proposed Changes

The bill prohibits a tax incentive, notwithstanding any other law, from being awarded or paid to a state contractor or any subcontractor for services provided or expenditures incurred pursuant to a state contract.

Department of Education Inspector General Investigations (Section 14)

Current Situation

The Office of Inspector General within the Department of Education (DOE-IG) is responsible for promoting accountability, efficiency, and effectiveness and detecting fraud and abuse within school districts, the Florida School for the Deaf and the Blind, and Florida College System institutions.[71]

If the Commissioner of Education determines that a district school board, the Board of Trustees for the Florida School for the Deaf and the Blind, or a Florida College System institution board of trustees is unwilling or unable to address substantiated allegations made by any person relating to waste, fraud, or financial mismanagement within the school district, the Florida School for the Deaf and the Blind, or the Florida College System institution, the DOE-IG must conduct, coordinate, or request investigations into such substantiated allegations.[72]

Additionally, the DOE-IG must investigate allegations or reports of possible fraud or abuse against a district school board made by any member of the Cabinet; the presiding officer of either house of the

[71] S. 1001.20(4)(e), F.S.
[72] *Id.*

Legislature; a chair of a substantive or appropriations committee with jurisdiction; or a member of the board for which an investigation is sought.[73]

Effect of Proposed Changes

To increase accountability, the bill requires the DOE-IG to also investigate allegations or reports of possible waste, fraud, abuse, or mismanagement against a Florida College System institution made by any member of the Cabinet; the presiding officer of either house of the Legislature; a chair of a substantive or appropriations committee with jurisdiction; or a member of the board for which an investigation is sought. Additionally, the bill requires the DOE-IG to investigate allegations or reports of possible waste or mismanagement against a district school board made by any of the previously referenced members or officers.

B. SECTION DIRECTORY:

Section 1. Creates s. 11.421, F.S., establishing FIO within the Office of Auditor General.

Section 2. Amends s. 11.45, F.S., relating to Auditor General reporting requirements.

Section 3. Amends s. 14.32, F.S., relating to the OIG.

Section 4. Amends s. 17.04, F.S., relating to the CFO's authority to audit and adjust accounts of officers and those indebted to the state.

Section 5. Amends s. 17.325, F.S., relating to Florida's 'Get Lean' hotline.

Section 6. Amends s. 20.055, F.S., relating to agency inspectors general.

Section 7. Amends s. 20.201, F.S., revising the number of votes required for executive director.

Section 8. Amends s. 20.37, F.S., revising the number of votes required for executive director.

Section 9. Amends s. 110.1245, F.S., relating to the state 'Savings Sharing Program.'

Section 10. Amends s. 112.3187, F.S., relating to the 'Whistle-blower's Act.'

Section 11. Creates s. 216.1366, F.S., relating to contract terms.

Section 12. Amends s. 287.057, F.S., relating to the procurement of commodities or contractual services.

Section 13. Creates s. 288.00001, F.S., relating to use of state or local incentive funds.

Section 14. Amends s. 1001.20 F.S., relating to duties of the DOE-IG.

Section 15. Provides authority to the Auditor General to use carryforward funds to fund the establishment and operation of FIO.

Section 16. Amends s. 112.3188, F.S., conforming provisions to changes made by the act.

Section 17. Amends s. 112.3189, F.S., conforming provisions to changes made by the act.

Section 18. Amends s. 112.31895, F.S., conforming provisions to changes made by the act.

Section 19. Provides an effective date of July 1, 2020.

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[73] *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Office of Auditor General, the projected annual fiscal impact is approximately $2.5 million to staff and to fund the newly created FIO. However, only a portion of that amount will be needed in the first year as the office ramps up staffing and associated expenses. Additionally, some of the functions of the FIO will not be fully implemented until FY 2021–2022. The bill authorizes the Auditor General to use existing carryforward funds to fund the office, which are sufficient to cover such costs for more than three years, therefore no appropriation is necessary.

The revisions to the state Savings Sharing Program will have an indeterminate positive fiscal impact on agencies as they provide an incentive for agency employees to file Whistle-blower's Act complaints and participate in investigations that lead to the recovery of state or federal funds. Any award given pursuant to this provision will be paid from the specific appropriation or trust fund from which the savings or recovery resulted.

Additional reporting and tracking requirements assigned to agencies, as well as investigations of complaint referrals and processing whistle-blower complaints, can be absorbed within existing agency resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor does it appear to require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to government accountability; creating
3 s. 11.421, F.S.; creating the Florida Integrity Office
4 under the Auditor General; providing definitions;
5 providing duties and powers of the Florida Integrity
6 Officer and the Auditor General; amending s. 11.45,
7 F.S.; providing a definition; providing and revising
8 Auditor General reporting requirements; amending s.
9 14.32, F.S.; providing definitions; providing
10 investigative duties of the Chief Inspector General
11 and agency inspectors general; requiring such
12 inspectors general to provide a report to the Chief
13 Financial Officer within a specified timeframe in
14 certain circumstances; providing liability for certain
15 officials, contractors, and persons in certain
16 circumstances; amending s. 17.04, F.S.; authorizing
17 the Chief Financial Officer to commence an
18 investigation based on certain complaints or
19 referrals; authorizing state agency employees and
20 state contractors to report certain information to the
21 Chief Financial Officer; amending s. 17.325, F.S.;
22 requiring certain records to be sent to the Florida
23 Integrity Officer within a specified timeframe;
24 amending s. 20.055, F.S.; requiring agency inspectors
25 general to make certain determinations and reports;

26 amending ss. 20.201 and 20.37, F.S.; revising the
27 number of cabinet votes required to approve the
28 appointment of the executive director of the Florida
29 Department of Law Enforcement and the executive
30 director of the Department of Veterans' Affairs,
31 respectively; amending s. 110.1245, F.S.; providing
32 requirements for awards given to employees who report
33 under the Whistle-blower's Act; authorizing
34 expenditures for such awards; amending s. 112.3187,
35 F.S.; revising a definition; conforming provisions to
36 changes made by the act; creating s. 216.1366, F.S.;
37 providing requirements for certain public agency
38 contracts; amending s. 287.057, F.S.; revising
39 provisions relating to contractual services and
40 commodities that are not subject to competitive-
41 solicitation requirements; prohibiting certain state
42 employees from participating in the negotiation or
43 award of state contracts; creating s. 288.00001, F.S.;
44 prohibiting tax incentives from being awarded or paid
45 to a state contractor or subcontractor; amending s.
46 1001.20, F.S.; requiring the Office of Inspector
47 General of the Department of Education to conduct
48 investigations relating to waste, fraud, abuse, or
49 mismanagement against a district school board or
50 Florida College System institution; authorizing the

51 Office of the Auditor General to use carryforward
52 funds to fund the Florida Integrity Office; amending
53 ss. 112.3188, 112.3189, and 112.31895, F.S.;
54 conforming provisions to changes made by the act;
55 providing an effective date.
56
57 Be It Enacted by the Legislature of the State of Florida:
58
59 Section 1. Section 11.421, Florida Statutes, is created to
60 read:
61 11.421 Florida Integrity Office.—
62 (1) There is created under the Auditor General the Florida
63 Integrity Office for the purpose of ensuring integrity in state
64 and local government and facilitating the elimination of fraud,
65 waste, abuse, mismanagement, and misconduct in government.
66 (2) The Florida Integrity Officer shall be a legislative
67 employee and be appointed by and serve at the pleasure of the
68 Auditor General. The Florida Integrity Officer shall oversee the
69 efficient operation of the office and report to and be under the
70 general supervision of the Auditor General.
71 (3) The Auditor General shall employ qualified individuals
72 for the office pursuant to s. 11.42.
73 (4) As used in this section, the term:
74 (a) "Appropriations project" means a specific
75 appropriation or proviso that provides funding for a specified

76 entity that is a local government, private entity, or privately
77 operated program. The term does not include an appropriation or
78 proviso:
79 1. Specifically authorized by statute;
80 2. That is part of a statewide distribution to local
81 governments;
82 3. Recommended by a commission, council, or other similar
83 entity created in statute to make annual funding
84 recommendations, provided that such appropriation does not
85 exceed the amount of funding recommended by the commission,
86 council, or other similar entity;
87 4. For a specific transportation facility that is part of
88 the Department of Transportation's 5-year work program submitted
89 pursuant to s. 339.135;
90 5. For an education fixed capital outlay project that is
91 submitted pursuant to s. 1013.60 or s. 1013.64; or
92 6. For a specified program, research initiative,
93 institute, center, or similar entity at a specific state college
94 or university recommended by the Board of Governors or the State
95 Board of Education in its legislative budget request.
96 (b) "Office" means the Florida Integrity Office.
97 (5) The Florida Integrity Officer may receive and
98 investigate a complaint alleging fraud, waste, abuse,
99 mismanagement, or misconduct in connection with the expenditure
100 of public funds.

101 (6) A complaint may be submitted to the office by any of
102 the following persons:
103 (a) The President of the Senate.
104 (b) The Speaker of the House of Representatives.
105 (c) The chair of an appropriations committee of the Senate
106 or the House of Representatives.
107 (d) The Auditor General.
108 (7)(a) Upon receipt of a complaint, the Florida Integrity
109 Officer shall determine whether the complaint is supported by
110 sufficient information indicating a reasonable probability of
111 fraud, waste, abuse, mismanagement, or misconduct. If the
112 Florida Integrity Officer determines that the complaint is not
113 supported by sufficient information indicating a reasonable
114 probability of fraud, waste, abuse, mismanagement, or
115 misconduct, the Florida Integrity Officer shall notify the
116 complainant in writing and the complaint shall be closed.
117 (b) If the complaint is supported by sufficient
118 information indicating a reasonable probability of fraud, waste,
119 abuse, mismanagement, or misconduct, the Florida Integrity
120 Officer shall determine whether an investigation into the matter
121 has already been initiated by a law enforcement agency, the
122 Commission on Ethics, the Chief Financial Officer, the Office of
123 Chief Inspector General, or the applicable agency inspector
124 general. If such an investigation has been initiated, the
125 Florida Integrity Officer shall notify the complainant in

126 writing and the complaint may be closed.
127 (c) If the complaint is supported by sufficient
128 information indicating a reasonable probability of fraud, waste,
129 abuse, mismanagement, or misconduct, and an investigation into
130 the matter has not already been initiated as described in
131 paragraph (b), the Florida Integrity Officer shall, within
132 available resources, conduct an investigation and issue a report
133 of the investigative findings to the complainant and to the
134 President of the Senate and the Speaker of the House of
135 Representatives. The Florida Integrity Officer may refer the
136 matter to the Auditor General, the appropriate law enforcement
137 agency, the Chief Financial Officer, the Office of the Chief
138 Inspector General, or the applicable agency inspector general.
139 The Auditor General may provide staff and other resources to
140 assist the Florida Integrity Officer.
141 (8)(a) The Florida Integrity Officer, or his or her
142 designee, may inspect and investigate the books, records,
143 papers, documents, data, operation, and physical location of any
144 public agency in this state, including any confidential
145 information, and the public records of any entity that has
146 received direct appropriations. The Florida Integrity Officer
147 may agree to retain the confidentiality of confidential
148 information pursuant to s. 11.0431(2)(a).
149 (b) Upon the request of the Florida Integrity Officer, the
150 Legislative Auditing Committee or any other committee of the

151 Legislature may issue subpoenas and subpoenas duces tecum, as
152 provided in s. 11.143, to compel testimony or the production of
153 evidence when deemed necessary to an investigation authorized by
154 this section. Consistent with s. 11.143, such subpoenas and
155 subpoenas duces tecum may be issued as provided by applicable
156 legislative rules or, in the absence of applicable legislative
157 rules, by the chair of the Legislative Auditing Committee with
158 the approval of the Legislative Auditing Committee and the
159 President of the Senate and the Speaker of the House of
160 Representatives, or with the approval of the President of the
161 Senate or the Speaker of the House of Representatives if such
162 officer alone designated the Legislative Auditing Committee as
163 defined in s. 1.01.
164 (c) If a witness fails or refuses to comply with a lawful
165 subpoena or subpoena duces tecum issued pursuant to this
166 subsection at a time when the Legislature is not in session, the
167 subpoena or subpoena duces tecum may be enforced as provided in
168 s. 11.143 and, in addition, the Auditor General, on behalf of
169 the committee issuing the subpoena or subpoena duces tecum, may
170 file a complaint before any circuit court of the state to
171 enforce the subpoena or subpoena duces tecum. Upon the filing of
172 such complaint, the court shall take jurisdiction of the witness
173 and the subject matter of the complaint and shall direct the
174 witness to respond to all lawful questions and to produce all
175 documentary evidence in the possession of the witness which is

176 lawfully demanded. The failure of a witness to comply with such
177 order constitutes a direct and criminal contempt of court, and
178 the court shall punish the witness accordingly.
179 (d) When the Legislature is in session, upon the request
180 of the Florida Integrity Officer directed to the committee
181 issuing the subpoena or subpoena duces tecum, either house of
182 the Legislature may seek compliance with the subpoena or
183 subpoena duces tecum in accordance with the State Constitution,
184 general law, the joint rules of the Legislature, or the rules of
185 the house of the Legislature whose committee issued the subpoena
186 or subpoena duces tecum.
187 (9) The Florida Integrity Officer shall receive copies of
188 all reports required by ss. 14.32, 17.325, and 20.055.
189 (10)(a) Beginning with the 2021-2022 fiscal year, the
190 Auditor General and the Florida Integrity Officer, within
191 available resources, shall randomly select and review
192 appropriations projects appropriated in the prior fiscal year
193 and, if appropriate, investigate and recommend an audit of such
194 projects. The review, investigation, or audit may be delayed on
195 a selected project until a subsequent year if the timeline of
196 the project warrants such delay. Each review, investigation, or
197 audit must include, but is not limited to, evaluating whether
198 the recipient of the appropriations project administered the
199 project in an efficient and effective manner. When an audit is
200 recommended by the Florida Integrity Officer under this

201 subsection, the Auditor General shall determine whether the
202 audit is appropriate.
203 (b) Beginning with the 2021-2022 fiscal year, the Auditor
204 General and the Florida Integrity Officer, within available
205 resources, shall select and review, investigate, or audit the
206 financial activities of any political subdivision, special
207 district, public authority, public hospital, state or local
208 council or commission, unit of local government, or public
209 education entity in this state, as well as any authority,
210 council, commission, direct-support organization, institution,
211 foundation, or similar entity created by law or ordinance to
212 pursue a public purpose, entitled by law or ordinance to any
213 distribution of tax or fee revenues, or organized for the sole
214 purpose of supporting one of the public entities listed in this
215 paragraph.
216 Section 2. Paragraphs (i) through (m) of subsection (1) of
217 section 11.45, Florida Statutes, are redesignated as paragraphs
218 (j) through (n), respectively, paragraphs (a) and (e) of
219 subsection (1), paragraph (f) of subsection (2), and paragraph
220 (j) of subsection (7) are amended, and a new paragraph (i) is
221 added to subsection (1) of that section, to read:
222 11.45 Definitions; duties; authorities; reports; rules.—
223 (1) DEFINITIONS.—As used in ss. 11.40-11.51, the term:
224 (a) "Abuse" means behavior that is deficient or improper
225 when compared with behavior that a prudent person would consider

226 a reasonable and necessary operational practice given the facts
227 and circumstances. The term includes the misuse of authority or
228 position for personal gain or for the gain of an immediate or
229 close family member or business associate.
230 (e) "Fraud" means obtaining something of value through
231 willful misrepresentation, including, but not limited to,
232 intentional misstatements or intentional omissions of amounts or
233 disclosures in financial statements to deceive users of
234 financial statements, theft of an entity's assets, bribery, or
235 the use of one's position for personal enrichment through the
236 deliberate misuse or misapplication of an entity's
237 organization's resources.
238 (i) "Misconduct" means conduct which, though not illegal,
239 is inappropriate for a person in his or her specified position.
240 (2) DUTIES.—The Auditor General shall:
241 (f) At least every 3 years, conduct operational audits of
242 the accounts and records of state agencies, state universities,
243 state colleges, district school boards, the Florida Clerks of
244 Court Operations Corporation, water management districts, and
245 the Florida School for the Deaf and the Blind. At the conclusion
246 of each 3-year cycle, the Auditor General shall publish a report
247 consolidating common operational audit findings for all state
248 agencies, state universities, state colleges, and district
249 school boards.
250

251 The Auditor General shall perform his or her duties
252 independently but under the general policies established by the
253 Legislative Auditing Committee. This subsection does not limit
254 the Auditor General's discretionary authority to conduct other
255 audits or engagements of governmental entities as authorized in
256 subsection (3).
257 (7) AUDITOR GENERAL REPORTING REQUIREMENTS.—
258 (j) The Auditor General shall notify the Legislative
259 Auditing Committee of any financial or operational audit report
260 prepared pursuant to this section which indicates that a
261 district school board, state university, or Florida College
262 System institution has failed to take full corrective action in
263 response to a recommendation that was included in the two
264 preceding financial ~~or operational~~ audit reports or a preceding
265 operational audit report.
266 1. The committee may direct the district school board or
267 the governing body of the state university or Florida College
268 System institution to provide a written statement to the
269 committee explaining why full corrective action has not been
270 taken or, if the governing body intends to take full corrective
271 action, describing the corrective action to be taken and when it
272 will occur.
273 2. If the committee determines that the written statement
274 is not sufficient, the committee may require the chair of the
275 district school board or the chair of the governing body of the

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

276 state university or Florida College System institution, or the
277 chair's designee, to appear before the committee.
278 3. If the committee determines that the district school
279 board, state university, or Florida College System institution
280 has failed to take full corrective action for which there is no
281 justifiable reason or has failed to comply with committee
282 requests made pursuant to this section, the committee shall
283 refer the matter to the State Board of Education or the Board of
284 Governors, as appropriate, to proceed in accordance with s.
285 1008.32 or s. 1008.322, respectively.
286 Section 3. Subsections (1) through (5) of section 14.32,
287 Florida Statutes, are renumbered as subsections (2) through (6),
288 respectively, and new subsections (1) and (7) are added to that
289 section to read:
290 14.32 Office of Chief Inspector General.—
291 (1) As used in this section, the term:
292 (a) "Abuse" means behavior that is deficient or improper
293 when compared with behavior that a prudent person would consider
294 a reasonable and necessary operational practice given the facts
295 and circumstances. The term includes the misuse of authority or
296 position for personal gain or for the benefit of another.
297 (b) "Fraud" means obtaining something of value through
298 willful misrepresentation, including, but not limited to, the
299 intentional misstatements or intentional omissions of amounts or
300 disclosures in financial statements to deceive users of

301 financial statements, theft of an entity's assets, bribery, or
302 the use of one's position for personal enrichment through the
303 deliberate misuse or misapplication of an entity's resources.
304 (c) "Independent contractor" has the same meaning as in s.
305 112.3187(3)(d).
306 (d) "Misconduct" means conduct which, though not illegal,
307 is inappropriate for a person in his or her specified position.
308 (e) "Waste" means the act of using or expending resources
309 unreasonably, carelessly, extravagantly, or for no useful
310 purpose.
311 (7)(a) Within 6 months after the initiation of an
312 investigation of fraud, waste, abuse, mismanagement, or
313 misconduct in government, the Chief Inspector General or an
314 agency inspector general must determine whether there is
315 reasonable probability that fraud, waste, abuse, mismanagement,
316 or misconduct in government has occurred. If there has not been
317 a determination of such reasonable probability and the
318 investigation continues, a new determination must be made every
319 3 months until the investigation is closed or such reasonable
320 probability is found to exist.
321 (b) If the Chief Inspector General or an agency inspector
322 general determines that there is reasonable probability that a
323 public official, independent contractor, or agency has committed
324 fraud, waste, abuse, mismanagement, or misconduct in government,
325 the inspector general shall report such determination to the

326 Florida Integrity Officer.
327 (c) If the findings of an investigation conducted pursuant
328 to this subsection conclude that a public official, independent
329 contractor, or agency has committed fraud, waste, abuse,
330 mismanagement, or misconduct in government, the Chief Inspector
331 General or agency inspector general shall report such findings
332 to the Chief Financial Officer within 30 days after the
333 investigation is closed. Such public official, independent
334 contractor, or person responsible within the agency is
335 personally liable for repayment of the funds that were diverted
336 or lost as a result of the fraud, waste, abuse, mismanagement,
337 or misconduct in government. If the person liable fails to repay
338 such funds voluntarily and the state does not agree to a
339 settlement, the Chief Financial Officer shall bring a civil
340 action to recover the funds within 60 days after receipt of such
341 findings.
342 Section 4. Section 17.04, Florida Statutes, is amended to
343 read:
344 17.04 To audit and adjust accounts of officers and those
345 indebted to the state.—The Chief Financial Officer, using
346 generally accepted auditing procedures for testing or sampling,
347 shall examine, audit, adjust, and settle the accounts of all the
348 officers of this state, and any other person in anywise
349 entrusted with, or who may have received any property, funds, or
350 moneys of this state, or who may be in anywise indebted or

351 accountable to this state for any property, funds, or moneys,
352 and require such officer or persons to render full accounts
353 thereof, and to yield up such property or funds according to
354 law, or pay such moneys into the treasury of this state, or to
355 such officer or agent of the state as may be appointed to
356 receive the same, and on failure so to do, to cause to be
357 instituted and prosecuted proceedings, criminal or civil, at law
358 or in equity, against such persons, according to law. The Chief
359 Financial Officer may conduct investigations within or outside
360 of this state as it deems necessary to aid in the enforcement of
361 this section. The Chief Financial Officer may commence an
362 investigation pursuant to this section based on a complaint or
363 referral from any source. An employee of a state agency or a
364 state contractor having knowledge of suspected misuse of state
365 funds may report such information to the Chief Financial
366 Officer. If during an investigation the Chief Financial Officer
367 has reason to believe that any criminal statute of this state
368 has or may have been violated, the Chief Financial Officer shall
369 refer any records tending to show such violation to state or
370 federal law enforcement or prosecutorial agencies and shall
371 provide investigative assistance to those agencies as required.
372 Section 5. Subsections (4) and (5) of section 17.325,
373 Florida Statutes, are renumbered as subsections (5) and (6),
374 respectively, and a new subsection (4) is added to that section
375 to read:

376 17.325 Governmental efficiency hotline; duties of Chief
377 Financial Officer.—
378 (4) A copy of each suggestion or item of information
379 received through the hotline or website that is logged pursuant
380 to this section must be reported to the Florida Integrity
381 Officer by the 15th of the month following receipt of the
382 suggestion or item of information.
383 Section 6. Paragraph (g) is added to subsection (7) of
384 section 20.055, Florida Statutes, to read:
385 20.055 Agency inspectors general.—
386 (7) In carrying out the investigative duties and
387 responsibilities specified in this section, each inspector
388 general shall initiate, conduct, supervise, and coordinate
389 investigations designed to detect, deter, prevent, and eradicate
390 fraud, waste, mismanagement, misconduct, and other abuses in
391 state government. For these purposes, each inspector general
392 shall:
393 (g) Make determinations and reports as required by s.
394 14.32(7).
395 Section 7. Subsection (1) of section 20.201, Florida
396 Statutes, is amended to read:
397 20.201 Department of Law Enforcement.—
398 (1) There is created a Department of Law Enforcement. The
399 head of the department is the Governor and Cabinet. The
400 executive director of the department shall be appointed by the

401 Governor with the approval of two or more ~~three~~ members of the
402 Cabinet and subject to confirmation by the Senate. The executive
403 director shall serve at the pleasure of the Governor and
404 Cabinet. The executive director may establish a command,
405 operational, and administrative services structure to assist,
406 manage, and support the department in operating programs and
407 delivering services.
408 Section 8. Subsection (1) of section 20.37, Florida
409 Statutes, is amended to read:
410 20.37 Department of Veterans' Affairs.—There is created a
411 Department of Veterans' Affairs.
412 (1) The head of the department is the Governor and
413 Cabinet. The executive director of the department shall be
414 appointed by the Governor with the approval of two or more ~~three~~
415 members of the Cabinet and subject to confirmation by the
416 Senate. The executive director shall serve at the pleasure of
417 the Governor and Cabinet.
418 Section 9. Paragraphs (a) and (b) of subsection (1) and
419 subsection (2) of section 110.1245, Florida Statutes, are
420 amended, and subsections (6) and (7) are added to that section,
421 to read:
422 110.1245 Savings sharing program; bonus payments; other
423 awards.—
424 (1)(a) The Department of Management Services shall adopt
425 rules that prescribe procedures and promote a savings sharing

426 program for an individual or group of employees who propose
427 procedures or ideas that are adopted and that result in
428 eliminating or reducing state expenditures, including employees
429 reporting under the Whistle-blower's Act, if such proposals are
430 placed in effect and may be implemented under current statutory
431 authority.
432 (b) Each agency head shall recommend employees
433 individually or by group to be awarded an amount of money, which
434 amount shall be directly related to the cost savings realized.
435 Each proposed award and amount of money must be approved by the
436 Legislative Budget Commission, except an award issued under
437 subsection (6).
438 (2) In June of each year, bonuses shall be paid to
439 employees from funds authorized by the Legislature in an
440 appropriation specifically for bonuses. For purposes of this
441 subsection, awards issued under subsection (6) are not
442 considered bonuses. Each agency shall develop a plan for
443 awarding lump-sum bonuses, which plan shall be submitted no
444 later than September 15 of each year and approved by the Office
445 of Policy and Budget in the Executive Office of the Governor.
446 Such plan shall include, at a minimum, but is not limited to:
447 (a) A statement that bonuses are subject to specific
448 appropriation by the Legislature.
449 (b) Eligibility criteria as follows:
450 1. The employee must have been employed before ~~prior to~~

451 July 1 of that fiscal year and have been continuously employed
452 through the date of distribution.
453 2. The employee must not have been on leave without pay
454 consecutively for more than 6 months during the fiscal year.
455 3. The employee must have had no sustained disciplinary
456 action during the period beginning July 1 through the date the
457 bonus checks are distributed. Disciplinary actions include
458 written reprimands, suspensions, dismissals, and involuntary or
459 voluntary demotions that were associated with a disciplinary
460 action.
461 4. The employee must have demonstrated a commitment to the
462 agency mission by reducing the burden on those served,
463 continually improving the way business is conducted, producing
464 results in the form of increased outputs, and working to improve
465 processes.
466 5. The employee must have demonstrated initiative in work
467 and have exceeded normal job expectations.
468 6. The employee must have modeled the way for others by
469 displaying agency values of fairness, cooperation, respect,
470 commitment, honesty, excellence, and teamwork.
471 (c) A periodic evaluation process of the employee's
472 performance.
473 (d) A process for peer input that is fair, respectful of
474 employees, and affects the outcome of the bonus distribution.
475 (e) A division of the agency by work unit for purposes of

476 peer input and bonus distribution.

477 (f) A limitation on bonus distributions equal to 35
478 percent of the agency's total authorized positions. This
479 requirement may be waived by the Office of Policy and Budget in
480 the Executive Office of the Governor upon a showing of
481 exceptional circumstances.

482 (6) Each agency inspector general shall report employees
483 whose reports under the Whistle-blower's Act resulted in savings
484 or recovery of public funds in excess of $1,000. Awards shall be
485 awarded by each agency to the employee, or his or her designee,
486 whose report led to the savings or recovery, and each agency
487 head is authorized to incur expenditures to provide such awards.
488 The award shall be paid from the specific appropriation or trust
489 fund from which the savings or recovery resulted. The agency
490 inspector general to whom the report was made or referred shall
491 certify the savings or recovery resulting from the
492 investigation. If more than one employee makes a relevant
493 report, the award shall be shared in proportion to each
494 employee's contribution to the investigation as certified by the
495 agency inspector general. Awards shall be made in the following
496 amounts:

497 (a) A career service employee shall receive 10 percent of
498 the savings or recovery certified, but not less than $500 and
499 not more than a total of $50,000 for whistle-blower reports in
500 any 1 year. If the employee had any fault for the misspending or

501 attempted misspending of public funds identified in the
502 investigation that resulted in the savings or recovery, the
503 award may be denied at the discretion of the agency head. If the
504 award is not denied by the agency head, the award may not exceed
505 $500. The agency inspector general shall certify any fault on
506 the part of the employee.
507 (b) A Senior Management Service employee or an employee in
508 a select exempt position shall receive 5 percent of the savings
509 or recovery certified, but not more than a total of $1,000 for
510 whistle-blower reports in any 1 year. An employee may not
511 receive an award under this paragraph if he or she had any fault
512 for the misspending or attempted misspending of public funds
513 identified in the investigation that resulted in the savings or
514 recovery. The agency inspector general shall certify any fault
515 on the part of the employee.
516 (7) Notwithstanding any other provision of law, an
517 employee whose name or identity is confidential or exempt from
518 disclosure under state or federal law may participate in the
519 savings sharing program authorized in this section. To maintain
520 confidentiality, upon notice of eligibility for an award, such
521 employee may designate an authorized agent, trustee, or
522 custodian to accept an award for which the employee is eligible
523 on behalf of the employee.
524 Section 10. Subsection (2), paragraph (e) of subsection
525 (3), and paragraph (b) of subsection (5) of section 112.3187,

526 Florida Statutes, are amended to read:
527 112.3187 Adverse action against employee for disclosing
528 information of specified nature prohibited; employee remedy and
529 relief.—
530 (2) LEGISLATIVE INTENT.—It is the intent of the
531 Legislature to prevent agencies or independent contractors from
532 taking retaliatory action against an employee who reports to an
533 appropriate agency violations of law on the part of a public
534 employer or independent contractor that create a substantial and
535 specific danger to the public's health, safety, or welfare. It
536 is further the intent of the Legislature to prevent agencies or
537 independent contractors from taking retaliatory action against
538 any person who discloses information to an appropriate agency
539 alleging improper use of governmental office, ~~gross~~ waste of
540 funds, or any other abuse or ~~gross~~ neglect of duty on the part
541 of an agency, public officer, or employee.
542 (3) DEFINITIONS.—As used in this act, unless otherwise
543 specified, the following words or terms shall have the meanings
544 indicated:
545 (e) "~~Gross~~ Mismanagement" means a continuous pattern of
546 managerial abuses, wrongful or arbitrary and capricious actions,
547 or fraudulent or criminal conduct which may have a substantial
548 adverse economic impact.
549 (5) NATURE OF INFORMATION DISCLOSED.—The information
550 disclosed under this section must include:

551 (b) Any act or suspected act of ~~gross~~ mismanagement,
552 malfeasance, misfeasance, ~~gross~~ waste of public funds, suspected
553 or actual Medicaid fraud or abuse, or ~~gross~~ neglect of duty
554 committed by an employee or agent of an agency or independent
555 contractor.
556 Section 11. Section 216.1366, Florida Statutes, is created
557 to read:
558 <u>216.1366 Contract terms.—</u>
559 <u>(1) In order to preserve the interest of the state in the</u>
560 <u>prudent expenditure of state funds, each public agency contract</u>
561 <u>for services entered into or amended on or after July 1, 2020,</u>
562 <u>shall authorize the public agency to inspect the:</u>
563 <u>(a) Financial records, papers, and documents of the</u>
564 <u>contractor directly related to the execution of the contract or</u>
565 <u>the expenditure of state funds; and</u>
566 <u>(b) Programmatic records, papers, and documents of the</u>
567 <u>contractor that are necessary to monitor the performance of the</u>
568 <u>contract or ensure that the terms of the contract are being met,</u>
569 <u>as determined by the public agency.</u>
570 <u>(2) The contract shall require the contractor to provide</u>
571 <u>any such records, papers, and documents requested by the public</u>
572 <u>agency within 10 business days after such request.</u>
573 Section 12. Paragraph (e) of subsection (3) of section
574 287.057, Florida Statutes, is amended, and subsection (24) is
575 added to that section, to read:

576 287.057 Procurement of commodities or contractual
577 services.—
578 (3) If the purchase price of commodities or contractual
579 services exceeds the threshold amount provided in s. 287.017 for
580 CATEGORY TWO, purchase of commodities or contractual services
581 may not be made without receiving competitive sealed bids,
582 competitive sealed proposals, or competitive sealed replies
583 unless:
584 (e) The following contractual services and commodities are
585 not subject to the competitive-solicitation requirements of this
586 section:
587 1. Artistic services. As used in this subsection, the term
588 "artistic services" does not include advertising or typesetting.
589 As used in this subparagraph, the term "advertising" means the
590 making of a representation in any form in connection with a
591 trade, business, craft, or profession in order to promote the
592 supply of commodities or services by the person promoting the
593 commodities or contractual services.
594 2. Academic program reviews if the fee for such services
595 does not exceed $50,000.
596 3. Lectures by individuals.
597 4. Legal services, including attorney, paralegal, expert
598 witness, appraisal, or mediator services.
599 5. Health services involving examination, diagnosis,
600 treatment, prevention, medical consultation, or administration.

601 The term also includes, but is not limited to, substance abuse
602 and mental health services involving examination, diagnosis,
603 treatment, prevention, or medical consultation if such services
604 are offered to eligible individuals participating in a specific
605 program that qualifies multiple providers and uses a standard
606 payment methodology. Reimbursement of administrative costs for
607 providers of services purchased in this manner are also exempt.
608 For purposes of this subparagraph, the term "providers" means
609 health professionals and health facilities, or organizations
610 that deliver or arrange for the delivery of health services.
611 6. Services provided to persons with mental or physical
612 disabilities by not-for-profit corporations that have obtained
613 exemptions under s. 501(c)(3) of the United States Internal
614 Revenue Code or when such services are governed by Office of
615 Management and Budget Circular A-122. However, in acquiring such
616 services, the agency shall consider the ability of the vendor,
617 past performance, willingness to meet time requirements, and
618 price.
619 7. Medicaid services delivered to an eligible Medicaid
620 recipient unless the agency is directed otherwise in law.
621 8. Family placement services.
622 9. Prevention services related to mental health, including
623 drug abuse prevention programs, child abuse prevention programs,
624 and shelters for runaways, operated by not-for-profit
625 corporations. However, in acquiring such services, the agency

626 shall consider the ability of the vendor, past performance,
627 willingness to meet time requirements, and price.
628 10. Training and education services provided to injured
629 employees pursuant to s. 440.491(6).
630 11. Contracts entered into pursuant to s. 337.11.
631 12. Services or commodities provided by governmental
632 entities.
633 13. ~~Statewide~~ Public service announcement programs <u>that</u>
634 ~~provided by a Florida statewide nonprofit corporation under s.~~
635 ~~501(c)(6) of the Internal Revenue Code which~~ have a guaranteed
636 documented match of at least $3 to $1.
637 <u>(24) Notwithstanding any other provision of law, a state</u>
638 <u>employee who is registered to lobby the Legislature, other than</u>
639 <u>an agency head, may not participate in the negotiation or award</u>
640 <u>of any contract required or expressly funded under a specific</u>
641 <u>legislative appropriation or proviso in an appropriation act.</u>
642 <u>This subsection does not apply to a state employee who is:</u>
643 <u>(a) Registered to lobby the Legislature, but whose primary</u>
644 <u>job responsibilities do not involve lobbying.</u>
645 <u>(b) Employed by the Executive Office of the Governor.</u>
646 <u>(c) Employed by the Office of Policy and Budget.</u>
647 Section 13. Section 288.00001, Florida Statutes, is
648 created to read:
649 <u>288.00001 Use of state or local incentive funds to pay for</u>
650 <u>services.—Notwithstanding any other provision of law, a tax</u>

651 incentive may not be awarded or paid to a state contractor or
652 any subcontractor for services provided or expenditures incurred
653 pursuant to a state contract.
654 Section 14. Paragraph (e) of subsection (4) of section
655 1001.20, Florida Statutes, is amended to read:
656 1001.20 Department under direction of state board.—
657 (4) The Department of Education shall establish the
658 following offices within the Office of the Commissioner of
659 Education which shall coordinate their activities with all other
660 divisions and offices:
661 (e) Office of Inspector General.—Organized using existing
662 resources and funds and responsible for promoting
663 accountability, efficiency, and effectiveness and detecting
664 fraud and abuse within school districts, the Florida School for
665 the Deaf and the Blind, and Florida College System institutions
666 in Florida. If the Commissioner of Education determines that a
667 district school board, the Board of Trustees for the Florida
668 School for the Deaf and the Blind, or a Florida College System
669 institution board of trustees is unwilling or unable to address
670 substantiated allegations made by any person relating to waste,
671 fraud, abuse, or financial mismanagement within the school
672 district, the Florida School for the Deaf and the Blind, or the
673 Florida College System institution, the office shall conduct,
674 coordinate, or request investigations into such substantiated
675 allegations. The office shall investigate allegations or reports

676 of possible waste, fraud, ~~or~~ abuse, or mismanagement against a
677 district school board or Florida College System institution made
678 by any member of the Cabinet, ~~;~~ the presiding officer of either
679 house of the Legislature, ~~;~~ a chair of a substantive or
680 appropriations legislative committee with jurisdiction, ~~;~~ or a
681 member of the board for which an investigation is sought. The
682 office shall have access to all information and personnel
683 necessary to perform its duties and shall have all of its
684 current powers, duties, and responsibilities authorized in s.
685 20.055.
686 Section 15. The Office of the Auditor General is
687 authorized to use carryforward funds to fund the establishment
688 and operations of the Florida Integrity Office as created by
689 this act.
690 Section 16. Subsection (1) of section 112.3188, Florida
691 Statutes, is amended to read:
692 112.3188 Confidentiality of information given to the Chief
693 Inspector General, internal auditors, inspectors general, local
694 chief executive officers, or other appropriate local officials.—
695 (1) The name or identity of any individual who discloses
696 in good faith to the Chief Inspector General or an agency
697 inspector general, a local chief executive officer, or other
698 appropriate local official information that alleges that an
699 employee or agent of an agency or independent contractor:
700 (a) Has violated or is suspected of having violated any

701 federal, state, or local law, rule, or regulation, thereby
702 creating and presenting a substantial and specific danger to the
703 public's health, safety, or welfare; or
704 (b) Has committed an act of ~~gross~~ mismanagement,
705 malfeasance, misfeasance, ~~gross~~ waste of public funds, or ~~gross~~
706 neglect of duty
707
708 may not be disclosed to anyone other than a member of the Chief
709 Inspector General's, agency inspector general's, internal
710 auditor's, local chief executive officer's, or other appropriate
711 local official's staff without the written consent of the
712 individual, unless the Chief Inspector General, internal
713 auditor, agency inspector general, local chief executive
714 officer, or other appropriate local official determines that:
715 the disclosure of the individual's identity is necessary to
716 prevent a substantial and specific danger to the public's
717 health, safety, or welfare or to prevent the imminent commission
718 of a crime; or the disclosure is unavoidable and absolutely
719 necessary during the course of the audit, evaluation, or
720 investigation.
721 Section 17. Paragraph (c) of subsection (3), subsection
722 (4), and paragraph (a) of subsection (5) of section 112.3189,
723 Florida Statutes, are amended to read:
724 112.3189 Investigative procedures upon receipt of whistle-
725 blower information from certain state employees.—

726 (3) When a person alleges information described in s.
727 112.3187(5), the Chief Inspector General or agency inspector
728 general actually receiving such information shall within 20 days
729 of receiving such information determine:
730 (c) Whether the information actually disclosed
731 demonstrates reasonable cause to suspect that an employee or
732 agent of an agency or independent contractor has violated any
733 federal, state, or local law, rule, or regulation, thereby
734 creating and presenting a substantial and specific danger to the
735 public's health, safety, or welfare, or has committed an act of
736 ~~gross~~ mismanagement, malfeasance, misfeasance, ~~gross~~ waste of
737 public funds, or ~~gross~~ neglect of duty.
738 (4) If the Chief Inspector General or agency inspector
739 general under subsection (3) determines that the information
740 disclosed is not the type of information described in s.
741 112.3187(5), or that the source of the information is not a
742 person who is an employee or former employee of, or an applicant
743 for employment with, a state agency, as defined in s. 216.011,
744 or that the information disclosed does not demonstrate
745 reasonable cause to suspect that an employee or agent of an
746 agency or independent contractor has violated any federal,
747 state, or local law, rule, or regulation, thereby creating and
748 presenting a substantial and specific danger to the public's
749 health, safety, or welfare, or has committed an act of ~~gross~~
750 mismanagement, malfeasance, misfeasance, ~~gross~~ waste of public

751 funds, or ~~gross~~ neglect of duty, the Chief Inspector General or
752 agency inspector general shall notify the complainant of such
753 fact and copy and return, upon request of the complainant, any
754 documents and other materials that were provided by the
755 complainant.
756 (5)(a) If the Chief Inspector General or agency inspector
757 general under subsection (3) determines that the information
758 disclosed is the type of information described in s.
759 112.3187(5), that the source of the information is from a person
760 who is an employee or former employee of, or an applicant for
761 employment with, a state agency, as defined in s. 216.011, and
762 that the information disclosed demonstrates reasonable cause to
763 suspect that an employee or agent of an agency or independent
764 contractor has violated any federal, state, or local law, rule,
765 or regulation, thereby creating a substantial and specific
766 danger to the public's health, safety, or welfare, or has
767 committed an act of ~~gross~~ mismanagement, malfeasance,
768 misfeasance, ~~gross~~ waste of public funds, or ~~gross~~ neglect of
769 duty, the Chief Inspector General or agency inspector general
770 making such determination shall then conduct an investigation,
771 unless the Chief Inspector General or the agency inspector
772 general determines, within 30 days after receiving the
773 allegations from the complainant, that such investigation is
774 unnecessary. For purposes of this subsection, the Chief
775 Inspector General or the agency inspector general shall consider

776 the following factors, but is not limited to only the following
777 factors, when deciding whether the investigation is not
778 necessary:
779 1. The gravity of the disclosed information compared to
780 the time and expense of an investigation.
781 2. The potential for an investigation to yield
782 recommendations that will make state government more efficient
783 and effective.
784 3. The benefit to state government to have a final report
785 on the disclosed information.
786 4. Whether the alleged whistle-blower information
787 primarily concerns personnel practices that may be investigated
788 under chapter 110.
789 5. Whether another agency may be conducting an
790 investigation and whether any investigation under this section
791 could be duplicative.
792 6. The time that has elapsed between the alleged event and
793 the disclosure of the information.
794 Section 18. Paragraph (a) of subsection (3) of section
795 112.31895, Florida Statutes, is amended to read:
796 112.31895 Investigative procedures in response to
797 prohibited personnel actions.—
798 (3) CORRECTIVE ACTION AND TERMINATION OF INVESTIGATION.—
799 (a) The Florida Commission on Human Relations, in
800 accordance with this act and for the sole purpose of this act,

801 is empowered to:
802 1. Receive and investigate complaints from employees
803 alleging retaliation by state agencies, as the term "state
804 agency" is defined in s. 216.011.
805 2. Protect employees and applicants for employment with
806 such agencies from prohibited personnel practices under s.
807 112.3187.
808 3. Petition for stays and petition for corrective actions,
809 including, but not limited to, temporary reinstatement.
810 4. Recommend disciplinary proceedings pursuant to
811 investigation and appropriate agency rules and procedures.
812 5. Coordinate with the Chief Inspector General in the
813 Executive Office of the Governor and the Florida Commission on
814 Human Relations to receive, review, and forward to appropriate
815 agencies, legislative entities, or the Department of Law
816 Enforcement disclosures of a violation of any law, rule, or
817 regulation, or disclosures of ~~gross~~ mismanagement, malfeasance,
818 misfeasance, nonfeasance, neglect of duty, or ~~gross~~ waste of
819 public funds.
820 6. Review rules pertaining to personnel matters issued or
821 proposed by the Department of Management Services, the Public
822 Employees Relations Commission, and other agencies, and, if the
823 Florida Commission on Human Relations finds that any rule or
824 proposed rule, on its face or as implemented, requires the
825 commission of a prohibited personnel practice, provide a written

826 comment to the appropriate agency.
827 7. Investigate, request assistance from other governmental
828 entities, and, if appropriate, bring actions concerning,
829 allegations of retaliation by state agencies under subparagraph
830 1.
831 8. Administer oaths, examine witnesses, take statements,
832 issue subpoenas, order the taking of depositions, order
833 responses to written interrogatories, and make appropriate
834 motions to limit discovery, pursuant to investigations under
835 subparagraph 1.
836 9. Intervene or otherwise participate, as a matter of
837 right, in any appeal or other proceeding arising under this
838 section before the Public Employees Relations Commission or any
839 other appropriate agency, except that the Florida Commission on
840 Human Relations must comply with the rules of the commission or
841 other agency and may not seek corrective action or intervene in
842 an appeal or other proceeding without the consent of the person
843 protected under ss. 112.3187-112.31895.
844 10. Conduct an investigation, in the absence of an
845 allegation, to determine whether reasonable grounds exist to
846 believe that a prohibited action or a pattern of prohibited
847 action has occurred, is occurring, or is to be taken.
848 Section 19. This act shall take effect July 1, 2020.

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

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1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative DuBose offered the following:
3
4 **Amendment (with title amendment)**
5 Remove lines 395-417
6
7
8 ---
9 **T I T L E A M E N D M E N T**
10 Remove lines 26-31 and insert:
11 amending s. 110.1245, F.S.; providing
12

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		

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1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Beltran offered the following:
3
4 **Amendment (with title amendment)**
5 Between lines 555 and 556, insert:
6 Section 11. The Division of Law Revision is directed to
7 create part IX of chapter 112, Florida Statutes, consisting of
8 s. 112.89, Florida Statutes, to be entitled "Fiduciary Duty of
9 Care for Appointed Public Officials and Executive Officers."
10 Section 12. Section 112.89, Florida Statutes, is created
11 to read:
12 112.89 Fiduciary duty of care.—
13 (1) LEGISLATIVE FINDINGS AND PURPOSE.—The Legislature
14 finds that appointed public officials and executive officers
15 acting on behalf of governmental entities owe a fiduciary duty
16 to the entities they serve. The Legislature finds that codifying

17 a fiduciary duty of care will require that appointed public
18 officials and executive officers stay adequately informed of
19 affairs, perform due diligence, perform reasonable oversight,
20 and practice fiscal responsibility regarding decisions involving
21 corporate and proprietary commitments on behalf of the entity
22 they serve.
23 (2) DEFINITIONS.—
24 (a) "Appointed public official" means either a "local
25 officer" as defined in s. 112.3145(1)(a)2. or a "state officer"
26 as defined in s. 112.3145(1)(c)2. and 3.
27 (b) "Department" means the Department of Business and
28 Professional Regulation.
29 (c) "Executive officer" means the chief executive officer
30 of a governmental entity to which an appointed public official
31 is appointed.
32 (d) "Governmental entity" means the entity, or a board, a
33 council, a commission, an authority, or other body thereof, to
34 which an appointed public official or an executive officer is
35 appointed or hired.
36 (3) FIDUCIARY DUTY OF CARE.—Each appointed public official
37 and executive officer owes a fiduciary duty of care to the
38 applicable entity in accordance with law he or she serves and
39 has a duty to:
40 (a) Act in accordance with the laws, ordinances, rules,
41 policies, and terms governing his or her office or employment.

42 (b) Act with the care, competence, and diligence normally
43 exercised by a reasonably prudent person in similar corporate
44 and proprietary circumstances.
45 (c) Act only within the scope of his or her authority.
46 (d) Refrain from conduct that is likely to damage the
47 financial or economic interests of the governmental entity.
48 (e) Use reasonable efforts to maintain documentation in
49 accordance with applicable laws.
50 (f) Maintain reasonable oversight of any delegated
51 authority and discharge his or her duties with the care that a
52 reasonably prudent person in a like business position would
53 believe appropriate under the circumstances, and must:
54 1. Become reasonably informed in connection with any
55 decisionmaking function;
56 2. Become reasonably informed when devoting attention to
57 any oversight function;
58 3. Keep reasonably informed concerning the affairs of the
59 governmental entity; and
60 4. Keep reasonably informed concerning the performance of
61 a governmental entity's executive officers or other officers,
62 agents, or employees.
63 (4) TRAINING REQUIREMENT.—
64 (a) Beginning January 1, 2021, each appointed public
65 official and executive officer shall complete a minimum of 5
66 hours of board governance training for each term served.

67 1. An appointed public official or executive officer
68 holding office or employed by an entity on January 1, 2021,
69 shall complete the 5 hours of board governance training before
70 the expiration of his or her term of service. If an appointed
71 public official or executive officer is employed under a
72 contract that does not specify a termination date for
73 employment, the public official or executive officer shall
74 complete the 5 hours of training by January 1, 2022, and once
75 every 4 years thereafter for the duration of their employment.
76 2. An appointed public official or executive officer who
77 is appointed, reappointed, or hired after January 1, 2021, shall
78 complete the 5 hours of board governance training within 180
79 days after the date of his or her appointment, reappointment, or
80 hire.
81 (b) By January 1, 2021, the department shall:
82 1. Contract for or approve a board governance training
83 program that includes an affordable web-based electronic media
84 option; or
85 2. Publish a list of approved board governance training
86 providers on its website. A provider may include a Florida
87 College System institution, a state university, a nationally
88 recognized entity specializing in board governance education, or
89 any other entity deemed qualified by the department as capable
90 of providing the minimum training requirements specified in this
91 subsection.

92 (c) The board governance training programs must provide,
93 at a minimum, educational materials and instruction on the
94 following:
95 1. Generally accepted corporate board governance
96 principles and best practices; corporate board fiduciary duty of
97 care legal analyses; corporate board oversight and evaluation
98 procedures; governmental entity responsibilities; executive
99 officer responsibilities; executive officer performance
100 evaluations; selecting, monitoring, and evaluating an executive
101 management team; reviewing and approving proposed investments,
102 expenditures, and budget plans; financial accounting and capital
103 allocation principles and practices; and new governmental entity
104 member orientation.
105 2. The fiduciary duty of care and obligations imposed upon
106 appointed public officials and executive officers pursuant to
107 this section.
108 (d) A governmental entity complies with the training
109 requirement under this subsection by providing a department-
110 approved program or contracting with a provider listed by the
111 department under subparagraph (b)2. However, for governmental
112 entities with annual revenues of less than $300,000, board
113 governance training may be provided by in-house counsel of the
114 governmental entity or the unit of government that created the
115 governmental entity, if applicable, so long as the training

116 complies with the minimum course content established by
117 department rule.
118 (e) Within 30 days after completion of the board
119 governance training, each appointed public official and
120 executive officer shall certify, in writing or electronic form
121 and under oath, to the department that he or she:
122 1. Has completed the training required by this subsection;
123 2. Has read the laws and relevant policies applicable to
124 his or her position;
125 3. Will work to uphold such laws and policies to the best
126 of his or her ability; and
127 4. Will faithfully discharge his or her fiduciary
128 responsibility, as imposed by this section.
129 (f) The department shall adopt rules to implement this
130 subsection.
131 (g) This subsection does not apply to appointed public
132 officials and executive officers who:
133 1. Serve governmental entities whose annual revenues are
134 less than $100,000;
135 2. Hold elected office in another capacity; or
136 3. Complete board governance training involving fiduciary
137 duties or responsibilities which is required under any other
138 state law.
139 (5) APPOINTMENT OF EXECUTIVE OFFICERS AND GENERAL
140 COUNSELS.—The appointment of any executive officer or general

141 counsel is subject to approval by a majority vote of the
142 governmental entity.
143 (6) STANDARDS FOR LEGAL COUNSEL.—All legal counsel
144 employed by a governmental entity must represent the legal
145 interests and positions of the governmental entity and not the
146 interest of any individual or employee of the governmental
147 entity, unless such representation is directed by the
148 governmental entity.
149
150 ---
151 **T I T L E A M E N D M E N T**
152 Remove line 36 and insert:
153 changes made by the act; providing a directive to the Division
154 of Law Revision to create part IX of ch. 112, F.S.; creating s.
155 112.89, F.S.; providing legislative findings and purpose;
156 defining terms; establishing standards for the fiduciary duty of
157 care for appointed public officials and executive officers of
158 specified governmental entities; requiring training on board
159 governance beginning on a specified date; requiring the
160 Department of Business and Professional Regulation to contract
161 for or approve such training programs or publish a list of
162 approved training providers; specifying requirements for such
163 training; authorizing training to be provided by in-house
164 counsel for certain governmental entities; requiring appointed
165 public officials and executive officers to certify their

166 completion of the annual training; requiring the department to
167 adopt rules; providing exceptions to the training requirement;
168 specifying requirements for the appointment of executive
169 officers and general counsels of governmental entities;
170 specifying standards for legal counsel; creating s. 216.1366,
171 F.S.;