CS/CS/SB 888 by **RI, CM, Flores**; (Similar to CS/CS/H 0749) Consumer Services

712052	A	S	L	RCS	BGA, Benacquisto	Delete L.413 - 414:	03/01 03:35 PM

CS/SB 1358 by **GO, Hays**; (Similar to CS/CS/CS/H 1205) Employee Drug Testing

749502	D	S		RCS	BGA, Hays	Delete everything after	03/01 07:16 AM

CS/CS/SB 1568 by **CA, HR, Gaetz, Garcia**; (Similar to CS/CS/CS/H 0711) Sale or Lease of a County, District, or Municipal Hospital

712212	D	S	L	RCS	BGA, Benacquisto	Delete everything after	03/01 03:40 PM

CS/SB 1620 by **BI, Richter**; (Compare to CS/CS/2ND ENG/H 1101) Insurance

148180	A	S		RCS	BGA, Latvala	Delete L.88 - 90:	03/01 04:32 PM
626670	AA	S		RCS	BGA, Hays	Delete L.989 - 1016.	03/01 04:32 PM
910484	A	S	L	RCS	BGA, Hays	btw L.119 - 120:	03/01 04:32 PM

SB 438 by **Bennett**; (Similar to CS/H 0275) Consumer Finance Charges

CS/CS/CS/SB 540 by **CJ, CA, CM, Smith (CO-INTRODUCERS) Montford, Evers, Lynn, Oelrich**; (Similar to CS/CS/3RD ENG/H 0885) Secondhand Dealers and Secondary Metals Recyclers

421202	A	S		WD	BGA, Hays	Delete L.571 - 573:	02/29 05:23 PM

CS/CS/SB 602 by **TR, CA, Storms**; (Similar to CS/CS/2ND ENG/H 0373) Stormwater Management Permits

866662	A	S		RCS	BGA, Latvala	Delete L.129:	03/01 04:32 PM

SB 624 by **Richter**; (Identical to H 0335) Household Pharmaceuticals Collection and Disposal Trust Fund/DEP

304776	A	S		FAV	EP, Detert	Delete L.37:	02/06 08:11 PM

SB 626 by **Richter**; (Identical to H 0333) Collection and Disposal of Household Pharmaceuticals

631912	A	S		FAV	EP, Detert	Delete L.37:	02/06 08:11 PM

SB 648 by **Hays (CO-INTRODUCERS) Evers, Fasano, Flores, Benacquisto, Lynn, Oelrich**; (Identical to H 4001) Florida Climate Protection Act

SB 676 by **Smith**; (Identical to H 0307) Workers' Compensation Certificate-of-exemption Process

272220	A	S		WD	BGA, Braynon	btw L.22 - 23:	02/29 05:25 PM

CS/CS/SB 716 by **EP, CA, Bennett (CO-INTRODUCERS) Evers**; (Similar to CS/CS/CS/CS/2ND ENG/H 0503) Environmental Regulation

711880	A	S		RCS	BGA, Jones	Delete L.244 - 258.	03/01 03:50 PM
747548	A	S		RCS	BGA, Jones	Delete L.1109 - 1110:	03/01 03:50 PM

CS/SB 738 by **EP, Altman**; (Similar to CS/CS/H 0663) Solid Waste Management Facilities

811608	A	S		RCS	BGA, Latvala	Delete L.87 - 106:	03/01 09:17 AM
782978	A	S		RCS	BGA, Latvala	Delete L.193:	03/01 09:17 AM

CS/SB 762 by **CJ, Hays**; (Similar to CS/2ND ENG/H 0517) Reducing and Streamlining Regulations

657172	D	S	L	RCS	BGA, Hays	Delete everything after	03/01 04:07 PM
903244	AA	S		RCS	BGA, Hays	Delete L.612 - 623:	03/01 04:07 PM
626470	AA	S		RCS	BGA, Latvala	btw L.686 - 687:	03/01 04:07 PM
749074	AA	S		RCS	BGA, Latvala	Delete L.687:	03/01 04:07 PM
280546	AA	S	L	RCS	BGA, Hays	btw L.119 - 120:	03/01 04:07 PM
699856	AA	S	L	RCS	BGA, Latvala	btw L.119 - 120:	03/01 04:07 PM

CS/SB 802 by **JU, EP**; (Similar to CS/CS/H 0313) Premises Liability

878806	A	S		RCS	BGA, Jones	Delete L.97 - 102:	03/01 04:10 PM

CS/CS/SB 956 by **HR, RI, Hays**; (Similar to CS/CS/CS/H 0625) Disposition of Human Remains

426088	A	S	L	RCS	BGA, Hays	Delete L.325 - 378:	03/01 04:11 PM

CS/CS/SB 1042 by **CU, CA, Bennett**; (Identical to CS/CS/H 0801) Emergency 911 Service

CS/SB 1086 by **EP, Garcia**; (Identical to CS/H 0639) Reclaimed Water

SB 1094 by **Hays**; (Compare to CS/H 0789) Workers' Compensation

232974	A	S			BGA, Hays	Delete L.17 - 22:	02/27 11:05 AM
711530	A	S	L		BGA, Hays	btw L.26 - 27:	02/27 01:10 PM

SB 1120 by **Jones**; (Compare to H 0693) Department of Business and Professional Regulation

313210	A	S	L	WD	BGA, Jones	btw L.335 - 336:	03/01 04:14 PM
976012	A	S	L	RCS	BGA, Diaz de la Portilla	btw L.335 - 336:	03/01 04:14 PM

CS/SB 1146 by **JU, Simmons**; (Similar to CS/1ST ENG/H 0401) Effect of Dissolution or Annulment of Marriage on Certain Designations

591122	A	S	L	RCS	BGA, Jones	Delete L.130 - 134:	03/01 04:15 PM
845048	A	S	L	RCS	BGA, Jones	Delete L.43:	03/01 04:15 PM

CS/CS/SB 1178 by **CA, EP, Hays**; (Compare to CS/CS/H 1379) Water Supply

977630	D	S		RCS	BGA, Hays	Delete everything after	03/01 04:22 PM

CS/CS/SB 1244 by **EP, CU, Hays (CO-INTRODUCERS) Storms, Fasano**; (Identical to CS/CS/H 1379) Water and Wastewater Utilities

CS/SB 1252 by **RI, Jones (CO-INTRODUCERS) Gaetz**; (Compare to CS/2ND ENG/H 0517) Business and Professional Regulation

754020	D	S	L	RCS	BGA, Jones	Delete everything after	03/01 04:24 PM
304738	AA	S		RCS	BGA, Jones	Delete L.728 - 857.	03/01 04:24 PM
500090	A	S	L	WD	BGA, Diaz de la Portilla	btw L.388 - 389:	03/01 04:24 PM

CS/CS/SB 1254 by **EP, AG, Siplin**; (Similar to CS/CS/H 7021) Department of Agriculture and Consumer Services

445356	A	S		RCS	BGA, Latvala	Delete L.1036 - 1037:	03/01 04:27 PM

SB 852 by **Siplin**; Healthy Foods Retail Act

CS/SB 1262 by **BI, Oelrich**; (Similar to CS/CS/H 1011) Warranty Associations

213656	D	S	L	RCS	BGA, Jones	Delete everything after	03/01 10:20 AM

CS/SB 1342 by **BI, Storms**; (Compare to CS/H 0935) Child Support Enforcement

CS/SB 1372 by **BI, Alexander**; (Similar to H 0833) Florida Hurricane Catastrophe Fund

CS/SB 1408 by **RI, Gardiner**; (Similar to CS/CS/CS/H 1001) Timeshares

494606	D	S		RCS	BGA, Benacquisto	Delete everything after	03/01 04:28 PM
874460	A	S	L	WD	BGA, Braynon	Delete L.187 - 193:	03/01 04:28 PM

CS/SB 1428 by **BI, Smith**; (Similar to CS/H 0941) Renewal of a Commercial Lines Insurance Policy

582478	A	S	L	RCS	BGA, Braynon	btw L.31 - 32:	03/01 04:30 PM
712766	A	S	L	RCS	BGA, Braynon	btw L.12 - 13:	03/01 04:30 PM

SB 1518 by **Hays**; (Identical to H 0211) Property and Casualty Insurance

552038	A	S			BGA, Hays	btw L.13 - 14:	02/27 09:49 AM

CS/SB 1586 by **BI, Thrasher**; (Similar to CS/H 1277) Money Services Businesses

673830	A	S		RCS	BGA, Hays	Delete L.283:	03/01 11:07 AM

CS/SB 1656 by **RI, Latvala**; (Identical to CS/CS/H 0769) Public Accountancy

SB 1794 by **Hays**; (Identical to H 4145) Continuing Education Advisory Board

CS/SB 1844 by **BI, Latvala**; (Similar to CS/H 0409) Alien Insurers

CS/SB 1858 by **EP, Altman**; (Compare to CS/1ST ENG/H 1389) Water Storage and Water Quality Improvements

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

BUDGET SUBCOMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS
Senator Hays, Chair
Senator Benacquisto, Vice Chair

MEETING DATE: Tuesday, February 28, 2012
TIME: 10:45 a.m.—12:45 p.m.
PLACE: *James E. "Jim" King, Jr. Committee Room,* 401 Senate Office Building

MEMBERS: Senator Hays, Chair; Senator Benacquisto, Vice Chair; Senators Braynon, Bullard, Diaz de la Portilla, Gibson, Jones, and Latvala

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/CS/SB 888** Regulated Industries / Commerce and Tourism / Flores (Similar CS/CS/H 749)	Consumer Services; Deleting provisions establishing the Division of Standards within the Department of Agriculture and Consumer Services; repealing provisions relating to responsibilities of the department for compliance with certain federal requirements related to consumer conciliatory conferences and energy conservation products, services, and loans; authorizing the department to waive license renewal fees for land surveyors and mappers under certain circumstances; authorizing the department to waive firearms training requirements for the initial licensure of private investigative, private security, or repossession services under certain circumstances, etc. CM 01/19/2012 Fav/CS RI 02/07/2012 Fav/CS BGA 02/28/2012 Fav/CS BC	Fav/CS Yeas 6 Nays 0
2	**CS/SB 1358** Governmental Oversight and Accountability / Hays (Similar CS/CS/CS/H 1205)	Employee Drug Testing; Removing the definition of the term “safety-sensitive position,” redefining the term “job applicant,” and defining the term “random testing” for purposes of the Drug-Free Workplace Act; authorizing an agency within state government to conduct random drug testing every 3 months; removing provisions prohibiting a state agency from discharging or disciplining an employee under certain circumstances based on the employee’s first positive confirmed drug test; authorizing an agency to refer an employee to an employee assistance program or an alcohol and drug rehabilitation program if the employee is not discharged, etc. HR 01/25/2012 Fav/1 Amendment GO 02/01/2012 Fav/CS BGA 02/28/2012 Fav/CS BC	Fav/CS Yeas 4 Nays 3

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**CS/CS/SB 1568** Community Affairs / Health Regulation / Gaetz / Garcia (Similar CS/CS/CS/H 711, Compare H 895, S 464)	Sale or Lease of a County, District, or Municipal Hospital; Requiring that the governing board of a county, district, or municipal hospital evaluate the possible benefits to an affected community from the sale or lease of the hospital facility to a not-for-profit or for-profit entity within a specified time period; specifying the factors that must be considered by the governing board before accepting a proposal to sell or lease the hospital; providing that any general or special law that is inconsistent with or otherwise in conflict with the act is specifically superseded by the act, etc. HR 01/19/2012 Fav/CS CA 01/30/2012 Fav/CS BGA 02/28/2012 Fav/CS BC	Fav/CS Yeas 6 Nays 0
4	**CS/SB 1620** Banking and Insurance / Richter (Compare CS/CS/H 1101, CS/CS/H 1223, CS/S 1122)	Insurance; Providing that a salvage motor vehicle dealer is not required to carry certain insurance on vehicles that have been issued a certificate of destruction; revising provisions specifying which insurers are not subject to certain filing requirements relating to reinsurance; providing that provisions relating to insurance adjusters do not apply to individuals who conduct data entry into an automated claims adjustment system for portable electronics insurance claims; revising provisions relating to cancellation for nonpayment of premiums for motor vehicle insurance, etc. BI 02/02/2012 Fav/CS BGA 02/28/2012 Fav/CS BC	Fav/CS Yeas 6 Nays 0
5	**SB 438** Bennett (Similar CS/H 275)	Consumer Finance Charges; Increasing the proportionate loan amounts that are subject to descending maximum rates of interest; increasing the maximum delinquency charge that may be imposed for each loan payment in default for not less than a specified time; revising the maximum amount that a lender may impose as a service charge on a borrower who gives the lender a bad check in full or partial payment of a loan, etc. BI 01/09/2012 Favorable CM 02/07/2012 Favorable BGA 02/28/2012 Favorable BC	Favorable Yeas 5 Nays 1

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	**CS/CS/CS/SB 540** Criminal Justice / Community Affairs / Commerce and Tourism / Smith (Similar CS/CS/H 885, Compare CS/S 1324)	Secondhand Dealers and Secondary Metals Recyclers; Requiring that a secondary metals recycler conform to the requirements for a secondhand dealer; revising requirements for payments made by secondary metals recyclers to sellers of regulated metals property to prohibit certain cash transactions; providing penalties; requiring the Department of Revenue to accept applications from a fixed business address; preempting to the state the regulation of secondary metals recyclers and purchase transactions involving regulated metals property; limiting the liability of a public or private owner of metal property for injuries occurring during the theft or attempted theft of metal property and for injuries occurring as the result of the theft or attempted theft, etc. CM 01/09/2012 Fav/CS CA 01/23/2012 Fav/CS CJ 01/31/2012 Fav/CS BGA 02/28/2012 Favorable BC	Favorable Yeas 6 Nays 0
7	**CS/CS/SB 602** Transportation / Community Affairs / Storms (Similar CS/CS/H 373, Compare CS/CS/CS/CS/H 503, CS/CS/CS/H 1399, CS/CS/S 716)	Stormwater Management Permits; Allowing an entity created by special act, local ordinance, or interlocal agreement of a county or municipality to receive certain reduced or waived permit processing fees; requiring that the Department of Environmental Protection initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports; authorizing certain municipalities and counties to adopt stormwater adaptive management plans and obtain conceptual permits for urban redevelopment projects; providing requirements for establishment of such permits by water management districts in consultation with the Department of Environmental Protection; providing that provisions may not conflict with existing federally delegated pollution reduction programs, etc. EP 12/06/2011 Favorable CA 01/12/2012 Fav/CS TR 01/26/2012 Fav/CS BGA 02/28/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 624** Richter (Identical H 335, Compare H 333, Link S 626)	Household Pharmaceuticals Collection and Disposal Trust Fund/DEP; Creating the Household Pharmaceuticals Collection and Disposal Trust Fund within the Department of Environmental Protection; providing for sources of funds and purposes; providing for annual carryforward of funds; providing for the future review and termination or re-creation of the trust fund, etc. EP 02/06/2012 Fav/1 Amendment HR 02/22/2012 Favorable BGA 02/28/2012 Fav/CS BC	Fav/CS Yeas 6 Nays 0
9	**SB 626** Richter (Identical H 333, Compare H 335, Link S 624)	Collection and Disposal of Household Pharmaceuticals; Requiring the Department of Environmental Protection to establish a grant program to reimburse local law enforcement agencies for the expenses associated with the collection and disposal of household pharmaceuticals; providing eligibility requirements; requiring that the court impose an additional surcharge for specified offenses; providing for the proceeds of the surcharge to be deposited into the Household Pharmaceuticals Collection and Disposal Trust Fund; providing for the clerk of the court to retain a service charge, etc. EP 02/06/2012 Fav/1 Amendment HR 02/22/2012 Favorable BGA 02/28/2012 Fav/CS BC	Fav/CS Yeas 6 Nays 0
10	**SB 648** Hays (Identical H 4001)	Florida Climate Protection Act; Repealing provisions relating to a cap-and-trade regulatory program to reduce greenhouse gas emissions from electric utilities, etc. CU 01/30/2012 Favorable EP 02/14/2012 Favorable BGA 02/28/2012 Not Considered BC	Not Considered

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**SB 676** Smith (Identical H 307, Compare H 5505)	Workers' Compensation Certificate-of-exemption Process; Revising requirements relating to election of exemption from coverage to include applicability to members of limited liability companies; revising requirements for submitting a notice of election of exemption; revising duties of the Department of Financial Services relating to the expiration of certificates of exemption; expanding applicability of requirements relating to certificates of exemption, etc. BI 01/09/2012 Favorable CM 01/19/2012 Temporarily Postponed CM 01/26/2012 Favorable BGA 02/28/2012 Favorable BC	Favorable Yeas 7 Nays 0
12	**CS/CS/SB 716** Environmental Preservation and Conservation / Community Affairs / Bennett (Similar CS/CS/CS/CS/H 503, Compare CS/CS/H 373, CS/CS/H 663, CS/H 691, H 747, H 987, H 4123, CS/CS/H 7117, CS/CS/S 602, CS/S 738, CS/S 758, S 994, S 1032, CS/CS/S 2094)	Environmental Regulation; Prohibiting a county from requiring an applicant to obtain a permit or approval from any state or federal agency as a condition of processing a development permit under certain conditions; providing for the reduction or waiver of permit processing fees relating to projects that serve a public purpose for certain entities created by special act, local ordinance, or interlocal agreement; exempting certain underground injection control wells from permitting requirements under part III of ch. 373, F.S., relating to regulation of wells; providing for waste-to-energy facilities to maximize acceptance and processing of nonhazardous solid and liquid waste, etc. CA 01/12/2012 Fav/CS EP 02/06/2012 Fav/CS BGA 02/28/2012 Fav/CS BC	Fav/CS Yeas 6 Nays 0
13	**CS/SB 738** Environmental Preservation and Conservation / Altman (Similar CS/CS/H 663, Compare CS/CS/CS/CS/H 503, CS/CS/S 716)	Solid Waste Management Facilities; Specifying a permit term for a solid waste management facility that is designed with a leachate control system meeting the requirements of the Department of Environmental Protection; creating a solid waste landfill closure account within the Solid Waste Management Trust Fund to fund the closing and long-term care of solid waste facilities under certain circumstances; requiring that the department require by rule that the owner or operator of a solid waste management facility receiving waste after a specified date provide financial assurance for the cost of completing corrective action for violations of water quality standards, etc. EP 01/09/2012 Fav/CS CA 01/23/2012 Favorable BGA 02/28/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	**CS/SB 762** Criminal Justice / Hays (Similar CS/H 517, Compare CS/CS/H 887, CS/S 1252)	Reducing and Streamlining Regulations; Revising certain licensure requirements and continuing education requirements for reactivating a license, certificate, or registration to practice certain professions and occupations regulated by the Department of Business and Professional Regulation or a board or council within the department, including community association management, employee leasing, home inspection, mold-related services, real estate appraisal, cosmetology, architecture and interior design, landscape architecture, construction contracting, and electrical and alarm system contracting, etc. RI 01/19/2012 Favorable CJ 02/09/2012 CJ 02/09/2012 Fav/CS BGA 02/28/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 0
15	**CS/SB 802** Judiciary / Environmental Preservation and Conservation (Similar CS/CS/H 313)	Premises Liability; Providing that an owner or lessee who makes an area available to another person for hunting, fishing, or wildlife viewing is entitled to certain limitations on liability if notice is provided to a person upon entry to the area or is posted conspicuously on the area; providing that an owner of an area who enters into a written agreement with the state for the area to be used for outdoor recreational purposes is entitled to certain limitations on liability; deleting a requirement that the area be leased to the state in order for the limitations on liability to apply; defining the term “area”, etc. EP 01/24/2012 Favorable JU 01/31/2012 JU 02/09/2012 Fav/CS BGA 02/28/2012 Fav/CS BC	Fav/CS Yeas 6 Nays 0
16	**CS/CS/SB 956** Health Regulation / Regulated Industries / Hays (Similar CS/CS/CS/H 625)	Disposition of Human Remains; Revising procedures for the reporting and disposition of unclaimed remains; limiting the liability of certain licensed persons for cremating or burying human remains under certain circumstances; deleting a requirement that the Department of Health assess fees for the burial of certain bodies; deleting provisions relating to procedures for the conveyance of plastinated human remains into or out of the state pursuant to their scheduled expiration; repealing provisions relating to claims of bodies after delivery to the anatomical board, etc. RI 02/07/2012 Fav/CS HR 02/16/2012 Fav/CS BGA 02/28/2012 Fav/CS BC	Fav/CS Yeas 6 Nays 1

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
17	**CS/CS/SB 1042** Communications, Energy, and Public Utilities / Community Affairs / Bennett (Identical CS/CS/H 801, Compare H 739, S 1282, S 1394)	Emergency 911 Service; Providing an exception to certain confidentiality provisions for a 911 public safety telecommunicator when a confirmed coronary emergency call is taking place; requiring that a voice communications service provider, other than a wireless service provider, impose a fee based on the number of access lines to the E911 system and on the basis of certain access lines for each digital transmission link, up to a specified number of access lines per account bill rendered; revising the criteria that a local government may use in order to indemnify a local carrier; expanding the types of providers that may be indemnified and that are not liable for certain damages; providing for a person or entity in possession of an automated external defibrillator to notify the local public safety answering point regarding the location of the defibrillator, etc. CA 01/23/2012 Fav/CS CU 01/30/2012 Fav/CS BGA 02/28/2012 Favorable BC	Favorable Yeas 6 Nays 0
18	**CS/SB 1086** Environmental Preservation and Conservation / Garcia (Identical CS/H 639)	Reclaimed Water; Defining the terms “reclaimed water” and “reclaimed water distribution system”; providing that reclaimed water is an alternative water supply and eligible for such funding; authorizing specified contract provisions for the development of reclaimed water as an alternative water supply; prohibiting the exclusion of reclaimed water use from regional water supply planning; prohibiting water management districts from requiring permits for the use of reclaimed water; authorizing permit conditions for certain surface water and groundwater sources; requiring the Department of Environmental Protection and each water management district to initiate rulemaking to adopt specified revisions to the water resource implementation rule, etc. EP 02/06/2012 Fav/CS BGA 02/28/2012 Not Considered BC	Not Considered
19	**SB 1094** Hays (Compare CS/H 789)	Workers’ Compensation; Revising penalties applicable to employers who fail to secure the payment of workers’ compensation as required, etc. BI 01/19/2012 Favorable BGA 01/26/2012 Temporarily Postponed BGA 02/28/2012 Not Considered BC	Not Considered

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
20	**SB 1120** Jones (Compare H 693, H 4043, H 4045, H 4097, H 4115, H 4153)	Department of Business and Professional Regulation; Deleting a provision that allows the cigarette tax to be paid by affixing a stamp insignia through a metering machine; requiring retail dealers of cigarettes, rather than wholesale dealers, to affix to each such machine, in a conspicuous place, an identification sticker furnished by the Division of Alcoholic Beverages and Tobacco within the Department of Business and Professional Regulation; deleting a provision that requires an applicant for a real estate license who is not a resident of this state to file an irrevocable consent regarding lawsuits and actions commenced against the applicant; deleting the requirement that an applicant to be chief administrator of a proprietary real estate school or state institution meet certain qualifications for licensure as a broker associate or sales associate and other minimal requirements, etc. RI 02/02/2012 Favorable BGA 02/28/2012 Fav/CS BC	Fav/CS Yeas 8 Nays 0
21	**CS/SB 1146** Judiciary / Simmons (Similar CS/H 401)	Effect of Dissolution or Annulment of Marriage on Certain Designations; Providing that a designation made by or on behalf of a decedent providing for the payment or transfer at death of an interest in an asset to or for the benefit of the decedent's former spouse shall become void if the decedent's marriage was judicially dissolved or declared invalid before the decedent's death, if the designation was made prior to the dissolution or order; providing that payors are not liable for payments or transfers to beneficiaries contrary to this provision in certain circumstances; providing that certain provisions apply notwithstanding the payor's knowledge that the person to whom the asset is transferred is different from the person who would own the interest due to the dissolution of the decedent's marriage or declaration of the marriage's validity before the decedent's death, etc. JU 01/25/2012 Fav/CS BGA 02/28/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
22	**CS/CS/SB 1178** Community Affairs / Environmental Preservation and Conservation / Hays (Compare CS/CS/H 1379, CS/H 7045, CS/CS/S 1244)	Water Supply; Specifying conditions of issuance; requiring that certain permits approved for the development of alternative water supplies by certain entities be granted for at least 30 years; providing an option for the duration of an alternative water supply permit to a county, special district, regional water supply authority, multijurisdictional water supply entity, or publicly or privately owned utility; creating the Study Committee on Investor-Owned Water and Wastewater Utility Systems; requiring the Public Service Commission to provide staff, information, assistance, and facilities that are deemed necessary for the committee to perform its duties; providing for funding from the Florida Public Service Regulatory Trust Fund; requiring the committee to report to the Governor and Legislature its findings and make recommendations for legislative changes, etc. EP 01/30/2012 Fav/CS CA 02/06/2012 Fav/CS BGA 02/28/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 0
23	**CS/CS/SB 1244** Environmental Preservation and Conservation / Communications, Energy, and Public Utilities / Hays (Identical CS/CS/H 1379, Compare CS/CS/S 1178)	Water and Wastewater Utilities; Creating the Study Committee on Investor-Owned Water and Wastewater Utility Systems; providing for removal or suspension of members by the appointing authority; requiring the Public Service Commission to provide staff, information, assistance, and facilities that are deemed necessary for the committee to perform its duties; providing for funding from the Florida Public Service Regulatory Trust Fund; providing for public meetings; providing for future termination of the committee, etc. CU 02/13/2012 Fav/CS EP 02/21/2012 Fav/CS BGA 02/28/2012 Favorable BC	Favorable Yeas 7 Nays 0
24	**CS/SB 1252** Regulated Industries / Jones (Compare CS/H 517, CS/CS/H 887, H 1345, S 76, CS/S 762)	Business and Professional Regulation; Requiring the Department of Business and Professional Regulation to waive certain licensing fees for a military veteran who applies within a specified period after honorable discharge from any branch of the United States Armed Forces; limiting to the department the authority to reinstate a license that has become void under certain circumstances; authorizing distance learning courses as an acceptable alternative to classroom instruction for renewal of a real estate instructor permit, etc. RI 02/02/2012 Fav/CS BGA 02/28/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
25	**CS/CS/SB 1254** Environmental Preservation and Conservation / Agriculture / Siplin (Similar CS/CS/H 7021, Compare H 4187, H 4189)	Department of Agriculture and Consumer Services; Establishing the Division of Food, Nutrition, and Wellness within the department; deleting provisions for a food safety pilot program and a permitting program for persons who test milk or milk products; creating the Agricultural Feed, Seed, and Fertilizer Advisory Council; revising requirements for the assessment of penalties and enforcement of violations by manufacturers and distributors of commercial feed or feedstuff; revising the geographic jurisdiction of soil and water conservation districts to include certain territory outside of the districts' boundaries; revising requirements and procedures for the dissolution or discontinuance of soil and water conservation districts, etc. AG 01/23/2012 Fav/CS EP 02/06/2012 Fav/CS BGA 02/28/2012 Fav/CS BC	Fav/CS Yeas 6 Nays 0
26	**SB 852** Siplin (Similar CS/S 1658)	Healthy Foods Retail Act; Directing the Department of Agriculture and Consumer Services to establish a financing program to help fund projects that increase access to fresh fruits and vegetables in underserved areas; authorizing the department to contract with other organizations to administer the program; specifying how the funding is to be used; providing who is eligible for funding; providing criteria for project funding and evaluation; requiring an annual report to the Legislature; authorizing available funds to be leveraged to access federal funding; authorizing the department to adopt rules, etc. AG 01/12/2012 Favorable BGA 02/28/2012 Favorable BC	Favorable Yeas 7 Nays 0
27	**CS/SB 1262** Banking and Insurance / Oelrich (Similar CS/CS/H 1011)	Warranty Associations; Providing criteria for a motor vehicle service agreement company to effectuate refunds through the issuing salesperson or agent; authorizing rather than requiring the Office of Insurance Regulation to examine service agreement companies; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide money to the Department of Financial Services to pursue unauthorized entities operating as motor vehicle service agreement companies; authorizing service warranty associations to effectuate refunds through the issuing sales representative, etc. BI 01/26/2012 Fav/CS BGA 02/28/2012 Fav/CS BC	Fav/CS Yeas 6 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
28	**CS/SB 1342** Banking and Insurance / Storms (Compare CS/H 935)	Child Support Enforcement; Providing that, for IV-D cases, an affidavit filed with a child support depository requesting that child support payments be made through the depository need not allege a default in support payments; requiring the Department of Highway Safety and Motor Vehicles to reinstate an obligor's driving privileges if the obligor is paying his or her support obligation by income deduction order or is receiving unemployment compensation, social security disability payments, supplemental security income, or temporary cash assistance; adding a caregiver to the list of persons who may provide a statement regarding a putative father; providing that the Department of Revenue rather than the director of the state IV-D program may cause a lien to be placed on a motor vehicle and vessel, etc. CF 01/19/2012 Favorable TR 02/07/2012 Fav/2 Amendments BI 02/16/2012 Fav/CS BGA 02/28/2012 Favorable BC	Favorable Yeas 7 Nays 0
29	**CS/SB 1372** Banking and Insurance / Alexander (Similar H 833)	Florida Hurricane Catastrophe Fund; Providing for calculation of an insurer's reimbursement premium and retention under the reimbursement contract; revising coverage levels available under the reimbursement contract; revising aggregate coverage limits; providing for the phase-in of changes to coverage levels and limits; revising the cash build-up factor included in reimbursement premiums; providing for phase-in; reducing maximum allowable emergency assessments; changing the name of the Florida Hurricane Catastrophe Fund Finance Corporation; repealing provisions related to temporary emergency options for additional coverage, etc. BI 02/16/2012 Fav/CS BGA 02/28/2012 Temporarily Postponed BC	Temporarily Postponed

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
30	**CS/SB 1408** Regulated Industries / Gardiner (Similar CS/CS/CS/H 1001)	Timeshares; Revising the purposes of ch. 721, F.S., to include the provision of certain disclosure; deleting a provision requiring resale service providers to provide certain fee or cost and listing information to timeshare interest owners; specifying information that a resale service provider must provide to the consumer timeshare reseller; prohibiting unlicensed resale service providers from engaging in certain activities; providing that the provision of resale advertising services in this state constitutes operating, conducting, engaging in, or carrying on a business or business venture for purposes relating to jurisdiction of the courts of this state, etc. RI 01/26/2012 Fav/CS BGA 02/28/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 0
31	**CS/SB 1428** Banking and Insurance / Smith (Similar CS/H 941)	Renewal of a Commercial Lines Insurance Policy; Providing that the transfer of a policy to certain other insurers is considered a renewal of the policy rather than a cancellation or nonrenewal; requiring notice of such transfer; specifying which types of policies such transfer provisions apply to, etc. BI 02/02/2012 Fav/CS BGA 02/28/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 0
32	**SB 1518** Hays (Identical H 211, H 4059)	Property and Casualty Insurance; Deleting a requirement that the Financial Services Commission provide an annual report to the Legislature consisting of specified data and analysis related to the aggregate net probable maximum losses, financing options, and potential assessments of the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation, etc. BI 02/07/2012 Favorable BGA 02/28/2012 Not Considered BC	Not Considered

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
33	**CS/SB 1586** Banking and Insurance / Thrasher (Similar CS/H 1277, Compare H 1279, Link S 1584)	Money Services Businesses; Revising the frequency and notice requirements for examinations and investigations by the Office of Financial Regulation of money services business licensees; prohibiting money services businesses, authorized vendors, and affiliated parties from knowingly possessing certain paraphernalia used or intended or designed for use in misrepresenting a customer's identity, for which penalties apply; requiring money services business licensees to submit certain transaction information to the Office of Financial Regulation related to the payment instruments cashed; authorizing the Financial Services Commission to prescribe the time, format, and manner for licensees to submit the transaction information, etc. BI 02/07/2012 Fav/CS BGA 02/28/2012 Fav/CS BC	Fav/CS Yeas 6 Nays 0
34	**CS/SB 1656** Regulated Industries / Latvala (Identical CS/CS/H 769)	Public Accountancy; Revising and updating education and work experience requirements for applicants for licensure as a certified public accountant; revising requirements for reactivation of an inactive license as a certified public accountant; requiring the Board of Accountancy to conduct a study to assess the privatization of the Division of Certified Public Accounting, etc. RI 02/07/2012 Fav/CS BGA 02/28/2012 Favorable BC	Favorable Yeas 7 Nays 0
35	**SB 1794** Hays (Identical H 4145)	Continuing Education Advisory Board; Deleting authority for the creation of the continuing education advisory board whose purpose is to advise the Department of Financial Services in determining standards by which courses for certain persons licensed to solicit or sell insurance may be evaluated and categorized; deleting all requirements and procedures with respect to the board, etc. BI 02/07/2012 Favorable BGA 02/28/2012 Not Considered BC	Not Considered

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
36	**CS/SB 1844** Banking and Insurance / Latvala (Similar CS/H 409, Compare CS/CS/H 1101)	Alien Insurers; Revising a provision exempting alien insurers from the requirement to obtain a certificate of authority; specifying the terms and conditions that must be satisfied before an alien insurer may issue a policy or contract; providing that an alien insurer issuing policies or contracts in this state is subject to part IX of ch. 626, F.S., relating to unfair insurance trade practices, etc. BI 02/02/2012 Fav/CS BGA 02/28/2012 Favorable BC	Favorable Yeas 7 Nays 0
37	**CS/SB 1858** Environmental Preservation and Conservation / Altman (Identical CS/H 1389)	Water Storage and Water Quality Improvements; Requiring a specified determination as a condition of an agreement for water storage and water quality improvements on private agricultural lands; providing a methodology for such determination; providing for regulation of such lands for the duration of the agreement and after its expiration, etc. EP 01/30/2012 Fav/CS AG 02/13/2012 Favorable BGA 02/28/2012 Not Considered BC	Not Considered

Other Related Meeting Documents

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/CS/SB 888

INTRODUCER: Budget Subcommittee on General Government Appropriations; Regulated Industries Committee; Commerce and Tourism Committee; and Senator Flores

SUBJECT: Relating to Consumer Protection

DATE: February 28, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Juliachs	Hrdlicka	CM	**Fav/CS**
2.	Waters	Imhof	RI	**Fav/CS**
3.	Blizzard	DeLoach	BGA	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill amends several statutes concerning consumer protection provisions that fall under the purview of the Department of Agriculture and Consumer Services (DACS). Specifically, the bill merges the responsibilities and duties of the Division of Standards into the Division of Consumer Services. The bill also amends statutory provisions relating to professional surveyors and mappers, business opportunities, motor repair shops, pawnshops, health studios, sellers of travel, intrastate movers, telemarketing, brake fluid and anti-freeze products, fair rides, and licensing.

The Senate General Appropriations Act for Fiscal Year 2012-2013 includes a cost savings of $800,000 from the General Inspection Trust Fund by consolidating the Division of Standards into the Division of Consumer Services.

The bill substantially amends the following sections of the Florida Statutes: 20.14, 472.005, 472.006, 472.011, 472.0131, 472.015, 472.018, 472.0202, 472.0203, 472.025, 472.0351, 493.6105, 493.6113, 493.6118, 493.6120, 501.015, 501.017, 501.059, 501.605, 501.607, 501.911, 501.913, 507.04, 525.07, 526.143, 526.50, 526.51, 526.52, 526.53, 526.55, 539.001, 559.805, 559.904, 559.928, 559.9285, 559.935, 570.29, 570.544, 616.242, F.S.

The bill creates the following section of the Florida Statutes: 472.0337, F.S.

The bill repeals the following sections of the Florida Statutes: 366.85, 559.922, 570.46 and 570.47, F.S.

II. Present Situation:

The DACS is charged with the responsibility of supporting Florida's agricultural economy, as well as protecting consumers from unsafe products and from deceptive business practices. To assist with carrying out its mission of protecting Florida's general public, the department is organized into 12 divisions, including Consumer Services, Licensing, and Standards.[1]

Presently, the Division of Consumer Services is responsible for overseeing and regulating the following activities and entities: business opportunities, motor vehicle repair shops, charitable organizations, Florida Do Not Call, dance studios, pawnshops, health studios, sellers of travel, intrastate movers, game promotions, telemarketing, and professional surveyors and mappers[2]. The Division of Standards protects consumers from unfair and unsafe business practices and products, including gasoline, brake fluid, antifreeze, liquefied petroleum gas, amusement rides, and weighing and measuring devices. Finally, the Division of Licensing is responsible for regulating private security and investigative industries, along with issuing concealed weapon and firearm licenses.

Notably, in 2009, the Division of Consumer Services underwent a significant change when the Legislature transferred[3] the Board of Professional Surveyors and Mappers (board) from the Department of Business and Professional Regulation to the Department of Agriculture and Consumer Services.[4] The effect was to transfer the operations of the board from ch. 455, F.S., to ch. 472, F.S.

III. Effect of Proposed Changes:

This bill makes numerous changes to statutes affecting the Department of Agriculture and Consumer Services.

Section 1 amends s. 20.14, F.S., to remove statutory reference to the Division of Standards.

Section 2 repeals s. 366.85, F.S., dealing with consumer conciliatory conferences and lists of sources for energy conservation products or services and of financial institutions offering energy conservation loans.

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[1] Sections 20.14 and 570.29, F.S.
[2] *See* http://www.800helpfla.com/ (Last visited February 6, 2012).
[3] The board was transferred by a type two transfer. The definition of a "type two transfer" is provided in s. 20.06(2), F.S.
[4] Chapter 2009-66, L.O.F.

Sections 3 to 14 of the bill make changes to the regulation of Professional Surveyors & Mappers.[5]

Section 3 amends s. 472.005, F.S., to redefine "license" and introduce the terms "consumer member" and "licensee." The term "license" means a registration, certificate, or license issued by the department pursuant to the chapter.

"Consumer member" is defined as a person appointed to serve on the board[6] who is not, and never has been, a professional surveyor or mapper in any jurisdiction or a member of any closely related profession regulated by the board.

"Licensee" means any person or business entity that has been issued, pursuant to ch. 472, F.S., a registration, certificate, or license by the department.[7]

Section 4 amends s. 472.006, F.S., by instructing the department to work with the Department of Revenue regarding the suspension or denial of the license of any licensee found to be in violation of a support order, subpoena, order to show cause, or written agreement; providing a basis for reinstating a denied or suspended license; and relieving the department of certain liability associated with the denial or suspension of a license.[8]

It should be noted that the provisions above are mandated under federal law under the current federal matching funds scheme concerning state child support enforcement programs.[9] In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act, which required states to target parents who owed overdue child support by enacting license restriction laws. As such, the provisions reflected in section 7 of this bill both comply with federal law and further the declared public policy of this state, which is that "children shall be maintained from the resources of their parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through public assistance programs."[10]

Section 5 amends s. 472.011, F.S., to authorize the department to waive license renewal fees by rule when the General Inspection Trust Fund[11] contains funds that exceed the amount required to cover the necessary functions of the board. This section also authorizes the board to collect a special assessment for the purpose of eliminating a cash deficit, or if there is not a cash deficit, in the amount sufficient to maintain the financial integrity of the profession.[12]

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[5] The provisions under this section transfer existing statutory language that was inadvertently omitted during the transfer of the Board of Professional Surveyors and Mappers from the Department of Business and Professional Regulation to the Department of Agriculture and Consumer Services.
[6] The term "Board" refers to the Board of Professional Surveyors and Mappers.
[7] The inclusion of the terms "licensee" and "consumer member" derives from identical language contained in s. 455.01, F.S.
[8] This provision derives from the identical language contained in s. 455.203(9), F.S.
[9] 42 U.S.C. 666(a)(16).
[10] Section 409.2551, F.S.
[11] Section 570.20, F.S. All donations and all inspection fees and other funds authorized and received from in the enforcement of the inspection laws administered by the department are paid to the General Inspection Trust Fund of Florida.
[12] This provision derives from identical language contained in s. 455.219, F.S.

Section 6 amends s. 472.0131, F.S., to specify that applicants who have taken and failed an examination developed by the department or a contracted vendor may review their last exam.[13]

Section 7 amends s. 472.015, F.S., to permit the department to require applicants to provide social security numbers when applying for an initial or renewal license. This requirement originates from federal law which provides that the use of a social security number is limited to administering child support enforcement activities.[14]

This section also specifies that an application is considered to be received upon receipt by the department of the application in its proper format and with any additional documentation or fee prescribed either by law or rule. Furthermore, the department may not issue a license by endorsement to any applicant who is under investigation in this state, any other state, or any other jurisdiction for any act that would constitute a violation under this chapter until the investigation is complete and disciplinary proceedings have been terminated.[15]

Section 8 amends s. 472.018, F.S., by authorizing the board to use the standard recognized by the Federal Poverty Income Guidelines as produced by the United States Department of Health and Human Services when determining indigency.

Additionally, the section requires that each continuing education provider must provide to the department, in an electronic format, information regarding the continuing education status of licensees. After a licensee completes a course, the information must be submitted electronically by the continuing education provider to the department within 30 calendar days after completion. However, on the 30th day before the renewal deadline, the time period for a continuing education provider to submit such information to the department is reduced to 10 business days after completion of the course.[16]

Finally, this section also directs the department to establish a system for monitoring license compliance with continuing education requirements, as well as authorizes the department to refuse to renew a license until the licensee has satisfied all applicable continuing education requirements. Further, the department is not precluded from imposing additional penalties pursuant to ch. 472, F.S., or department rules.

Section 9 amends s. 472.0202, F.S., to correct a statutory citation and clarify when a licensee is subject to discipline for practicing without an active license.

Section 10 amends s. 472.0203, F.S., to allow the department to communicate with a licensee via electronic communication concerning license renewal.

Section 11 amends s. 472.025, F.S., to make technical changes concerning the regulation of seals so that it is now surrendered to the executive director of the board.

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[13] This provision derives from identical language contained in s. 455.217, F.S.
[14] 42 U.S.C. 666(a)(13)(a).
[15] This provision derives from identical language contained in s. 455.213, F.S. Current law provides for denial to any applicant who also is under investigation in another state for acts that would violate ch. 455, F.S.
[16] This provision derives from identical language contained in s. 455.2178, F.S.

Section 12 creates s. 472.0337, F.S., which grants the department powers with respect to investigations, administration of oaths, taking depositions, and other powers.[17]

Section 13 amends s. 472.0351, F.S., by clarifying the grounds for commencing disciplinary actions for licensure violations and specifying the manner that a licensee may be disciplined, as well as repealing provisions that contain duplicative violations. This section further clarifies the ability of the board to discipline licenses and impose license restrictions as disciplinary penalties.[18]

Section 14 amends s. 493.6105, F.S., to allow the department to waive the firearms training requirement for a first-time applicant of a Class "G"[19] license under the following conditions: the applicant provides proof that he or she is currently certified as a law enforcement officer or correctional officer pursuant to the requirements of the Criminal Justice Standards and Training Commission or has successfully completed the training required for certification within the last 12 months; the applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency; or the applicant submits a valid firearm certificate among those specified in s. 493.6105(6)(a), F.S.[20]

Section 15 amends s. 493.6113, F.S., to allow the department to waive the firearms training requirement for an applicant who is renewing their Class "G" license under the following conditions: the applicant provides proof that he or she is currently certified as a law enforcement officer or correctional officer pursuant to the requirements of the Criminal Justice Standards and Training Commission and has completed law enforcement firearms requalification training annually during the preceding two years of the licensure period; the applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency annually during the preceding two years of the licensure period; or the applicant submits a valid firearm certificate among those specified in s. 493.6105(6)(a), F.S., and provides proof of having completed requalification training during the preceding two years of the licensure period.

Section 16 amends s. 493.6118, F.S., to expand the group of licensees subject to disciplinary action to include Class "DS"[21] and "RS"[22] schools. As such, upon entry of a final order imposing an administrative fine against owners, as well as corporate or agency officers or partners, of a class "DS" and "RS" agency, school, or training facility, the license or pending requests for approval of a license for the school, its owners, and officers are automatically suspended if 30

[17] This provision derives from identical language contained in s. 455.233, F.S.
[18] This provision derives from identical language contained in s. 455.227, F.S.
[19] Class "G" license refers to the license required for an armed security guard.
[20] Certificates include the following: The Florida Criminal Justice Standards and Training Commission Instructor Certificate and written confirmation by the commission that the applicant possesses an active firearms certification; The National Rifle Association Private Security Firearm Instructor Certificate; or a firearms instructor certificate issued by a federal law enforcement agency.
[21] Class "DS" license refers to a security officer school or training facility.
[22] Class "RS" license refers to a recovery agent school or training facility.

days have elapsed since the entry of the final order and the fine has not been paid. All parties are jointly and severally liable[23] for fines levied against the agency, school, or training facility.

Section 17 amends s. 493.6120, F.S., to state that any owner, officer, partner, or manager of a school or training facility that knew or should have known of an activity that resulted in the revocation of the school or training facility license shall have their personal license suspended for three years and may not have any financial interest or be employed by the school or training facility during suspension.

Section 18 amends s. 501.015, F.S., by removing the term "occupational license" and replacing it with "business tax receipt" as it relates to health studios.[24]

Section 19 amends s. 501.017, F.S., to make technical changes and to provide for "at least" 10-point boldfaced font in health studio contracts, which are required to include the language stipulated in s. 501.017(1)(a), F.S. As currently written, the statute requires exactly 10-point boldfaced type.

Section 20 amends s. 501.059, F.S., by removing the definition for "Public Service Commission"; requiring the department to keep a telephone subscriber who notifies the department of his or her desire not to receive unsolicited telephone sales calls to be placed on the "do not call" list for five years; removing fees related to placement on the "do not call" list; authorizing the department to include the phone number listings of Florida subscribers from a national "do not call list" should the Federal Trade Commission establish such a national database; and authorizing the department to impose an administrative fine not to exceed $1,000 for every violation.

Section 21 amends s. 501.605, F.S., by removing the requirement to submit a social security number for an application to become a commercial telephone seller.

Section 22 amends s. 501.607, F.S., by removing the requirement to submit a social security number for an application to become a salesperson.

Section 23 amends s. 501.911, F.S., to remove statutory reference to the Division of Standards.

Section 24 amends s. 501.913, F.S., to require that a registrant of a brand of antifreeze, who is no longer producing for distribution such brand, to submit a notarized affidavit on company letterhead stating the following: that the brand is no longer in production; that the brand will not be distributed in the state; and that all existing products of the brand will be removed by the registrant from the state within 30 days after expiration of the registration or the registrant will reregister the brand for two subsequent registration periods. It also specifies the sample size required for registration.

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[23] The effect of joint and several liability is to make each party liable for the entire amount of the fine regardless of that individual party's relative degree of fault or responsibility for the violation.

[24] The Legislature enacted ch. 2006-152, L.O.F., which reclassified "local occupational license" to "local business tax." This change proposes to match the statute, as amended by this bill, to its modern term as codified in s. 205.022(2), F.S.

Section 25 amends s. 507.04, F.S., to reduce the period of notification of cancellation of insurance coverage for household moving services required to be provided to the department from at least 30 days to 10 days prior to cancellation of coverage.

Section 26 amends s. 525.07, F.S., to prohibit a person from removing, using, selling, offering for sale, distributing, offering for distribution, or disposing of petroleum fuel that has been placed under a stop-sale order without receiving permission from the department. After repairs and adjustments have been made, the adjusting mechanism must immediately be resealed by the registered meter mechanic with a seal clasp bearing at least the name or initials of the registered mechanic.

Section 27 amends s. 526.143, F.S., to authorize the department to temporarily waive requirements for maintaining generators at retail motor fuel outlets that are used in preparation for, or response to, an emergency or major disaster in another state.

Section 28 amends s. 526.50, F.S., to define the terms "brand" and "formula" as they relate to brake fluid. As such, "brand" means the product name appearing on the label of a container of brake fluid while "formula" means the name of the chemical mixture or composition of the brake fluid product.

Section 29 amends s. 526.51, F.S., to require that to reregister a previously registered brand and formula combination of brake fluid, an applicant must submit a completed application to the department before the first day of the permit year. Any late submissions will incur a penalty of $25 that will be in addition to the standard fee.

This section also requires a registrant of a brand of brake fluid, who is no longer producing for distribution such brand, to submit a notarized affidavit on company letterhead stating the following: that the brand is no longer in production; that the brand will not be distributed in the state; and that all existing products of the brand will be removed by the registrant from the state within 30 days after expiration of the registration or the registrant will reregister the brand for two subsequent registration periods.

Furthermore, all first-time applicants for a brand and formula combination must be accompanied by a certified report from an independent testing laboratory demonstrating that the quality of the brake fluid is not less than the specifications established by the department.

Section 30 amends s. 526.52, F.S., to clarify quality standards for brake fluid products by referring to the United States Department of Transportation Motor Vehicle Safety Standard No. 116, or other specified standard identified in department rule.

Section 31 amends s. 526.53, F.S., to require that stop-sale orders for brake fluid be served by the department on the owner of the brand name, the distributor, or other entity responsible for selling or distributing the brake fluid product.

The section also requires that unregistered brake fluid held by the department or its representative that has not been registered within 30 days after the issuance of a stop-sale order may be given to any tax-supported institution or agency of the state, if the product satisfies legal

specifications. If the product does not satisfy legal specifications, then the product may be disposed of as authorized by rule of the department.

Section 32 amends s. 526.55, F.S., by enumerating the penalties for violating provisions relating to brake fluid and replacing criminal sanctions with administrative and monetary sanctions, including an administrative fine of up to $5,000.

Section 33 amends s. 539.001, F.S., by requiring that a licensee who seeks to move a pawnshop to another location must give written notice to the agency at least 30 days before the move. However, the requirement for the notice to be sent via certified or registered mail with return receipt requested is removed from the statute.

Section 34 amends s. 559.805, F.S., by removing the requirement that every seller of a business opportunity provide the department with the social security number of every independent agent who will engage in the offer or sale of business opportunities on behalf of the seller in this state. The seller of a business opportunity, however, must still provide the name, home and business address, telephone number, present employer, and birth date for each independent agent.

Section 35 amends s. 559.904, F.S., by removing the term "occupational license" and replacing it with "business tax receipt" as it relates to motor vehicle repair shops.[25]

Section 36 repeals s. 559.922, F.S., with the effect of eliminating a financial assistance program to undertake technical training or courses of study in motor vehicle repair.

Section 37 amends s. 559.928, F.S., by removing the term "occupational license" and replacing it with "business tax receipt" as it relates to sellers of travel.[26] Additionally, an independent agent representing a seller of travel is no longer required to submit their social security number when filing their annual affidavit. However, they are still required to submit their name, legal business or trade name, mailing address, business address, telephone number, and address of each seller of travel represented by the independent agent.

Section 38 amends s. 559.9285, F.S., by correcting a cross-reference.

Section 39 amends s. 559.935, F.S., by removing the term "occupational license" and replacing it with "business tax receipt" as it relates to sellers of travel.[27]

Section 40 amends s. 570.29, F.S., to remove statutory reference to the Division of Standards.

Section 41 repeals ss. 570.46 and 570.47, F.S., to remove the powers and duties the Division of Standards and to remove references to the appointment and duties of the division director.

Section 42 amends s. 570.544, F.S., by providing that the director of the Division of Consumer Services shall supervise, direct, and coordinate the activities of the former Division of Standards

[25] *Id.*
[26] *Id.*
[27] *Id.*

and shall, under the direction of the department, enforce the provisions of chs. 472, 496, 501, 507, 525, 526, 527, 531, 539, 559, 616, and 849, F.S. The effect is to shift the duties and responsibilities of the Division of Standards to the Division of Consumer Services.

Section 43 amends s. 616.242, F.S., by removing an obsolete reference to the "Bureau of Fair Rides Inspection" and replacing it with "fair rides inspection program." As such, the department shall by rule establish fees to cover the costs and expenditures associated with the fair rides inspection program, as opposed to the Bureau of Fair Rides Inspection.

Section 44 provides that this act shall take effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the DACS, the waiver of the firearms training requirement for a first time or renewing applicant of a Class "G" license who is either a retired law enforcement officer or a federal law enforcement officer that has undergone proper firearms training will allow such groups to qualify and remain eligible for a Class "G" license at a minimum expense and inconvenience. As such, the effect of these changes will provide greater opportunities for employment in the private investigation and security industries.[28] Similarly, the removal of the $10 listing charge fee and $5 renewal assessment associated with the "do not call list" will create a positive private sector impact.

The bill also imposes a $25 late fee for any late submissions of applications to reregister a previously registered brand and formula of brake fluid, as well as imposes an administrative fine of up to $5,000 for any violations of law regarding the regulation of brake fluid. Additionally, this bill also gives the department the option to impose an

[28] Memorandum to Senate Committee on Commerce and Tourism from Department of Agriculture and Consumer Services (on file with the Senate Committee on Commerce and Tourism).

administrative fine, not to exceed $1,000, for every violation of the telephone solicitation and "do not call" statutes.

Lastly, the repeal of s. 559.922, F.S., resulting in the elimination of the department's financial assistance program for technical training or courses of study in motor vehicle repair will also create a private sector impact.

C. Government Sector Impact:

According to the DACS, the merger of the divisions of Consumer Services and Standards would reduce expenses by approximately $800,000.[29] The Senate General Appropriations Act for Fiscal Year 2012-2013 includes a reduction of $800,000 from the General Inspection Trust fund due to the merger of the two divisions.

Conversely, with respect to telephone solicitation, the removal of the $10 listing charge fee and $5 renewal assessment associated with the "do not call list" will reduce revenue to the department by $530,600. The DACS will continue to collect $85,500 in fees for the selling of the "do not call list" and reductions in revenues will be offset through administrative fines.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Budget Subcommittee on General Government Appropriations on February 28, 2012:

- Removes section providing that a person giving false information when applying for a license commits a third degree felony.
- Removes provision stating that a surveyors and mappers license renewal notification may be received by e-mail if the licensee has elected to receive the notification in that manner. Accordingly, the department may send renewal notifications electronically, regardless of whether or not the licensee has elected to receive notifications in such manner, if the licensee has provided an e-mail address to the department.

CS/CS by Regulated Industries on February 7, 2012:

- Clarifies that the department may send a surveyors and mappers license renewal by e-mail if the licensee has elected to receive the notifications in that manner.

[29] *Id*.

CS by Commerce and Tourism on January 19, 2012:

- Retracted on renaming of Division of Consumer Services to Division of Consumer Protection.
- Repealed s. 559.922, F.S., with the effect of eliminating the department's financial assistance program for technical training or courses of study in motor vehicle repair.
- Repealed s. 366.85, F.S., dealing with consumer conciliatory conferences.
- Inserted the following provisions relating to the regulation of telephone solicitation:
    - Removed "Public Service Commission" from definition portion of the statute.
    - Required the department to keep a telephone subscriber who notified the department of his or her desire not to receive unsolicited telephone sales calls to be placed on the "do not call" list for five years.
    - Removed fees relating to placement on the "do not call list." Specifically, there is no longer an initial $10 listing charge or $5 renewal assessment.
    - Authorized the department to include the phone number listings of Florida subscribers from any national "do not call list" if the Federal Trade Commission, pursuant to 15 U.S.C. s. 6102(a), established such a national database.
    - Authorized the department, as an alternative to the civil penalties already provided, to impose an administrative fine not to exceed $1,000 for every violation. The administrative proceeding must be conducted in accordance with ch. 120, F.S.

B. Amendments:

None.

712052

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Benacquisto) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 413 - 414
4 and insert:
5 to the department.
6
7 Delete lines 588 - 598.
8
9 ========== T I T L E A M E N D M E N T ==========
10 And the title is amended as follows:
11 Delete lines 83 - 86
12 and insert:

712052

13 and conditions of the final order; amending s.
14 493.6105, F.S.;

By the Committees on Regulated Industries; and Commerce and Tourism; and Senator Flores

580-03065-12 2012888c2

A bill to be entitled

An act relating to consumer services; amending s. 20.14, F.S.; deleting provisions establishing the Division of Standards within the Department of Agriculture and Consumer Services; repealing s. 366.85, F.S., relating to responsibilities of the department for compliance with certain federal requirements related to consumer conciliatory conferences and energy conservation products, services, and loans; amending s. 472.005, F.S.; redefining the term “license” and defining the terms “consumer member” and “licensee” for purposes of provisions governing surveyors and mappers; amending s. 472.006, F.S.; directing the Department of Agriculture and Consumer Services to work cooperatively with the Department of Revenue to implement an automated method of disclosing information related to licensees; authorizing the Department of Agriculture and Consumer Services to suspend or deny the license of any licensee found not to be in compliance with a support order, subpoena, order to show cause, or written agreement; providing for reinstatement of a denied or suspended license; relieving the department of certain liability associated with the denial or suspension of a license; amending s. 472.011, F.S.; authorizing the department to waive license renewal fees for land surveyors and mappers under certain circumstances; authorizing the collection of an existing special assessment from

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580-03065-12 2012888c2

inactive and delinquent licensees; amending s. 472.0131, F.S., relating to examinations; making technical changes; amending s. 472.015, F.S.; authorizing the department to require land surveyors or mappers to submit their social security numbers when applying for initial licensure or license renewal; providing conditions under which an application is deemed received; providing conditions under which the department may issue a license by endorsement; requiring an applicant to provide his or her social security number as required pursuant to federal law; specifying how a social security number may be used; amending s. 472.018, F.S., relating to continuing education; making technical changes; requiring that continuing education providers electronically provide certain information to the department; providing timeframes for reporting; requiring that the department establish a system to monitor licensee compliance with continuing education requirements; defining the term “monitor”; authorizing the department to refuse to renew a license until the applicant satisfies continuing education requirements; authorizing the department or board to impose additional penalties against applicants who fail to satisfy additional requirements; amending s. 472.0202, F.S.; conforming a cross-reference; amending s. 472.0203, F.S.; providing for license renewal notification by the department to be sent electronically to the licensee’s last known e-mail

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59 address; amending s. 472.025, F.S.; providing that a
60 professional surveyor or mapper whose license is
61 revoked or suspended must return his or her seal to
62 the executive director of the board, rather than to
63 the secretary; creating s. 472.0337, F.S.; authorizing
64 the department to administer oaths, take depositions,
65 make inspections, issue and serve subpoenas and other
66 process, and compel the attendance of witnesses and
67 production of certain documents; providing for
68 challenges to and enforcement of subpoenas and orders;
69 amending s. 472.0351, F.S.; revising grounds for
70 discipline; eliminating certain actions by a licensee
71 which are grounds for disciplinary action; specifying
72 what constitutes an action against a license in
73 another state, territory, or country; specifying that
74 the board may enter an order against a surveyor or
75 mapper who committed certain violations before
76 obtaining a license; authorizing the board to require
77 corrective action; prohibiting the department from
78 issuing to or renewing the license of a person or
79 business entity that has been assessed a fine,
80 interest, costs, or attorney fees associated with an
81 investigation or prosecution until the person pays
82 them in full or complies with or satisfies all terms
83 and conditions of the final order; creating s.
84 472.0357, F.S.; providing penalties for knowingly
85 giving false information in the course of applying for
86 or obtaining a license; amending s. 493.6105, F.S.;
87 authorizing the Department of Agriculture and Consumer

88 Services to waive firearms training requirements for
89 the initial licensure of private investigative,
90 private security, or repossession services under
91 certain circumstances; amending s. 493.6113, F.S.;
92 authorizing the department to waive firearms training
93 requirements for license renewal of private
94 investigative, private security, and repossession
95 services under certain circumstances; amending s.
96 493.6118, F.S.; providing for disciplinary action to
97 be taken against certain additional license classes
98 and schools or training facilities for private
99 investigators and private security and repossession
100 services; amending s. 493.6120, F.S.; providing for
101 penalty provisions to apply to certain additional
102 license classes and schools or training facilities for
103 private investigators and private security and
104 repossession services; amending s. 501.015, F.S.,
105 relating to the regulation of health studios;
106 substituting the term “local business tax receipt” for
107 the term “local occupational license”; amending s.
108 501.017, F.S.; making technical changes; clarifying
109 that certain notice be provided in a health studio
110 contract in at least 10-point boldface type; amending
111 s. 501.059, F.S.; deleting requirement that telephone
112 subscribers pay an initial listing charge for
113 including their telephone numbers on the state’s no
114 sales solicitation calls listing; specifying the
115 period that a subscriber’s listing remains active;
116 requiring the department to include certain listings

117 from a national database on the state's listing;
118 authorizing the department to impose administrative
119 fines for violations; specifying that administrative
120 proceedings are subject to the Administrative
121 Procedure Act; requiring telecommunications companies
122 to inform their customers of certain telephone
123 solicitation requirements; deleting the requirement
124 that the Florida Public Service Commission adopt
125 certain rules; amending s. 501.605, F.S.; providing
126 that an applicant for a commercial telephone seller
127 license may provide other valid forms of
128 identification in lieu of a valid driver license
129 number; removing the requirement that the applicant
130 provide his or her social security number on the
131 application; amending s. 501.607, F.S.; providing that
132 an applicant for a telemarketing salesperson's license
133 may provide other valid forms of identification in
134 lieu of a driver license number; amending s. 501.911,
135 F.S.; revising provisions for administration of the
136 Antifreeze Act of 1978, to conform; amending s.
137 501.913, F.S.; requiring the registrant of a brand of
138 antifreeze to assume full responsibility for the
139 registration; requiring that a registrant of a brand
140 of antifreeze not in production for distribution in
141 this state must submit a notarized affidavit attesting
142 to specified information; requiring that a certain
143 sample size of each brand of antifreeze accompany the
144 application for registration; amending s. 507.04,
145 F.S.; requiring that the Department of Agriculture and

146 Consumer Services be notified at least 10 days before
147 any changes are made in the insurance coverage of a
148 household moving service; amending s. 525.07, F.S.;
149 revising required contents of seal clasps applied by
150 meter mechanics after repair and adjustment of
151 petroleum fuel measuring devices; amending s. 526.143,
152 F.S.; authorizing the department to temporarily waive
153 certain requirements for generators at retail motor
154 fuel outlets which are used in preparation or response
155 to an emergency or major disaster in another state;
156 amending s. 526.50, F.S., relating to the sale of
157 brake fluid; defining the terms "brand" and "formula";
158 amending s. 526.51, F.S.; conforming terminology;
159 providing criteria for reregistering a previously
160 registered brand and formula combination of brake
161 fluid; providing for a fine for late submission of the
162 application for reregistration and required materials;
163 requiring a registrant to submit a notarized affidavit
164 attesting that specified conditions have been
165 satisfied if a registered brand and formula
166 combination is not in production for distribution in
167 this state; amending s. 526.52, F.S.; providing
168 alternative criteria under which a brand of brake
169 fluid may satisfy branding requirements; amending s.
170 526.53, F.S.; conforming terminology; requiring that
171 stop-sale orders be served by the department on the
172 owner of the brand name, the distributor, or other
173 entity responsible for selling or distributing the
174 product; providing that the department's

175 representative, with the consent of the department,
176 may dispose of certain unregistered brake fluid;
177 amending s. 526.55, F.S.; replacing criminal sanctions
178 with administrative and monetary sanctions for
179 violations of laws regulating the sale of brake fluid;
180 amending s. 539.001, F.S.; eliminating the requirement
181 that a pawnshop provide the Department of Agriculture
182 and Consumer Services notice of a change in its
183 location by certified or registered mail; amending s.
184 559.805, F.S.; eliminating a requirement that sellers
185 of business opportunities provide the department with
186 the social security numbers of their independent
187 agents; amending s. 559.904, F.S., relating to the
188 regulation of motor vehicle repair shops; substituting
189 the term "business tax receipt" for the term
190 "occupational license"; repealing s. 559.922, F.S.,
191 relating to the use of motor vehicle repair shop
192 registration fees to provide financial assistance to
193 motor vehicle repair shop employees who undertake
194 certain technical training or courses; amending s.
195 559.928, F.S., relating to the regulation of sellers
196 of travel; substituting the term "business tax
197 receipt" for the term "occupational license";
198 eliminating a requirement that an independent travel
199 agent provide his or her social security number to the
200 department; amending s. 559.9285, F.S.; conforming a
201 cross-reference; amending s. 559.935, F.S., relating
202 to an exemption from regulation provided for certain
203 sellers of travel; substituting the term "business tax

204 receipt" for the term "occupational license"; amending
205 s. 570.29, F.S., relating to departmental divisions;
206 conforming terminology; repealing ss. 570.46 and
207 570.47, F.S., relating to the powers and duties of the
208 Division of Standards and the qualifications and
209 duties of the director of the division; amending s.
210 570.544, F.S.; revising the powers and duties of the
211 director of the Division of Consumer Services;
212 amending s. 616.242, F.S.; removing an obsolete
213 reference to the Bureau of Fair Rides Inspection;
214 providing an effective date.
215
216 Be It Enacted by the Legislature of the State of Florida:
217
218 Section 1. Paragraph (l) of subsection (2) of section
219 20.14, Florida Statutes, is amended to read:
220 20.14 Department of Agriculture and Consumer Services.—
221 There is created a Department of Agriculture and Consumer
222 Services.
223 (2) The following divisions of the Department of
224 Agriculture and Consumer Services are established:
225 ~~(l) Standards.~~
226 Section 2. Section 366.85, Florida Statutes, is repealed.
227 Section 3. Subsection (7) of section 472.005, Florida
228 Statutes, is amended, and subsections (15) and (16) are added to
229 that section, to read:
230 472.005 Definitions.—As used in ss. 472.001-472.037:
231 (7) The term "license" means a registration, certificate,
232 or license issued by the department pursuant to this chapter ~~the~~

233 ~~registration of surveyors and mappers or the certification of~~
234 ~~businesses to practice surveying and mapping in this state~~.
235 (15) "Consumer member" means a person appointed to serve on
236 the board who is not, and never has been, a professional
237 surveyor or mapper in any jurisdiction or a member of any
238 closely related profession regulated by the board.
239 (16) "Licensee" means any person or business entity that
240 has been issued, pursuant to this chapter, a registration,
241 certificate, or license by the department.
242 Section 4. Subsection (12) is added to section 472.006,
243 Florida Statutes, to read:
244 472.006 Department; powers and duties.—The department
245 shall:
246 (12) Work cooperatively with the Department of Revenue to
247 implement an automated method for periodically disclosing
248 information relating to current licensees to the Department of
249 Revenue in order to further the public policy of reducing the
250 state's financial burden as a result of family desertion and
251 nonsupport of dependent children as provided in s. 409.2551. The
252 department shall, if directed by the court or the Department of
253 Revenue, pursuant to s. 409.2598, suspend or deny the license of
254 any licensee who is found to not be in compliance with a support
255 order, subpoena, order to show cause, or written agreement
256 entered into by the licensee with the Department of Revenue. The
257 department shall issue or reinstate the license without
258 additional charge to the licensee if notified by the court or
259 the Department of Revenue that the licensee has complied with
260 the terms of the support order. The department is not liable for
261 any license denial or suspension resulting from the discharge of

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262 its duties under this subsection.
263 Section 5. Subsections (1) and (12) of section 472.011,
264 Florida Statutes, are amended to read:
265 472.011 Fees.—
266 (1) The board, by rule, may establish fees to be paid for
267 applications, examination, reexamination, licensing and renewal,
268 inactive status application and reactivation of inactive
269 licenses, recordmaking and recordkeeping, and applications for
270 providers of continuing education. The board may also establish
271 by rule a delinquency fee. The board shall establish fees that
272 are adequate to ensure the continued operation of the board.
273 Fees shall be based on department estimates of the revenue
274 required to implement ss. 472.001-472.037 and the provisions of
275 law with respect to the regulation of surveyors and mappers. If
276 the department determines, based on estimates of available
277 revenue collected pursuant to this section, that the General
278 Inspection Trust Fund contains funds that exceed the amount
279 required to cover the necessary functions of the board, the
280 department shall, by rule, waive the license renewal fees for
281 licensees under this chapter for a period not to exceed 2 years.
282 (12) The board may, by rule, assess and collect a special
283 assessment ~~one-time fee~~ from each active, inactive, and
284 delinquent ~~each voluntary inactive~~ licensee in an amount
285 necessary to eliminate a cash deficit or, if there is not a cash
286 deficit, in an amount sufficient to maintain the financial
287 integrity of this profession as required in this subsection.
288 Section 6. Subsection (3) of section 472.0131, Florida
289 Statutes, is amended to read:
290 472.0131 Examinations; development; administration.—

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291 (3) Except for national examinations approved and
292 administered pursuant to paragraph (1)(d), the department shall
293 provide procedures for applicants who have taken and failed an
294 examination developed by the department or a contracted vendor
295 to review their examination questions, answers, papers, grades,
296 and grading key for the questions the candidate answered
297 incorrectly on his or her last examination or, if not feasible,
298 the parts of the examination failed. Applicants shall bear the
299 actual cost for the department to provide examination review
300 pursuant to this subsection. An applicant may waive in writing
301 the confidentiality of his or her examination grades.
302 Section 7. Subsection (1) and paragraph (b) of subsection
303 (6) of section 472.015, Florida Statutes, are amended, and
304 subsection (15) is added to that section, to read:
305 472.015 Licensure.—
306 (1) Notwithstanding any other law, the department is the
307 sole authority for determining the contents of any documents to
308 be submitted for initial licensure and licensure renewal. The
309 ~~Such~~ documents may contain information including, as
310 appropriate: demographics, social security number, education,
311 work history, personal background, criminal history, finances,
312 business information, complaints, inspections, investigations,
313 discipline, bonding, signature notarization, photographs,
314 performance periods, reciprocity, local government approvals,
315 supporting documentation, periodic reporting requirements,
316 continuing education requirements, and ongoing education
317 monitoring. The applicant shall supplement his or her
318 application ~~may be supplemented~~ as needed to reflect any
319 material change in any circumstance or condition stated in the

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320 application which takes place between the initial filing of the
321 application and the final grant or denial of the license and
322 which might affect the decision of the department. An
323 application is received for the purposes of s. 120.60 upon
324 receipt by the department of the application, submitted in the
325 format prescribed by the department, the application fee set by
326 the board, and any other documentation or fee required by law or
327 rule to be submitted with the application in order for the
328 application to be complete.
329 (6)
330 (b) The department may ~~shall~~ not issue a license by
331 endorsement to any applicant who is under investigation in this
332 state or any other state or any other jurisdiction ~~another state~~
333 for any act that would constitute a violation of this ~~ss.~~
334 ~~472.001-472.037 or~~ chapter ~~455~~ until ~~such time as~~ the
335 investigation is complete and disciplinary proceedings have been
336 terminated.
337 (15) Pursuant to the federal Personal Responsibility and
338 Work Opportunity Reconciliation Act of 1996, each person
339 applying for initial licensure or license renewal shall provide
340 his or her social security number. Use of social security
341 numbers obtained through this requirement is limited to the
342 purpose of administering the Title IV-D program for child
343 support enforcement, use by the department, and use as otherwise
344 provided by law.
345 Section 8. Subsection (1) of section 472.018, Florida
346 Statutes, is amended, and subsections (13), (14), and (15) are
347 added to that section, to read:
348 472.018 Continuing education.—The department may not renew

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349 a license until the licensee submits proof satisfactory to the
350 board that during the 2 years before ~~prior to~~ her or his
351 application for renewal the licensee has completed at least 24
352 hours of continuing education.
353 (1) The board shall adopt rules to establish the criteria
354 and course content for continuing education courses. The rules
355 may provide that up to a maximum of 25 percent of the required
356 continuing education hours may ~~can~~ be fulfilled by the
357 performance of pro bono services to the indigent or to
358 underserved populations or in areas of critical need within the
359 state where the licensee practices. The board must require that
360 any pro bono services be approved in advance in order to receive
361 credit for continuing education under this section. The board
362 shall use the standard ~~for determining indigency shall be that~~
363 recognized by the Federal Poverty Income Guidelines produced by
364 the United States Department of Health and Human Services in
365 determining indigency. The board may adopt rules that may
366 provide ~~for approval by the board~~ that a part of the continuing
367 education hours may ~~can~~ be fulfilled by performing research in
368 critical need areas or for training leading to advanced
369 professional certification. The board~~, or the department when~~
370 ~~there is no board,~~ may adopt ~~make~~ rules to define underserved
371 and critical need areas. The department shall adopt rules for
372 the administration of continuing education requirements adopted
373 by the board ~~or the department when there is no board~~.
374 (13) Each continuing education provider shall provide to
375 the department, in an electronic format determined by the
376 department, information regarding the continuing education
377 status of licensees which the department determines is necessary

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378 to carry out its duties under this chapter. After a licensee
379 completes a course, the information must be submitted
380 electronically by the continuing education provider to the
381 department within 30 calendar days after completion. However,
382 beginning on the 30th day before the renewal deadline or before
383 the renewal date, whichever occurs sooner, the continuing
384 education provider shall electronically report such information
385 to the department within 10 business days after completion.
386 (14) The department shall establish a system to monitor
387 licensee compliance with continuing education requirements and
388 to determine the continuing education status of each licensee.
389 As used in this subsection, the term "monitor" means the act of
390 determining, for each licensee, whether the licensee is in full
391 compliance with applicable continuing education requirements as
392 of the date of the licensee's application for license renewal.
393 (15) The department may refuse to renew a license until the
394 licensee has satisfied all applicable continuing education
395 requirements. This subsection does not preclude the department
396 or board from imposing additional penalties pursuant to this
397 chapter or rules adopted pursuant this chapter.
398 Section 9. Subsection (1) of section 472.0202, Florida
399 Statutes, is amended to read:
400 472.0202 Inactive and delinquent status.—
401 (1) A licensee may practice a profession only if the
402 licensee has an active status license. A licensee who practices
403 a profession without an active status license is in violation of
404 this section and s. 472.0351 ~~472.033~~, and the board may impose
405 discipline on the licensee.
406 Section 10. Subsection (3) is added to section 472.0203,

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407 Florida Statutes, to read:
408 472.0203 Renewal and cancellation notices.—
409 (3) Notwithstanding any other law, a licensure renewal
410 notification required to be sent to the last known address of
411 record may be sent by the department to the licensee by
412 electronic means if the licensee has provided an e-mail address
413 to the department and the licensee has elected to receive
414 notifications by e-mail.
415 Section 11. Subsection (2) of section 472.025, Florida
416 Statutes, is amended to read:
417 472.025 Seals.—
418 (2) It is unlawful for a ~~any~~ person to stamp, seal, or
419 digitally sign a ~~any~~ document with a seal or digital signature
420 after his or her certificate of registration has expired or been
421 revoked or suspended, unless such certificate of registration
422 has been reinstated or reissued. When a ~~the~~ certificate of
423 registration ~~of a registrant~~ has been revoked or suspended by
424 the board, the registrant shall, within ~~a period of~~ 30 days
425 after the revocation or suspension has become effective,
426 surrender his or her seal to the executive director ~~secretary~~ of
427 the board and confirm to the executive director ~~secretary~~ the
428 cancellation of the registrant's digital signature in accordance
429 with ss. 668.001-668.006. If ~~In the event~~ the registrant's
430 certificate has been suspended for a period of time, his or her
431 seal shall be returned to him or her upon expiration of the
432 suspension period.
433 Section 12. Section 472.0337, Florida Statutes, is created
434 to read:
435 472.0337 Power to administer oaths, take depositions, and

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436 issue subpoenas.—For the purpose of an investigation or
437 proceeding conducted by the department, the department shall
438 administer oaths, take depositions, make inspections, issue
439 subpoenas which must be supported by affidavit, serve subpoenas
440 and other process, and compel the attendance of witnesses and
441 the production of books, papers, documents, and other evidence.
442 Challenges to, and enforcement of, the subpoenas and orders
443 shall be conducted as provided in s. 120.569.
444 Section 13. Section 472.0351, Florida Statutes, is amended
445 to read:
446 472.0351 Grounds for discipline; penalties; enforcement.—
447 (1) The following acts ~~shall~~ constitute grounds for which
448 the disciplinary actions specified in subsection (2) may be
449 taken:
450 (a) Violation of any provision of s. 472.031;
451 (b) Attempting to procure a license to practice surveying
452 and mapping by bribery or fraudulent misrepresentations;
453 (c) Having a license to practice surveying and mapping
454 revoked, suspended, or otherwise acted against, including the
455 denial of licensure, by the licensing authority of another
456 state, territory, or country, for a violation that constitutes a
457 violation under the laws of this state. The acceptance of a
458 relinquishment of licensure, stipulation, consent order, or
459 other settlement offered in response to or in anticipation of
460 the filing of charges against the license by a licensing
461 authority is an action against the license;
462 (d) Being convicted or found guilty of, or entering a plea
463 of guilty, no contest, or nolo contendere to, regardless of
464 adjudication, a crime in any jurisdiction which directly relates

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465 to the practice of surveying and mapping or the ability to
466 practice surveying and mapping;
467 (e) Making or filing a report or record that the licensee
468 knows to be false, willfully failing to file a report or record
469 required by state or federal law, willfully impeding or
470 obstructing such filing, or inducing another person to impede or
471 obstruct such filing. Such reports or records ~~shall~~ include only
472 those that are signed in the capacity of a registered surveyor
473 and mapper;
474 (f) Advertising goods or services in a manner that is
475 fraudulent, false, deceptive, or misleading in form or content;
476 (g) Upon proof that the licensee is guilty of fraud or
477 deceit, or of negligence, incompetency, or misconduct, in the
478 practice of surveying and mapping;
479 (h) Failing to perform a ~~any~~ statutory or legal obligation
480 placed upon a licensed surveyor and mapper; violating a ~~any~~
481 provision of this chapter, a rule of the board or department, or
482 a lawful order of the board or department ~~previously entered in~~
483 ~~a disciplinary hearing~~; or failing to comply with a lawfully
484 issued subpoena of the department;
485 (i) Practicing on a revoked, suspended, inactive, or
486 delinquent license;
487 ~~(j) Making misleading, deceptive, or fraudulent~~
488 ~~representations in or related to the practice of the licensee's~~
489 ~~profession;~~
490 ~~(k) Intentionally violating any rule adopted by the board~~
491 ~~or the department, as appropriate;~~
492 ~~(l) Having a license or the authority to practice the~~
493 ~~regulated profession revoked, suspended, or otherwise acted~~

494 ~~against, including the denial of licensure, by the licensing~~
495 ~~authority of any jurisdiction, including its agencies or~~
496 ~~subdivisions, for a violation that would constitute a violation~~
497 ~~under Florida law;~~
498 (j) ~~(m)~~ Having been found liable in a civil proceeding for
499 knowingly filing a false report or complaint with the department
500 against another licensee;
501 (k) ~~(n)~~ Failing to report to the department any person who
502 the licensee knows is in violation of this chapter or the rules
503 of the department or the board;
504 (l) ~~(o)~~ Aiding, assisting, procuring, employing, or advising
505 any unlicensed person or entity to practice surveying and
506 mapping contrary to this chapter or the rules of the department
507 or the board;
508 (m) ~~(p)~~ Making deceptive, untrue, or fraudulent
509 representations in or related to the practice of professional
510 surveying or mapping ~~a profession~~ or employing a trick or scheme
511 in or related to the practice of professional surveying or
512 mapping ~~a profession~~;
513 (n) ~~(q)~~ Exercising influence on the client for the purpose
514 of financial gain of the licensee or a third party;
515 (o) ~~(r)~~ Practicing or offering to practice beyond the scope
516 permitted by law or accepting and performing professional
517 responsibilities the licensee knows, or has reason to know, the
518 licensee is not competent to perform;
519 (p) ~~(s)~~ Delegating or contracting for the performance of
520 professional responsibilities by a person when the licensee
521 delegating or contracting for performance of such
522 responsibilities knows, or has reason to know, such person is

523 not qualified by training, experience, and authorization when
524 required to perform them; or
525 ~~(t) Violating this chapter, the applicable professional~~
526 ~~practice act, a rule of the department or the board, or a lawful~~
527 ~~order of the department or the board, or failing to comply with~~
528 ~~a lawfully issued subpoena of the department; or~~
529 (q) ~~(u)~~ Improperly interfering with an investigation or
530 inspection authorized by statute, or with any disciplinary
531 proceeding.
532 (2) If ~~When~~ the board finds a ~~any~~ surveyor or mapper guilty
533 of any of the grounds set forth in subsection (1) or a violation
534 of this chapter which occurred before obtaining a license, the
535 board ~~it~~ may enter an order imposing one or more of the
536 following penalties:
537 (a) Denial of an application for licensure, or approval of
538 an application for licensure with restrictions.
539 (b) Revocation or suspension of a license.
540 (c) Imposition of an administrative fine not to exceed
541 $1,000 for each count or separate offense.
542 (d) Issuance of a reprimand.
543 (e) Placement of the surveyor or mapper on probation for a
544 period of time and subject to such conditions as the board may
545 specify. Those conditions may include, but are not limited to,
546 requiring the licensee to undergo treatment, attend continuing
547 education courses, submit to be reexamined, work under the
548 supervision of another licensee, or satisfy any terms which are
549 reasonably tailored to the violations found.
550 (f) Restriction of the authorized scope of practice by the
551 surveyor or mapper.

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552 (g) Corrective action.
553 (3) The department shall reissue the license of a
554 disciplined surveyor or mapper upon certification by the board
555 that he or she has complied with all of the terms and conditions
556 set forth in the final order.
557 (4)(a) In addition to any other discipline imposed pursuant
558 to this section, the board may assess costs and attorney
559 ~~attorneys~~ fees related to the investigation and prosecution of
560 the case.
561 (b) In any case where the board or the department imposes a
562 fine or assessment and the fine or assessment is not paid within
563 a reasonable time, which may ~~such reasonable time to~~ be
564 prescribed in the rules of the board or in the order assessing
565 such fines or costs, the department or the Department of Legal
566 Affairs may contract for the collection of, or bring a civil
567 action to recover, the fine or assessment.
568 (c) The department may not issue to or renew the license of
569 any person or business entity against which the board has
570 assessed a fine, interest, costs, or attorney fees associated
571 with an investigation and prosecution until the person or
572 business entity has paid the full amount due or complies with or
573 satisfies all terms and conditions of the final order.
574 ~~(5) In addition to, or in lieu of, any other remedy or~~
575 ~~criminal prosecution, the department may file a proceeding in~~
576 ~~the name of the state seeking issuance of an injunction or a~~
577 ~~writ of mandamus against any person who violates any of the~~
578 ~~provisions of this chapter, or any provision of law with respect~~
579 ~~to professions regulated by the department, or any board~~
580 ~~therein, or the rules adopted pursuant thereto.~~

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581 (5) ~~(6)~~ If the board determines that revocation of a license
582 is the appropriate penalty, the revocation shall be permanent.
583 However, the board may establish, by rule, requirements for
584 reapplication by applicants whose licenses have been permanently
585 revoked. Such requirements may include, but are ~~shall~~ not ~~be~~
586 limited to, satisfying current requirements for an initial
587 license.
588 Section 14. Section 472.0357, Florida Statutes, is created
589 to read:
590 472.0357 Penalty for giving false information.—In addition
591 to, or in lieu of, any other disciplinary action imposed
592 pursuant to s. 472.0351, a person who knowingly gives false
593 information in the course of applying for or obtaining a license
594 from the department or the board, or who attempts to obtain or
595 obtains a license from the department or the board by knowingly
596 providing misleading statements or misrepresentations commits a
597 felony of the third degree, punishable as provided in s.
598 775.082, s. 775.083, or s. 775.084.
599 Section 15. Subsection (5) of section 493.6105, Florida
600 Statutes, is amended to read:
601 493.6105 Initial application for license.—
602 (5) In addition to the requirements outlined in subsection
603 (3), an applicant for a Class "G" license must satisfy minimum
604 training criteria for firearms established by rule of the
605 department, which training criteria includes, but is not limited
606 to, 28 hours of range and classroom training taught and
607 administered by a Class "K" licensee; however, no more than 8
608 hours of such training shall consist of range training. The
609 department may waive the foregoing firearms training requirement

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610 if:
611 (a) The applicant provides proof that he or she is
612 currently certified as a law enforcement officer or correctional
613 officer pursuant to the requirements of the Criminal Justice
614 Standards and Training Commission or has successfully completed
615 the training required for certification within the last 12
616 months.
617 (b) The applicant provides proof that he or she is
618 currently certified as a federal law enforcement officer and has
619 received law enforcement firearms training administered by a
620 federal law enforcement agency.
621 (c) The applicant submits a valid firearm certificate among
622 those specified in paragraph (6)(a). ~~If the applicant submits~~
623 ~~proof that he or she is an active law enforcement officer~~
624 ~~currently certified under the Criminal Justice Standards and~~
625 ~~Training Commission or has completed the training required for~~
626 ~~that certification within the last 12 months, or if the~~
627 ~~applicant submits one of the certificates specified in paragraph~~
628 ~~(6)(a), the department may waive the foregoing firearms training~~
629 ~~requirement.~~
630 Section 16. Paragraph (b) of subsection (3) of section
631 493.6113, Florida Statutes, is amended to read:
632 493.6113 Renewal application for licensure.—
633 (3) Each licensee is responsible for renewing his or her
634 license on or before its expiration by filing with the
635 department an application for renewal accompanied by payment of
636 the prescribed license fee.
637 (b) Each Class "G" licensee shall additionally submit proof
638 that he or she has received during each year of the license

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639 period a minimum of 4 hours of firearms recertification training
640 taught by a Class "K" licensee and has complied with such other
641 health and training requirements which the department may adopt
642 by rule. If proof of a minimum of 4 hours of annual firearms
643 recertification training cannot be provided, the renewal
644 applicant shall complete the minimum number of hours of range
645 and classroom training required at the time of initial
646 licensure. The department may waive the foregoing firearms
647 training requirement if:
648 1. The applicant provides proof that he or she is currently
649 certified as a law enforcement officer or correctional officer
650 under the Criminal Justice Standards and Training Commission and
651 has completed law enforcement firearms requalification training
652 annually during the previous 2 years of the licensure period.
653 2. The applicant provides proof that he or she is currently
654 certified as a federal law enforcement officer and has received
655 law enforcement firearms training administered by a federal law
656 enforcement agency annually during the previous 2 years of the
657 licensure period.
658 3. The applicant submits a valid firearm certificate among
659 those specified in s. 493.6105(6)(a) and provides proof of
660 having completed requalification training during the previous 2
661 years of the licensure period.
662 Section 17. Subsection (6) of section 493.6118, Florida
663 Statutes, is amended to read:
664 493.6118 Grounds for disciplinary action.—
665 (6) The agency or Class "DS" or "RS" license and the
666 approval or license of each officer, partner, or owner of the
667 agency, school, or training facility are automatically suspended

668 upon entry of a final order imposing an administrative fine
669 against the agency, school, or training facility, until the fine
670 is paid, if 30 calendar days have elapsed since the entry of the
671 final order. All owners and corporate or agency officers or
672 partners are jointly and severally liable for ~~agency~~ fines
673 levied against the agency, school, or training facility. ~~Neither~~
674 The agency or Class "DS" or "RS" license or the approval or
675 license of any officer, partner, or owner of the agency, school,
676 or training facility may not be renewed, and ~~nor may~~ an
677 application may not be approved, if the owner, licensee, or
678 applicant is liable for an outstanding administrative fine
679 imposed under this chapter. An individual's approval or license
680 becomes automatically suspended if a fine imposed against the
681 individual or his or her agency is not paid within 30 days after
682 the date of the final order, and remains suspended until the
683 fine is paid. Notwithstanding the provisions of this subsection,
684 an individual's approval or license may not be suspended and ~~nor~~
685 ~~may~~ an application may not be denied if ~~when~~ the licensee or the
686 applicant has an appeal from a final order pending in any
687 appellate court.
688 Section 18. Subsection (4) of section 493.6120, Florida
689 Statutes, is amended to read:
690 493.6120 Violations; penalty.—
691 (4) A ~~Any~~ person who was an owner, officer, partner, or
692 manager of a licensed agency or a Class "DS" or "RS" school or
693 training facility at the time of any activity that is the basis
694 for revocation of the agency or branch office license or the
695 school or training facility license and who knew or should have
696 known of the activity, shall have his or her personal licenses

697 or approval suspended for 3 years and may not have any financial
698 interest in or be employed in any capacity by a licensed agency
699 or a school or training facility during the period of
700 suspension.
701 Section 19. Subsection (7) of section 501.015, Florida
702 Statutes, is amended to read:
703 501.015 Health studios; registration requirements and
704 fees.—Each health studio shall:
705 (7) A ~~Any~~ person applying for or renewing a local business
706 tax receipt ~~occupational license~~ to engage in business as a
707 health studio must exhibit an active registration certificate
708 from the Department of Agriculture and Consumer Services before
709 the local business tax receipt ~~occupational license~~ may be
710 issued or reissued.
711 Section 20. Subsection (1) of section 501.017, Florida
712 Statutes, is amended to read:
713 501.017 Health studios; contracts.—
714 (1) Each ~~Every~~ contract for the sale of future health
715 studio services which is paid for in advance or which the buyer
716 agrees to pay for in future installment payments shall be in
717 writing and shall contain, contractual provisions to the
718 contrary notwithstanding, in immediate proximity to the space
719 reserved in the contract for the signature of the buyer, and in
720 at least 10-point boldfaced type, language substantially
721 equivalent to the following:
722 (a) A provision for the penalty-free cancellation of the
723 contract within 3 days, exclusive of holidays and weekends, of
724 its making, upon the mailing or delivery of written notice to
725 the health studio, and refund upon such notice of all moneys

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726 paid under the contract, except that the health studio may
727 retain an amount computed by dividing the number of complete
728 days in the contract term or, if appropriate, the number of
729 occasions health studio services are to be rendered into the
730 total contract price and multiplying the result by the number of
731 complete days that have passed since the making of the contract
732 or, if appropriate, by the number of occasions that health
733 studio services have been rendered. A refund shall be issued
734 within 30 days after receipt of the notice of cancellation made
735 within the 3-day provision.
736 (b)1. A provision for the cancellation and refund of the
737 contract if the contracting business location of the health
738 studio goes out of business, or moves its facilities more than 5
739 driving miles from the business location designated in the ~~such~~
740 contract and fails to provide, within 30 days, a facility of
741 equal quality located within 5 driving miles of the business
742 location designated in the ~~such~~ contract at no additional cost
743 to the buyer.
744 2. A provision that notice of intent to cancel by the buyer
745 shall be given in writing to the health studio. The ~~Such a~~
746 notice of cancellation from the consumer terminates ~~shall also~~
747 ~~terminate~~ automatically the consumer's obligation to any entity
748 to whom the health studio has subrogated or assigned the
749 consumer's contract. If the health studio wishes to enforce the
750 ~~such~~ contract after receipt of the notice ~~such showing~~, it may
751 request the department to determine the sufficiency of the
752 notice ~~showing~~.
753 3. A provision that if the department determines that a
754 refund is due the buyer, the refund shall be an amount computed

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755 by dividing the contract price by the number of weeks in the
756 contract term and multiplying the result by the number of weeks
757 remaining in the contract term. The business location of a
758 health studio may ~~shall~~ not be deemed out of business when
759 temporarily closed for repair and renovation of the premises:
760 a. Upon sale, for not more than 14 consecutive days; or
761 b. During ownership, for not more than 7 consecutive days
762 and not more than two periods of 7 consecutive days in any
763 calendar year.
764
765 A refund shall be issued within 30 days after receipt of the
766 notice of cancellation made pursuant to this paragraph.
767 (c) A provision in the disclosure statement advising the
768 buyer to contact the department for information within 60 days
769 should the health studio go out of business.
770 (d) A provision for the cancellation of the contract if the
771 buyer dies or becomes physically unable to avail himself or
772 herself of a substantial portion of those services which he or
773 she used from the commencement of the contract until the time of
774 disability, with refund of funds paid or accepted in payment of
775 the contract in an amount computed by dividing the contract
776 price by the number of weeks in the contract term and
777 multiplying the result by the number of weeks remaining in the
778 contract term. The contract may require a buyer or the buyer's
779 estate seeking relief under this paragraph to provide proof of
780 disability or death. A physical disability sufficient to warrant
781 cancellation of the contract by the buyer is ~~shall be~~
782 established if the buyer furnishes to the health studio a
783 certification of such disability by a physician licensed under

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784 chapter 458, chapter 459, chapter 460, or chapter 461 to the
785 extent the diagnosis or treatment of the disability is within
786 the physician's scope of practice. A refund shall be issued
787 within 30 days after receipt of the notice of cancellation made
788 pursuant to this paragraph.
789 (e) A provision that the initial contract will not be for a
790 period in excess of 36 months, and thereafter shall only be
791 renewable annually. A ~~Such~~ renewal contract ~~contracts~~ may not be
792 executed and the fee therefor paid until 60 days or less before
793 the previous ~~preceding~~ contract expires.
794 (f) A provision that if the health studio requires a buyer
795 to furnish identification upon entry to the facility and as a
796 condition of using the services of the health studio, the health
797 studio shall provide the buyer with the means of such
798 identification.
799 Section 21. Paragraphs (e) through (i) of subsection (1) of
800 section 501.059, Florida Statutes, are redesignated as
801 paragraphs (d) through (h), respectively, and present paragraph
802 (d) of subsection (1) and subsections (3), (8), and (10) of that
803 section are amended to read:
804 501.059 Telephone solicitation.—
805 (1) As used in this section:
806 ~~(d) "Commission" means the Florida Public Service~~
807 ~~Commission.~~
808 (3)(a) If any residential, mobile, or telephonic paging
809 device telephone subscriber notifies the department of his or
810 her desire ~~desiring~~ to be placed on a "no sales solicitation
811 calls" listing indicating that the subscriber does not wish to
812 receive unsolicited telephonic sales calls, ~~may notify~~ the

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813 department shall place the subscriber ~~and be placed~~ on that
814 listing for 5 years ~~upon receipt by the department of a $10~~
815 ~~initial listing charge. This listing shall be renewed by the~~
816 ~~department annually for each consumer upon receipt of a renewal~~
817 ~~notice and a $5 assessment~~.
818 (b) The department shall update its "no sales solicitation
819 calls" listing upon receipt of initial consumer subscriptions or
820 renewals and provide this listing for a fee to telephone
821 solicitors upon request.
822 (c) All fees imposed pursuant to this section shall be
823 deposited in the General Inspection Trust Fund for the
824 administration of this section.
825 (d) If the Federal Trade Commission, pursuant to 15 U.S.C.
826 s. 6102(a), establishes a national database that lists the
827 telephone numbers of subscribers who object to receiving
828 telephone solicitations, the department shall include those
829 listings from the national database which relate to Florida in
830 the listing established under this section.
831 (8)(a) The department shall investigate any complaints
832 received concerning violations of this section. If, after
833 investigating any complaint, the department finds that there has
834 been a violation of this section, the department or the
835 Department of Legal Affairs may bring an action to impose a
836 civil penalty and to seek other relief, including injunctive
837 relief, as the court deems appropriate against the telephone
838 solicitor. The civil penalty may ~~shall~~ not exceed $10,000 per
839 violation and shall be deposited in the General Inspection Trust
840 Fund if the action or proceeding was brought by the department,
841 or the Legal Affairs Revolving Trust Fund if the action or

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842 proceeding was brought by the Department of Legal Affairs. This
843 civil penalty may be recovered in any action brought under this
844 part by the department, or the department may terminate any
845 investigation or action upon agreement by the person to pay a
846 stipulated civil penalty. The department or the court may waive
847 any civil penalty if the person has previously made full
848 restitution or reimbursement or has paid actual damages to the
849 consumers who have been injured by the violation.
850 (b) The department may, as an alternative to the civil
851 penalties provided in paragraph (a), impose an administrative
852 fine not to exceed $1,000 for each act or omission that
853 constitutes a violation of this section. An administrative
854 proceeding that could result in the entry of an order imposing
855 an administrative penalty must be conducted in accordance with
856 chapter 120.
857 (10) ~~The commission shall by rule ensure that~~
858 Telecommunications companies shall inform their customers of the
859 provisions of this section. The notification may be made by:
860 (a) Annual inserts in the billing statements mailed to
861 customers; and
862 (b) Conspicuous publication of the notice in the consumer
863 information pages of the local telephone directories.
864 Section 22. Paragraphs (a) and (l) of subsection (2) of
865 section 501.605, Florida Statutes, are amended to read:
866 501.605 Licensure of commercial telephone sellers.—
867 (2) An applicant for a license as a commercial telephone
868 seller must submit to the department, in such form as it
869 prescribes, a written application for the license. The
870 application must set forth the following information:

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871 (a) The true name, date of birth, driver ~~driver's~~ license
872 number or other valid form of identification, ~~social security~~
873 ~~number,~~ and home address of the applicant, including each name
874 under which he or she intends to do business.
875 (l) The true name, current home address, date of birth,
876 ~~social security number,~~ and all other names by which known, or
877 previously known, of each:
878 1. Principal officer, director, trustee, shareholder,
879 owner, or partner of the applicant, and of each other person
880 responsible for the management of the business of the applicant.
881 2. Office manager or other person principally responsible
882 for a location from which the applicant will do business.
883 3. Salesperson or other person to be employed by the
884 applicant.
885
886 The application shall be accompanied by a copy of any: Script,
887 outline, or presentation the applicant will require or suggest a
888 salesperson to use when soliciting, or, if no such document is
889 used, a statement to that effect; sales information or
890 literature to be provided by the applicant to a salesperson; and
891 sales information or literature to be provided by the applicant
892 to a purchaser in connection with any solicitation.
893 Section 23. Paragraph (a) of subsection (1) of section
894 501.607, Florida Statutes, is amended to read:
895 501.607 Licensure of salespersons.—
896 (1) An applicant for a license as a salesperson must submit
897 to the department, in such form as it prescribes, a written
898 application for a license. The application must set forth the
899 following information:

900 (a) The true name, date of birth, driver ~~driver's~~ license
901 number or other valid form of identification, ~~social security~~
902 ~~number,~~ and home address of the applicant.
903 Section 24. Section 501.911, Florida Statutes, is amended
904 to read:
905 501.911 Administration of act.—Sections 501.91-501.923
906 shall be administered by ~~the Division of Standards of~~ the
907 Department of Agriculture and Consumer Services.
908 Section 25. Subsections (1) and (2) of section 501.913,
909 Florida Statutes, are amended to read:
910 501.913 Registration.—
911 (1) Each brand of antifreeze to be distributed in this
912 state shall be registered with the department before ~~prior to~~
913 distribution. The person whose name appears on the label, the
914 manufacturer, or the packager shall make application to the
915 department on forms provided by the department no later than
916 July 1 of each year. The registrant assumes, by application to
917 register the brand, full responsibility for the registration,
918 quality, and quantity of the product sold, offered, or exposed
919 for sale in this state. If a registered brand is not in
920 production for distribution in this state and to ensure any
921 remaining product that is still available for sale in the state
922 is properly registered, the registrant must submit a notarized
923 affidavit on company letterhead to the department certifying
924 that:
925 (a) The stated brand is no longer in production;
926 (b) The stated brand will not be distributed in this state;
927 and
928 (c) All existing product of the stated brand will be

929 removed by the registrant from the state within 30 days after
930 expiration of the registration or the registrant will reregister
931 the brand for two subsequent registration periods.
932
933 If production resumes, the brand must be reregistered before it
934 is distributed in this state.
935 (2) The completed application shall be accompanied by:
936 (a) Specimens or facsimiles of the label for each brand of
937 antifreeze;
938 (b) An application fee of $200 for each brand; and
939 (c) A properly labeled sample of between 1 and 2 gallons
940 for each brand of antifreeze.
941 Section 26. Subsection (3) of section 507.04, Florida
942 Statutes, is amended to read:
943 507.04 Required insurance coverages; liability limitations;
944 valuation coverage.—
945 (3) INSURANCE COVERAGES.—The insurance coverages required
946 under paragraph (1)(a) and subsection (2) must be issued by an
947 insurance company or carrier licensed to transact business in
948 this state under the Florida Insurance Code as designated in s.
949 624.01. The department shall require a mover to present a
950 certificate of insurance of the required coverages before
951 issuance or renewal of a registration certificate under s.
952 507.03. The department shall be named as a certificateholder in
953 the certificate and must be notified at least 10 ~~30~~ days before
954 cancellation of ~~any changes in~~ insurance coverage.
955 Section 27. Subsection (7) of section 525.07, Florida
956 Statutes, is amended to read:
957 525.07 Powers and duties of department; inspections;

958 unlawful acts.—
959 (7) It is unlawful for any person to break, cut, or remove
960 any seal applied by the department to a petroleum fuel measuring
961 device or container. If ~~When~~ it becomes necessary to repair and
962 adjust a petroleum fuel measuring device during the absence of
963 an inspector of the department, the seal on the meter adjustment
964 may be broken by a person who is registered with the department
965 as a meter mechanic. After repairs and adjustments have been
966 made, the adjusting mechanism must immediately be resealed by
967 the registered meter mechanic with a seal clasp bearing at least
968 ~~the name of the company or~~ the name or initials of the
969 registered mechanic. The registered mechanic shall immediately
970 notify the department of this action.
971 Section 28. Subsection (5) of section 526.143, Florida
972 Statutes, is amended to read:
973 526.143 Alternate generated power capacity for motor fuel
974 dispensing facilities.—
975 (5)(a) Each corporation or other entity that owns 10 or
976 more motor fuel retail outlets located within a single county
977 shall maintain at least one portable generator that is capable
978 of providing an alternate generated power source as required
979 under subsection (2) for every 10 outlets. If an entity owns
980 more than 10 outlets or a multiple of 10 outlets plus an
981 additional 6 outlets, the entity must provide one additional
982 generator to accommodate such additional outlets. Each portable
983 generator must be stored within this state, or may be stored in
984 another state if located within 250 miles of this state, and
985 must be available for use in an affected location within 24
986 hours after a disaster.

987 (b) Each corporation or other entity that owns 10 or more
988 motor fuel retail outlets located within a single domestic
989 security region, as determined pursuant to s. 943.0312(1), and
990 that does not own additional outlets located outside the
991 domestic security region shall maintain a written document of
992 agreement with one or more similarly equipped entities for the
993 use of portable generators that may be used to meet the
994 requirements of paragraph (a) and that are located within this
995 state but outside the affected domestic security region. The
996 agreement may be reciprocal, may allow for payment for services
997 rendered by the providing entity, and must guarantee the
998 availability of the portable generators to an affected location
999 within 24 hours after a disaster.
1000 (c) Upon written request, the department may temporarily
1001 waive the requirements in paragraphs (a) and (b) if the
1002 generators are used in preparation for or response to an
1003 emergency or major disaster in another state. The waiver shall
1004 be in writing and include a beginning and ending date. The
1005 waiver may provide additional conditions as deemed necessary by
1006 the department. The waiver may be modified or terminated by the
1007 department if the Governor declares an emergency.
1008 (d) ~~(c)~~ For purposes of this section, ownership of a motor
1009 fuel retail outlet is ~~shall be~~ the owner of record of the fuel
1010 storage systems operating at the location, as identified in the
1011 Department of Environmental Protection underground storage
1012 facilities registry pursuant to s. 376.303(1).
1013 Section 29. Subsections (8) and (9) are added to section
1014 526.50, Florida Statutes, to read:
1015 526.50 Definition of terms.—As used in this part:

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1016 (8) "Brand" means the product name appearing on the label
1017 of a container of brake fluid.
1018 (9) "Formula" means the name of the chemical mixture or
1019 composition of the brake fluid product.
1020 Section 30. Subsections (1) and (3) of section 526.51,
1021 Florida Statutes, are amended to read:
1022 526.51 Registration; renewal and fees; departmental
1023 expenses; cancellation or refusal to issue or renew.—
1024 (1)(a) Application for registration of each brand of brake
1025 fluid shall be made on forms ~~to be~~ supplied by the department.
1026 The applicant shall give his or her name and address and the
1027 brand name of the brake fluid, state that he or she owns the
1028 brand name and has complete control over the product sold
1029 thereunder in this state ~~Florida~~, and provide the name and
1030 address of the resident agent in this state ~~Florida~~. If the
1031 applicant does not own the brand name but wishes to register the
1032 product with the department, a notarized affidavit that gives
1033 the applicant full authorization to register the brand name and
1034 that is signed by the owner of the brand name must accompany the
1035 application for registration. The affidavit must include all
1036 affected brand names, the owner's company or corporate name and
1037 address, the applicant's company or corporate name and address,
1038 and a statement from the owner authorizing the applicant to
1039 register the product with the department. The owner of the brand
1040 name shall maintain complete control over each product sold
1041 under that brand name in this state. All first-time ~~new product~~
1042 applications for a brand and formula combination must be
1043 accompanied by a certified report from an independent testing
1044 laboratory, setting forth the analysis of the brake fluid which

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1045 shows ~~shall show~~ its quality to be not less than the
1046 specifications established by the department for brake fluids. A
1047 sample of not less than 24 fluid ounces of brake fluid shall be
1048 submitted, in a container or containers, with labels
1049 representing exactly how the containers of brake fluid will be
1050 labeled when sold, and the sample and container shall be
1051 analyzed and inspected by the department ~~Division of Standards~~
1052 in order that compliance with the department's specifications
1053 and labeling requirements may be verified. Upon approval of the
1054 application, the department shall register the brand name of the
1055 brake fluid and issue to the applicant a permit authorizing the
1056 registrant to sell the brake fluid in this state during the
1057 permit year specified in the permit.
1058 (b) Each applicant shall pay a fee of $100 with each
1059 application. A permit may be renewed by application to the
1060 department, accompanied by a renewal fee of $50 on or before the
1061 last day of the permit year immediately preceding the permit
1062 year for which application is made for renewal of registration.
1063 To reregister a previously registered brand and formula
1064 combination, an applicant must submit a completed application
1065 and all materials as required in this section to the department
1066 before the first day of the permit year. A brand and formula
1067 combination for which a completed application and all materials
1068 required in this section are not received before the first day
1069 of the permit year may not be registered with the department
1070 until a completed application and all materials required in this
1071 section have been received and approved. If the brand and
1072 formula combination was previously registered with the
1073 department and a fee, application, or materials required in this

1074 section are received after the first day of the permit year, ~~To~~
1075 ~~any fee not paid when due, there shall accrue~~ a penalty of $25
1076 accrues, which shall be added to the ~~renewal~~ fee. Renewals shall
1077 ~~will~~ be accepted only on brake fluids that have no change in
1078 formula, composition, or brand name. Any change in formula,
1079 composition, or brand name of any brake fluid constitutes a new
1080 product that must be registered in accordance with this part.
1081 (c) In order to ensure that any remaining product still
1082 available for sale in this state is properly registered, if a
1083 registered brand and formula combination is no longer in
1084 production for distribution in this state, the registrant must
1085 submit a notarized affidavit on company letterhead to the
1086 department certifying that:
1087 1. The stated brand and formula combination is no longer in
1088 production;
1089 2. The stated brand and formula combination will not be
1090 distributed in this state; and
1091 3. All existing product of the stated brand and formula
1092 combination will be removed by the registrant from the state
1093 within 30 days after the expiration of the registration or that
1094 the registrant will reregister the brand and formula combination
1095 for two subsequent registration periods.
1096
1097 If production resumes, the brand and formula combination must be
1098 reregistered before it is again distributed in this state.
1099 (3) The department may cancel or~~,~~ refuse to issue ~~or refuse~~
1100 ~~to renew~~ any registration and permit after due notice and
1101 opportunity to be heard if it finds that the brake fluid is
1102 adulterated or misbranded or that the registrant has failed to

1103 comply with the provisions of this part or the rules adopted
1104 pursuant to this section ~~and regulations promulgated thereunder~~.
1105 Section 31. Paragraph (a) of subsection (3) of section
1106 526.52, Florida Statutes, is amended to read:
1107 526.52 Specifications; adulteration and misbranding.—
1108 (3) Brake fluid is deemed to be misbranded:
1109 (a) If its container does not bear on its side or top a
1110 label on which is printed the name and place of business of the
1111 registrant of the product, the words "brake fluid," and a
1112 statement that the product therein equals or exceeds the minimum
1113 specification of the Society of Automotive Engineers for brake
1114 fluid, heavy-duty-type, the United States Department of
1115 Transportation Motor Vehicle Safety Standard No. 116, or other
1116 specified standard identified in department rule. ~~By regulation~~
1117 The department may require by rule that the duty-type
1118 classification appear on the label.
1119 Section 32. Subsections (1) and (2) of section 526.53,
1120 Florida Statutes, are amended to read:
1121 526.53 Enforcement; inspection and analysis, stop-sale and
1122 disposition, regulations.—
1123 (1) The department shall enforce the provisions of this
1124 part through the department ~~Division of Standards~~, and may
1125 sample, inspect, analyze, and test any brake fluid manufactured,
1126 packed, or sold within this state. The department shall have
1127 free access during business hours to all premises, buildings,
1128 vehicles, cars, or vessels used in the manufacture, packing,
1129 storage, sale, or transportation of brake fluid, and may open
1130 any box, carton, parcel, or container of brake fluid and take
1131 samples for inspection and analysis or for evidence.

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1132 (2)(a) If ~~When~~ any brake fluid is sold in violation of any
1133 of the provisions of this part, all such brake fluid of the same
1134 brand name ~~on the same premises on which the violation occurred~~
1135 shall be placed under a stop-sale order by the department by
1136 serving the owner of the brand name, the distributor, or other
1137 entity responsible for selling or distributing the product in
1138 this state with the stop-sale order. The department shall
1139 withdraw its stop-sale order upon the removal of the violation
1140 or upon voluntary destruction of the product, or other disposal
1141 approved by the department, under the supervision of the
1142 department.
1143 (b) In addition to being subject to the stop-sale
1144 procedures ~~above~~, unregistered brake fluid shall be held by the
1145 department or its representative, at a place to be designated in
1146 the stop-sale order, until properly registered and released in
1147 writing by the department or its representative. If application
1148 has not been made for registration of such product within 30
1149 days after issue of the stop-sale order, the department or, with
1150 the consent of the department, the representative may give the
1151 product that meets legal specifications ~~such product shall be~~
1152 ~~disposed of by the department~~ to any tax-supported institution
1153 or agency of the state. If application has not been made for
1154 registration of the product within 30 days after issuance of the
1155 stop-order sale and the product fails to meet legal
1156 specifications, the product may be disposed of as ~~if the brake~~
1157 ~~fluid meets legal specifications or by other disposal~~ authorized
1158 by rule of the department ~~if it fails to meet legal~~
1159 ~~specifications~~.
1160 Section 33. Section 526.55, Florida Statutes, is amended to

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1161 read:
1162 526.55 Violation and penalties.—
1163 (1) It is unlawful:
1164 (a) ~~(1)~~ To sell any brake fluid that is adulterated or
1165 misbranded, not registered or on which a permit has not been
1166 issued.
1167 (b) ~~(2)~~ For anyone to remove any stop-sale order placed on a
1168 product by the department, or any product upon which a stop-sale
1169 order has been placed.
1170 (2) If the department finds that a person has violated or
1171 is operating in violation of ss. 526.50-526.56 or the rules or
1172 orders adopted thereunder, the department may, by order:
1173 (a) Issue a notice of noncompliance pursuant to s. 120.695;
1174 (b) Impose an administrative fine not to exceed $5,000 for
1175 each violation;
1176 (c) Direct that the person cease and desist specified
1177 activities;
1178 (d) Revoke or suspend a registration, or refuse to register
1179 a product; or
1180 (e) Place the registrant on probation for a period of time,
1181 subject to conditions as the department may specify.
1182 (3) The administrative proceedings seeking entry of an
1183 order imposing any of the penalties specified in subsection (2)
1184 are governed by chapter 120.
1185 (4) If a registrant is found to be in violation of ss.
1186 526.50-526.56 and fails to pay a fine within 30 days after
1187 imposition of the fine, the department may suspend all
1188 registrations issued to the registrant by the department until
1189 the fine is paid.

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1190 (5) All fines collected by the department under this
1191 section shall be deposited into the General Inspection Trust
1192 Fund.
1193 ~~(3) Any person who violates any of the provisions of this~~
1194 ~~part or any rule or regulation promulgated thereunder shall, for~~
1195 ~~the first offense, be guilty of a misdemeanor of the second~~
1196 ~~degree, punishable as provided in s. 775.082 or s. 775.083, and,~~
1197 ~~for a second or subsequent offense, shall be guilty of a~~
1198 ~~misdemeanor of the first degree, punishable as provided in s.~~
1199 ~~775.082 or s. 775.083.~~
1200 Section 34. Paragraph (b) of subsection (3) of section
1201 539.001, Florida Statutes, is amended to read:
1202 539.001 The Florida Pawnbroking Act.—
1203 (3) LICENSE REQUIRED.—
1204 (b) A licensee who seeks to move a pawnshop to another
1205 location must give written notice ~~30 days' prior written notice~~
1206 to the agency at least 30 days before the move ~~by certified or~~
1207 ~~registered mail, return receipt requested~~, and the agency must
1208 ~~then~~ amend the license to indicate the new location. The
1209 licensee must also give such written notice to the appropriate
1210 law enforcement official.
1211 Section 35. Subsection (1) of section 559.805, Florida
1212 Statutes, is amended to read:
1213 559.805 Filings with the department; disclosure of
1214 advertisement identification number.—
1215 (1) Every seller of a business opportunity shall annually
1216 file with the department a copy of the disclosure statement
1217 required by s. 559.803 before ~~prior to~~ placing an advertisement
1218 or making any other representation designed to offer to, sell

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1219 to, or solicit an offer to buy a business opportunity from a
1220 prospective purchaser in this state and shall update this filing
1221 by reporting any material change in the required information
1222 within 30 days after the material change occurs. An
1223 advertisement is not placed in the state merely because the
1224 publisher circulates, or there is circulated on his or her
1225 behalf in the state, any bona fide newspaper or other
1226 publication of general, regular, and paid circulation which has
1227 had more than two-thirds of its circulation during the past 12
1228 months outside the state or because a radio or television
1229 program originating outside the state is received in the state.
1230 If the seller is required by s. 559.807 to provide a bond or
1231 establish a trust account or guaranteed letter of credit, he or
1232 she shall contemporaneously file with the department a copy of
1233 the bond, a copy of the formal notification by the depository
1234 that the trust account is established, or a copy of the
1235 guaranteed letter of credit. Every seller of a business
1236 opportunity shall file with the department a list of independent
1237 agents who will engage in the offer or sale of business
1238 opportunities on behalf of the seller in this state. This list
1239 must be kept current and shall include the following
1240 information: name, home and business address, telephone number,
1241 present employer, ~~social security number,~~ and birth date. A ~~No~~
1242 person may not ~~shall be allowed to~~ offer or sell business
1243 opportunities unless the required information has been provided
1244 to the department.
1245 Section 36. Subsection (7) of section 559.904, Florida
1246 Statutes, is amended to read:
1247 559.904 Motor vehicle repair shop registration;

1248 application; exemption.—
1249 (7) Any person applying for or renewing a local business
1250 tax receipt ~~occupational license on or after October 1, 1993,~~ to
1251 engage in business as a motor vehicle repair shop must exhibit
1252 an active registration certificate from the department before
1253 the local business tax receipt ~~occupational license~~ may be
1254 issued or renewed.
1255 Section 37. Section 559.922, Florida Statutes, is repealed.
1256 Section 38. Subsections (1), (3), and (4) of section
1257 559.928, Florida Statutes, are amended to read:
1258 559.928 Registration.—
1259 (1) Each seller of travel shall annually register with the
1260 department, providing: its legal business or trade name, mailing
1261 address, and business locations; the full names, addresses, and
1262 telephone numbers of its owners or corporate officers and
1263 directors and the Florida agent of the corporation; a statement
1264 whether it is a domestic or foreign corporation, its state and
1265 date of incorporation, its charter number, and, if a foreign
1266 corporation, the date it registered with this state ~~the State of~~
1267 ~~Florida~~, and business tax receipt ~~occupational license~~ where
1268 applicable; the date on which a seller of travel registered its
1269 fictitious name if the seller of travel is operating under a
1270 fictitious or trade name; the name of all other corporations,
1271 business entities, and trade names through which each owner of
1272 the seller of travel operated, was known, or did business as a
1273 seller of travel within the preceding 5 years; a list of all
1274 authorized independent agents, including the agent's trade name,
1275 full name, mailing address, business address, and telephone
1276 numbers; the business location and address of each branch office

1277 and full name and address of the manager or supervisor; the
1278 certification required under s. 559.9285; and proof of purchase
1279 of adequate bond as required in this part. A certificate
1280 evidencing proof of registration shall be issued by the
1281 department and must be prominently displayed in the seller of
1282 travel's primary place of business.
1283 (3) Each independent agent shall annually file an affidavit
1284 with the department prior to engaging in business in this state.
1285 This affidavit must include the independent agent's full name,
1286 legal business or trade name, mailing address, business address,
1287 telephone number, ~~social security number,~~ and the name ~~or names~~
1288 and address ~~addresses~~ of each seller of travel represented by
1289 the independent agent. A letter evidencing proof of filing must
1290 be issued by the department and must be prominently displayed in
1291 the independent agent's primary place of business. Each
1292 independent agent must also submit an annual registration fee of
1293 $50. All moneys collected pursuant to the imposition of the fee
1294 shall be deposited by the Chief Financial Officer into the
1295 General Inspection Trust Fund of the Department of Agriculture
1296 and Consumer Services for the sole purpose of administrating
1297 this part. As used in this subsection, the term "independent
1298 agent" means a person who represents a seller of travel by
1299 soliciting persons on its behalf; who has a written contract
1300 with a seller of travel which is operating in compliance with
1301 this part and any rules adopted thereunder; who does not receive
1302 a fee, commission, or other valuable consideration directly from
1303 the purchaser for the seller of travel; who does not at any time
1304 have any unissued ticket stock or travel documents in his or her
1305 possession; and who does not have the ability to issue tickets,

1306 vacation certificates, or any other travel document. The term
1307 "independent agent" does not include an affiliate of the seller
1308 of travel, as that term is used in s. 559.935(3), or the
1309 employees of the seller of travel or of such affiliates.
1310 (4) Any person applying for or renewing a local business
1311 tax receipt ~~occupational license~~ to engage in business as a
1312 seller of travel must exhibit a current registration certificate
1313 from the department before the local business tax receipt
1314 ~~occupational license~~ may be issued or reissued.
1315 Section 39. Paragraph (c) of subsection (3) of section
1316 559.9285, Florida Statutes, is amended to read:
1317 559.9285 Certification of business activities.—
1318 (3) The department shall specify by rule the form of each
1319 certification under this section which shall include the
1320 following information:
1321 (c) The legal name, any trade names or fictitious names,
1322 mailing address, physical address, telephone number or numbers,
1323 facsimile number or numbers, and all Internet and electronic
1324 contact information of every other commercial entity with which
1325 the certifying party engages in business or commerce that is
1326 related in any way to the certifying party's business or
1327 commerce with any terrorist state. The information disclosed
1328 pursuant to this paragraph does not constitute customer lists,
1329 customer names, or trade secrets protected under s. 570.544(8)
1330 ~~570.544(7)~~.
1331 Section 40. Subsection (6) of section 559.935, Florida
1332 Statutes, is amended to read:
1333 559.935 Exemptions.—
1334 (6) The department shall request from the Airlines

1335 Reporting Corporation any information necessary to implement the
1336 provisions of subsection (2). Persons claiming an exemption
1337 under subsection (2) or subsection (3) must show a letter of
1338 exemption from the department before a local business tax
1339 receipt ~~occupational license~~ to engage in business as a seller
1340 of travel may be issued or reissued. If the department fails to
1341 issue a letter of exemption on a timely basis, the seller of
1342 travel shall submit to the department, through certified mail,
1343 an affidavit containing her or his name and address and an
1344 explanation of the exemption sought. Such affidavit may be used
1345 in lieu of a letter of exemption for the purpose of obtaining a
1346 business tax receipt ~~an occupational license~~. In any civil or
1347 criminal proceeding, the burden of proving an exemption under
1348 this section is ~~shall be~~ on the person claiming such exemption.
1349 A letter of exemption issued by the department may ~~shall~~ not be
1350 used in, and has ~~shall have~~ no bearing on, such proceedings.
1351 Section 41. Subsection (12) of section 570.29, Florida
1352 Statutes, is amended to read:
1353 570.29 Departmental divisions.—The department shall include
1354 the following divisions:
1355 ~~(12) Standards.~~
1356 Section 42. Sections 570.46 and 570.47, Florida Statutes,
1357 are repealed.
1358 Section 43. Section 570.544, Florida Statutes, is amended
1359 to read:
1360 570.544 Division of Consumer Services; director; powers;
1361 processing of complaints; records.—
1362 (1) The director of the Division of Consumer Services shall
1363 be appointed by and serve at the pleasure of the commissioner.

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1364 (2) The director shall supervise, direct, and coordinate
1365 the activities of the division and shall, under the direction of
1366 the department, enforce the provisions of chapters 472, 496,
1367 501, 507, 525, 526, 527, 531, 539, 559, 616, and 849.
1368 (3) ~~(2)~~ The Division of Consumer Services may:
1369 (a) Conduct studies and make analyses of matters affecting
1370 the interests of consumers.
1371 (b) Study the operation of laws for consumer protection.
1372 (c) Advise and make recommendations to the various state
1373 agencies concerned with matters affecting consumers.
1374 (d) Assist, advise, and cooperate with local, state, or
1375 federal agencies and officials in order to promote the interests
1376 of consumers.
1377 (e) Make use of the testing and laboratory facilities of
1378 the department for the detection of consumer fraud.
1379 (f) Report to the appropriate law enforcement officers any
1380 information concerning violation of consumer protection laws.
1381 (g) Assist, develop, and conduct programs of consumer
1382 education and consumer information through publications and
1383 other informational and educational material prepared for
1384 dissemination to the public, in order to increase the competence
1385 of consumers.
1386 (h) Organize and hold conferences on problems affecting
1387 consumers.
1388 (i) Recommend programs to encourage business and industry
1389 to maintain high standards of honesty, fair business practices,
1390 and public responsibility in the production, promotion, and sale
1391 of consumer goods and services.
1392 (4) ~~(3)~~ In addition to the powers, duties, and

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1393 responsibilities authorized by this or any other chapter, the
1394 Division of Consumer Services shall serve as a clearinghouse for
1395 matters relating to consumer protection, consumer information,
1396 and consumer services generally. It shall receive complaints and
1397 grievances from consumers and promptly transmit them to the ~~that~~
1398 agency most directly concerned in order that the complaint or
1399 grievance may be expeditiously handled in the best interests of
1400 the complaining consumer. If no agency exists, the Division of
1401 Consumer Services shall seek a settlement of the complaint using
1402 formal or informal methods of mediation and conciliation and may
1403 seek any other resolution of the matter in accordance with its
1404 jurisdiction.
1405 (5) ~~(4)~~ If any complaint received by the Division of
1406 Consumer Services concerns matters that ~~which~~ involve concurrent
1407 jurisdiction in more than one agency, duplicate copies of the
1408 complaint shall be referred to those offices deemed to have
1409 concurrent jurisdiction.
1410 (6) ~~(5)~~ (a) Any agency, office, bureau, division, or board of
1411 state government receiving a complaint that ~~which~~ deals with
1412 consumer fraud or consumer protection and that ~~which~~ is not
1413 within the jurisdiction of the receiving agency, office, bureau,
1414 division, or board originally receiving it, shall immediately
1415 refer the complaint to the Division of Consumer Services.
1416 (b) Upon receipt of such a complaint, the Division of
1417 Consumer Services shall make a determination of the proper
1418 jurisdiction to which the complaint relates and shall
1419 immediately refer the complaint to the agency, office, bureau,
1420 division, or board that ~~which~~ does have the proper regulatory or
1421 enforcement authority to deal with it.

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1422 (7) ~~(6)~~ The office or agency to which a complaint has been
1423 referred shall within 30 days acknowledge receipt of the
1424 complaint. If an office or agency receiving a complaint
1425 determines that the matter presents a prima facie case for
1426 criminal prosecution or if the complaint cannot be settled at
1427 the administrative level, the complaint together with all
1428 supporting evidence shall be transmitted to the Department of
1429 Legal Affairs or other appropriate enforcement agency with a
1430 recommendation for civil or criminal action warranted by the
1431 evidence.
1432 (8) ~~(7)~~ The records of the Division of Consumer Services are
1433 public records. However, customer lists, customer names, and
1434 trade secrets are confidential and exempt from the provisions of
1435 s. 119.07(1). Disclosure necessary to enforcement procedures
1436 does ~~shall~~ not violate ~~be construed as violative of~~ this
1437 prohibition.
1438 (9) ~~(8)~~ ~~It shall be the duty of~~ The Division of Consumer
1439 Services shall ~~to~~ maintain records and compile summaries and
1440 analyses of consumer complaints and their eventual disposition,
1441 which data may serve as a basis for recommendations to the
1442 Legislature and to state regulatory agencies.
1443 Section 44. Paragraph (a) of subsection (8) of section
1444 616.242, Florida Statutes, is amended to read:
1445 616.242 Safety standards for amusement rides.—
1446 (8) FEES.—
1447 (a) The department shall by rule establish fees to cover
1448 the costs and expenditures associated with the fair rides
1449 inspection program ~~Bureau of Fair Rides Inspection~~, including
1450 all direct and indirect costs. If there is not sufficient

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1451 general revenue appropriated by the Legislature, the industry
1452 shall pay for the remaining cost of the program. The fees must
1453 be deposited in the General Inspection Trust Fund.
1454 Section 45. This act shall take effect July 1, 2012.

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THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2-28-12
Date

888
Bill Number

Barcode

Name Grace Lovett

Phone 488 3022

Address PL 10 The Capitol
Street

E-mail grace.lovett@freshfromflorida.com

Tallahassee FL 32301
City State Zip

Job Title Leg. Affairs

Speaking: [X] For [ ] Against [ ] Information

Appearing at request of Chair [ ]

Subject DACS Consumer Services Bill

Representing Dept. of Agriculture + Consumer Services

Lobbyist registered with Legislature: [X] Yes [ ] No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Chair*
Budget
Budget - Subcommittee on Education Pre-K - 12 Appropriations
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability
Reapportionment
Rules

SENATOR ANITERE FLORES
Majority Whip
38th District

February 16, 2012

The Honorable Alan Hays
Chair of Subcommittee on General Government Appropriations
324 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Hays:

I respectfully request that you place SB 888, regarding consumer protection, on the next Subcommittee on General Government Appropriations. This proposed legislation changes the name of the Division of Consumer Services within the Department of Agriculture and Consumer Services to the "Division of Consumer Protection." In the previous committee of reference, Committee on Regulated Industries, this legislation passed unanimously.

I look forward to presenting this bill before your committee.

Please do not hesitate to contact me should you have any questions. Thank you for your consideration.

Sincerely,

Anitere Flores

Anitere Flores

CC: Mr. Jamie DeLoach, Subcommittee on General Government Appropriations, 201 The Capitol

REPLY TO:
☐ 10691 North Kendall Drive, Suite 309, Miami, Florida 33176 (305) 270-6550
☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5130

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/SB 1358

INTRODUCER: Budget Subcommittee on General Government Appropriations; Governmental Oversight and Accountability Committee and Senator Hays

SUBJECT: Employee Drug Testing

DATE: February 28, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HR	**Fav/1 amendment**
2.	Seay	Roberts	GO	**Fav/CS**
3.	Betta	DeLoach	BGA	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 1358 expands the authorization of public employers to drug test employees to allow for random drug testing of all employees every three months. It further requires that the random sample chosen for the testing must be computer-generated by an independent third party. The bill provides that a random sample may not constitute more than ten percent of the total employee population. The bill also allows state agencies to administer drug tests to all job applicants. The bill revises the definition of "job applicant." The bill provides that an employer must determine whether an employee who tested positive is fit to continue in their current job duties while participating in an employee assistance program. The bill replaces references to "safety-sensitive" positions with "mandatory-testing" positions. The bill allows a public employer to terminate the employment of any employee who receives a first-time positive drug test.

This bill substantially amends sections 112.0455, 440.102 and 944.474 of the Florida Statutes.

II. Present Situation:

Drug-Free Workplace Act

In 1989, the Legislature first enacted the Drug-Free Workplace Act (Act).[1] The Legislature's intent in enacting the Act was to "promote the goal of drug-free workplaces within government through fair and reasonable drug testing methods for the protection of public employees and employers"; "encourage employers to provide employees who have drug use problems an opportunity to participate in an employee assistance program or alcohol and drug rehabilitation program"; and "provide for confidentiality of testing results." The Act sets out the specific guidelines to be followed by state agencies who wish to test employees.

The Act currently provides that no employer may discharge, discipline, or discriminate against an employee on the sole basis of the employee's first positive drug test under certain conditions.[2] The Act does permit state employers to discharge or discipline a "special-risk employee" for the first positive confirmed drug test result.[3] In addition, the Act authorizes, but does not require, employers to "require job applicants to submit a drug test and may use a refusal to submit to a drug test or a positive confirmed drug test as a basis for refusal to hire the job applicant."[4] Section 112.0455, F.S., currently defines job applicants as "a person who has applied for a special risk or safety-sensitive position with an employer and has been offered employment conditioned upon successfully passing a drug test."[5]

The Act also authorizes, but does not require, public employers to drug test:

- An employee whom the employer has reasonable suspicion to believe is using or has used drugs.[6]
- An employee as part of a routinely scheduled fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group.
- An employee who in the course of employment enters an employee assistance program for drug-related problems, or an alcohol and drug rehabilitation program, as a follow-up for a specified time frame.[7]

Employers without drug testing programs must give at least 60 days notice to all employees before beginning such a program.[8] Before any testing begins, all employees must be given a written statement which provides:

- The employer's policy on drug abuse;
- Drug testing indications and procedures;

---

[1] Ch. 89-173, L.O.F.
[2] Section 112.0455(8)(n)1, F.S.
[3] Section 112.0455(8)(n)3, F.S. Special risk employees are defined as one who is required as a condition of employment to be certified under chapter 633, F.S. (Fire Prevention Control) or chapter 943, F.S. (Department of Law Enforcement). Section 112.0455(5)(n), F.S.
[4] Section 112.0455(7)(a), F.S.
[5] Section 112.0455(5)(f), F.S.
[6] Section 112.0455(5)(j), F.S.
[7] Section 112.0455(7), F.S.
[8] Section 112.0455(6), F.S.

- Actions taken against violators of the drug policy;
- A confidentiality statement;
- A list of common medications which may interfere with drug tests;
- A list of local employee assistance and substance abuse rehabilitation programs;
- A statement that the employee has five business days after receiving a positive drug test to explain the results to the employer and may contest the test result; and
- A statement regarding any collective bargaining agreement related to drug testing and the right to appeal to the Public Employees Relations Commission.[9]

Workers' Compensation Law

The Workers' Compensation Law, contained in Chapter 440, F.S., provides legislative intent to promote drug-free workplaces and sets out notice and procedural requirements for employee drug testing.[10] The requirements in Ch. 440, F.S., are applicable to both private and public employers. An employer is not required to request an employee or job applicant to undergo drug testing.[11]

If an employer implements drug testing that conforms to the statutory standards and procedures and to applicable rules, such employer is eligible for workers' compensation and employer's liability insurance discounts.[12]

Current law provides that drug-free workplace program requirements are a mandatory topic of negotiations with any certified collective bargaining agent for nonfederal public sector employers that operate under a collective bargaining agreement.[13] If applicable, random drug testing must be specified in a collective bargaining agreement as negotiated by the appropriate certified bargaining agent before such testing is implemented.[14]

Department of Corrections Employee Drug Testing

Current law authorizes the Department of Corrections to randomly drug test all employees.[15]

Executive Order 11-58

Executive Order Number 11-58, signed by the Governor on March 22, 2011, requires pre-employment and random drug testing for state employees.[16]

A representative of public employees sued the Governor, alleging that the drug-testing policies required by the order constitute a suspicionless search without a special need in violation of the

[9] *Id.*
[10] *See* ss. 440.101 and 440.102, F.S.
[11] *See* s. 440.102(2), F.S.
[12] Section 440.102(2), F.S.
[13] Section 440.102(13), F.S.
[14] Section 440.102(7)(g), F.S.
[15] Section 944.474(2), F.S.
[16] Executive Order 11-58, Office of the Governor, *available at* http://www.flgov.com/wp-content/uploads/orders/2011/11-58-testing.pdf (last visited January 30, 2012).

Fourth Amendment of the United States Constitution.[17] Both parties have requested summary judgment and are awaiting a decision by a federal district judge.[18]

III. Effect of Proposed Changes:

Section 1 amends s. 112.0455, F.S., expanding the definition of "job applicant" to include any person who has applied for a position with an employer and has been offered employment contingent to passing a drug test; creating a definition for "random testing"; removing the definition for "safety-sensitive position"; providing that an employer may conduct random testing once every three months; providing that the random sample chosen for the testing must be computer-generated by an independent third party; providing that a random sample may not constitute more than ten percent of the total employee population of an agency; deleting a provision prohibiting a public employer from discharging, disciplining, or discriminating against an employee (other than a special-risk employee) on the sole basis of the employee's first positive confirmed drug test under certain conditions.

This section also consolidates the provisions relating to continued employment of employees in special risk or safety-sensitive positions. By removing the current definition for "safety-sensitive position", the bill amends the provisions related to employees in such positions to prescribe duties an employee would be automatically deemed unable to safely and effectively perform while participating in an employee assistance program. Such duties are those that require an employee to:

- Carry a firearm;
- Work closely with an employee who carries a firearm;
- Perform life-threatening procedures;
- Work with heavy or dangerous machinery;
- Work as a safety inspector;
- Work with children;
- Work with detainees in the correctional system;
- Work with confidential information or documents pertaining to criminal investigations;
- Work with controlled substances;
- Hold a position subject to s. 110.1127, F.S.;[19] or
- Hold a position in which a momentary lapse in attention could result in injury or death of another person.

If an employer refers the employee to an employee assistance program, the employee will be placed in a job assignment which the employer has determined can be performed during treatment if the employee cannot safely and effectively perform job duties in their current position. If an alternative job assignment is unavailable, the employee is placed on leave status.

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[17] *See* "Complaint," *American Federation of State, County and Municipal Employees Council 79, and Richard Flamm, v. Rick Scott*, Case No. 1:11-cv-21976-UU (S.D. Fla. 2011).

[18] *See* "Plaintiff's Motion for Summary Judgment" and "Defendant's Motion for Summary Judgment and Incorporated Memorandum of Law," *American Federation of State, County and Municipal Employees Council 79, and Richard Flamm, v. Rick Scott*, Case No. 1:11-cv-21976-UU (S.D. Fla. 2011).

[19] Section 110.1127, F.S. requires security background checks for employees in specified positions of special responsibility or sensitive location.

Section 2 amends s. 440.102, F.S., removing the current definition for "safety-sensitive position" and replacing the term with "mandatory-testing position"; defining "mandatory-testing position" to mean "with respect to a public employer, a job assignment that requires the employee to" engage in any of the activities which an employee would be deemed unable to safely and effectively perform while participating in an employee assistance program under the Drug-Free Workplace Act; providing that an employer may receive discounts under s. 627.0915, F.S., if an employer maintains a drug-free workplace program broader in scope than the minimum standards established in this section.

Section 3 amends s. 944.474, F.S., authorizing the Department of Corrections (DOC) to develop a drug testing program for all job applicants; removing a reference to "safety-sensitive."

Section 4 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Fourth Amendment

Mandatory drug testing programs have been challenged in courts numerous times. The United States Supreme Court has ruled in four situations that suspicionless drug testing is constitutional and does not violate the Fourth Amendment, which protects an individual's rights against unreasonable search and seizure.[20] These situations include suspicionless drug testing of:

- Students in extracurricular activities;[21]
- Student athletes;[22]
- Certain Customs employees;[23] and
- Railroad employees after major accidents.[24]

[20] A concurring opinion in *Katz v. United States*, 389 U.S. 347, 36-61 (1967), set out the "reasonable expectation of privacy test" – when a person manifests a subjective expectation of privacy that society accepts as reasonable, that person has a "reasonable expectation of privacy" protected by the Fourth Amendment. Therefore, if there is no reasonable expectation of privacy, no Fourth Amendment violation can occur.
[21] *Board of Education of Pottawatomie County v. Earls*, 536 U.S. 822 (U.S. 2002).
[22] *Vernonia School District v. Acton*, 515 U.S. 646 (U.S. 1995).
[23] *National Treasury Employees Union v. Von Raab*, 489 U.S. 656 (U.S. 1989).

In these cases, the court focused on the special need of the government, the unique situation involved (school setting, drug enforcement, and major train accidents), and public safety.

The United States Supreme Court has held one suspicionless drug test unconstitutional. In *Chandler v. Miller*, the state of Georgia required all candidates for designated state offices to certify that they had taken a drug test and that the result was negative in order to run for state office.[25] In ruling the drug testing unconstitutional, the court held that,

> "Where the risk to public safety is substantial and real, blanket suspicionless searches calibrated to the risk may rank as 'reasonable'…But where, as in this case, public safety is not genuinely in jeopardy, the Fourth Amendment precludes the suspicionless search."[26]

Federal district courts in Florida have ruled on the constitutionality of random drug testing of public employees and of blanket drug testing of job applicants with a public employer, holding that:

- A state agency's random drug testing policy was unconstitutional as applied to a strategic planning analyst because the employee did not present a concrete risk of real harm;[27] and
- A city's suspicionless drug testing of all new applicants as a condition of employment was unconstitutional because the city produced no concrete evidence or history of drug use among its employees and failed to specifically identify any governmental interest sufficiently compelling to justify testing all job applicants.[28]

An issue that has not been ruled upon in the context of suspicionless public employee and job applicant drug testing in federal courts with jurisdiction in Florida is that of an employee's or applicant's consent to the drug test. Some appellate courts have considered consent of the employee when holding that a physical search of a public employee or his or her property is not an unconstitutional search.[29] In addition, the Third Circuit has held that a public job applicant's consent to a drug test satisfied the Fourth Amendment's reasonableness requirement.[30] In the same ruling, however, the Third Circuit cited a prior case, saying that it "is the law of [the Third Circuit] that 'silent submission' to a drug test 'on pain of dismissal from employment' does not constitute consent."[31]

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[24] *Skinner v. Railway Labor Executives' Association*, 489 U.S. 602 (U.S. 1989).
[25] *Chandler v. Miller*, 520 U.S. 305 (1997).
[26] *Id.* at 323.
[27] *Wenzel v. Bankhead*, 351 F.Supp.2d 1316 (N.D. Fla. 2004).
[28] *Baron v. Hollywood*, 93 F.Supp.2d 1337 (S.D. Fla. 2000).
[29] For example, *see United States v. Sihler*, 562 F.2d 349, 350 (5th Cir. 1977) (holding, in part, that a search of a prison guard did not violate the Fourth Amendment because the guard had "voluntarily accepted and continued an employment which subjected him to search on a routine basis") and *United States v. Esser*, 284 Fed. Appx. 757, 758-759 (11th Cir. 2008) (citing *Sihler* and holding that in light of a post office regulation that purses were subject to inspection, a postal employee consented to the search of her purse "by virtue of her voluntary employment and her decision to bring her purse on postal property").
[30] *Kerns v. Chalfont-New Britain Twp. Joint Sewage Auth.*, 263 F.3d 61, 65-55 (3d Cir. 2001).
[31] *Id.* at 66. The cited case, *Bolden v. SEPTA*, 953 F.2d 807 (3d Cir. 1991), held in part that an employee's silent submission to drug testing required as a prerequisite to his return to work was not a voluntary consent to search (*id.* at 824).

Other issues that may be arguable are whether the suspicionless drug testing of public employees or job applicants contravenes reasonable expectations of privacy and whether the government has a special need for such drug testing that outweighs the privacy interests of such employees and applicants.

Contracts Clause

The United States Constitution and the Florida Constitution prohibit the state from passing any law impairing the obligation of contracts.[32] "[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear."[33] If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.[34] The factors that a court will consider when balancing the impairment of contracts with the public purpose include: whether the law was enacted to deal with a broad, generalized economic or social problem; whether the law operates in an area that was already subject to state regulation at the time the parties undertook their contractual obligations, or whether it invades an area never before subject to regulation; and whether the law effects a temporary alteration of the contractual relationships of those within its scope, or whether it works a severe, permanent, and immediate change in those relationships, irrevocably and retroactively.[35] An impairment of contracts issue may arise if a current collective bargaining agreement containing drug testing provisions in conflict with those in this bill exists and a public employer who is a party to such agreement chooses to use the expanded drug testing authorization in this bill.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill's extension of certain insurance discounts to employers with a broader drug-free workplace program than the minimum standards set out in statute may result in an indeterminate reduction in expenditures of private employers.

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[32] Article I, s. 10, U.S. Const.; Art. I, s. 10, Fla. Const.

[33] *Pomponio v. Claridge of Pompano Condominiums, Inc.*, 378 So.2d 774 (Fla. 1979). *See also General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

[34] *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So.2d 681 (Fla. 1980); *Yellow Cab Co. v. Dade County*, 412 So.2d 395 (Fla. 3rd DCA 1982). *See also Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983) (construing the federal constitutional provision). An important public purpose would be a purpose protecting the public's health, safety, or welfare. *See Khoury v. Carvel Homes South, Inc.*, 403 So.2d 1043 (Fla. 1st DCA 1981).

[35] *Pomponio v. Claridge of Pompano Condominiums, Inc.*, 378 S0.2d 774 (Fla. 1979).

C. Government Sector Impact:

State agencies may incur increased costs due to the drug testing of additional job applicants and random testing of employees. However, the bill provides that tests are to be administered at each agency's discretion and within each agency's appropriation, so the fiscal impact is ultimately up to each agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 368-372 state that if an employer refers an employee to an employee assistance program, the employer must determine whether the employee is able to safely and effectively perform his or her job duties while in the program. However, the bill makes no reference to when such a determination must be made. Presumably, the decision should be made before the employee begins an employee assistance program, but this provision is introduced in the bill's title (line 23) as occurring anytime before the employee completes the program.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Budget Subcommittee on General Government Appropriations on February 28, 2012:
The CS differs from the CS by Governmental Oversight and Accountability in that:

- It clarifies that agencies must use existing appropriations to conduct drug testing.
- It reinstates Drugfree Workplace Programs as a mandatory topic of negotiations of nonfederal public sector employees.

CS by Governmental Oversight and Accountability on February 1, 2012:
The CS differs from the original bill in that:

- It makes several technical changes recommended by the Health Regulation Committee.
- It further amends the Drug-Free Workplace Act by requiring that the random sample chosen for the testing must be computer-generated by an independent third party. It provides that a random sample may not constitute more than ten percent of the total employee population of an agency.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
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The Committee on Budget Subcommittee on General Government Appropriations (Hays) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Subsections (5), (7), and (8) and paragraphs
6 (h), (i), (j), and (k) of subsection (10) of section 112.0455,
7 Florida Statutes, are amended to read:
8 112.0455 Drug-Free Workplace Act.—
9 (5) DEFINITIONS.—Except where the context otherwise
10 requires, as used in this act:
11 (a) “Drug” means alcohol, including distilled spirits,
12 wine, malt beverages, and intoxicating liquors; amphetamines;

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13 cannabinoids; cocaine; phencyclidine (PCP); hallucinogens;
14 methaqualone; opiates; barbiturates; benzodiazepines; synthetic
15 narcotics; designer drugs; or a metabolite of any of the
16 substances listed herein.
17 (b) “Drug test” or “test” means any chemical, biological,
18 or physical instrumental analysis administered for the purpose
19 of determining the presence or absence of a drug or its
20 metabolites.
21 (c) “Initial drug test” means a sensitive, rapid, and
22 reliable procedure to identify negative and presumptive positive
23 specimens. All initial tests must ~~shall~~ use an immunoassay
24 procedure or an equivalent, or must ~~shall~~ use a more accurate
25 scientifically accepted method approved by the Agency for Health
26 Care Administration as ~~such~~ more accurate technology becomes
27 available in a cost-effective form.
28 (d) “Confirmation test,” “confirmed test,” or “confirmed
29 drug test” means a second analytical procedure used to identify
30 the presence of a specific drug or metabolite in a specimen. The
31 confirmation test must be different in scientific principle from
32 that of the initial test procedure. This confirmation method
33 must be capable of providing requisite specificity, sensitivity,
34 and quantitative accuracy.
35 (e) “Chain of custody” refers to the methodology of
36 tracking specified materials or substances for the purpose of
37 maintaining control and accountability from initial collection
38 to final disposition for all such materials or substances and
39 providing for accountability at each stage in handling, testing,
40 storing specimens, and reporting of test results.
41 (f) “Job applicant” means a person who has applied for a

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42 ~~special risk or safety-sensitive~~ position with an employer and
43 has been offered employment conditioned upon successfully
44 passing a drug test.
45 (g) "Employee" means a ~~any~~ person who works for salary,
46 wages, or other remuneration for an employer.
47 (h) "Employer" means an ~~any~~ agency within state government
48 that employs individuals for salary, wages, or other
49 remuneration.
50 (i) "Prescription or nonprescription medication" means a
51 drug or medication obtained pursuant to a prescription as
52 defined by s. 893.02 or a medication that is authorized pursuant
53 to federal or state law for general distribution and use without
54 a prescription in the treatment of human diseases, ailments, or
55 injuries.
56 (j) "Random testing" means a drug test conducted on
57 employees who are selected through the use of a computer-
58 generated random sample of an employer's employees.
59 (k) ~~(j)~~ "Reasonable suspicion drug testing" means drug
60 testing based on a belief that an employee is using or has used
61 drugs in violation of the employer's policy drawn from specific
62 objective and articulable facts and reasonable inferences drawn
63 from those facts in light of experience. Reasonable suspicion
64 drug testing may ~~shall~~ not be required except upon the
65 recommendation of a supervisor who is at least one level of
66 supervision higher than the immediate supervisor of the employee
67 in question. Among other things, such facts and inferences may
68 be based upon:
69 1. Observable phenomena while at work, such as direct
70 observation of drug use or of the physical symptoms or

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71 manifestations of being under the influence of a drug.
72 2. Abnormal conduct or erratic behavior while at work or a
73 significant deterioration in work performance.
74 3. A report of drug use, provided by a reliable and
75 credible source, which has been independently corroborated.
76 4. Evidence that an individual has tampered with a drug
77 test during employment with the current employer.
78 5. Information that an employee has caused, or contributed
79 to, an accident while at work.
80 6. Evidence that an employee has used, possessed, sold,
81 solicited, or transferred drugs while working or while on the
82 employer's premises or while operating the employer's vehicle,
83 machinery, or equipment.
84 (l) ~~(k)~~ "Specimen" means a tissue, hair, or product of the
85 human body capable of revealing the presence of drugs or their
86 metabolites.
87 (m) ~~(l)~~ "Employee assistance program" means an established
88 program for employee assessment, counseling, and possible
89 referral to an alcohol and drug rehabilitation program.
90 ~~(m) "Safety-sensitive position" means any position,~~
91 ~~including a supervisory or management position, in which a drug~~
92 ~~impairment would constitute an immediate and direct threat to~~
93 ~~public health or safety.~~
94 (n) "Special risk" means employees who are required as a
95 condition of employment to be certified under chapter 633 or
96 chapter 943.
97 (7) TYPES OF TESTING.—Drug testing must be conducted within
98 each agency's appropriation. An employer may conduct ~~is~~
99 ~~authorized~~, but is not required~~,~~ to conduct, the following types

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100 of drug tests:
101 (a) *Job applicant testing.*—An employer may require job
102 applicants to submit to a drug test and may use a refusal to
103 submit to a drug test or a positive confirmed drug test as a
104 basis for refusal to hire the job applicant.
105 (b) *Reasonable suspicion.*—An employer may require an
106 employee to submit to reasonable suspicion drug testing.
107 (c) *Random testing.*—An employer may conduct random testing
108 once every 3 months. The random sample of employees chosen for
109 testing must be computer-generated by an independent third
110 party. A random sample may not constitute more than 10 percent
111 of the total employee population.
112 (d) ~~(c)~~ *Routine fitness for duty.*—An employer may require an
113 employee to submit to a drug test if the test is conducted as
114 part of a routinely scheduled employee fitness-for-duty medical
115 examination that is part of the employer's established policy or
116 that is scheduled routinely for all members of an employment
117 classification or group.
118 (e) ~~(d)~~ *Followup testing.*—If the employee in the course of
119 employment enters an employee assistance program for drug-
120 related problems, or an alcohol and drug rehabilitation program,
121 the employer may require the ~~said~~ employee to submit to a drug
122 test as a followup to such program, and on a quarterly,
123 semiannual, or annual basis for up to 2 years thereafter.
124 (8) PROCEDURES AND EMPLOYEE PROTECTION.—All specimen
125 collection and testing for drugs under this section shall be
126 performed in accordance with the following procedures:
127 (a) A sample shall be collected with due regard to the
128 privacy of the individual providing the sample, and in a manner

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129 reasonably calculated to prevent substitution or contamination
130 of the sample.
131 (b) Specimen collection shall be documented, and the
132 documentation procedures shall include:
133 1. Labeling of specimen containers so as to reasonably
134 preclude the likelihood of erroneous identification of test
135 results.
136 2. A form for the employee or job applicant to provide any
137 information he or she considers relevant to the test, including
138 identification of currently or recently used prescription or
139 nonprescription medication, or other relevant medical
140 information. Such form shall provide notice of the most common
141 medications by brand name or common name, as applicable, as well
142 as by chemical name, which may alter or affect a drug test. The
143 providing of information does ~~shall~~ not preclude the
144 administration of the drug test, but shall be taken into account
145 in interpreting any positive confirmed results.
146 (c) Specimen collection, storage, and transportation to the
147 testing site shall be performed in a manner that ~~which~~ will
148 reasonably preclude specimen contamination or adulteration.
149 (d) Each initial and confirmation test conducted under this
150 section, not including the taking or collecting of a specimen to
151 be tested, shall be conducted by a licensed laboratory as
152 described in subsection (12).
153 (e) A specimen for a drug test may be taken or collected by
154 any of the following persons:
155 1. A physician, a physician’s assistant, a registered
156 professional nurse, a licensed practical nurse, a nurse
157 practitioner, or a certified paramedic who is present at the

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158 scene of an accident for the purpose of rendering emergency
159 medical service or treatment.
160 2. A qualified person employed by a licensed laboratory.
161 (f) A person who collects or takes a specimen for a drug
162 test conducted pursuant to this section shall collect an amount
163 sufficient for two drug tests as determined by the Agency for
164 Health Care Administration.
165 (g) Any drug test conducted or requested by an employer may
166 occur before, during, or immediately after the regular work
167 period of the employee, and shall be deemed to be performed
168 during work time for the purposes of determining compensation
169 and benefits for the employee.
170 (h) Every specimen that produces a positive confirmed
171 result shall be preserved by the licensed laboratory that
172 conducts the confirmation test for a period of at least 210 days
173 from the time the results of the positive confirmation test are
174 mailed or otherwise delivered to the employer. However, if an
175 employee or job applicant undertakes an administrative or legal
176 challenge to the test result, the employee or job applicant
177 shall notify the laboratory and the sample shall be retained by
178 the laboratory until the case or administrative appeal is
179 settled. During the 180-day period after written notification of
180 a positive test result, the employee or job applicant who has
181 provided the specimen shall be permitted by the employer to have
182 a portion of the specimen retested, at the employee or job
183 applicant’s expense, at another laboratory, licensed and
184 approved by the Agency for Health Care Administration, chosen by
185 the employee or job applicant. The second laboratory must test
186 at equal or greater sensitivity for the drug in question as the

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187 first laboratory. The first laboratory that ~~which~~ performed the
188 test for the employer is ~~shall be~~ responsible for the transfer
189 of the portion of the specimen to be retested, and for the
190 integrity of the chain of custody during such transfer.
191 (i) Within 5 working days after receipt of a positive
192 confirmed test result from the testing laboratory, an employer
193 shall inform an employee or job applicant in writing of such
194 positive test result, the consequences of such results, and the
195 options available to the employee or job applicant.
196 (j) The employer shall provide to the employee or job
197 applicant, upon request, a copy of the test results.
198 (k) Within 5 working days after receiving notice of a
199 positive confirmed test result, the employee or job applicant
200 may submit information to an employer explaining or contesting
201 the test results, and why the results do not constitute a
202 violation of the employer's policy.
203 (l) If an employee or job applicant's explanation or
204 challenge of the positive test results is unsatisfactory to the
205 employer, a written explanation as to why the employee or job
206 applicant's explanation is unsatisfactory, along with the report
207 of positive results, shall be provided by the employer to the
208 employee or job applicant. All such documentation shall be kept
209 confidential and exempt from the provisions of s. 119.07(1) by
210 the employer pursuant to subsection (11) and shall be retained
211 by the employer for at least 1 year.
212 (m) An ~~No~~ employer may not discharge, discipline, refuse to
213 hire, discriminate against, or request or require rehabilitation
214 of an employee or job applicant on the sole basis of a positive
215 test result that has not been verified by a confirmation test.

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216 ~~(n) In addition to the limitation under paragraph (m):~~
217 ~~1. Except as provided in subparagraph 3., no employer may~~
218 ~~discharge, discipline, or discriminate against an employee on~~
219 ~~the sole basis of the employee's first positive confirmed drug~~
220 ~~test, unless the employer has first given the employee an~~
221 ~~opportunity to participate in, at the employee's own expense or~~
222 ~~pursuant to coverage under a health insurance plan, an employee~~
223 ~~assistance program or an alcohol and drug rehabilitation~~
224 ~~program, and:~~
225 ~~a. The employee has either refused to participate in the~~
226 ~~employee assistance program or the alcohol and drug~~
227 ~~rehabilitation program or has failed to successfully complete~~
228 ~~such program, as evidenced by withdrawal from the program before~~
229 ~~its completion or a report from the program indicating~~
230 ~~unsatisfactory compliance, or by a positive test result on a~~
231 ~~confirmation test after completion of the program; or~~
232 ~~b. The employee has failed or refused to sign a written~~
233 ~~consent form allowing the employer to obtain information~~
234 ~~regarding the progress and successful completion of an employee~~
235 ~~assistance program or an alcohol and drug rehabilitation~~
236 ~~program.~~
237 ~~2. An employee in a safety-sensitive position shall be~~
238 ~~placed by the employer in a non-safety-sensitive position, or if~~
239 ~~such position is unavailable, on leave status while~~
240 ~~participating in an employee assistance program or an alcohol~~
241 ~~and drug rehabilitation program. If placed on leave status~~
242 ~~without pay, the employee shall be permitted to use any~~
243 ~~accumulated leave credits prior to being placed on leave without~~
244 ~~pay.~~

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245 ~~3. A special risk employee may be discharged or disciplined~~
246 ~~for the first positive confirmed drug test result when illicit~~
247 ~~drugs, pursuant to s. 893.13, are confirmed. No special risk~~
248 ~~employee shall be permitted to continue work in a safety-~~
249 ~~sensitive position, but may be placed either in a non-safety-~~
250 ~~sensitive position or on leave status while participating in an~~
251 ~~employee assistance program or an alcohol and drug~~
252 ~~rehabilitation program.~~
253 (n) ~~(o)~~ Upon successful completion of an employee assistance
254 program or an alcohol and drug rehabilitation program, the
255 employee shall be reinstated to the same or equivalent position
256 that was held prior to such rehabilitation.
257 (o) ~~(p)~~ An ~~No~~ employer may not discharge, discipline, or
258 discriminate against an employee, or refuse to hire a job
259 applicant, on the basis of any prior medical history revealed to
260 the employer pursuant to this section.
261 (p) ~~(q)~~ An employer who performs drug testing or specimen
262 collection shall use chain-of-custody procedures as established
263 by the Agency for Health Care Administration to ensure proper
264 recordkeeping, handling, labeling, and identification of all
265 specimens to be tested.
266 (q) ~~(r)~~ An employer shall pay the cost of all drug tests,
267 initial and confirmation, which the employer requires of
268 employees.
269 (r) ~~(s)~~ An employee or job applicant shall pay the costs of
270 any additional drug tests not required by the employer.
271 (s) ~~(t)~~ An ~~No~~ employer may not ~~shall~~ discharge, discipline,
272 or discriminate against an employee solely upon voluntarily
273 seeking treatment, while under the employ of the employer, for a

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274 drug-related problem if the employee has not previously tested
275 positive for drug use, entered an employee assistance program
276 for drug-related problems, or entered an alcohol and drug
277 rehabilitation program. However, special risk employees may be
278 subject to discharge or disciplinary action when the presence of
279 illicit drugs, pursuant to s. 893.13, is confirmed.
280 (t) ~~(u)~~ If ~~Where~~ testing is conducted based on reasonable
281 suspicion, each employer shall promptly detail in writing the
282 circumstances which formed the basis of the determination that
283 reasonable suspicion existed to warrant the testing. A copy of
284 this documentation shall be given to the employee upon request
285 and the original documentation shall be kept confidential and
286 exempt from the provisions of s. 119.07(1) by the employer
287 pursuant to subsection (11) and retained by the employer for at
288 least 1 year.
289 (u) ~~(v)~~ If an employee is unable to participate in
290 outpatient rehabilitation, the employee may be placed on leave
291 status while participating in an employee assistance program or
292 an alcohol and drug rehabilitation program. If placed on leave-
293 without-pay status, the employee shall be permitted to use any
294 accumulated leave credits prior to being placed on leave without
295 pay. Upon successful completion of an employee assistance
296 program or an alcohol and drug rehabilitation program, the
297 employee shall be reinstated to the same or equivalent position
298 that was held prior to such rehabilitation.
299 (10) EMPLOYER PROTECTION.—
300 (h) An employer may discharge or discipline ~~shall refer~~ an
301 employee following ~~with~~ a first-time positive confirmed drug
302 test result. If the employer does not discharge the employee,

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303 the employer may refer the employee to an employee assistance
304 program or an alcohol and drug rehabilitation program in which
305 the employee may participate at the expense of the employee or
306 pursuant to a health insurance plan~~, unless such employee is~~
307 ~~discharged as provided in subparagraph (8)(n)3. If the results~~
308 ~~of a subsequent confirmed drug test are positive, the employer~~
309 ~~may discharge or discipline the employee~~.
310 1. If an employer refers an employee to an employee
311 assistance program or an alcohol and drug rehabilitation
312 program, the employer must determine whether the employee is
313 able to safely and effectively perform the job duties assigned
314 to the employee while the employee participates in the employee
315 assistance program or the alcohol and drug rehabilitation
316 program.
317 2. An employee whose assigned duties require the employee
318 to carry a firearm, work closely with an employee who carries a
319 firearm, perform life-threatening procedures, work with heavy or
320 dangerous machinery, work as a safety inspector, work with
321 children, work with detainees in the correctional system, work
322 with confidential information or documents pertaining to
323 criminal investigations, work with controlled substances, hold a
324 position subject to s. 110.1127, or hold a position in which a
325 momentary lapse in attention could result in injury or death to
326 another person, is deemed unable to safely and effectively
327 perform the job duties assigned to the employee while the
328 employee participates in the employee assistance program or the
329 alcohol and drug rehabilitation program.
330 3. If an employer refers an employee to an employee
331 assistance program or an alcohol and drug rehabilitation program

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332 and the employer determines that the employee is unable, or the
333 employee is deemed unable, to safely and effectively perform the
334 job duties assigned to the employee before he or she completes
335 the employee assistance program or the alcohol and drug
336 rehabilitation program, the employer shall place the employee in
337 a job assignment that the employer determines the employee can
338 safely and effectively perform while participating in the
339 employee assistance program or the alcohol and drug
340 rehabilitation program.
341 4. If a job assignment in which the employee may safely and
342 effectively perform is unavailable, the employer shall place the
343 employee on leave status while the employee is participating in
344 an employee assistance program or an alcohol and drug
345 rehabilitation program. If placed on leave status without pay,
346 the employee may use accumulated leave credits before being
347 placed on leave without pay.
348 (i) ~~Nothing in~~ This section does not ~~shall be construed to~~
349 prohibit an employer from conducting medical screening or other
350 tests required by any statute, rule, or regulation for the
351 purpose of monitoring exposure of employees to toxic or other
352 unhealthy substances in the workplace or in the performance of
353 job responsibilities. Such screening or tests shall be limited
354 to the specific substances expressly identified in the
355 applicable statute, rule, or regulation, unless prior written
356 consent of the employee is obtained for other tests.
357 ~~(j) An employer shall place a safety-sensitive position~~
358 ~~employee whose drug test result is confirmed positive in a non-~~
359 ~~safety-sensitive position, or if such a position is unavailable,~~
360 ~~on leave status while the employee participates in an employee~~

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361 ~~assistance program or an alcohol and drug rehabilitation~~
362 ~~program. If placed on leave status without pay, the employee~~
363 ~~shall be permitted to use any accumulated leave credits prior to~~
364 ~~being placed on leave without pay.~~
365 ~~(k) A special risk employee may be discharged or~~
366 ~~disciplined on the first positive confirmed drug test result~~
367 ~~when illicit drugs, pursuant to s. 893.13, are confirmed. No~~
368 ~~special risk employee shall be permitted to continue work in a~~
369 ~~safety-sensitive position, but may be placed either in a non-~~
370 ~~safety-sensitive position or on leave status while participating~~
371 ~~in an employee assistance program or an alcohol and drug~~
372 ~~rehabilitation program.~~
373 Section 2. Paragraphs (j) and (o) of subsection (1),
374 subsection (2), paragraph (g) of subsection (7), and subsection
375 (11) of section 440.102, Florida Statutes, are amended to read:
376 440.102 Drug-free workplace program requirements.—The
377 following provisions apply to a drug-free workplace program
378 implemented pursuant to law or to rules adopted by the Agency
379 for Health Care Administration:
380 (1) DEFINITIONS.—Except where the context otherwise
381 requires, as used in this act:
382 (j) “Job applicant” means a person who has applied for a
383 position with an employer and has been offered employment
384 conditioned upon successfully passing a drug test, and may have
385 begun work pending the results of the drug test. For a public
386 employer, “job applicant” means only a person who has applied
387 for a special-risk or <u>mandatory-testing</u> ~~safety-sensitive~~
388 position.
389 (o) <u>“Mandatory-testing position” means, with respect to a</u>

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390 public employer, a job assignment that requires the employee to
391 carry a firearm, work closely with an employee who carries a
392 firearm, perform life-threatening procedures, work with heavy or
393 dangerous machinery, work as a safety inspector, work with
394 children, work with detainees in the correctional system, work
395 with confidential information or documents pertaining to
396 criminal investigations, work with controlled substances, or a
397 job assignment that requires an employee security background
398 check, pursuant to s. 110.1127, or a job assignment in which a
399 momentary lapse in attention could result in injury or death to
400 another person. ~~"Safety-sensitive position" means, with respect~~
401 ~~to a public employer, a position in which a drug impairment~~
402 ~~constitutes an immediate and direct threat to public health or~~
403 ~~safety, such as a position that requires the employee to carry a~~
404 ~~firearm, perform life-threatening procedures, work with~~
405 ~~confidential information or documents pertaining to criminal~~
406 ~~investigations, or work with controlled substances; a position~~
407 ~~subject to s. 110.1127; or a position in which a momentary lapse~~
408 ~~in attention could result in injury or death to another person.~~
409 (2) DRUG TESTING.—An employer may test an employee or job
410 applicant for any drug described in paragraph (1)(c). In order
411 to qualify as having established a drug-free workplace program
412 under this section and to qualify for the discounts provided
413 under s. 627.0915 and deny medical and indemnity benefits under
414 this chapter, an employer must, at a minimum, implement drug
415 testing that conforms to the standards and procedures
416 established in this section and all applicable rules adopted
417 pursuant to this section as required in subsection (4). However,
418 an employer does not have a legal duty under this section to

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419 request an employee or job applicant to undergo drug testing. If
420 an employer fails to maintain a drug-free workplace program in
421 accordance with the standards and procedures established in this
422 section and in applicable rules, the employer is ineligible for
423 discounts under s. 627.0915. However, an employer qualifies for
424 discounts under s. 627.0915 if the employer maintains a drug-
425 free workplace program that is broader in scope than that
426 provided for by the standards and procedures established in this
427 section. An employer who qualifies ~~All employers qualifying~~ for
428 and receives ~~receiving~~ discounts provided under s. 627.0915 must
429 be reported annually by the insurer to the department.
430 (7) EMPLOYER PROTECTION.—
431 (g) This section does not prohibit an employer from
432 conducting medical screening or other tests required, permitted,
433 or not disallowed by any statute, rule, or regulation for the
434 purpose of monitoring exposure of employees to toxic or other
435 unhealthy substances in the workplace or in the performance of
436 job responsibilities. Such screening or testing is limited to
437 the specific substances expressly identified in the applicable
438 statute, rule, or regulation, unless prior written consent of
439 the employee is obtained for other tests. Such screening or
440 testing need not be in compliance with the rules adopted by the
441 Agency for Health Care Administration under this chapter or
442 under s. 112.0455. A public employer may, through the use of an
443 unbiased selection procedure, conduct random drug tests of
444 employees occupying mandatory-testing ~~safety-sensitive~~ or
445 special-risk positions if the testing is performed in accordance
446 with drug-testing rules adopted by the Agency for Health Care
447 Administration and the department. ~~If applicable, random drug~~

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448 ~~testing must be specified in a collective bargaining agreement~~
449 ~~as negotiated by the appropriate certified bargaining agent~~
450 ~~before such testing is implemented.~~
451 (11) PUBLIC EMPLOYEES IN MANDATORY-TESTING ~~SAFETY-SENSITIVE~~
452 OR SPECIAL-RISK POSITIONS.—
453 (a) If an employee who is employed by a public employer in
454 a mandatory-testing ~~safety-sensitive~~ position enters an employee
455 assistance program or drug rehabilitation program, the employer
456 must assign the employee to a position other than a mandatory-
457 testing ~~safety-sensitive~~ position or, if such position is not
458 available, place the employee on leave while the employee is
459 participating in the program. However, the employee shall be
460 permitted to use any accumulated annual leave credits before
461 leave may be ordered without pay.
462 (b) An employee who is employed by a public employer in a
463 special-risk position may be discharged or disciplined by a
464 public employer for the first positive confirmed test result if
465 the drug confirmed is an illicit drug under s. 893.03. A
466 special-risk employee who is participating in an employee
467 assistance program or drug rehabilitation program may not be
468 allowed to continue to work in any special-risk or mandatory-
469 testing ~~safety-sensitive~~ position of the public employer, but
470 may be assigned to a position other than a mandatory-testing
471 ~~safety-sensitive~~ position or placed on leave while the employee
472 is participating in the program. However, the employee shall be
473 permitted to use any accumulated annual leave credits before
474 leave may be ordered without pay.
475 Section 3. Section 944.474, Florida Statutes, is amended to
476 read:

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477 944.474 Legislative intent; employee wellness program; drug
478 and alcohol testing.—
479 (1) It is the intent of the Legislature that the state
480 correctional system provide a safe and secure environment for
481 both inmates and staff. A healthy workforce is a productive
482 workforce, and security of the state correctional system can
483 best be provided by strong and healthy employees. The Department
484 of Corrections may develop and implement an employee wellness
485 program. The program may include, but is not limited to,
486 wellness education, smoking cessation, nutritional education,
487 and overall health-risk reduction, including the effects of
488 using drugs and alcohol.
489 (2) An employee ~~Under no circumstances shall employees~~ of
490 the department may not test positive for illegal use of
491 controlled substances. An employee of the department may not be
492 under the influence of alcohol while on duty. In order to ensure
493 that these prohibitions are adhered to by all employees of the
494 department and notwithstanding s. 112.0455, the department may
495 develop a program for the drug testing of all job applicants and
496 for the random drug testing of all employees. The department may
497 randomly evaluate employees for the contemporaneous use or
498 influence of alcohol through the use of alcohol tests and
499 observation methods. Notwithstanding s. 112.0455, the department
500 may develop a program for the reasonable suspicion drug testing
501 of employees who are in mandatory-testing positions, as defined
502 in s. 440.102(1)(o), ~~safety-sensitive~~ or special risk positions,
503 as defined in s. 112.0455(5), for the controlled substances
504 listed in s. 893.03(3)(d). The reasonable suspicion drug testing
505 authorized by this subsection shall be conducted in accordance

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506 with s. 112.0455, but may also include testing upon reasonable
507 suspicion based on violent acts or violent behavior of an
508 employee who is on or off duty. The department shall adopt rules
509 pursuant to ss. 120.536(1) and 120.54 that are necessary to
510 administer this subsection.
511 Section 4. This act shall take effect July 1, 2012.
512
513 ========== T I T L E A M E N D M E N T ==========
514 And the title is amended as follows:
515 Delete everything before the enacting clause
516 and insert:
517 A bill to be entitled
518 An act relating to the Drug-Free Workplace Act;
519 amending s. 112.0455, F.S.; revising the definition of
520 the term "job applicant"; defining the term "random
521 testing"; removing the definition of the term "safety-
522 sensitive position"; requiring drug testing to be
523 conducted within each state agency's appropriation;
524 authorizing a state agency to conduct random drug
525 testing every 3 months; providing testing selection
526 requirements; removing provisions prohibiting a state
527 agency from discharging or disciplining an employee
528 under certain circumstances based on the employee's
529 first positive confirmed drug test; removing
530 provisions limiting the circumstances under which an
531 agency may discharge an employee in a special risk or
532 safety-sensitive position; providing that an agency
533 may discharge or discipline an employee following a
534 first-time positive confirmed drug test result;

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535 authorizing an agency to refer an employee to an
536 employee assistance program or an alcohol and drug
537 rehabilitation program if the employee is not
538 discharged; requiring participation in an employee
539 assistance program or an alcohol and drug
540 rehabilitation program at the employee's own expense;
541 requiring the employer to determine if the employee is
542 able to safely and effectively perform the job duties
543 assigned to the employee while the employee is
544 participating in the employee assistance program or
545 alcohol and drug rehabilitation program; deeming that
546 certain specified job activities cannot be performed
547 safely and effectively while the employee is
548 participating in the employee assistance program or
549 alcohol and drug rehabilitation program; requiring the
550 employer to transfer the employee to a job assignment
551 that he or she can perform safely and effectively
552 while the employee participates in the employee
553 assistance program or alcohol and drug rehabilitation
554 program; requiring the employer to place the employee
555 on leave status while the employee is participating in
556 an employee assistance program or an alcohol and drug
557 rehabilitation program if such a position is
558 unavailable; authorizing the employee to use
559 accumulated leave credits before being placed on leave
560 without pay; amending s. 440.102, F.S.; revising the
561 definition of the term "job applicant" as it pertains
562 to a public employer; removing the definition of the
563 term "safety-sensitive position" and replacing it with

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564 the definition for the term “mandatory-testing
565 position;” providing that an employer remains
566 qualified for an insurer rate plan that discounts
567 rates for workers’ compensation and employer’s
568 liability insurance policies if the employer maintains
569 a drug-free workplace program that is broader in scope
570 than that provided for by the standards and procedures
571 established in the act; authorizing a public employer,
572 using an unbiased selection procedure, to conduct
573 random drug tests of employees occupying mandatory-
574 testing or special-risk positions if the testing is
575 performed in accordance with drug-testing rules
576 adopted by the Agency for Health Care Administration;
577 requiring that a public sector employer assign a
578 public sector employee to a position other than a
579 mandatory-testing position if the employee enters an
580 employee assistance program or drug rehabilitation
581 program; amending s. 944.474, F.S.; revising
582 provisions governing employees of the state
583 correctional system, to conform to changes made by the
584 act; providing an effective date.

By the Committee on Governmental Oversight and Accountability; and Senator Hays

585-02798-12 20121358c1

A bill to be entitled

An act relating to employee drug testing; amending s. 112.0455, F.S.; removing the definition of the term "safety-sensitive position," redefining the term "job applicant," and defining the term "random testing" for purposes of the Drug-Free Workplace Act; authorizing an agency within state government to conduct random drug testing every 3 months; removing provisions prohibiting a state agency from discharging or disciplining an employee under certain circumstances based on the employee's first positive confirmed drug test; removing provisions limiting the circumstances under which an agency may discharge an employee in a special risk or safety-sensitive position; providing that an agency may discharge or discipline an employee following a first-time positive confirmed drug test result; authorizing an agency to refer an employee to an employee assistance program or an alcohol and drug rehabilitation program if the employee is not discharged; providing that participation in an employee assistance program or an alcohol and drug rehabilitation program may be at the employee's own expense or pursuant to a health insurance plan; requiring the employer to determine if the employee is able to safely and effectively perform the job duties assigned to the employee before the employee enters the employee assistance program or the alcohol and drug rehabilitation program; deeming that certain specified job activities cannot be performed safely

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585-02798-12 20121358c1

and effectively while the employee is participating in the employee assistance program or the alcohol and drug rehabilitation program; requiring the employer to transfer the employee to a job assignment that he or she can perform safely and effectively while the employee participates in the employee assistance program or the alcohol and drug rehabilitation program; requiring the employer to place the employee on leave status while the employee is participating in an employee assistance program or an alcohol and drug rehabilitation program if such a position is unavailable; authorizing the employee to use accumulated leave credits before being placed on leave without pay; amending s. 440.102, F.S.; revising the definition of the term "job applicant"; removing the definition of the term "safety-sensitive position" and replacing it with the definition for the term "mandatory-testing position"; providing that an employer remains qualified for an insurer rate plan that discounts rates for workers' compensation and employer's liability insurance policies if the employer maintains a drug-free workplace program that is broader in scope than that provided for by the standards and procedures established in the act; authorizing a public employer, using an unbiased selection procedure, to conduct random drug tests of employees occupying mandatory-testing or special-risk positions if the testing is performed in accordance with drug-testing rules adopted by the Agency for

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59 Health Care Administration; requiring that a public
60 sector employer assign a public sector employee to a
61 position other than a mandatory-testing position if
62 the employee enters an employee assistance program or
63 alcohol and drug rehabilitation program; removing
64 provisions related to collective bargaining rights for
65 nonfederal public sector employers; conforming cross-
66 references; amending s. 944.474, F.S.; revising
67 provisions governing employees of the state
68 correctional system, to conform to changes made by the
69 act; providing an effective date.
70
71 Be It Enacted by the Legislature of the State of Florida:
72
73 Section 1. Subsections (5), (7), and (8) and paragraphs
74 (h), (i), (j), and (k) of subsection (10) of section 112.0455,
75 Florida Statutes, are amended to read:
76 112.0455 Drug-Free Workplace Act.—
77 (5) DEFINITIONS.—Except where the context otherwise
78 requires, as used in this act:
79 (a) "Drug" means alcohol, including distilled spirits,
80 wine, malt beverages, and intoxicating liquors; amphetamines;
81 cannabinoids; cocaine; phencyclidine (PCP); hallucinogens;
82 methaqualone; opiates; barbiturates; benzodiazepines; synthetic
83 narcotics; designer drugs; or a metabolite of any of the
84 substances listed herein.
85 (b) "Drug test" or "test" means any chemical, biological,
86 or physical instrumental analysis administered for the purpose
87 of determining the presence or absence of a drug or its

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88 metabolites.
89 (c) "Initial drug test" means a sensitive, rapid, and
90 reliable procedure to identify negative and presumptive positive
91 specimens. All initial tests must ~~shall~~ use an immunoassay
92 procedure or an equivalent, or must ~~shall~~ use a more accurate
93 scientifically accepted method approved by the Agency for Health
94 Care Administration as ~~such~~ more accurate technology becomes
95 available in a cost-effective form.
96 (d) "Confirmation test," "confirmed test," or "confirmed
97 drug test" means a second analytical procedure used to identify
98 the presence of a specific drug or metabolite in a specimen. The
99 confirmation test must be different in scientific principle from
100 that of the initial test procedure. This confirmation method
101 must be capable of providing requisite specificity, sensitivity,
102 and quantitative accuracy.
103 (e) "Chain of custody" refers to the methodology of
104 tracking specified materials or substances for the purpose of
105 maintaining control and accountability from initial collection
106 to final disposition for all such materials or substances and
107 providing for accountability at each stage in handling, testing,
108 storing specimens, and reporting of test results.
109 (f) "Job applicant" means a person who has applied for a
110 ~~special risk or safety-sensitive~~ position with an employer and
111 has been offered employment conditioned upon successfully
112 passing a drug test.
113 (g) "Employee" means a ~~any~~ person who works for salary,
114 wages, or other remuneration for an employer.
115 (h) "Employer" means an ~~any~~ agency within state government
116 that employs individuals for salary, wages, or other

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117 remuneration.
118 (i) “Prescription or nonprescription medication” means a
119 drug or medication obtained pursuant to a prescription as
120 defined by s. 893.02 or a medication that is authorized pursuant
121 to federal or state law for general distribution and use without
122 a prescription in the treatment of human diseases, ailments, or
123 injuries.
124 (j) “Random testing” means a drug test conducted on
125 employees who are selected through the use of a computer-
126 generated random sample of an employer’s employees.
127 (k) ~~(j)~~ “Reasonable suspicion drug testing” means drug
128 testing based on a belief that an employee is using or has used
129 drugs in violation of the employer’s policy drawn from specific
130 objective and articulable facts and reasonable inferences drawn
131 from those facts in light of experience. Reasonable suspicion
132 drug testing may ~~shall~~ not be required except upon the
133 recommendation of a supervisor who is at least one level of
134 supervision higher than the immediate supervisor of the employee
135 in question. Among other things, such facts and inferences may
136 be based upon:
137 1. Observable phenomena while at work, such as direct
138 observation of drug use or of the physical symptoms or
139 manifestations of being under the influence of a drug.
140 2. Abnormal conduct or erratic behavior while at work or a
141 significant deterioration in work performance.
142 3. A report of drug use, provided by a reliable and
143 credible source, which has been independently corroborated.
144 4. Evidence that an individual has tampered with a drug
145 test during employment with the current employer.

146 5. Information that an employee has caused, or contributed
147 to, an accident while at work.
148 6. Evidence that an employee has used, possessed, sold,
149 solicited, or transferred drugs while working or while on the
150 employer’s premises or while operating the employer’s vehicle,
151 machinery, or equipment.
152 (l) ~~(k)~~ “Specimen” means a tissue, hair, or product of the
153 human body capable of revealing the presence of drugs or their
154 metabolites.
155 (m) ~~(l)~~ “Employee assistance program” means an established
156 program for employee assessment, counseling, and possible
157 referral to an alcohol and drug rehabilitation program.
158 ~~(m) “Safety-sensitive position” means any position,~~
159 ~~including a supervisory or management position, in which a drug~~
160 ~~impairment would constitute an immediate and direct threat to~~
161 ~~public health or safety.~~
162 (n) “Special risk” means employees who are required as a
163 condition of employment to be certified under chapter 633 or
164 chapter 943.
165 (7) TYPES OF TESTING.—An employer may conduct ~~is~~
166 ~~authorized~~, but is not required~~,~~ to conduct, the following types
167 of drug tests:
168 (a) *Job applicant testing.*—An employer may require job
169 applicants to submit to a drug test and may use a refusal to
170 submit to a drug test or a positive confirmed drug test as a
171 basis for refusal to hire the job applicant.
172 (b) *Reasonable suspicion.*—An employer may require an
173 employee to submit to reasonable suspicion drug testing.
174 (c) *Random testing.*—An employer may conduct random testing

175 once every 3 months. The random sample chosen for the testing
176 must be computer-generated by an independent third party. A
177 random sample may not constitute more than 10 percent of the
178 total employee population.
179 (d) ~~(c)~~ *Routine fitness for duty.*—An employer may require an
180 employee to submit to a drug test if the test is conducted as
181 part of a routinely scheduled employee fitness-for-duty medical
182 examination that is part of the employer's established policy or
183 that is scheduled routinely for all members of an employment
184 classification or group.
185 (e) ~~(d)~~ *Followup testing.*—If the employee in the course of
186 employment enters an employee assistance program for drug-
187 related problems, or an alcohol and drug rehabilitation program,
188 the employer may require the ~~said~~ employee to submit to a drug
189 test as a followup to such program, and on a quarterly,
190 semiannual, or annual basis for up to 2 years thereafter.
191 (8) PROCEDURES AND EMPLOYEE PROTECTION.—All specimen
192 collection and testing for drugs under this section shall be
193 performed in accordance with the following procedures:
194 (a) A sample shall be collected with due regard to the
195 privacy of the individual providing the sample, and in a manner
196 reasonably calculated to prevent substitution or contamination
197 of the sample.
198 (b) Specimen collection shall be documented, and the
199 documentation procedures shall include:
200 1. Labeling of specimen containers so as to reasonably
201 preclude the likelihood of erroneous identification of test
202 results.
203 2. A form for the employee or job applicant to provide any

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204 information he or she considers relevant to the test, including
205 identification of currently or recently used prescription or
206 nonprescription medication, or other relevant medical
207 information. Such form shall provide notice of the most common
208 medications by brand name or common name, as applicable, as well
209 as by chemical name, which may alter or affect a drug test. The
210 providing of information does ~~shall~~ not preclude the
211 administration of the drug test, but shall be taken into account
212 in interpreting any positive confirmed results.
213 (c) Specimen collection, storage, and transportation to the
214 testing site shall be performed in a manner that ~~which~~ will
215 reasonably preclude specimen contamination or adulteration.
216 (d) Each initial and confirmation test conducted under this
217 section, not including the taking or collecting of a specimen to
218 be tested, shall be conducted by a licensed laboratory as
219 described in subsection (12).
220 (e) A specimen for a drug test may be taken or collected by
221 any of the following persons:
222 1. A physician, a physician's assistant, a registered
223 professional nurse, a licensed practical nurse, a nurse
224 practitioner, or a certified paramedic who is present at the
225 scene of an accident for the purpose of rendering emergency
226 medical service or treatment.
227 2. A qualified person employed by a licensed laboratory.
228 (f) A person who collects or takes a specimen for a drug
229 test conducted pursuant to this section shall collect an amount
230 sufficient for two drug tests as determined by the Agency for
231 Health Care Administration.
232 (g) Any drug test conducted or requested by an employer may

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occur before, during, or immediately after the regular work period of the employee, and shall be deemed to be performed during work time for the purposes of determining compensation and benefits for the employee.

(h) Every specimen that produces a positive confirmed result shall be preserved by the licensed laboratory that conducts the confirmation test for a period of at least 210 days from the time the results of the positive confirmation test are mailed or otherwise delivered to the employer. However, if an employee or job applicant undertakes an administrative or legal challenge to the test result, the employee or job applicant shall notify the laboratory and the sample shall be retained by the laboratory until the case or administrative appeal is settled. During the 180-day period after written notification of a positive test result, the employee or job applicant who has provided the specimen shall be permitted by the employer to have a portion of the specimen retested, at the employee or job applicant's expense, at another laboratory, licensed and approved by the Agency for Health Care Administration, chosen by the employee or job applicant. The second laboratory must test at equal or greater sensitivity for the drug in question as the first laboratory. The first laboratory that ~~which~~ performed the test for the employer is ~~shall be~~ responsible for the transfer of the portion of the specimen to be retested, and for the integrity of the chain of custody during such transfer.

(i) Within 5 working days after receipt of a positive confirmed test result from the testing laboratory, an employer shall inform an employee or job applicant in writing of such positive test result, the consequences of such results, and the

options available to the employee or job applicant.

(j) The employer shall provide to the employee or job applicant, upon request, a copy of the test results.

(k) Within 5 working days after receiving notice of a positive confirmed test result, the employee or job applicant may submit information to an employer explaining or contesting the test results, and why the results do not constitute a violation of the employer's policy.

(l) If an employee or job applicant's explanation or challenge of the positive test results is unsatisfactory to the employer, a written explanation as to why the employee or job applicant's explanation is unsatisfactory, along with the report of positive results, shall be provided by the employer to the employee or job applicant. All such documentation shall be kept confidential and exempt from the provisions of s. 119.07(1) by the employer pursuant to subsection (11) and shall be retained by the employer for at least 1 year.

(m) An ~~No~~ employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test.

~~(n) In addition to the limitation under paragraph (m):~~

~~1. Except as provided in subparagraph 3., no employer may discharge, discipline, or discriminate against an employee on the sole basis of the employee's first positive confirmed drug test, unless the employer has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under a health insurance plan, an employee assistance program or an alcohol and drug rehabilitation~~

291 ~~program, and:~~
292 ~~a. The employee has either refused to participate in the~~
293 ~~employee assistance program or the alcohol and drug~~
294 ~~rehabilitation program or has failed to successfully complete~~
295 ~~such program, as evidenced by withdrawal from the program before~~
296 ~~its completion or a report from the program indicating~~
297 ~~unsatisfactory compliance, or by a positive test result on a~~
298 ~~confirmation test after completion of the program; or~~
299 ~~b. The employee has failed or refused to sign a written~~
300 ~~consent form allowing the employer to obtain information~~
301 ~~regarding the progress and successful completion of an employee~~
302 ~~assistance program or an alcohol and drug rehabilitation~~
303 ~~program.~~
304 ~~2. An employee in a safety-sensitive position shall be~~
305 ~~placed by the employer in a non-safety-sensitive position, or if~~
306 ~~such position is unavailable, on leave status while~~
307 ~~participating in an employee assistance program or an alcohol~~
308 ~~and drug rehabilitation program. If placed on leave status~~
309 ~~without pay, the employee shall be permitted to use any~~
310 ~~accumulated leave credits prior to being placed on leave without~~
311 ~~pay.~~
312 ~~3. A special risk employee may be discharged or disciplined~~
313 ~~for the first positive confirmed drug test result when illicit~~
314 ~~drugs, pursuant to s. 893.13, are confirmed. No special risk~~
315 ~~employee shall be permitted to continue work in a safety-~~
316 ~~sensitive position, but may be placed either in a non-safety-~~
317 ~~sensitive position or on leave status while participating in an~~
318 ~~employee assistance program or an alcohol and drug~~
319 ~~rehabilitation program.~~

320 (n) ~~(o)~~ Upon successful completion of an employee assistance
321 program or an alcohol and drug rehabilitation program, the
322 employee shall be reinstated to the same or equivalent position
323 that was held prior to such rehabilitation.
324 (o) ~~(p)~~ An ~~No~~ employer may not discharge, discipline, or
325 discriminate against an employee, or refuse to hire a job
326 applicant, on the basis of any prior medical history revealed to
327 the employer pursuant to this section.
328 (p) ~~(q)~~ An employer who performs drug testing or specimen
329 collection shall use chain-of-custody procedures as established
330 by the Agency for Health Care Administration to ensure proper
331 recordkeeping, handling, labeling, and identification of all
332 specimens to be tested.
333 (q) ~~(r)~~ An employer shall pay the cost of all drug tests,
334 initial and confirmation, which the employer requires of
335 employees.
336 (r) ~~(s)~~ An employee or job applicant shall pay the costs of
337 any additional drug tests not required by the employer.
338 (s) ~~(t)~~ An ~~No~~ employer may not ~~shall~~ discharge, discipline,
339 or discriminate against an employee solely upon voluntarily
340 seeking treatment, while under the employ of the employer, for a
341 drug-related problem if the employee has not previously tested
342 positive for drug use, entered an employee assistance program
343 for drug-related problems, or entered an alcohol and drug
344 rehabilitation program. However, special risk employees may be
345 subject to discharge or disciplinary action when the presence of
346 illicit drugs, pursuant to s. 893.13, is confirmed.
347 (t) ~~(u)~~ If ~~Where~~ testing is conducted based on reasonable
348 suspicion, each employer shall promptly detail in writing the

349 circumstances which formed the basis of the determination that
350 reasonable suspicion existed to warrant the testing. A copy of
351 this documentation shall be given to the employee upon request
352 and the original documentation shall be kept confidential and
353 exempt from the provisions of s. 119.07(1) by the employer
354 pursuant to subsection (11) and retained by the employer for at
355 least 1 year.
356 (u) ~~(v)~~ If an employee is unable to participate in
357 outpatient rehabilitation, the employee may be placed on leave
358 status while participating in an employee assistance program or
359 an alcohol and drug rehabilitation program. If placed on leave-
360 without-pay status, the employee shall be permitted to use any
361 accumulated leave credits prior to being placed on leave without
362 pay. Upon successful completion of an employee assistance
363 program or an alcohol and drug rehabilitation program, the
364 employee shall be reinstated to the same or equivalent position
365 that was held prior to such rehabilitation.
366 (10) EMPLOYER PROTECTION.—
367 (h) An employer may discharge or discipline ~~shall refer~~ an
368 employee following ~~with~~ a first-time positive confirmed drug
369 test result. If the employer does not discharge the employee,
370 the employer may refer the employee to an employee assistance
371 program or an alcohol and drug rehabilitation program in which
372 the employee may participate at the expense of the employee or
373 pursuant to a health insurance plan~~, unless such employee is~~
374 ~~discharged as provided in subparagraph (8)(n)3. If the results~~
375 ~~of a subsequent confirmed drug test are positive, the employer~~
376 ~~may discharge or discipline the employee~~.
377 1. If an employer refers an employee to an employee

378 assistance program or an alcohol and drug rehabilitation
379 program, the employer must determine whether the employee is
380 able to safely and effectively perform the job duties assigned
381 to the employee while the employee participates in such a
382 program.
383 2. An employee whose assigned duties require the employee
384 to carry a firearm, work closely with an employee who carries a
385 firearm, perform life-threatening procedures, work with heavy or
386 dangerous machinery, work as a safety inspector, work with
387 children, work with detainees in the correctional system, work
388 with confidential information or documents pertaining to
389 criminal investigations, work with controlled substances, hold a
390 position subject to s. 110.1127, or hold a position in which a
391 momentary lapse in attention could result in injury or death to
392 another person, is deemed unable to safely and effectively
393 perform the job duties assigned to the employee while the
394 employee participates in the employee assistance program or
395 alcohol and drug rehabilitation program.
396 3. If an employer refers an employee to an employee
397 assistance program or an alcohol and drug rehabilitation program
398 and the employer determines that the employee is unable, or the
399 employee is deemed unable, to safely and effectively perform the
400 job duties assigned to the employee before he or she completes
401 such a program, the employer shall place the employee in a job
402 assignment that the employer determines the employee can safely
403 and effectively perform while participating in the program.
404 4. If a job assignment in which the employee may safely and
405 effectively perform is unavailable, the employer shall place the
406 employee on leave status while the employee is participating in

407 an employee assistance program or an alcohol and drug
408 rehabilitation program. If placed on leave status without pay,
409 the employee may use accumulated leave credits before being
410 placed on leave without pay.
411 (i) ~~Nothing in~~ This section does not ~~shall be construed to~~
412 prohibit an employer from conducting medical screening or other
413 tests required by any statute, rule, or regulation for the
414 purpose of monitoring exposure of employees to toxic or other
415 unhealthy substances in the workplace or in the performance of
416 job responsibilities. Such screening or tests shall be limited
417 to the specific substances expressly identified in the
418 applicable statute, rule, or regulation, unless prior written
419 consent of the employee is obtained for other tests.
420 ~~(j) An employer shall place a safety-sensitive position~~
421 ~~employee whose drug test result is confirmed positive in a non-~~
422 ~~safety-sensitive position, or if such a position is unavailable,~~
423 ~~on leave status while the employee participates in an employee~~
424 ~~assistance program or an alcohol and drug rehabilitation~~
425 ~~program. If placed on leave status without pay, the employee~~
426 ~~shall be permitted to use any accumulated leave credits prior to~~
427 ~~being placed on leave without pay.~~
428 ~~(k) A special risk employee may be discharged or~~
429 ~~disciplined on the first positive confirmed drug test result~~
430 ~~when illicit drugs, pursuant to s. 893.13, are confirmed. No~~
431 ~~special risk employee shall be permitted to continue work in a~~
432 ~~safety sensitive position, but may be placed either in a non-~~
433 ~~safety-sensitive position or on leave status while participating~~
434 ~~in an employee assistance program or an alcohol and drug~~
435 ~~rehabilitation program.~~

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

436 Section 2. Paragraphs (j) and (o) of subsection (1),
437 subsection (2), paragraph (g) of subsection (7), and subsections
438 (11), (13), (14), and (15) of section 440.102, Florida Statutes,
439 are amended to read:
440 440.102 Drug-free workplace program requirements.—The
441 following provisions apply to a drug-free workplace program
442 implemented pursuant to law or to rules adopted by the Agency
443 for Health Care Administration:
444 (1) DEFINITIONS.—Except where the context otherwise
445 requires, as used in this act:
446 (j) "Job applicant" means a person who has applied for a
447 position with an employer and has been offered employment
448 conditioned upon successfully passing a drug test, and may have
449 begun work pending the results of the drug test. For a public
450 employer, "job applicant" means only a person who has applied
451 for a special-risk or mandatory-testing ~~safety-sensitive~~
452 position.
453 (o) "Mandatory-testing position" means, with respect to a
454 public employer, a job assignment that requires the employee to
455 carry a firearm, work closely with an employee who carries a
456 firearm, perform life-threatening procedures, work with heavy or
457 dangerous machinery, work as a safety inspector, work with
458 children, work with detainees in the correctional system, work
459 with confidential information or documents pertaining to
460 criminal investigations, or work with controlled substances; a
461 job assignment that requires an employee security background
462 check pursuant to s. 110.1127; or a job assignment in which a
463 momentary lapse in attention could result in injury or death to
464 another person ~~"Safety-sensitive position" means, with respect~~

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

465 ~~to a public employer, a position in which a drug impairment~~
466 ~~constitutes an immediate and direct threat to public health or~~
467 ~~safety, such as a position that requires the employee to carry a~~
468 ~~firearm, perform life-threatening procedures, work with~~
469 ~~confidential information or documents pertaining to criminal~~
470 ~~investigations, or work with controlled substances; a position~~
471 ~~subject to s. 110.1127; or a position in which a momentary lapse~~
472 ~~in attention could result in injury or death to another person~~.
473 (2) DRUG TESTING.—An employer may test an employee or job
474 applicant for any drug described in paragraph (1)(c). In order
475 to qualify as having established a drug-free workplace program
476 under this section and to qualify for the discounts provided
477 under s. 627.0915 and deny medical and indemnity benefits under
478 this chapter, an employer must, at a minimum, implement drug
479 testing that conforms to the standards and procedures
480 established in this section and all applicable rules adopted
481 pursuant to this section as required in subsection (4). However,
482 an employer does not have a legal duty under this section to
483 request an employee or job applicant to undergo drug testing. If
484 an employer fails to maintain a drug-free workplace program in
485 accordance with the standards and procedures established in this
486 section and in applicable rules, the employer is ineligible for
487 discounts under s. 627.0915. However, an employer qualifies for
488 discounts under s. 627.0915 if the employer maintains a drug-
489 free workplace program that is broader in scope than that
490 provided for by the standards and procedures established in this
491 section. An employer who qualifies ~~All employers qualifying~~ for
492 and receives ~~receiving~~ discounts provided under s. 627.0915 must
493 be reported annually by the insurer to the department.

494 (7) EMPLOYER PROTECTION.—
495 (g) This section does not prohibit an employer from
496 conducting medical screening or other tests required, permitted,
497 or not disallowed by any statute, rule, or regulation for the
498 purpose of monitoring exposure of employees to toxic or other
499 unhealthy substances in the workplace or in the performance of
500 job responsibilities. Such screening or testing is limited to
501 the specific substances expressly identified in the applicable
502 statute, rule, or regulation, unless prior written consent of
503 the employee is obtained for other tests. Such screening or
504 testing need not be in compliance with the rules adopted by the
505 Agency for Health Care Administration under this chapter or
506 under s. 112.0455. A public employer may, through the use of an
507 unbiased selection procedure, conduct random drug tests of
508 employees occupying mandatory-testing ~~safety-sensitive~~ or
509 special-risk positions if the testing is performed in accordance
510 with drug-testing rules adopted by the Agency for Health Care
511 Administration and the department. ~~If applicable, random drug~~
512 ~~testing must be specified in a collective bargaining agreement~~
513 ~~as negotiated by the appropriate certified bargaining agent~~
514 ~~before such testing is implemented.~~
515 (11) PUBLIC EMPLOYEES IN MANDATORY-TESTING ~~SAFETY-SENSITIVE~~
516 OR SPECIAL-RISK POSITIONS.—
517 (a) If an employee who is employed by a public employer in
518 a mandatory-testing ~~safety-sensitive~~ position enters an employee
519 assistance program or drug rehabilitation program, the employer
520 must assign the employee to a position other than a mandatory-
521 testing ~~safety-sensitive~~ position or, if such position is not
522 available, place the employee on leave while the employee is

523 participating in the program. However, the employee shall be
524 permitted to use any accumulated annual leave credits before
525 leave may be ordered without pay.
526 (b) An employee who is employed by a public employer in a
527 special-risk position may be discharged or disciplined by a
528 public employer for the first positive confirmed test result if
529 the drug confirmed is an illicit drug under s. 893.03. A
530 special-risk employee who is participating in an employee
531 assistance program or drug rehabilitation program may not be
532 allowed to continue to work in any special-risk or mandatory-
533 testing ~~safety-sensitive~~ position of the public employer, but
534 may be assigned to a position other than a mandatory-testing
535 ~~safety-sensitive~~ position or placed on leave while the employee
536 is participating in the program. However, the employee shall be
537 permitted to use any accumulated annual leave credits before
538 leave may be ordered without pay.
539 ~~(13) COLLECTIVE BARGAINING RIGHTS.—~~
540 ~~(a) This section does not eliminate the bargainable rights~~
541 ~~as provided in the collective bargaining process if applicable.~~
542 ~~(b) Drug-free workplace program requirements pursuant to~~
543 ~~this section shall be a mandatory topic of negotiations with any~~
544 ~~certified collective bargaining agent for nonfederal public~~
545 ~~sector employers that operate under a collective bargaining~~
546 ~~agreement.~~
547 (13) ~~(14)~~ APPLICABILITY.—A drug testing policy or procedure
548 adopted by an employer pursuant to this chapter shall be applied
549 equally to all employee classifications where the employee is
550 subject to workers' compensation coverage.
551 (14) ~~(15)~~ STATE CONSTRUCTION CONTRACTS.—Each construction

552 contractor regulated under part I of chapter 489, and each
553 electrical contractor and alarm system contractor regulated
554 under part II of chapter 489, who contracts to perform
555 construction work under a state contract for educational
556 facilities governed by chapter 1013, for public property or
557 publicly owned buildings governed by chapter 255, or for state
558 correctional facilities governed by chapter 944 shall implement
559 a drug-free workplace program under this section.
560 Section 3. Section 944.474, Florida Statutes, is amended to
561 read:
562 944.474 Legislative intent; employee wellness program; drug
563 and alcohol testing.—
564 (1) It is the intent of the Legislature that the state
565 correctional system provide a safe and secure environment for
566 both inmates and staff. A healthy workforce is a productive
567 workforce, and security of the state correctional system can
568 best be provided by strong and healthy employees. The Department
569 of Corrections may develop and implement an employee wellness
570 program. The program may include, but is not limited to,
571 wellness education, smoking cessation, nutritional education,
572 and overall health-risk reduction, including the effects of
573 using drugs and alcohol.
574 (2) An employee ~~Under no circumstances shall employees~~ of
575 the department may not test positive for illegal use of
576 controlled substances. An employee of the department may not be
577 under the influence of alcohol while on duty. In order to ensure
578 that these prohibitions are adhered to by all employees of the
579 department and notwithstanding s. 112.0455, the department may
580 develop a program for the drug testing of all job applicants and

581 for the random drug testing of all employees. The department may
582 randomly evaluate employees for the contemporaneous use or
583 influence of alcohol through the use of alcohol tests and
584 observation methods. Notwithstanding s. 112.0455, the department
585 may develop a program for the reasonable suspicion drug testing
586 of employees who are in mandatory-testing ~~safety-sensitive~~ or
587 special risk positions, as defined in s. 112.0455(5) or s.
588 440.102(1)(o), respectively, for the controlled substances
589 listed in s. 893.03(3)(d). The reasonable suspicion drug testing
590 authorized by this subsection shall be conducted in accordance
591 with s. 112.0455, but may also include testing upon reasonable
592 suspicion based on violent acts or violent behavior of an
593 employee who is on or off duty. The department shall adopt rules
594 pursuant to ss. 120.536(1) and 120.54 that are necessary to
595 administer this subsection.
596 Section 4. This act shall take effect July 1, 2012.

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

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/28/12
Date

1358
Bill Number

Barcode

Name Kathy Pogas

Phone

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Street

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Ormond Beach FL 32176
City State Zip

Job Title

Speaking: ☐ For ☑ Against ☐ Information

Appearing at request of Chair ☐

Subject EMPLOYEE DRUG TESTING

Representing SELF

Lobbyist registered with Legislature: ☐ Yes ☐ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/28/12
Date

SB 1358
Bill Number

Barcode

Name RON BILBAO

Phone 919-923-7288

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E-mail rbilbao@aclufl.org

Miami FL 33137
City State Zip

Job Title Sr. Legislative Associate

Speaking: ☐ For ☑ Against ☐ Information

Appearing at request of Chair ☐

Subject Employee Drug Testing

Representing ACLU of FLORIDA

Lobbyist registered with Legislature: ☑ Yes ☐ No

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If designated employee: Time: from _____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/28/12
Date

1358
Bill Number

Barcode

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Address 135 S. Monroe
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Tallahassee FL 32301
City State Zip

Job Title

Speaking: ☐ For ☒ Against ☐ Information

Appearing at request of Chair ☐

Subject Mandatory Drug Testing

Representing Florida AFL-CIO

Lobbyist registered with Legislature: ☒ Yes ☐ No

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If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2-28-12
Date

1358
Bill Number

Barcode

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City *State* *Zip*

Job Title

Speaking: ☐ For ☒ Against ☐ Information

Appearing at request of Chair ☐

Subject Drug fees tax

Representing SELF

Lobbyist registered with Legislature: ☐ Yes ☒ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/28/12
Date

SB 858
Bill Number

Barcode

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Orl FL 32801
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Job Title

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Appearing at request of Chair ☐

Subject Employee Drug Testing

Representing Self

Lobbyist registered with Legislature: ☐ Yes ☒ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/28/12
Date

SB 1358
Bill Number

Barcode

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Job Title

Speaking: ☐ For ☑ Against ☐ Information

Appearing at request of Chair ☐

Subject Employee Drug Testing

Representing Self

Lobbyist registered with Legislature: ☐ Yes ☑ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from ____ ___ .m. to ____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2-28-12
Date

SB 1358
Bill Number

Barcode

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Job Title Teacher

Speaking: ☐ For ☒ Against ☐ Information

Appearing at request of Chair ☐

Subject Employee Drug Testing

Representing Self

Lobbyist registered with Legislature: ☐ Yes ☒ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2-28-2012
Date

SB 1358
Bill Number

Barcode

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Job Title Physical Ed. Teacher

Speaking: ☐ For ☒ Against ☐ Information

Appearing at request of Chair ☐

Subject Employee Drug Testing

Representing SeFA & USEP - Pasco County Teachers

Lobbyist registered with Legislature: ☐ Yes ☐ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

02-28-12
Date

1358
Bill Number

Barcode

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Job Title CODE COMPLIANCE OFFICIAL

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Appearing at request of Chair ☐

Subject

Representing SELF

Lobbyist registered with Legislature: ☐ Yes ☑ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from ____ ___.m. to ____ ___.m.

S-001 (04/14/10)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/29/12
Date

1358
Bill Number

Barcode

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PORT ST. LUCIE, FL. 34984
City State Zip

Job Title

Speaking: ☐ For ☑ Against ☐ Information

Appearing at request of Chair ☐

Subject

Representing SELF

Lobbyist registered with Legislature: ☐ Yes ☑ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from ____ ___.m. to ____ ___.m.

S-001 (04/14/10)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/SB 1568

INTRODUCER: Community Affairs Committee; Health Regulation Committee; and Senators Gaetz and Garcia

SUBJECT: Sale or Lease of County, District, or Municipal Hospital

DATE: February 27, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	**Fav/CS**
2.	Toman	Yeatman	CA	**Fav/CS**
3.	Betta	DeLoach	BGA	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The committee substitute (CS/CS) requires any sale or lease of a public hospital that is owned by a county, district, or municipality to be approved by the Chief Financial Officer (CFO) of Florida, unless a majority vote of the registered voters within that county, district, or municipality, is required by law.

Unless exempted, the governing board of a public hospital must, within 60 calendar days after one of six triggering conditions, commence evaluation of the possible benefits to an affected community from the sale or lease of the hospital. Within 160 days of the initiation of an evaluation, the governing board must publish its findings related to the evaluation process.

The CS/CS also provides that prior to the sale or lease, the governing board of the public hospital must provide public notice of the proposed transaction, publish documents associated with the transaction, and publish the governing board's findings regarding the proposed sale or lease. A procedure for allocating the costs associated with an evaluation is outlined. The CS/CS also provides the process of review of the sale or lease to be conducted by the CFO prior to approval or rejection of the sale or lease.

The CS/CS provides for the appeal of the CFO's decision by the governing board or an interested party.

The CS/CS allocates net proceeds received from the sale or lease of a county, district, or municipal hospital and ad valorem tax revenue collected when a public hospital is sold or leased to a for-profit corporation or other business entity subject to local taxation.

The CS/CS exempts a lease modification, renewal, or extension relating to a hospital that was leased prior to the CS/CS becoming a law, from the evaluation, public disclosure, or approval processes, or net proceeds or tax revenue allocations provided for in the CS/CS. The CS/CS also exempts the sale or lease of any hospital property that generates less than a certain amount of revenue from these processes and allocations.

The CS/CS also provides that, despite any other provision of general or special law, the purposes for which a special taxing district may appropriate funds from the sale or lease of a hospital to an economic development fund include the promotion and support of health care business development or research in the district and in the county in which the district is located.

The CS/CS will take effect upon becoming a law.

This CS/CS amends sections 155.40 and 395.3036, Florida Statutes.

This CS/CS creates section 155.401, Florida Statutes.

The CS/CS creates an undesignated section of Florida Statutes.

II. Present Situation:

Sale or Lease of Public Hospitals

County, district, and municipal hospitals may be created by special enabling acts, rather than by general acts under Florida law.[1] The special act may specify the hospital's ability or inability to levy taxes to support the maintenance of the hospital, the framework for the governing board, and whether or not the governing board has the ability to issue bonds. There are currently 34 hospital districts in Florida under which public hospitals operate,[2] and the Public Health Trust of Miami-Dade County, which is not a special hospital district but is a part of county government.[3]

---

[1] Section 155.04, F.S., allows a county, upon receipt of a petition signed by at least 5 percent of resident freeholders, to levy an ad valorem tax or issue bonds to pay for the establishment and maintenance of a hospital. Section 155.05, F.S., gives a county the ability to establish a hospital without raising bonds or an ad valorem tax, utilizing available discretionary funds. However, an ad valorem tax can be levied for the ongoing maintenance of the hospital.

[2] *See* Agency for Health Care Administration, Florida Commission on Review of Taxpayer Funded Hospital Districts, *Hospital Tax District Survey Data*, for a list of taxpayer funded hospital districts, available at: http://ahca.myflorida.com/mchq/FCTFH/hospitalNEW.shtml (Last visited on January 17, 2012).

[3] Commission on Review of Taxpayer Funded Hospital Districts, *Report of the Commission on Review of Taxpayer Funded Hospital Districts,* pg. 8, available at: http://ahca.myflorida.com/mchq/FCTFH/pdf/122911Meeting/FinalReportRF2.pdf (Last visited on January 17, 2012).

The process for the sale or lease of a public hospital is established by s. 155.40, F.S. Currently, the governing board of a public hospital has the authority to negotiate the sale or lease of the hospital. The hospital can be sold or leased to a for-profit or not-for-profit Florida corporation and such sale or lease must be in the best interest of the public. The board is required to publicly advertise the meeting at which the proposed sale or lease will be discussed in accordance with s. 286.0105, F.S., and the offer to accept proposals from all interested and qualified purchasers in accordance with s. 255.0525, F.S.

Section 155.40(2), F.S., requires any lease, contract, or agreement to:

- Provide that the articles of incorporation of the corporation are subject to approval of the board of directors or board of trustees of the hospital.
- Require that any not-for-profit corporation become qualified under s. 501(c)(3) of the U.S. Internal Revenue Code.
- Provide for the orderly transition of the operation and management of the facilities.
- Provide for the return of the facility to the county, municipality, or district upon the termination of the lease, contract, or agreement.
- Provide for the continued treatment of indigent patients pursuant to the Florida Health Care Responsibility Act[4] and ch. 87-92, Laws of Florida.

For the sale or lease to be considered "a complete sale of the public agency's interest in the hospital" under s. 155.40(8)(a), F.S., the purchasing private entity must:

- Acquire 100 percent ownership of the hospital enterprise.
- Purchase the physical plant of the hospital facility and have complete responsibility for the operation and maintenance of the facility, regardless of the underlying ownership of the real property.
- Not allow the public agency to retain control over decision-making or policymaking for the hospital.
- Not receive public funding, other than by contract for services rendered to patients for whom the public agency seller has the responsibility to pay for hospital or medical care.
- Not receive substantial investment or loans from the seller.
- Not be created by the public agency seller.
- Primarily operate for its own financial interests and not those of the public agency seller.

A complete sale of the public agency's interest under s. 155.40(8)(b), F.S., shall not be construed as:

- A transfer of governmental function from the county, district, or municipality to a private corporation or entity.
- A financial interest of the public agency in the private corporation or other private entity purchaser.
- Making the private corporation or other private entity purchaser an "agency" as that term is used in statute.
- Making the private entity an integral part of the public agency's decision-making process.
- Indicating that the private entity is "acting on behalf of a public agency," as that term is used in statute.

[4] Sections 154.301-154.316, F.S.

If the corporation that operates a hospital receives more than $100,000 in revenues from the county, district, or municipality, it must account for the manner in which the funds are expended.[5] The funds are to be expended by being subject to annual appropriations by the county, district, or municipality, or if there is a contract for 12 months or longer to provide revenues to the hospital, then the governing board of the county, district, or municipality must be able to modify the contract upon 12 months notice to the hospital.[6]

Recent Leases or Sales of Public Hospitals

The public hospital Bert Fish Medical Center entered into a controversial $80 million lease agreement with Adventist Health System, which was nullified by Circuit Court Judge Richard Graham because of 21 closed-door meetings that occurred during the negotiation process and violated Florida's Sunshine Law under s. 286.011, F.S.[7]

Other leases or sales or proposed leases or sales of public hospitals have been scrutinized, especially for the effect such sales or leases would have on taxpayers. For example, Helen Ellis Hospital was merged with Adventist Health in 2010, and there have been proposals to turn public hospital systems in Miami-Dade County and Broward County into private hospitals.[8]

Florida Commission on Review of Taxpayer Funded Hospital Districts

On March 23, 2011, Governor Rick Scott issued Executive Order Number 11-63, which created the Florida Commission on Review of Taxpayer Funded Hospital Districts (Commission). The Commission was created to assess and make recommendations on the role of hospital districts, whether it is in the public's best interest to have government entities operating hospitals, and what is the most effective model for enhancing health-care access for the poor.

The Commission held 14 public meetings between May 23 and December 29, 2011, at which stakeholders, government officials, and taxpayers gave testimony and made presentations. The Commission also surveyed all Florida hospital districts. Based on the presentations, testimony, and the survey responses, the Commission made several recommendations in the Report of the Commission on Review of Taxpayer Funded Hospital Districts.[9]

The Commission's general recommendations include the following:[10]

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[5] Section 155.40(5), F.S.
[6] *Id.*
[7] Linda Shrieves, *Judge rules Bert Fish must cut ties with Florida Hospital*, Orlando Sentinel, February 24, 2011, available at: http://articles.orlandosentinel.com/2011-02-24/health/os-bert-fish-decision-20110224_1_sunshine-laws-open-meetings-hospital-board (Last visited January 17, 2012).
[8] Anne Geggis, *Bills reflect problems at Bert Fish*, Daytona Beach News-Journal, March 8, 2011, available at: http://www.news-journalonline.com/news/local/southeast-volusia/2011/03/08/bills-reflect-problems-at-bert-fish.html (Last visited January 17, 2012).
[9] Commission on Review of Taxpayer Funded Hospital Districts, *Report of the Commission on Review of Taxpayer Funded Hospital Districts*, pg. 1, available at: http://ahca.myflorida.com/mchq/FCTFH/pdf/122911Meeting/FinalReportRF2.pdf (Last visited on January 17, 2012).
[10] *Id.* at 3.

- The Governor and other appointing authorities should appoint qualified individuals to district and hospital boards who do not have conflicts of interest.
- Board members should include health care stakeholders and members of the local community who have financial expertise and experience operating successful, larger enterprises.
- To ensure appropriate checks and balances, the membership of district and hospital boards should be separate and distinct.
- To ensure appropriate checks and balances the membership of hospital board members and hospital managers should be separate and distinct.
- Special hospital districts should become indigent health care districts, funding indigent health care based on local priorities and not limited to hospitals owned or operated by the districts. As a part of the transition to indigent health care districts, hospital districts that own hospitals should de-couple them from the districts.
- When considering changes to taxation rates, millage rates should be adjustable with a maximum allowable rate, but with the flexibility to lower the rate if circumstances change.
- Boards of directors of hospital districts should be subject to appropriate oversight.

Furthermore, to correspond with the directives in the Governor's executive order, the Commission made several comments and recommendations regarding quality of care, cost of care, access to care for the poor, oversight and accountability, physician employment, and changes of ownership and governance in taxpayer funded hospitals.[11] Those comments and recommendations, pertaining to the sale or lease of taxpayer funded hospitals, are as follows:

- Using the available outcome data, the Commission could not establish that there is a pattern of higher or lower quality in Florida hospitals based on ownership. The Governor and Legislature should support the Agency for Health Care Administration (AHCA) in its effort to continue to refine and publish data on outcomes and quality by hospital and health care facility.
- An open, competitive public procurement process or negotiation should be ensured.
- A fair and independent asset valuation process should be ensured during a sale or lease.
- Guidelines should be established to ensure an ongoing community benefit from any proceeds generated by the sale of a hospital.
- Without inhibiting the functioning of a free market, independent oversight of a sale or lease process should be maintained with review by an appropriate authority.
- The maintenance and/or expansion of community health programs should be required if there is a sale or lease, with an emphasis on primary care and emergency room diversion.

Chief Financial Officer of Florida

Florida's Chief Financial Officer (CFO) oversees the state's accounting and auditing functions and unclaimed property, monitors the investment of state funds, and manages the deferred compensation program and risk management program for the state.[12]

Florida's CFO serves as one of three constitutionally elected state executives of the Florida Cabinet, which consists of the Chief Financial Officer, the Attorney General, and the

[11] *Id.* at 4-5.
[12] Florida Department of Financial Services, Jeff Atwater, Chief Financial Officer, *Meet the CFO*, available at: http://www.myfloridacfo.com/sitepages/agency/cfo.aspx (Last visited on January 17, 2012).

Commissioner of Agriculture and Consumer Services. The Governor and the Cabinet serve as a board of directors, or agency heads, governing such matters as the purchase of state lands; clemency matters; state bond, trust and fund management; veterans' affairs; state law enforcement administration; tax collection; power plant and transmission line sitings; and financial and insurance regulation for the state of Florida.[13]

Superseding or Prohibiting Local Law by General Law

The rule of statutory construction is that specific provisions prevail over general provisions.[14] Therefore, local laws prevail over inconsistent general laws. General laws may be drafted to supersede prior local laws by using the phrase "notwithstanding any provision of local law." This phrase applies only to local laws existing when the general law takes effect and does not prevent later inconsistent local laws from again superseding the general law.[15]

III. Effect of Proposed Changes:

Section 1 amends s. 155.40, F.S., to require the governing board of a county, district, or municipal hospital to find that a sale, lease, or contract is in the best interests of the "affected community," rather than the public and requires the board to state the basis of that finding notwithstanding any other provision of general or special law. "Affected community" is defined in this section to mean those persons residing within the geographic boundaries defined by the charter of the county, district, or municipal hospital, or if the boundaries are not specifically defined by charter of the hospital, by the geographic area from which 75 percent of the county, district, or municipal hospital's inpatient admissions are derived.

Subsection (3) of this section exempts any lease modification, renewal, or extension relating to a lease transaction that occurs before the CS/CS becomes a law from the provisions of the CS/CS if a governing board elects to consider a sale or lease of a hospital or health care system to a third party.

Subsection (4) of this section provides a number of definitions including:

- "Expression of interest" means a bona fide request from a for-profit or not-for-profit entity that is a qualified purchaser or lessee to the board of directors of a county, district, or municipal hospital to enter into negotiations to sell or lease the hospital or health care system on commercially reasonable terms.
- "Increase tax support" means a vote to increase ad valorem or other taxes that are used to support operations of the hospital or health care system or any vote to allow the ad valorem tax rate to remain the same in any year in which property values in the taxing district have increased on the average, resulting in an increase in ad valorem tax revenues to the hospital.
- "Net operating expenses" means the total operating expenses of the hospital, excluding depreciation, interest, taxes, amortization, and nonoperating expenses.
- "Net operating revenues" has the same meaning as provided in s. 395.701(1). The term does not include restricted donations and grants for indigent care or nonoperating revenues, including, but not limited to, local unrestricted tax revenues and appropriated funds from

[13] *Id.*
[14] Fla. Senate, *Manual for Drafting Legislation*, 130 (6th ed. 2009)
[15] *Id.*

state and local governments or any other type of tax support, gain or loss from the sale of assets, or unrestricted contributions.

- "Qualified purchaser or lessee" means an entity that demonstrates access to capital in an amount equal to or in excess of 25 percent of the net revenue generated in the immediately preceding fiscal year of the hospital or health care system that is the subject of the sale or lease. Such access to capital can be demonstrated by cash reserves, an existing line of credit, or a binding commitment to obtain a line of credit to finance the purchase in an amount that equals or exceeds 25 percent of the net revenue generated by the hospital or health care system.

Subsection (5) of this section requires the hospital governing board, within 60 calendar days after any of six possible triggering events, to commence an evaluation of the possible benefits to an affected community from the sale or lease of hospital facilities owned by the board to a nonprofit or for-profit entity. The six possible triggering events are:

1. The county, district, or municipal hospital or health care system receives a bona fide expression of interest by a qualified purchaser or lessee to buy or lease the county, district, or municipal hospital or health care system.
2. The governing board of a county, district, or municipal hospital votes to increase the amount of tax support for the hospital or health care system.
3. The county, district, or municipal hospital or health care system experiences operating deficits that result in net operating expenses that exceed net operating revenues by ten percent or more for three consecutive years.
4. The county, district, or municipal hospital or health care system has had administrative complaint proceedings initiated against it by the Agency for Health Care Administration for licensure violations under chapter 395 in three consecutive years.
5. The county, district, or municipal hospital or health care system has been declared ineligible to participate in the Medicare or Medicaid program.
6. The county, district, or municipal hospital or health care system fails to achieve or loses accreditation by the Joint Commission on Accreditation of Healthcare Organizations.

During the evaluation the board must:

- Conduct a public hearing to provide interested persons the opportunity to be heard on the matter.
- Publish notice of the public hearing in one or more newspapers of general circulation in the county in which the majority of the physical assets of the hospital are located and in the Florida Administrative Weekly at least 15 days before the hearing is scheduled to occur.
- Contract with a certified public accounting firm or other firm that has substantial expertise in the valuation of hospitals to render an independent valuation of the hospital's "fair market value," which is defined in this section as the price that a seller or lessee is willing to accept and a buyer or lessee is willing to pay on the open market and in an arms-length transaction, or what an independent expert in hospital valuation determines the fair market value to be. The fair market valuation shall be valid for a period of 12 months, unless there are material financial changes in the hospital's financial condition as determined by the certified public accounting firm, the Agency for Health Care Administration, or the Auditor General. The firm chosen by the board must be agreeable to the qualified purchaser or lessee and the hospital or health care system. The firm's valuation must be available to the public seven working days before the scheduled public hearing.

- Consider an objective operating comparison between a hospital or hospital system operated by the district, county, or municipality and other similarly situated hospitals, both nonprofit and for-profit, which have a similar service mix, in order to determine whether there is a difference in the cost of operation using publicly available data provided by the AHCA and the quality metrics identified by the Centers for Medicare and Medicaid Services (CMS) Core Measures. The comparison must determine whether it is more beneficial to taxpayers and the affected community for the hospital to be operated by a governmental entity, or whether the hospital can be operated by a nonprofit or for-profit entity with similar or better cost efficiencies or measurable outcomes identified by the CMS Core Measures. The comparison must also determine whether there is a net benefit to the community to operate the hospital as a nonprofit or for-profit entity and use the proceeds of the sale or lease for specified purposes.
- Make publicly available all documents considered by the board in the course of the evaluation.

The governing board must publish notice of the board's findings, within 160 days after the initiation of the evaluation process, in one or more newspapers of general circulation in the county in which the majority of the physical assets of the hospital are located and in the Florida Administrative Weekly.

This section includes a provision to grandfather-in, and exempt from the evaluation process any district, county, or municipal hospital that has issued a public request for proposals for the sale or lease of a hospital on or before February 1, 2012, for the purpose of receiving proposals from qualified purchasers or lessees, regardless if the buyer or lessee is nonprofit or for-profit.

The evaluation process does not apply to any county, district or municipal hospital, or health care system that is under lease as of February 1, 2012, as long as that lease remains in effect in accordance with the terms of the lease or such lease is extended or renewed. However, any such hospital or health care system becomes subject to the evaluation process upon:

- Termination of the lease.
- Notification provided to the lessee of a planned termination of the lease in accordance with the lease terms.
- Notification to the lessee that the lessor plans to seek potential new lessees or buyers. or
- Notification to the lessee that the lessor plans to resume operation of the hospital or health care system at the termination of the lease.

Subsection (6) requires the governing board of the hospital, when it has determined that it is no longer in the interest of the affected community to own or operate the hospital or health care system, to first determine whether there are any qualified purchasers or lessees, prior to the sale or lease of the county, district, or municipal hospital. The authority of the board to negotiate the terms of a sale or lease with a for-profit or nonprofit Florida corporation, to determine if there is a potential purchaser or lessee, is removed.

A sale or lease of the hospital is required to be for fair market value, or if less than fair market value, the lease must be in the best interest of the affected community.

Subsection (7) provides that if upon completion of the evaluation of the benefits of the sale or lease, the governing board determines that it is in the best interest of the affected community to maintain ownership or operation of the hospital or health care system and elects not to consider a sale or lease of the hospital or health care system, the qualified purchaser or lessee shall pay the final cost of the evaluation. If, however, the governing board and the qualified purchaser do not agree upon the firm chosen to evaluate the hospital or health care system, the governing board is responsible for the full cost of the evaluation.

Subsection (8) requires the governing board's determination to accept a proposal for sale or lease to be made after consideration of all proposals received and negotiations with a qualified purchaser or lessee. The governing board's determination must include detailed written findings of all reasons for accepting the proposal. Furthermore, the governing board's acceptance of a proposal for sale or lease must include a description of how the sale or lease satisfies each of the following requirements:

- The sale or lease represents fair market value, as determined by a certified public accounting firm or other qualified firm. If leased at less than fair market value, the governing board must provide a detailed explanation of how the best interests of the affected community are served by the acceptance of less than fair market value for the lease of the hospital.
- Acceptance of the proposal will result in a reduction or elimination of ad valorem or other taxes for taxpayers in the district if applicable.
- The proposal includes an enforceable commitment that programs and services and quality health care will continue to be provided to all residents of the affected community, particularly to the indigent, the uninsured, and the underinsured.
- Disclosure has been made of all conflicts of interest, including whether the sale or lease of the hospital would result in a special private gain or loss to members of the governing board, to key management employees, or to members of the medical staff of the county, district, or municipal hospital, or if governing board members will be serving on the board of any successor private corporation. Conflicts of interest, if any, with respect to experts retained by the governing board must also be disclosed.
- Disclosure has been made by the seller or lessor of all contracts with physicians or other entities to provide health care services, including all agreements or contracts that would be void or voidable upon the consummation of the sale or lease.
- The proposal is in compliance with legal requirements to make the board's findings and documents publicly available, to publish a notice of the proposed transaction, and to allow any person to submit written comments to the board regarding the proposed transaction.

The board's findings must be accompanied by all information and documents relevant to the governing board's determination, including:

- The names and addresses of all parties to the transaction.
- The location of the hospital and all related facilities.
- A description of the terms of all proposed agreements.
- A copy of the proposed sale or lease agreement and any related agreements, including leases, management contracts, service contracts, and memoranda of understanding.
- The estimated total value associated with the proposed agreement and the proposed acquisition price.

- Any valuations of the hospital's assets prepared during the 3 years immediately preceding the proposed transaction date.
- The fair market value analysis or any other valuation prepared at the request of the board, owner of the hospital or health care system, or managing entity of the hospital or health care system.
- Copies of all other proposals and bids the governing board may have received or considered.

Subsection (9) requires, within 120 days before the anticipated closing date of the proposed transaction, the governing board to make publicly available all findings and documents associated with the transaction or relevant to the board's determination, including copies of all other proposals and bids, and publish a notice of the proposed transaction in one or more newspapers of general circulation in the county in which the majority of the physical assets of the hospital are located. The notice must include the names of the parties involved and the means by which a person may submit written comments about the proposed transaction to the governing board and obtain copies of the findings and documents.

Subsection (10) provides that, within 20 days after the date of publication of the public notice provided by the governing board, any person may submit to the governing board written comments regarding the proposed transaction.

Subsection (11) provides that the sale or lease of the hospital is subject to approval by the state CFO or his or her designee, unless a law (most likely a local charter) requires approval of the sale or lease exclusively by majority vote of the registered voters in the county, district, or municipality in which the hospital is located.

To obtain approval from the CFO, the governing board must file a petition with the CFO seeking approval of the proposed transaction at least 30 days after publication of the notice of the proposed transaction. The petition for approval filed by the governing board must include all findings and related documents and certification by the governing board of compliance with all requirements under s. 155.40, F.S. The chair of the governing board must certify under oath and subject to the penalty of perjury on a form accompanying the petition that the contents of the petition and representations therein are true and correct.

Subsection (12) requires the CFO or his or her designee, within 30 days of receiving the petition, to issue a final order approving or denying the proposed transaction based solely upon consideration of whether the procedures required under s. 155, 40, F.S., have been followed by the governing board of the county, district, or municipal hospital. The CFO's order must require the governing board to accept or reject the proposal for the sale or lease of the county, district, or municipal hospital based upon a determination that:

- The proposed transaction is permitted by law.
- The proposed transaction does not unreasonably exclude a potential purchaser or lessee on the basis of being a for-profit or a not-for-profit Florida corporation or other form of business organization, such as a partnership or limited liability company.
- The governing board of the hospital publicly advertised the meeting at which the proposed transaction was considered by the board in compliance with s. 286.0105, F.S., which requires notice to be provided to the public that a record of a meeting must be made in order to appeal any decision made by the board with respect to any matter considered at the meeting.

- The governing board of the hospital publicly advertised the offer to accept proposals in compliance with s. 255.0525, F.S., which requires the solicitation of competitive bids or proposals for any county, municipality, or other political subdivision construction project that is projected to cost more than $200,000 to be publicly advertised at least once in a newspaper of general circulation in the county where the project is located at least 21 days prior to the established bid opening and at least 5 days prior to any scheduled prebid conference. The solicitation of competitive bids or proposals for any county, municipality, or other political subdivision construction project that is projected to cost more than $500,000 must be publicly advertised at least once in a newspaper of general circulation in the county where the project is located at least 30 days prior to the established bid opening and at least 5 days prior to any scheduled prebid conference.
- Any conflict of interest was disclosed, including how the proposed transaction could result in a special private gain or loss to members of the governing board or key management employees of the county, district, or municipal hospital, or if governing board members will be serving on the board of any successor private corporation. Conflicts of interest, if any, with respect to experts retained by the governing board must also be disclosed.
- The seller or lessor documented that it will receive fair market value for the sale or lease of the assets or, if leased at less than fair market value, the governing board provided a detailed explanation of how the best interests of the affected community are served by the acceptance of less than fair market value for the lease of the hospital.
- The acquiring entity has made an enforceable commitment that programs and services and quality health care will continue to be provided to all residents of the affected community, particularly to the indigent, the uninsured, and the underinsured.
- The governing board disclosed whether the sale or lease will result in a reduction or elimination of ad valorem or other taxes used to support the hospital.

Subsection (13) provides that any interested party to the action has the right to seek judicial review of the CFO's decision in the appellate district where the hospital is located or in the First District Court of Appeal pursuant to s. 120.68, F.S. "Interested party" is defined in the CS/CS to include any person submitting a proposal for sale or lease of the county, district, or municipal hospital, as well as the governing board. All appellate proceedings must be initiated by filing a notice of appeal in accordance with the Florida Rules of Appellate Procedure within 30 days after the date of the final order.

In judicial review of the appeal, the appellate court must affirm the decision of the CFO, unless the decision by the CFO is shown to be clearly erroneous.[16]

Subsection (14) requires all costs to be paid by the governing board, unless an interested party contests the action, in which case the court may assign costs equitably to the parties.

Subsection (15) requires that if any provision of subsection (5), subsection (6), or subsection (8) is not followed, the contract for sale or lease is voidable by any party to the contract. If any member of the governing board negligently or willfully violates subsection (5), subsection (6), or

[16] "Clearly erroneous" is the standard of review that an appellate court usually applies in judging a trial court's treatment of factual issues. Under this standard, a judgment will be upheld unless the appellate court is left with the firm conviction that an error has been committed. Black's Law Dictionary, 9th ed., 2009.

subsection (7), as determined by the Commission on Ethics after receipt of a sworn complaint, the member is subject to a penalty, as determined by the Commission on Ethics.

Subsection (16) requires, when a county, district, or municipal hospital is sold or leased, the governing board to:

- Deposit 50 percent of the "net proceeds," which means the sale price after payment of all district debts and obligations, of the sale or lease into a health care economic development trust fund, which must be under the control of the county commission of the county in which the property is located. The use and distribution of the funds must be at the discretion of a majority of the county commission, the members of which must serve as trustees of the trust fund. The net proceeds in the health care economic development trust fund must be distributed, in consultation with the Department of Economic Opportunity, to promote job creation in the health care sector of the economy through new or expanded health care business development, new or expanded health care services, or new or expanded health care education programs or commercialization of health care research within the affected community; and
- Appropriate 50 percent of the net proceeds of the sale or lease for funding the delivery of indigent and uncompensated care on an equitable basis, based on the amount of indigent and uncompensated care provided, to all hospitals within the boundaries of the district.

Subsection (17) provides that if a county, district, or municipal hospital is sold or leased to a for-profit corporation or other business entity subject to local taxation, in addition to the distribution of net proceeds as directed in subsection (16):

- Fifty percent of the resulting county and municipal ad valorem tax revenue from the formerly tax-exempt property must be distributed by the county commission of the county in which the property is located, in consultation with the Department of Economic Opportunity, for purposes set forth in subsection (16); and
- Fifty percent of the resulting county and municipal ad valorem tax revenue from the formerly tax-exempt property must be appropriated by the county commission for the sole purpose of enhancing education and law enforcement programs within the county.

Subsection (22) exempts, from the public disclosure, and approval of sale or lease processes provided for in the CS/CS, the sale or lease of any hospital or health care system property if such property generated less than 20 percent of the hospital or health care system's total revenue within the most recent fiscal year. However, the governing board must publicly advertise the meeting at which the proposed sale or lease of such property will be considered by the governing board of the hospital in accordance with s. 286.0105, F.S., or publicly advertise the offer to accept proposals in accordance with s. 255.0525, F.S., and receive proposals from all qualified purchasers and lessees. Additionally, the sale or lease of the property must be for fair market value, or if the lease is for less than fair market value, the lease must be in the best interest of the affected community.

Subsection (23) provides that a county, district, or municipal hospital that has executed a letter of intent to sell or lease the hospital or health care system accepted at a properly noticed public meeting, and whose governing board has voted to approve the letter of intent before December 31, 2011, is not subject to the public disclosure, and approval of sale or lease

processes provided for in the CS/CS, as long as the final closing of the sale or lease transaction pursuant to the letter of intent occurs before December 31, 2012.

Section 2 creates s. 155.401, F.S., to provide that, despite any other provision of general or special law, the purposes for which a special taxing district may appropriate funds from the sale or lease of a hospital to an economic development fund include the promotion and support of economic growth in such district and in the county in which such district is located and the furthering of the purposes of such district, as provided by law.

Section 3 creates an undesignated section of law providing that to the extent that any general or special law is inconsistent with or otherwise in conflict with this act, such conflicting provisions are specifically superseded by this act. A special tax district, public hospital, or municipal hospital is not exempt from this act.

Section 4 amends s. 395.3036, F.S., to change a cross-reference and make other clarifying updates to conform to changes made by the CS/CS.

Section 5 provides that the CS/CS will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, subsection 18(a) of the Florida Constitution, provides that a county or municipality may not be bound by any general law requiring the county or municipality to spend funds or to take an action requiring the expenditure of funds, unless the legislature has determined that such law fulfills an important state interest and unless:

- Funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure;
- The legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality;
- The law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or
- The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

Subsection 18(d) provides an exemption from this prohibition. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times 10 cents (which is $1.88 million for FY 2009/10), are exempt.

The extent of this CS/CS's fiscal impact has not yet been determined; however, if the costs incurred are greater than $1.88 million, the law may be unenforceable unless passed by two-thirds in each house of the Legislature.

B. Public Records/Open Meetings Issues:

This CS/CS will provide more disclosure of the sale or lease process of a public hospital by requiring the governing board of the hospital to make available to the public its facts and findings that support its decision to sell or lease the hospital. Additionally, the CS/CS ensures more oversight of the sale or lease process by requiring the CFO to determine whether the public has been put on notice as to any meetings at which the proposed sale or lease is to be considered or as to any offer to accept the proposal for sale or lease prior to the CFO's approval of the sale.

C. Trust Funds Restrictions:

The provisions of this CS/CS have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This CS/CS will allow interested parties to provide written statements of opposition to a governing board's determination to accept a proposal for the sale or lease of a public hospital and requires the governing board to conduct a public hearing to provide interested persons the opportunity to be heard regarding the proposed sale or lease.

In the event that an interested party challenges the CFO's decision to approve or reject the sale or lease, the interested party may incur costs associated with appealing the decision.

The net proceeds of a hospital sale or lease will generate funds for the establishment of a county economic development trust fund to promote job creation in the health care sector through new or expanded health care business development as well as monies for the delivery of indigent care at all hospitals within the district. Private entities may benefit from these opportunities.

C. Government Sector Impact:

This CS/CS will require a governing board to make publicly available and publish certain findings and documents that support a board's decision to accept a proposal for the sale or lease of a public hospital. Therefore, there may be costs to local governments associated with gathering and publishing such information.

The governing board will also likely incur costs associated with contracting with a certified public accounting firm or other firm to provide a valuation of the hospital's fair market value. These costs could be recouped if a sale or lease does not occur.

In the event that a governing board challenges the CFO's decision to reject the sale or lease, the governing board may incur costs associated with appealing the decision. The state CFO is likely to incur costs associated with reviewing and approving or rejecting proposed sales or leases of public hospitals, but has indicated any costs can be absorbed.

The CS/CS allocates the net proceeds of the sale or lease of a public hospital.

VI. Technical Deficiencies:

In line 441 of the CS/CS, the word "instituted" should be replaced by the word "initiated."

VII. Related Issues:

The CS/CS requires notice of public hearings and notice of the board's findings and documents to be published in the county in which the "majority of the physical assets of the hospital are located." It is unclear whether the "majority of the physical assets" means the place where multiple facilities associated with the hospital are located or whether it is the location of the largest physical building associated with the hospital.

Use of any new ad valorem tax revenue resulting from a hospital sale or lease may need to be limited to municipal and county taxes. School millage is to be used for school purposes pursuant to Art. VII, sec. 9(b) of the State Constitution. In addition, there may be issues related to sales or leases of hospital facilities within existing community redevelopment areas where tax increment financing is in place. Finally, the status of a hospital district following a sale or lease may need to be clarified.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Community Affairs on January 30, 2012

Provides additional definitions.

- Provides conditions that trigger the evaluation of a possible sale or lease of hospital facilities.
- Establishes new time frames for the initiation and the completion of an evaluation.
- Specifies the length of time a fair market valuation shall remain valid.
- Outlines how the CS/CS applies to specified hospitals that are under lease as of February 1, 2012
- Provides a means for evaluation costs to be borne by a potential purchaser if a sale or lease does not occur.
- Specifies time length within which the CFO must approve or deny a proposed hospital transaction.

- Establishes that proceeds from a hospital sale shall be used to promote health care business development or research.
- Provides that specified hospital sales that close prior to December 31, 2012 are exempted from certain provisions of the CS/CS.
- Provides that the provisions of the CS/CS supersede other general or special law.
- Makes technical and clarifying changes.

CS by Health Regulation on January 19, 2012:
The CS is different from the bill in that it:

- Makes several technical changes;
- Exempts an existing lease that is modified, renewed, or extended from the requirements of s. 155.40, F.S.;
- Adds the term "hospital system" to clarify that multiple hospitals may be considered in a cost of operation comparison;
- Requires the governing board to demonstrate that disclosure was made by the seller or lessor of all contracts with physicians or other entities to provide health care services, including agreements or contracts that would be void or voidable upon the consummation of the sale or lease;
- Exempts the sale or lease of any hospital property that generates less than 20 percent of the hospital's total revenue in the most recent fiscal year from certain requirements relating to public disclosure, approval of a sale or lease, or allocations of the net proceeds or taxes stemming from a lease or sale, while maintaining other requirements that exist under current law; and
- Revises the effective date to provide that the CS takes effect upon becoming a law.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Benacquisto) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. 155.40, Florida Statutes, is amended to read:
6 155.40 Sale or lease of county, district, or municipal
7 hospital; effect of sale.—
8 (1) In the interest of providing quality health care
9 services to the ~~order that~~ citizens and residents of this ~~the~~
10 state ~~may receive quality health care~~, and notwithstanding any
11 other provision of general or special law, a ~~any~~ county,
12 district, or municipal hospital organized and existing under the

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13 laws of this state, acting by and through its governing board,
14 may ~~shall have the authority to~~ sell or lease the ~~such~~ hospital
15 to a for-profit or not-for-profit Florida entity ~~corporation~~,
16 and enter into leases or other contracts with a for-profit or
17 not-for-profit Florida entity ~~corporation~~ for the purpose of
18 operating the ~~and managing such~~ hospital and ~~any or all of~~ its
19 facilities ~~of whatsoever kind and nature~~. The term of any such
20 lease, contract, or agreement and the conditions, covenants, and
21 agreements to be contained therein shall be determined by the
22 governing board of the ~~such county, district, or municipal~~
23 hospital. The governing board of the hospital must find that the
24 sale, lease, or contract is in the best interests of the
25 affected community ~~public~~ and must state the basis of that ~~such~~
26 finding. ~~If the governing board of a county, district, or~~
27 ~~municipal hospital decides to lease the hospital, it must give~~
28 ~~notice in accordance with paragraph (4)(a) or paragraph (4)(b).~~
29 (2) A ~~Any such~~ lease, contract, or agreement made pursuant
30 hereto shall:
31 (a) Provide that the articles of incorporation of the ~~such~~
32 for-profit or not-for-profit corporation be subject to the
33 approval of the board of directors or board of trustees of the
34 ~~such~~ hospital;
35 (b) Require that any not-for-profit corporation become
36 qualified under s. 501(c)(3) of the United States Internal
37 Revenue Code;
38 (c) Provide for the orderly transition of the operation and
39 management of the ~~such~~ facilities;
40 (d) Provide for the return of the ~~such~~ facility to the
41 county, municipality, or district upon the termination of the

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42 ~~such~~ lease, contract, or agreement; and
43 (e) Provide for the continued treatment of indigent
44 patients pursuant to the Florida Health Care Responsibility Act
45 and pursuant to chapter 87-92, Laws of Florida.
46 (3) Any sale, lease, or contract entered into pursuant to
47 this section before ~~prior to~~ the effective date of this act must
48 have complied with the requirements of subsection (2) in effect
49 at the time of the sale, lease, or contract. Any lease
50 modification, renewal, or extension relating to a lease
51 transaction that occurred before the effective date of this act
52 is not subject to subsections (6)-(17). It is the intent of the
53 Legislature that this section does not impose any further
54 requirements with respect to the formation of any for-profit or
55 not-for-profit Florida entity ~~corporation~~, the composition of
56 the board of directors of any Florida entity ~~corporation~~, or the
57 manner in which control of the hospital is transferred to the
58 Florida entity ~~corporation~~.
59 (4) As used in this section, the term:
60 (a) "Affected community" means those persons residing
61 within the geographic boundaries defined by the charter of the
62 county, district, or municipal hospital or health care system,
63 or if the boundaries are not specifically defined by charter, by
64 the geographic area from which 75 percent of the county,
65 district, or municipal hospital's or health care system's
66 inpatient admissions are derived.
67 (b) "Fair market value" means the price that a seller or
68 lessor is willing to accept and a buyer or lessee is willing to
69 pay on the open market and in an arms-length transaction, or
70 what an independent expert in hospital valuation determines the

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71 fair market value to be.
72 (c) "Interested party" includes a person submitting a
73 proposal for sale or lease of the county, district, or municipal
74 hospital or health care system, as well as the governing board.
75 (5) The governing board of a county, district, or municipal
76 hospital or health care system shall commence an evaluation of
77 the possible benefits to an affected community from the sale or
78 lease of hospital facilities owned by the board to a not-for-
79 profit or for-profit entity no later than December 31, 2012. In
80 the course of evaluating the benefits of the sale or lease, the
81 board shall:
82 (a) Conduct a public hearing to provide interested persons
83 the opportunity to be heard on the matter.
84 (b) Publish notice of the public hearing in one or more
85 newspapers of general circulation in the county in which the
86 majority of the physical assets of the hospital or health care
87 system are located and in the Florida Administrative Weekly at
88 least 15 days before the hearing is scheduled to occur.
89 (c) Contract with a certified public accounting firm or
90 other firm that has substantial expertise in the valuation of
91 hospitals to render an independent valuation of the hospital's
92 fair market value.
93 (d) Consider an objective operating comparison between a
94 hospital or health care system operated by the district, county,
95 or municipality and other similarly situated hospitals, both
96 not-for-profit and for-profit, which have a similar service mix,
97 in order to determine whether there is a difference in the cost
98 of operation using publicly available data provided by the
99 Agency for Health Care Administration and the quality metrics

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100 identified by the Centers for Medicare and Medicaid Services
101 Core Measures. The comparison must determine whether it is more
102 beneficial to taxpayers and the affected community for the
103 hospital to be operated by a governmental entity, or whether the
104 hospital can be operated by a not-for-profit or for-profit
105 entity with similar or better cost-efficiencies or measurable
106 outcomes identified by the Centers for Medicare and Medicaid
107 Services Core Measures. The comparison must also determine
108 whether there is a net benefit to the community to operate the
109 hospital as a not-for-profit or for-profit entity and use the
110 proceeds of the sale or lease for the purposes described in this
111 section.
112 (e) Make publicly available all documents considered by the
113 board in the course of such evaluation.
114 1. Within 160 days after the initiation of the process
115 established in subsection (5), the governing board shall publish
116 notice of the board's findings in one or more newspapers of
117 general circulation in the county in which the majority of the
118 physical assets of the hospital are located and in the Florida
119 Administrative Weekly.
120 2. This evaluation is not required if a district, county,
121 or municipal hospital has issued a public request for proposals
122 for the sale or lease of a hospital on or before February 1,
123 2012, for the purpose of receiving proposals from qualified
124 purchasers or lessees, either not-for-profit or for-profit.
125 (6) ~~(4)~~ If, upon completion of the evaluation of the
126 benefits of the sale or lease, ~~In the event~~ the governing board
127 of a county, district, or municipal hospital determines that it
128 is no longer in the best interest of the affected community to

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129 own or operate a hospital or health care system and elects to
130 consider a sale or lease of the hospital or health care system
131 to a third party, the governing board must first determine
132 whether there are any qualified purchasers or lessees. In the
133 process of evaluating any qualified purchaser or lessee ~~elects~~
134 ~~to sell or lease the hospital~~, the board shall:
135 (a) ~~Negotiate the terms of the sale or lease with a for-~~
136 ~~profit or not-for-profit Florida corporation and~~ Publicly
137 advertise the meeting at which the proposed sale or lease will
138 be considered by the governing board of the hospital in
139 accordance with s. 286.0105; or
140 (b) Publicly advertise the offer to accept proposals in
141 accordance with s. 255.0525 and receive proposals from all
142 ~~interested and~~ qualified purchasers and lessees.
143
144 Any sale or lease must be for fair market value, or, if not for
145 fair market value, the lease must be in the best interest of the
146 affected community. A ~~and any~~ sale or lease must comply with all
147 applicable state and federal antitrust laws.
148 (7) A determination by the governing board to accept a
149 proposal for sale or lease shall be made after consideration of
150 all proposals received and negotiations with a qualified
151 purchaser or lessee. The governing board's determination must
152 include, in writing, detailed findings of all reasons for
153 accepting the proposal.
154 (a) The governing board's acceptance of a proposal for sale
155 or lease must include a description of how the sale or lease
156 satisfies each of the following requirements:
157 1. The sale or lease represents fair market value, as

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158 determined by a certified public accounting firm or other
159 qualified firm pursuant to subsection(5). If leased at less than
160 fair market value, the governing board shall provide a detailed
161 explanation of how the best interests of the affected community
162 are served by the acceptance of less than fair market value for
163 the lease of the hospital.
164 2. Acceptance of the proposal will result in a reduction or
165 elimination of ad valorem or other taxes for taxpayers in the
166 district, if applicable.
167 3. The proposal includes an enforceable commitment that
168 programs and services and quality health care will continue to
169 be provided to all residents of the affected community,
170 particularly to the indigent, the uninsured, and the
171 underinsured.
172 4. Disclosure has been made of all conflicts of interest,
173 including, but not limited to, whether the sale or lease of the
174 hospital or health care system would result in a special private
175 gain or loss to members of the governing board or key management
176 employees or members of the medical staff of the county,
177 district, or municipal hospital, or if governing board members
178 will be serving on the board of any successor private
179 corporation. Conflicts of interest, if any, with respect to
180 experts retained by the governing board shall also be disclosed.
181 5. Disclosure has been made by the seller or lessor of all
182 contracts with physicians or other entities providing health
183 care services through a contract with the seller or lessor,
184 including all agreements or contracts that would be void or
185 voidable upon the consummation of the sale or lease.
186 6. The proposal is in compliance with subsections (8) and

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187 (9).
188 (b) The findings must be accompanied by all information and
189 documents relevant to the governing board's determination,
190 including, but not limited to:
191 1. The names and addresses of all parties to the
192 transaction.
193 2. The location of the hospital or health care system and
194 all related facilities.
195 3. A description of the terms of all proposed agreements.
196 4. A copy of the proposed sale or lease agreement and any
197 related agreements, including, but not limited to, leases,
198 management contracts, service contracts, and memoranda of
199 understanding.
200 5. The estimated total value associated with the proposed
201 agreement and the proposed acquisition price.
202 6. Any valuations of the hospital's or health care system's
203 assets prepared during the 3 years immediately preceding the
204 proposed transaction date.
205 7. The fair market value analysis required by paragraph
206 (5)(c), or any other valuation prepared at the request of the
207 board, owner of the hospital or health care system, or managing
208 entity of the hospital or health care system.
209 8. Copies of all other proposals and bids that the
210 governing board may have received or considered in compliance
211 with subsection (6).
212 (8) Within 120 days before the anticipated closing date of
213 the proposed transaction, the governing board shall make
214 publicly available all findings and documents required under
215 subsection (7) and publish a notice of the proposed transaction

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216 in one or more newspapers of general circulation in the county
217 in which the majority of the physical assets of the hospital or
218 health care system are located. The notice must include the
219 names of the parties involved and the means by which a person
220 may submit written comments about the proposed transaction to
221 the governing board and obtain copies of the findings and
222 documents required under subsection (7).
223 (9) Within 20 days after the date of publication of the
224 public notice, any person may submit to the governing board
225 written comments regarding the proposed transaction.
226 (10) The sale or lease of the hospital or health care
227 system is subject to approval by the Chief Financial Officer or
228 his or her designee, except, if otherwise required by law,
229 approval of the sale or lease shall exclusively be by majority
230 vote of the registered voters in the county, district, or
231 municipality in which the hospital or health care system is
232 located.
233 (a) The governing board shall file a petition with the
234 state Chief Financial Officer seeking approval of the proposed
235 transaction at least 30 days after publication of the notice of
236 the proposed transaction.
237 (b) The petition for approval filed by the governing board
238 must include all findings and documents required under
239 subsection (7) and certification by the governing board of
240 compliance with all requirements of this section. The chair of
241 the governing board must certify under oath and subject to the
242 penalty of perjury on a form accompanying the petition that the
243 contents of the petition and representations therein are true
244 and correct.

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245 (11) Within 30 days of receiving the petition, the Chief
246 Financial Officer or his or her designee shall issue a final
247 order approving or denying the proposed transaction based solely
248 upon consideration of whether the procedures contained within
249 this section have been followed by the governing board of the
250 county, district, or municipal hospital or health care system.
251 The order shall require the governing board to accept or reject
252 the proposal for the sale or lease of the county, district, or
253 municipal hospital or health care system based upon a
254 determination that:
255 (a) The proposed transaction is permitted by law.
256 (b) The proposed transaction does not unreasonably exclude
257 a potential purchaser or lessee on the basis of being a for-
258 profit or a not-for-profit Florida corporation or other form of
259 business organization, such as a partnership or limited
260 liability company.
261 (c) The governing board of the hospital or health care
262 system publicly advertised the meeting at which the proposed
263 transaction was considered by the board in compliance with s.
264 286.0105.
265 (d) The governing board of the hospital or health care
266 system publicly advertised the offer to accept proposals in
267 compliance with s. 255.0525.
268 (e) Any conflict of interest was disclosed, including, but
269 not limited to, how the proposed transaction could result in a
270 special private gain or loss to members of the governing board
271 or key management employees of the county, district, or
272 municipal hospital, or if governing board members will be
273 serving on the board of any successor private corporation.

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274 Conflicts of interest, if any, with respect to experts retained
275 by the governing board shall also be disclosed.
276 (f) The seller or lessor documented that it will receive
277 fair market value for the sale or lease of the assets as
278 indicated in paragraph (5)(c) or, if leased at less than fair
279 market value, the governing board provided a detailed
280 explanation of how the best interests of the affected community
281 are served by the acceptance of less than fair market value for
282 the lease of the hospital or health care system.
283 (g) The acquiring entity has made an enforceable commitment
284 that programs and services and quality health care will continue
285 to be provided to all residents of the affected community,
286 particularly to the indigent, the uninsured, and the
287 underinsured.
288 (h) The governing board disclosed whether the sale or lease
289 will result in a reduction or elimination of ad valorem or other
290 taxes used to support the hospital.
291 (12) Any interested party to the action has the right to
292 seek judicial review of the decision in the appellate district
293 where the hospital is located or in the First District Court of
294 Appeal pursuant to s. 120.68.
295 (a) All proceedings shall be instituted by filing a notice
296 of appeal in accordance with the Florida Rules of Appellate
297 Procedure within 30 days after the date of the final order.
298 (b) In such judicial review, the appellate court shall
299 affirm the decision of the Chief Financial Officer, unless the
300 decision by the Chief Financial Officer is shown to be clearly
301 erroneous.
302 (13) All costs shall be paid by the governing board, unless

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303 an interested party contests the action, in which case the court
304 may assign costs equitably to the parties.
305 (14) If any provision of subsection (5), subsection (6), or
306 subsection (7) is not followed, the contract for sale or lease
307 is voidable by any party to the contract. If any member of the
308 governing board negligently or willfully violates subsection
309 (5), subsection (6), or subsection (7), as determined by the
310 Commission on Ethics after receipt of a sworn complaint pursuant
311 to s. 112.322, the member is subject to a penalty, as determined
312 by the Commission on Ethics pursuant to s. 112.317.
313 (15) If a county, district, or municipal hospital is sold,
314 any and all special district tax authority associated with the
315 hospital subject to the sale shall cease on the effective date
316 of the closing date of the sale. Any special law inconsistent
317 with this subsection is superseded by this act.
318 (16) If a county, district, or municipal hospital is sold
319 or leased, the governing board shall:
320 (a) Deposit 50 percent of the net proceeds of the sale or
321 lease into a health care economic development trust fund, which
322 shall be under the control of the county commission of the
323 county in which the property is located, if the hospital is a
324 county hospital or district hospital whose geographic boundaries
325 extend beyond a single municipality, or, if the hospital is a
326 municipal hospital or district hospital whose geographic
327 boundaries lie entirely within a single municipality, under the
328 control of the city or municipal government in which the
329 hospital is located. The use and distribution of the funds shall
330 be at the discretion of a majority of the county commission if
331 the hospital is a county hospital or district hospital whose

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332 geographic boundaries extend beyond a single municipality, or,
333 if the hospital is a municipal hospital or district hospital
334 whose geographic boundaries lie entirely within a single
335 municipality, at the discretion of a majority of the members of
336 the municipal government. The members of the county commission
337 or the municipal government, depending on the type of hospital
338 being sold, shall serve as trustees of the trust fund. The net
339 proceeds in the health care economic development trust fund
340 shall be distributed, in consultation with the Department of
341 Economic Opportunity, to promote job creation in the health care
342 sector of the economy through new or expanded health care
343 business development, new or expanded health care services, or
344 new or expanded health care education programs or
345 commercialization of health care research within the affected
346 community; and
347 (b) Appropriate 50 percent of the net proceeds of the sale
348 or lease for funding the delivery of indigent care, including
349 but not limited to primary care, physician specialty care, out-
350 patient care, in-patient care and behavioral health, to
351 hospitals within the boundaries of the district with
352 consideration given to the levels of indigent care provided.
353
354 For the purposes of this subsection, the term "net proceeds"
355 means the sale price after payment of all district debts and
356 obligations.
357 (17) If a county, district, or municipal hospital or health
358 care system is sold or leased to a for-profit corporation or
359 other business entity subject to local taxation, the resulting
360 county and municipal ad valorem tax revenue from the formerly

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361 tax-exempt property shall be distributed by the county
362 commission of the county in which the property is located, if
363 the hospital is a county hospital or district hospital whose
364 geographic boundaries extend beyond a single municipality, or,
365 if the hospital is a municipal hospital or district hospital
366 whose geographic boundaries lie entirely within a single
367 municipality, such ad valorem tax revenues shall be distributed
368 by the municipal government. The distribution of such ad valorem
369 tax revenues shall be made in consultation with the Department
370 of Economic Opportunity, for purposes set forth in subsection
371 (16).
372 (18) ~~(5)~~ If ~~In the event~~ a hospital operated by a for-profit
373 or not-for-profit Florida entity ~~corporation~~ receives annually
374 more than $100,000 in revenues from the county, district, or
375 municipality that owns the hospital, the Florida entity
376 ~~corporation~~ must be accountable to the county, district, or
377 municipality with respect to the manner in which the funds are
378 expended by either:
379 (a) Having the revenues subject to annual appropriations by
380 the county, district, or municipality; or
381 (b) Where there is a contract to provide revenues to the
382 hospital, the term of which is longer than 12 months, the
383 governing board of the county, district, or municipality must be
384 able to modify the contract upon 12 months notice to the
385 hospital.
386
387 A not-for-profit entity ~~corporation~~ that is subject to this
388 subsection and that does not currently comply with the
389 accountability requirements in this subsection shall have 12

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390 months after the effective date of this act to modify any
391 contracts with the county, district, or municipality in a manner
392 that is consistent with this subsection.
393 (19) ~~(6)~~ Unless otherwise expressly stated in the lease
394 documents, the transaction involving the sale or lease of a
395 hospital may ~~shall~~ not be construed as:
396 (a) A transfer of a governmental function from the county,
397 district, or municipality to the private purchaser or lessee;
398 (b) Constituting a financial interest of the public lessor
399 in the private lessee; or
400 (c) Making a private lessee an integral part of the public
401 lessor's decisionmaking process.
402 (20) ~~(7)~~ The lessee of a hospital, under this section or any
403 special act of the Legislature, operating under a lease may
404 ~~shall~~ not be construed to be "acting on behalf of" the lessor as
405 that term is used in statute, unless the lease document
406 expressly provides to the contrary.
407 (21) ~~(8)~~(a) If, whenever the sale of a public hospital by a
408 public agency to a private ~~corporation or other private~~ entity
409 pursuant to this section or pursuant to a special act of the
410 Legislature reflects that:
411 1. The private ~~corporation or other private~~ entity
412 purchaser acquires 100 percent ownership in the hospital
413 enterprise;
414 2. The private ~~corporation or other private~~ entity
415 purchases the physical plant of the hospital facility and has
416 complete responsibility for the operation and maintenance of the
417 facility, regardless of ownership of the underlying real
418 property;

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419 3. The public agency seller retains no control over
420 decisionmaking or policymaking for the hospital;
421 4. The private ~~corporation or other private~~ entity
422 purchaser receives no funding from the public agency seller
423 other than by contract for services rendered to patients for
424 whom the public agency seller has the responsibility to pay for
425 hospital or medical care;
426 5. The public agency seller makes no substantial investment
427 in or loans to the private entity;
428 6. The private ~~corporation or other private~~ entity
429 purchaser was not created by the public entity seller; and
430 7. The private ~~corporation or other private~~ entity
431 purchaser operates primarily for its own financial interests and
432 not primarily for the interests of the public agency,
433
434 such a sale shall be considered a complete sale of the public
435 agency's interest in the hospital or health care system.
436 (b) A complete sale of a hospital or health care system as
437 described in this subsection may ~~shall~~ not be construed as:
438 1. A transfer of a governmental function from the county,
439 district, or municipality to the private ~~corporation or other~~
440 ~~private~~ entity purchaser;
441 2. Constituting a financial interest of the public agency
442 in the private ~~corporation or other private~~ entity purchaser;
443 3. Making the private ~~corporation or other private~~ entity
444 purchaser an "agency" as that term is used in statutes;
445 4. Making the private ~~corporation or other private~~ entity
446 purchaser an integral part of the public agency's decisionmaking
447 process; or

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448 5. Indicating that the private ~~corporation or other private~~
449 entity purchaser is "acting on behalf of a public agency" as
450 that term is used in statute.
451 (22) If the governing board elects to sell or lease any
452 physical property of a county, district, or municipal hospital
453 or health care system and such property generated less than 20
454 percent of the hospital's net revenue within the hospital's or
455 health care system's most recent fiscal year, the sale or lease
456 of such property is exempt from the requirements under
457 subsections (6)-(15). However, the governing board shall
458 publicly advertise the meeting at which the proposed sale or
459 lease of such property will be considered by the governing board
460 of the hospital in accordance with s. 286.0105 or publicly
461 advertise the offer to accept proposals in accordance with s.
462 255.0525 and receive proposals from all qualified purchasers and
463 lessees. The sale or lease of the property must be for fair
464 market value or, if a lease is for less than fair market value,
465 the lease must be in the best interest of the affected
466 community.
467 (23) A county, district or municipal hospital or health
468 care system that is under lease as of the effective date of this
469 act is not subject to subsections (5)-(16) as long as that lease
470 remains in effect in accordance with the terms of the lease or
471 such lease is modified, extended or renewed. Any such hospital
472 or health care system, however, becomes subject to the
473 provisions of this act upon:
474 (a) Termination of the lease, unless the lease termination
475 is the direct result of a new lease involving a partnership,
476 transaction or contract in which both the existing lessor and

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477 lessee agree to the new lease between the lessor and another
478 mutually agreed upon entity;
479 (b) Notification provided to the lessee of a planned
480 termination of the lease in accordance with the lease terms,
481 unless the notification of lease termination is the direct
482 result of a new lease involving a partnership, transaction or
483 contract in which both the existing lessor and lessee agree to
484 the new lease between the lessor and another mutually agreed
485 upon entity;
486 (c) Notification to the lessee that upon termination of the
487 lease the lessor plans to seek potential new lessees or buyers;
488 or
489 (d) Notification to the lessee that the lessor plans to
490 resume operation of the hospital or health care system at the
491 termination of the lease.
492
493 Any such hospital or health care system may not thereafter be
494 sold, leased to another lessee, or operated by the owner without
495 first complying with this act.
496 (24) A county, district, or municipal hospital or health
497 care system that has executed a letter of intent to sell or
498 lease the hospital or health care system accepted at a properly
499 noticed public meeting, and whose governing board has voted to
500 approve the letter of intent before December 31, 2011, is not
501 subject to subsections (6)-(17) as long as the final closing of
502 the sale or lease transaction pursuant to the letter of intent
503 occurs before December 31, 2012.
504 Section 2. Section 155.401, Florida Statutes, is created to
505 read:

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506 155.401 Power of special taxing district to appropriate
507 proceeds from sale or lease of hospital or health care system to
508 economic development trust fund.—Notwithstanding any other
509 general or special law, the purposes for which a special taxing
510 district may appropriate funds from the sale or lease of a
511 hospital or health care system to an economic development fund
512 include the promotion and support of economic growth in such
513 district and in the county in which such district is located and
514 the furthering of the purposes of such district, as provided by
515 law.
516 Section 3. To the extent that any general or special law is
517 inconsistent with or otherwise in conflict with this act, such
518 conflicting provisions are specifically superseded by this act.
519 A special tax district, public hospital, or municipal hospital
520 is not exempt from this act.
521 Section 4. Subsection (1) of section 395.002, Florida
522 Statutes, is amended to read:
523 395.002 Definitions.—As used in this chapter:
524 (1) "Accrediting organizations" means national
525 accreditation organizations that are approved by the Centers for
526 Medicare and Medicaid Services and whose standards incorporate
527 comparable licensure regulations required by the state ~~the Joint~~
528 ~~Commission on Accreditation of Healthcare Organizations, the~~
529 ~~American Osteopathic Association, the Commission on~~
530 ~~Accreditation of Rehabilitation Facilities, and the~~
531 ~~Accreditation Association for Ambulatory Health Care, Inc~~.
532 Section 5. For the purpose of incorporating the amendment
533 made by this act to section 395.002, Florida Statutes, in a
534 reference thereto, paragraph (c) of subsection (2) of section

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535 395.003, Florida Statutes, is reenacted to read:
536 395.003 Licensure; denial, suspension, and revocation.—
537 (2)
538 (c) Intensive residential treatment programs for children
539 and adolescents which have received accreditation from an
540 accrediting organization as defined in s. 395.002(1) and which
541 meet the minimum standards developed by rule of the agency for
542 such programs shall be licensed by the agency under this part.
543 Section 6. Section 395.3036, Florida Statutes, is amended
544 to read:
545 395.3036 Confidentiality of records and meetings of
546 entities ~~corporations~~ that lease public hospitals or other
547 public health care facilities.—The records of a private entity
548 ~~corporation~~ that leases a public hospital or other public health
549 care facility are confidential and exempt from ~~the provisions of~~
550 s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and
551 the meetings of the governing board of a private entity
552 ~~corporation~~ are exempt from s. 286.011 and s. 24(b), Art. I of
553 the State Constitution if ~~when~~ the public lessor complies with
554 the public finance accountability provisions of s. 155.40(18)
555 ~~155.40(5)~~ with respect to the transfer of any public funds to
556 the private lessee and if ~~when~~ the private lessee meets at least
557 three of the five following criteria:
558 (1) The public lessor that owns the public hospital or
559 other public health care facility was not the incorporator or
560 initial member of the private entity ~~corporation~~ that leases the
561 public hospital or other health care facility.
562 (2) The public lessor and the private lessee do not
563 commingle any of their funds in any account maintained by either

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564 of them, other than the payment of the rent and administrative
565 fees or the transfer of funds pursuant to subsection (5) ~~(2)~~.
566 (3) Except as otherwise provided by law, the private lessee
567 is not allowed to participate, except as a member of the public,
568 in the decisionmaking process of the public lessor.
569 (4) The lease agreement does not expressly require the
570 lessee to comply with ~~the requirements of~~ ss. 119.07(1) and
571 286.011.
572 (5) The public lessor is not entitled to receive any
573 revenues from the lessee, except for rental or administrative
574 fees due under the lease, and the lessor is not responsible for
575 the debts or other obligations of the lessee.
576 Section 7. This act shall take effect upon becoming a law.
577
578 ========== T I T L E A M E N D M E N T ==========
579 And the title is amended as follows:
580
581 Delete everything before the enacting clause
582 and insert:
583 A bill to be entitled
584 An act relating to the sale or lease of a county,
585 district, or municipal hospital; amending s. 155.40,
586 F.S.; defining the terms; requiring that the governing
587 board of a county, district, or municipal hospital
588 evaluate the possible benefits to an affected
589 community from the sale or lease of the hospital
590 facility to a not-for-profit or for-profit entity
591 within a specified time period; specifying the actions
592 the board must take in evaluating whether to sell or

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593 lease the public hospital; requiring the board to
594 determine whether qualified purchasers or lessees
595 exist; specifying the factors that must be considered
596 by the governing board before accepting a proposal to
597 sell or lease the hospital; requiring the board to
598 state in writing detailed findings related to its
599 decision to accept or reject the proposal; requiring
600 the governing board to make public the required
601 findings and documents and to publish a notice of the
602 proposed transaction in one or more newspapers of
603 general circulation in the county in which the
604 majority of the physical assets of the hospital are
605 located; allowing persons to submit written comments
606 regarding the proposed transaction; providing that the
607 sale or lease is subject to the approval of the Chief
608 Financial Officer; requiring the governing board to
609 file a petition with the Chief Financial Officer
610 seeking approval of the proposed transaction within a
611 specified time period; requiring the Chief Financial
612 Officer or his or her designee to issue a final order
613 approving or denying the proposed transaction;
614 specifying the criteria upon which the Chief Financial
615 Officer must base his or her decision; authorizing an
616 interested party to appeal the decision of the Chief
617 Financial Officer; requiring that all costs be paid by
618 the governing board unless an interested party
619 contests the action, in which case the court may
620 assign costs equitably to the parties; providing for
621 the distribution of proceeds from the transaction;

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622 exempting the sale or lease of specified physical
623 property of a county, district, or municipal hospital
624 from processes required for the approval of a sale or
625 lease of county, district, or municipal hospital
626 property; providing an exemption from complying with
627 the requirements of the act under certain
628 circumstances; exempting application of the act to
629 hospitals or health care systems for which a letter of
630 intent to sell or lease is executed before a specified
631 date; creating s. 155.401, F.S.; providing that the
632 purposes for which a special taxing district may
633 appropriate funds from the sale or lease of a hospital
634 or health care system include the promotion and
635 support of economic growth in the district and county
636 in which the taxing district is located and the
637 furthering of the purposes of the taxing district;
638 providing that any general or special law that is
639 inconsistent with or otherwise in conflict with the
640 act is specifically superseded by the act; amending s.
641 395.002, F.S.; revising the definition of the term
642 “accrediting organizations”; reenacting s.
643 395.003(2)(c), F.S., relating to licensure and
644 regulation of hospitals, to incorporate the amendment
645 made to s. 395.002, F.S., in a reference thereto;
646 amending s. 395.3036, F.S.; conforming cross-
647 references; providing an effective date.

By the Committees on Community Affairs; and Health Regulation; and Senators Gaetz and Garcia

578-02595-12 20121568c2

A bill to be entitled

An act relating to the sale or lease of a county, district, or municipal hospital; amending s. 155.40, F.S.; defining the terms; requiring that the governing board of a county, district, or municipal hospital evaluate the possible benefits to an affected community from the sale or lease of the hospital facility to a not-for-profit or for-profit entity within a specified time period; specifying the actions the board must take in evaluating whether to sell or lease the public hospital; requiring the board to determine whether qualified purchasers or lessees exist; specifying the factors that must be considered by the governing board before accepting a proposal to sell or lease the hospital; requiring the board to state in writing detailed findings related to its decision to accept or reject the proposal; requiring the governing board to make public the required findings and documents and to publish a notice of the proposed transaction in one or more newspapers of general circulation in the county in which the majority of the physical assets of the hospital are located; allowing persons to submit written comments regarding the proposed transaction; providing that the sale or lease is subject to the approval of the Chief Financial Officer; requiring the governing board to file a petition with the Chief Financial Officer seeking approval of the proposed transaction within a specified time period; requiring the Chief Financial

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Officer or his or her designee to issue a final order approving or denying the proposed transaction; specifying the criteria upon which the Chief Financial Officer must base his or her decision; authorizing an interested party to appeal the decision of the Chief Financial Officer; requiring that all costs be paid by the governing board unless an interested party contests the action, in which case the court may assign costs equitably to the parties; providing for the distribution of proceeds from the transaction; exempting the sale or lease of specified physical property of a county, district, or municipal hospital from processes required for the approval of a sale or lease of county, district, or municipal hospital property; providing an exemption from complying with the requirements of the act under certain circumstances; exempting application of the act to hospitals or health care systems for which a letter of intent to sell or lease is executed before a specified date; creating s. 155.401, F.S.; providing that the purposes for which a special taxing district may appropriate funds from the sale or lease of a hospital include the promotion and support of economic growth in the district and county in which the taxing district is located and the furthering of the purposes of the taxing district; providing that any general or special law that is inconsistent with or otherwise in conflict with the act is specifically superseded by the act; amending s. 395.3036, F.S.; conforming cross-

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59 references; providing an effective date.
60
61 Be It Enacted by the Legislature of the State of Florida:
62
63 Section 1. Section 155.40, Florida Statutes, is amended to
64 read:
65 155.40 Sale or lease of county, district, or municipal
66 hospital; effect of sale.—
67 (1) In the interest of providing quality health care
68 services to the ~~order that~~ citizens and residents of this ~~the~~
69 state ~~may receive quality health care~~, and notwithstanding any
70 other provision of general or special law, a ~~any~~ county,
71 district, or municipal hospital organized and existing under the
72 laws of this state, acting by and through its governing board,
73 may ~~shall have the authority to~~ sell or lease the ~~such~~ hospital
74 to a for-profit or not-for-profit Florida entity ~~corporation~~,
75 and enter into leases or other contracts with a for-profit or
76 not-for-profit Florida entity ~~corporation~~ for the purpose of
77 operating the ~~and managing such~~ hospital and ~~any or all of~~ its
78 facilities ~~of whatsoever kind and nature~~. The term of any such
79 lease, contract, or agreement and the conditions, covenants, and
80 agreements to be contained therein shall be determined by the
81 governing board of the ~~such county, district, or municipal~~
82 hospital. The governing board of the hospital must find that the
83 sale, lease, or contract is in the best interests of the
84 affected community ~~public~~ and must state the basis of that ~~such~~
85 finding. ~~If the governing board of a county, district, or~~
86 ~~municipal hospital decides to lease the hospital, it must give~~
87 ~~notice in accordance with paragraph (4)(a) or paragraph (4)(b).~~

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88 (2) A ~~Any such~~ lease, contract, or agreement made pursuant
89 hereto shall:
90 (a) Provide that the articles of incorporation of the ~~such~~
91 for-profit or not-for-profit corporation be subject to the
92 approval of the board of directors or board of trustees of the
93 ~~such~~ hospital;
94 (b) Require that any not-for-profit corporation become
95 qualified under s. 501(c)(3) of the United States Internal
96 Revenue Code;
97 (c) Provide for the orderly transition of the operation and
98 management of the ~~such~~ facilities;
99 (d) Provide for the return of the ~~such~~ facility to the
100 county, municipality, or district upon the termination of the
101 ~~such~~ lease, contract, or agreement; and
102 (e) Provide for the continued treatment of indigent
103 patients pursuant to the Florida Health Care Responsibility Act
104 and pursuant to chapter 87-92, Laws of Florida.
105 (3) Any sale, lease, or contract entered into pursuant to
106 this section before ~~prior to~~ the effective date of this act must
107 have complied with the requirements of subsection (2) in effect
108 at the time of the sale, lease, or contract. Any lease
109 modification, renewal, or extension relating to a lease
110 transaction that occurred before the effective date of this act
111 is not subject to subsections (6)-(17). It is the intent of the
112 Legislature that this section does not impose any further
113 requirements with respect to the formation of any for-profit or
114 not-for-profit Florida entity ~~corporation~~, the composition of
115 the board of directors of any Florida entity ~~corporation~~, or the
116 manner in which control of the hospital is transferred to the

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117 Florida entity ~~corporation~~.
118 (4) As used in this section, the term:
119 (a) "Affected community" means those persons residing
120 within the geographic boundaries defined by the charter of the
121 county, district, or municipal hospital, or if the boundaries
122 are not specifically defined by charter of the hospital, by the
123 geographic area from which 75 percent of the county, district,
124 or municipal hospital's inpatient admissions are derived.
125 (b) "Expression of interest" means a bona fide request from
126 a for-profit or not-for-profit entity that is a qualified
127 purchaser or lessee to the board of directors of a county,
128 district, or municipal hospital to enter into negotiations to
129 sell or lease the hospital or health care system on commercially
130 reasonable terms.
131 (c) "Fair market value" means the price that a seller or
132 lessor is willing to accept and a buyer or lessee is willing to
133 pay on the open market and in an arms-length transaction, or
134 what an independent expert in hospital valuation determines the
135 fair market value to be.
136 (d) "Increase tax support" means a vote to increase ad
137 valorem or other taxes that are used to support operations of
138 the hospital or health care system or any vote to allow the ad
139 valorem tax rate to remain the same in any year in which
140 property values in the taxing district have increased on the
141 average, resulting in an increase in ad valorem tax revenues to
142 the hospital.
143 (e) "Interested party" includes a person submitting a
144 proposal for sale or lease of the county, district, or municipal
145 hospital, as well as the governing board.

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146 (f) "Net operating expenses" means the total operating
147 expenses of the hospital, excluding depreciation, interest,
148 taxes, amortization, and nonoperating expenses.
149 (g) "Net operating revenues" has the same meaning as
150 provided in s. 395.701(1). The term does not include restricted
151 donations and grants for indigent care or nonoperating revenues,
152 including, but not limited to, local unrestricted tax revenues
153 and appropriated funds from state and local governments or any
154 other type of tax support, gain or loss from the sale of assets,
155 or unrestricted contributions.
156 (h) "Qualified purchaser or lessee" means an entity that
157 demonstrates access to capital in an amount equal to or in
158 excess of 25 percent of the net revenue generated in the
159 immediately preceding fiscal year of the hospital or health care
160 system that is the subject of the sale or lease. Such access to
161 capital can be demonstrated by cash reserves, an existing line
162 of credit, or a binding commitment to obtain a line of credit to
163 finance the purchase in an amount that equals or exceeds 25
164 percent of the net revenue generated by the hospital or health
165 care system.
166 (5)(a) The governing board of a county, district, or
167 municipal hospital shall commence an evaluation of the possible
168 benefits to an affected community from the sale or lease of
169 hospital facilities owned by the board to a not-for-profit or
170 for-profit entity within 60 calendar days after:
171 1. The county, district, or municipal hospital or health
172 care system receives a bona fide expression of interest by a
173 qualified purchaser or lessee to buy or lease the county,
174 district, or municipal hospital or health care system;

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175 2. The governing board of a county, district, or municipal
176 hospital votes to increase the amount of tax support for the
177 hospital or health care system;
178 3. The county, district, or municipal hospital or health
179 care system experiences operating deficits that result in net
180 operating expenses that exceed net operating revenues by 10
181 percent or more for 3 consecutive years;
182 4. The county, district, or municipal hospital or health
183 care system has had administrative complaint proceedings
184 initiated against it by the Agency for Health Care
185 Administration for licensure violations under chapter 395 in 3
186 consecutive years;
187 5. The county, district, or municipal hospital or health
188 care system has been declared ineligible to participate in the
189 Medicare or Medicaid program; or
190 6. The county, district, or municipal hospital or health
191 care system fails to achieve or loses accreditation by the Joint
192 Commission on Accreditation of Healthcare Organizations.
193 (b) In the course of evaluating the benefits of the sale or
194 lease, the board shall:
195 1. Conduct a public hearing to provide interested persons
196 the opportunity to be heard on the matter.
197 2. Publish notice of the public hearing in one or more
198 newspapers of general circulation in the county in which the
199 majority of the physical assets of the hospital are located and
200 in the Florida Administrative Weekly at least 15 days before the
201 hearing is scheduled to occur.
202 3. Contract with a certified public accounting firm or
203 other firm that has substantial expertise in the valuation of

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204 hospitals to render an independent valuation of the hospital's
205 fair market value. The firm chosen by the board must be
206 agreeable to the qualified purchaser or lessee and the hospital
207 or health care system. The firm's valuation report shall be made
208 available to the public 7 working days before the scheduled
209 public hearing.
210 4. Consider an objective operating comparison between a
211 hospital or health care system operated by the district, county,
212 or municipality and other similarly situated hospitals, both
213 not-for-profit and for-profit, which have a similar service mix,
214 in order to determine whether there is a difference in the cost
215 of operation using publicly available data provided by the
216 Agency for Health Care Administration and the quality metrics
217 identified by the Centers for Medicare and Medicaid Services
218 Core Measures. The comparison must determine whether it is more
219 beneficial to taxpayers and the affected community for the
220 hospital to be operated by a governmental entity, or whether the
221 hospital can be operated by a not-for-profit or for-profit
222 entity with similar or better cost-efficiencies or measurable
223 outcomes identified by the Centers for Medicare and Medicaid
224 Services Core Measures. The comparison must also determine
225 whether there is a net benefit to the community to operate the
226 hospital as a not-for-profit or for-profit entity and use the
227 proceeds of the sale or lease for the purposes described in this
228 section.
229 5. Make publicly available all documents considered by the
230 board in the course of such evaluation.
231 (c)1. Within 160 days after the initiation of the process
232 established in paragraphs (a) and (b), the governing board shall

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233 publish notice of the board's findings in one or more newspapers
234 of general circulation in the county in which the majority of
235 the physical assets of the hospital are located and in the
236 Florida Administrative Weekly.
237 2. This evaluation is not required if a district, county,
238 or municipal hospital has issued a public request for proposals
239 for the sale or lease of a hospital on or before February 1,
240 2012, for the purpose of receiving proposals from qualified
241 purchasers or lessees, either not-for-profit or for-profit.
242 3. The fair market valuation established in paragraph (b)
243 shall be valid for a period of 12 months following the date of
244 its issuance, unless there are material financial changes in the
245 hospitals financial condition as determined by the outside
246 independent certified public accounting firm for the hospital or
247 health care system, the Agency for Health Care Administration,
248 or the Auditor General.
249 4. This subsection does not apply to any county, district
250 or municipal hospital, or health care system that is under lease
251 as of February 1, 2012, as long as that lease remains in effect
252 in accordance with the terms of the lease or such lease is
253 extended or renewed. Any such hospital or health care system,
254 however, becomes subject to this subsection upon:
255 a. Termination of the lease;
256 b. Notification provided to the lessee of a planned
257 termination of the lease in accordance with the lease terms;
258 c. Notification to the lessee that the lessor plans to seek
259 potential new lessees or buyers; or
260 d. Notification to the lessee that the lessor plans to
261 resume operation of the hospital or health care system at the

262 termination of the lease.
263
264 Any such hospital or health care system may not thereafter be
265 sold, leased to another lessee, or operated by the owner without
266 first complying with the provisions of subsections (5)-(16).
267 (6) ~~(4)~~ If, upon completion of the evaluation of the
268 benefits of the sale or lease, ~~In the event~~ the governing board
269 of a county, district, or municipal hospital determines that it
270 is no longer in the best interest of the affected community to
271 own or operate a hospital or health care system and elects to
272 consider a sale or lease of the hospital or health care system
273 to a third party, the governing board must first determine
274 whether there are any qualified purchasers or lessees. In the
275 process of evaluating any qualified purchaser or lessee ~~elects~~
276 ~~to sell or lease the hospital~~, the board shall:
277 (a) ~~Negotiate the terms of the sale or lease with a for-~~
278 ~~profit or not-for-profit Florida corporation and~~ Publicly
279 advertise the meeting at which the proposed sale or lease will
280 be considered by the governing board of the hospital in
281 accordance with s. 286.0105; or
282 (b) Publicly advertise the offer to accept proposals in
283 accordance with s. 255.0525 and receive proposals from all
284 ~~interested and~~ qualified purchasers and lessees.
285
286 Any sale or lease must be for fair market value, or, if not for
287 fair market value, the lease must be in the best interest of the
288 affected community. A ~~and any~~ sale or lease must comply with all
289 applicable state and federal antitrust laws.
290 (7) If, upon completion of the evaluation of the benefits

291 of the sale or lease, the governing board determines that it is
292 in the best interest of the affected community to maintain
293 ownership or operation of the hospital or health care system and
294 elects not to consider a sale or lease of the hospital or health
295 care system, the qualified purchaser or lessee shall pay the
296 final cost of the evaluation. If, however, the governing board
297 and the qualified purchaser do not agree upon the firm chosen to
298 evaluate the hospital or health care system, the governing board
299 is responsible for the full cost of the evaluation.
300 (8) A determination by the governing board to accept a
301 proposal for sale or lease shall be made after consideration of
302 all proposals received and negotiations with a qualified
303 purchaser or lessee. The governing board's determination must
304 include, in writing, detailed findings of all reasons for
305 accepting the proposal.
306 (a) The governing board's acceptance of a proposal for sale
307 or lease must include a description of how the sale or lease
308 satisfies each of the following requirements:
309 1. The sale or lease represents fair market value, as
310 determined by a certified public accounting firm or other
311 qualified firm pursuant to paragraph (5)(b). If leased at less
312 than fair market value, the governing board shall provide a
313 detailed explanation of how the best interests of the affected
314 community are served by the acceptance of less than fair market
315 value for the lease of the hospital.
316 2. Acceptance of the proposal will result in a reduction or
317 elimination of ad valorem or other taxes for taxpayers in the
318 district, if applicable.
319 3. The proposal includes an enforceable commitment that

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320 programs and services and quality health care will continue to
321 be provided to all residents of the affected community,
322 particularly to the indigent, the uninsured, and the
323 underinsured.
324 4. Disclosure has been made of all conflicts of interest,
325 including, but not limited to, whether the sale or lease of the
326 hospital would result in a special private gain or loss to
327 members of the governing board or key management employees or
328 members of the medical staff of the county, district, or
329 municipal hospital, or if governing board members will be
330 serving on the board of any successor private corporation.
331 Conflicts of interest, if any, with respect to experts retained
332 by the governing board shall also be disclosed.
333 5. Disclosure has been made by the seller or lessor of all
334 contracts with physicians or other entities providing health
335 care services through a contract with the seller or lessor,
336 including all agreements or contracts that would be void or
337 voidable upon the consummation of the sale or lease.
338 6. The proposal is in compliance with subsections (9) and
339 (10).
340 (b) The findings must be accompanied by all information and
341 documents relevant to the governing board's determination,
342 including, but not limited to:
343 1. The names and addresses of all parties to the
344 transaction.
345 2. The location of the hospital and all related facilities.
346 3. A description of the terms of all proposed agreements.
347 4. A copy of the proposed sale or lease agreement and any
348 related agreements, including, but not limited to, leases,

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349 management contracts, service contracts, and memoranda of
350 understanding.
351 5. The estimated total value associated with the proposed
352 agreement and the proposed acquisition price.
353 6. Any valuations of the hospital's assets prepared during
354 the 3 years immediately preceding the proposed transaction date.
355 7. The fair market value analysis required by paragraph
356 (5)(b), or any other valuation prepared at the request of the
357 board, owner of the hospital or health care system, or managing
358 entity of the hospital or health care system.
359 8. Copies of all other proposals and bids that the
360 governing board may have received or considered in compliance
361 with subsection (6).
362 (9) Within 120 days before the anticipated closing date of
363 the proposed transaction, the governing board shall make
364 publicly available all findings and documents required under
365 subsection (8) and publish a notice of the proposed transaction
366 in one or more newspapers of general circulation in the county
367 in which the majority of the physical assets of the hospital are
368 located. The notice must include the names of the parties
369 involved and the means by which a person may submit written
370 comments about the proposed transaction to the governing board
371 and obtain copies of the findings and documents required under
372 subsection (8).
373 (10) Within 20 days after the date of publication of the
374 public notice, any person may submit to the governing board
375 written comments regarding the proposed transaction.
376 (11) The sale or lease of the hospital is subject to
377 approval by the Chief Financial Officer or his or her designee,

378 except, if otherwise required by law, approval of the sale or
379 lease shall exclusively be by majority vote of the registered
380 voters in the county, district, or municipality in which the
381 hospital is located.
382 (a) The governing board shall file a petition with the
383 state Chief Financial Officer seeking approval of the proposed
384 transaction at least 30 days after publication of the notice of
385 the proposed transaction.
386 (b) The petition for approval filed by the governing board
387 must include all findings and documents required under
388 subsection (8) and certification by the governing board of
389 compliance with all requirements of this section. The chair of
390 the governing board must certify under oath and subject to the
391 penalty of perjury on a form accompanying the petition that the
392 contents of the petition and representations therein are true
393 and correct.
394 (12) Within 30 days of receiving the petition, the Chief
395 Financial Officer or his or her designee shall issue a final
396 order approving or denying the proposed transaction based solely
397 upon consideration of whether the procedures contained within
398 this section have been followed by the governing board of the
399 county, district, or municipal hospital. The order shall require
400 the governing board to accept or reject the proposal for the
401 sale or lease of the county, district, or municipal hospital
402 based upon a determination that:
403 (a) The proposed transaction is permitted by law.
404 (b) The proposed transaction does not unreasonably exclude
405 a potential purchaser or lessee on the basis of being a for-
406 profit or a not-for-profit Florida corporation or other form of

407 business organization, such as a partnership or limited
408 liability company.
409 (c) The governing board of the hospital publicly advertised
410 the meeting at which the proposed transaction was considered by
411 the board in compliance with s. 286.0105.
412 (d) The governing board of the hospital publicly advertised
413 the offer to accept proposals in compliance with s. 255.0525.
414 (e) Any conflict of interest was disclosed, including, but
415 not limited to, how the proposed transaction could result in a
416 special private gain or loss to members of the governing board
417 or key management employees of the county, district, or
418 municipal hospital, or if governing board members will be
419 serving on the board of any successor private corporation.
420 Conflicts of interest, if any, with respect to experts retained
421 by the governing board shall also be disclosed.
422 (f) The seller or lessor documented that it will receive
423 fair market value for the sale or lease of the assets as
424 indicated in paragraph (5)(b) or, if leased at less than fair
425 market value, the governing board provided a detailed
426 explanation of how the best interests of the affected community
427 are served by the acceptance of less than fair market value for
428 the lease of the hospital.
429 (g) The acquiring entity has made an enforceable commitment
430 that programs and services and quality health care will continue
431 to be provided to all residents of the affected community,
432 particularly to the indigent, the uninsured, and the
433 underinsured.
434 (h) The governing board disclosed whether the sale or lease
435 will result in a reduction or elimination of ad valorem or other

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436 taxes used to support the hospital.
437 (13) Any interested party to the action has the right to
438 seek judicial review of the decision in the appellate district
439 where the hospital is located or in the First District Court of
440 Appeal pursuant to s. 120.68.
441 (a) All proceedings shall be instituted by filing a notice
442 of appeal in accordance with the Florida Rules of Appellate
443 Procedure within 30 days after the date of the final order.
444 (b) In such judicial review, the appellate court shall
445 affirm the decision of the Chief Financial Officer, unless the
446 decision by the Chief Financial Officer is shown to be clearly
447 erroneous.
448 (14) All costs shall be paid by the governing board, unless
449 an interested party contests the action, in which case the court
450 may assign costs equitably to the parties.
451 (15) If any provision of subsection (5), subsection (6), or
452 subsection (8) is not followed, the contract for sale or lease
453 is voidable by any party to the contract. If any member of the
454 governing board negligently or willfully violates subsection
455 (5), subsection (6), or subsection (7), as determined by the
456 Commission on Ethics after receipt of a sworn complaint pursuant
457 to s. 112.322, the member is subject to a penalty, as determined
458 by the Commission on Ethics pursuant to s. 112.317.
459 (16) If a county, district, or municipal hospital is sold
460 or leased, the governing board shall:
461 (a) Deposit 50 percent of the net proceeds of the sale or
462 lease into a health care economic development trust fund, which
463 shall be under the control of the county commission of the
464 county in which the property is located. The use and

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465 distribution of the funds shall be at the discretion of a
466 majority of the county commission, the members of which shall
467 serve as trustees of the trust fund. The net proceeds in the
468 health care economic development trust fund shall be
469 distributed, in consultation with the Department of Economic
470 Opportunity, to promote job creation in the health care sector
471 of the economy through new or expanded health care business
472 development, new or expanded health care services, or new or
473 expanded health care education programs or commercialization of
474 health care research within the affected community; and
475 (b) Appropriate 50 percent of the net proceeds of the sale
476 or lease for funding the delivery of indigent and uncompensated
477 care on an equitable basis, based on the amount of indigent and
478 uncompensated care provided, to all hospitals within the
479 boundaries of the district.
480
481 For the purposes of this subsection, the term "net proceeds"
482 means the sale price after payment of all district debts and
483 obligations.
484 (17) If a county, district, or municipal hospital is sold
485 or leased to a for-profit corporation or other business entity
486 subject to local taxation, in addition to the distribution of
487 funds as directed in subsection (16):
488 (a) Fifty percent of the resulting county and municipal ad
489 valorem tax revenue from the formerly tax-exempt property shall
490 be distributed by the county commission of the county in which
491 the property is located, in consultation with the Department of
492 Economic Opportunity, for purposes set forth in subsection (16);
493 and

494 (b) Fifty percent of the resulting county and municipal ad
495 valorem tax revenue from the formerly tax-exempt property shall
496 be appropriated by the county commission for the sole purpose of
497 enhancing education and law enforcement programs within the
498 county.
499 (18) ~~(5)~~ If ~~In the event~~ a hospital operated by a for-profit
500 or not-for-profit Florida entity ~~corporation~~ receives annually
501 more than $100,000 in revenues from the county, district, or
502 municipality that owns the hospital, the Florida entity
503 ~~corporation~~ must be accountable to the county, district, or
504 municipality with respect to the manner in which the funds are
505 expended by either:
506 (a) Having the revenues subject to annual appropriations by
507 the county, district, or municipality; or
508 (b) Where there is a contract to provide revenues to the
509 hospital, the term of which is longer than 12 months, the
510 governing board of the county, district, or municipality must be
511 able to modify the contract upon 12 months notice to the
512 hospital.
513
514 A not-for-profit entity ~~corporation~~ that is subject to this
515 subsection and that does not currently comply with the
516 accountability requirements in this subsection shall have 12
517 months after the effective date of this act to modify any
518 contracts with the county, district, or municipality in a manner
519 that is consistent with this subsection.
520 (19) ~~(6)~~ Unless otherwise expressly stated in the lease
521 documents, the transaction involving the sale or lease of a
522 hospital may ~~shall~~ not be construed as:

523 (a) A transfer of a governmental function from the county,
524 district, or municipality to the private purchaser or lessee;
525 (b) Constituting a financial interest of the public lessor
526 in the private lessee; or
527 (c) Making a private lessee an integral part of the public
528 lessor's decisionmaking process.
529 (20) ~~(7)~~ The lessee of a hospital, under this section or any
530 special act of the Legislature, operating under a lease may
531 ~~shall~~ not be construed to be "acting on behalf of" the lessor as
532 that term is used in statute, unless the lease document
533 expressly provides to the contrary.
534 (21) ~~(8)~~(a) If, whenever the sale of a public hospital by a
535 public agency to a private ~~corporation or other private~~ entity
536 pursuant to this section or pursuant to a special act of the
537 Legislature reflects that:
538 1. The private ~~corporation or other private~~ entity
539 purchaser acquires 100 percent ownership in the hospital
540 enterprise;
541 2. The private ~~corporation or other private~~ entity
542 purchases the physical plant of the hospital facility and has
543 complete responsibility for the operation and maintenance of the
544 facility, regardless of ownership of the underlying real
545 property;
546 3. The public agency seller retains no control over
547 decisionmaking or policymaking for the hospital;
548 4. The private ~~corporation or other private~~ entity
549 purchaser receives no funding from the public agency seller
550 other than by contract for services rendered to patients for
551 whom the public agency seller has the responsibility to pay for

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

552 hospital or medical care;
553 5. The public agency seller makes no substantial investment
554 in or loans to the private entity;
555 6. The private ~~corporation or other private~~ entity
556 purchaser was not created by the public entity seller; and
557 7. The private ~~corporation or other private~~ entity
558 purchaser operates primarily for its own financial interests and
559 not primarily for the interests of the public agency,
560
561 such a sale shall be considered a complete sale of the public
562 agency's interest in the hospital or health care system.
563 (b) A complete sale of a hospital or health care system as
564 described in this subsection may ~~shall~~ not be construed as:
565 1. A transfer of a governmental function from the county,
566 district, or municipality to the private ~~corporation or other~~
567 ~~private~~ entity purchaser;
568 2. Constituting a financial interest of the public agency
569 in the private ~~corporation or other private~~ entity purchaser;
570 3. Making the private ~~corporation or other private~~ entity
571 purchaser an "agency" as that term is used in statutes;
572 4. Making the private ~~corporation or other private~~ entity
573 purchaser an integral part of the public agency's decisionmaking
574 process; or
575 5. Indicating that the private ~~corporation or other private~~
576 entity purchaser is "acting on behalf of a public agency" as
577 that term is used in statute.
578 (22) If the governing board elects to sell or lease any
579 physical property of a county, district, or municipal hospital
580 or health care system and such property generated less than 20

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581 percent of the hospital's net revenue within the hospital's or
582 health care system's most recent fiscal year, the sale or lease
583 of such property is exempt from the requirements under
584 subsections (6)-(17). However, the governing board shall
585 publicly advertise the meeting at which the proposed sale or
586 lease of such property will be considered by the governing board
587 of the hospital in accordance with s. 286.0105 or publicly
588 advertise the offer to accept proposals in accordance with s.
589 255.0525 and receive proposals from all qualified purchasers and
590 lessees. The sale or lease of the property must be for fair
591 market value or, if a lease is for less than fair market value,
592 the lease must be in the best interest of the affected
593 community.
594 (23) A county, district, or municipal hospital that has
595 executed a letter of intent to sell or lease the hospital or
596 health care system accepted at a properly noticed public
597 meeting, and whose governing board has voted to approve the
598 letter of intent before December 31, 2011, is not subject to
599 subsections (6)-(17) as long as the final closing of the sale or
600 lease transaction pursuant to the letter of intent occurs before
601 December 31, 2012.
602 Section 2. Section 155.401, Florida Statutes, is created to
603 read:
604 155.401 Power of special taxing district to appropriate
605 proceeds from sale or lease of hospital to economic development
606 trust fund.—Notwithstanding any other general or special law,
607 the purposes for which a special taxing district may appropriate
608 funds from the sale or lease of a hospital to an economic
609 development fund include the promotion and support of economic

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610 growth in such district and in the county in which such district
611 is located and the furthering of the purposes of such district,
612 as provided by law.
613 Section 3. To the extent that any general or special law is
614 inconsistent with or otherwise in conflict with this act, such
615 conflicting provisions are specifically superseded by this act.
616 A special tax district, public hospital, or municipal hospital
617 is not exempt from this act.
618 Section 4. Section 395.3036, Florida Statutes, is amended
619 to read:
620 395.3036 Confidentiality of records and meetings of
621 entities ~~corporations~~ that lease public hospitals or other
622 public health care facilities.—The records of a private entity
623 ~~corporation~~ that leases a public hospital or other public health
624 care facility are confidential and exempt from ~~the provisions of~~
625 s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and
626 the meetings of the governing board of a private entity
627 ~~corporation~~ are exempt from s. 286.011 and s. 24(b), Art. I of
628 the State Constitution if ~~when~~ the public lessor complies with
629 the public finance accountability provisions of s. 155.40(18)
630 ~~155.40(5)~~ with respect to the transfer of any public funds to
631 the private lessee and if ~~when~~ the private lessee meets at least
632 three of the five following criteria:
633 (1) The public lessor that owns the public hospital or
634 other public health care facility was not the incorporator or
635 initial member of the private entity ~~corporation~~ that leases the
636 public hospital or other health care facility.
637 (2) The public lessor and the private lessee do not
638 commingle any of their funds in any account maintained by either

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639 of them, other than the payment of the rent and administrative
640 fees or the transfer of funds pursuant to subsection (5) ~~(2)~~.
641 (3) Except as otherwise provided by law, the private lessee
642 is not allowed to participate, except as a member of the public,
643 in the decisionmaking process of the public lessor.
644 (4) The lease agreement does not expressly require the
645 lessee to comply with ~~the requirements of~~ ss. 119.07(1) and
646 286.011.
647 (5) The public lessor is not entitled to receive any
648 revenues from the lessee, except for rental or administrative
649 fees due under the lease, and the lessor is not responsible for
650 the debts or other obligations of the lessee.
651 Section 5. This act shall take effect upon becoming a law.

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THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/28/12
Date

1568
Bill Number

Barcode

Name Nick Iarossi

Phone 222-9075

Address 101 E. College Ave. Ste 303
Street

E-mail

Tallahassee FL 32311
City State Zip

Job Title

Speaking: ☐ For ☐ Against ☑ Information Strike All ☐ Appearing at request of Chair

Subject

Representing Safety Net Hospital Alliance

Lobbyist registered with Legislature: ☒ Yes ☐ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from ____ ___ .m. to ____ ___ .m.

S-001 (04/14/1

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/SB 1620

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Insurance

DATE: February 27, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Burgess	Burgess	BI	**Fav/CS**
2.	Betta	DeLoach	BGA	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill changes a number of provisions relating to the regulation of insurance companies, insurance agents, insurance adjusters, and insurance coverage, including:

- Specifies that a salvage motor vehicle dealer is not required to carry the $25,000 combined single-limit liability coverage for bodily injury and property damage, or the $10,000 Personal Injury Protection (PIP) coverage, for vehicles that have been issued a certificate of destruction and cannot be operated legally on state roads.
- Clarifies that a current exemption from filing specified reinsurance information applies to any insurer with less than $500,000 in direct written premiums in Florida in the preceding calendar year, as long as that insurer did not write more than $250,000 of premium during the preceding calendar quarter, or any insurer with less than 1,000 policyholders at the end of the preceding calendar year.
- Allows the Department of Financial Services (DFS) to provide licensing examinations in Spanish at the expense of the applicant.
- Expands the list of entities to whom a limited license for travel insurance may be issued.
- Prohibits a patronage dividend or other payment from being paid to a production credit association or a federal land bank association, if the payment is directly or indirectly based on the premium charged to that member for crop hail or multi-peril crop insurance.

- Allows a licensed independent adjuster or a licensed agent to supervise up to 25 individuals who are not required to obtain a license to perform functions in connection with entering data into an automated claims adjudication system for portable electronics insurance claims.
- Provides that a resident of Canada cannot obtain a license as a nonresident independent adjuster for the purpose of adjusting portable electronics insurance claims, unless the individual obtains an adjuster license in another state.
- Provides that an insurer with surplus as to policyholders of $25 million or less can qualify as a limited apportionment company (LAC) for all statutory purposes.
- Provides that mandated health benefits are intended to apply only to the types of health benefit plans defined in s. 627.6699(3), F.S., unless specifically designated otherwise.
- Specifies that the alternative dispute resolution procedure for personal and commercial residential property insurance claims can be requested only by the policyholder, as a first-party claimant, or by the insurer.
- Provides that when the notice of loss is reported more than 36 months after a declaration of a state of emergency by the Governor in response to a hurricane, the alternative claim dispute resolution process is not available.
- Allows the cancellation of a private passenger motor vehicle insurance policy, regardless of whether the first two months of premiums need to be paid up front, within the first 60 days for non-payment of premium when the check or other method of payment presented is subsequently dishonored.
- Clarifies that when an insurer fails to meet the statutory requirements for timely payment of PIP benefits, the obligation will accrue interest at the rate established in the contract or the statutory interest rate that applies to judgments and decrees, whichever is greater, that is in effect on the date the payment became overdue.

The bill provides an effective date of July 1, 2012.

This bill substantially amends the following sections of the Florida Statutes: 320.27, 624.501, 624.610, 626.261, 626.321, 626.753, 627.351, 627.7015, 627.7295, and 627.736.

This bill substantially creates the following sections of the Florida Statutes: 626.8675 and 627.6011.

II. Present Situation:

Motor Vehicle Dealers

Section 320.27(3), F.S., requires motor vehicle dealers licensed in Florida to be insured under a garage liability insurance policy or a general liability policy and a business automobile policy which must include a minimum of $25,000 combined single-limit liability coverage for bodily injury and property damage, and $10,000 of PIP. Section 320.27(1)(a), F.S., defines a “motor vehicle dealer” as any person engaged in the business of buying, selling or dealing in motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles. The definition specifies five separate classifications of motor vehicle dealers, one of which is a salvage motor vehicle dealer, which purchases salvaged or wrecked motor vehicles for the purpose of reselling the vehicle or its parts.

Reinsurance Filing Requirements

Section 624.610(11), F.S., establishes specified information that must be filed by domestic or commercially domiciled insurers that cede directly written risks of loss. Section 624.619(11)(c), F.S., specifies certain exemptions from the filing requirements, including any insurer with more than $100 million in surplus as to policyholders, less than $500,000 in direct written premiums in Florida in the preceding calendar year, or less than 1,000 policyholders at the end of the preceding calendar year. The statute then provides that any ceding insurer "otherwise subject to this section with more than $250,000 in direct written premiums written in this state during the preceding calendar quarter is not exempt from the requirements of this subsection." The placement of this last provision creates some ambiguity as to its application.

Agent License Examinations

The Department of Financial Services (DFS) is responsible for licensing insurance agents, service representatives and adjusters, under Part I of ch. 626, F.S., titled the "Licensing Procedures Law." Section 626.261, F.S., establishes requirements for conducting examinations for licensee candidates.

Limited Licenses

Section 626.321, F.S., establishes categories for which the DFS will issue a license that authorizes an agent to transact a limited class of business. The following enumerated categories qualify for limited license:

- Motor vehicle physical damage and mechanical breakdown insurance;
- Industrial fire or burglary insurance;
- Travel insurance;
- Motor vehicle rental insurance;
- Credit life or disability insurance;
- Credit insurance;
- Credit property insurance;
- Crop hail and multi-peril crop insurance;
- In-transit and storage personal property insurance; and
- Communications equipment property insurance, communications equipment inland marine insurance, and communications equipment service warranty insurance.

Under a limited license for travel insurance, the policy or certificate of travel insurance can cover risks incidental to travel, planned travel, or accommodations while traveling, including:

- Accidental death and dismemberment;
- Trip cancellation, interruption or delay;
- Loss or damage to personal effects or travel documents;
- Baggage delay;
- Emergency medical travel or evacuation;
- Medical, surgical, or hospital expenses arising from an illness or emergency.

The travel insurance must be limited to travel or accommodations of no more than 60 days, but the policy or certificate can be issued for a term that exceeds 60 days. A limited license for travel insurance may be issued only to:

- A full-time salaried employee of a common carrier or a transportation ticket agency in connection with the sale of transportation tickets;
- An entity or individual that is a developer of a timeshare plan of an approved public offering statement;
- An entity or individual that is an exchange company operating an approved exchange program;
- An entity or individual that is a managing entity operating a timeshare plan;
- An entity or individual that is a seller of travel; or
- An entity or individual that is an affiliate of any of the listed entities.

Agents Sharing Commissions

Section 626.753, F.S., provides that an agent may divide or share commissions only with other agents appointed and licensed to write the same kinds of insurance. An agent cannot share a commission with any corporation unless that corporation is an insurance agency.

Section 626.753(3), F.S., provides that a general lines agent may share commissions from the sale of crop hail or multi-peril crop insurance with a production credit association or a federal land bank association, if the association has approved the insurance activity by its employees.

Insurance Adjusters

Insurance adjusters are regulated by the DFS under part VI of ch. 626, F.S., entitled the "Insurance Adjusters Law."[1] Section 626.852, F.S., explicitly provides that the Insurance Adjusters Law does not apply to:

- Life insurance or annuity contracts;
- Third party administrators with a certificate of authority, or individuals employed by third party administrators;
- Any employee or agent of a state university board of trustees providing services for a self-insurance program; or
- Any person who adjusts only multi-peril crop insurance or crop hail insurance.

Section 626.862, F.S., provides that a licensed and appointed insurance agent is authorized to adjust claims for the insurers for which the agent is appointed, without obtaining a license as an adjuster.

The Insurance Adjusters Law provides separate definitions and separate requirements for public adjusters,[2] independent adjusters,[3] company employee adjusters,[4] nonresident company

[1] Section 626.851, F.S.
[2] Section 626.854, F.S.
[3] Section 626.855, F.S.
[4] Section 626.856, F.S.

employee adjusters,[5] nonresident public adjusters,[6] and nonresident independent adjusters.[7] A nonresident independent adjuster is defined as a person who:

- Is a resident of Florida;
- Is a licensed independent adjuster in the state of residence, or if the state of residence does not license independent adjusters, the nonresident must have passed the relevant Florida examination for licensure; and
- Is a self-employed independent adjuster or is associated with or employed by an independent adjuster firm or other independent adjuster.

Additional requirements for nonresident independent adjusters are contained in s. 626.8734, F.S.

Limited Apportionment Companies

A limited apportionment company (LAC) is a company with surplus as to policyholders below a certain prescribed level. Four separate sections in current law have established apparently conflicting requirements necessary to qualify as an LAC. Section 627.351(2)(b)3., F.S., provides a threshold of $20 million or less of surplus as to policyholders to qualify as an LAC. Section 627.351(6)(c)13., F.S., provides a threshold of $25 million or less of surplus as to policyholders to qualify as an LAC. Further, s. 215.555(4)(e)3., F.S., specifically references the $20 million definition of LAC under s. 627.351(2)(b)3., F.S.; however, s. 215.555(4)(b)4., F.S., specifically references the $25 million definition of LAC under s. 627.351(6)(c), F.S.

Section 627.351(2)(b)3., F.S., established the Windstorm Insurance Risk Apportionment plan, and authorized the OIR to adopt a plan for the equitable apportionment of windstorm coverage among insurers authorized to transact property insurance on a direct basis in Florida.[8] Section 627.351(2)(b)3., F.S., requires that the plan provide that any member insurer with $20 million or less of surplus as to policyholders can apply with OIR to qualify as an LAC. The section specifies that the apportionment of windstorm loss to an LAC cannot exceed that LAC's gross participation, and the LAC cannot be required to participate in marketwide aggregate windstorm losses exceeding $50 million. Further, if the OIR determines that any regular assessment will result in the impairment of surplus of an LAC, the OIR must direct that LAC's share of the assessment to be deferred.

Because all residual market windstorm risk is now covered by Citizens Property Insurance Corporation (Citizens) under s. 627.351(6), F.S., the Windstorm Insurance Risk Apportionment plan created by s. 627.351(2), F.S., is no longer active. Nevertheless, the $20 million threshold that it establishes to qualify as an LAC is still in effect through a cross-reference from legislation regulating the Florida Hurricane Catastrophe Fund (FCHF) under ch. 215, F.S.

Section 215.555(4)(e)3., F.S., specifically references the definition of limited apportionment companies under s. 627.351(2)(b)3., F.S., for the purpose of allowing the FHCF to advance the amount of estimated reimbursement payable to an LAC under the FHCF contract. Accordingly,

[5] Section 262.858, F.S.
[6] Section 626.8582, F.S.
[7] Section 626.8584, F.S.
[8] Section 627.351(2)(b), F.S.

only those companies with surplus at or below $20 million could qualify to receive the advance from the FHCF.

Section 627.351(6), F.S., establishes Citizens Property Insurance Corporation, and s. 627.351(6)(c)13., F.S., specifies that the Citizens' plan of operation must provide that any assessable insurer with surplus as to policyholders of $25 million or less may petition the OIR to qualify as an LAC, for the purpose of allowing the LAC to pay any regular assessment on a monthly basis as the assessments are collected by the LAC from its policyholders. Further, if the OIR determines that any regular assessment will result in the impairment of surplus of an LAC, the OIR must direct that LAC's share of the assessment be deferred.

The $25 million threshold for LACs also has a statutory cross-reference tying it into the statutes regulating the FHCF. Section 215.555(4)(b)4., F.S., specifically references the definition of limited apportionment companies under s. 627.351(6)(c), F.S., for the purpose of allowing the LACs to participate in an additional layer of FHCF coverage not otherwise available. Accordingly, those companies with surplus up to $25 million could qualify as LACs for participating in the additional layer of FHCF coverage.

Mandated Health Benefit Coverages

Sections 627.6401, F.S., through 627.64193, F.S., are 17 different statutory sections that impose various forms of mandatory health benefits that must be included in every health insurance policy, unless an exception is designated within the statutory section that describes the specific mandate being imposed. Many of the mandates provide for exceptions within the specific section that imposes the mandate, as follows:

- Section 627.6406, F.S., maternity care, explicitly exempts health insurance coverage that does not provide for hospitalization in connection with childbirth.
- Section 627.6408, F.S., osteoporosis screening, does not apply to "specific-accident, specific-disease, hospital indemnity, Medicare supplement, or long-term care health insurance, or the state employee health insurance program."
- Section 627.641, F.S., newborn children, does not apply to disability income or hospital indemnity policies, or to normal maternity policy provisions.
- Section 627.6416, F.S., child health supervision services, does not apply to "disability income, specified disease, Medicare supplement, or hospital indemnity policies."
- Section 627.6417, F.S., surgical procedures and devices incident to mastectomy, does not apply to "disability income, specified disease other than cancer, or hospital indemnity policies."
- Section 627.64171, F.S., outpatient postsurgical care, does not apply to "disability income, specified diseases other than cancer, or hospital indemnity policies."
- Section 627.6418, F.S., mammograms, does not apply to "disability income, specified disease, or hospital indemnity policies."
- Section 627.64193, F.S., cleft lip and cleft palate, does not apply to "specified-accident, specified-disease, hospital indemnity, limited benefit disability income, or long-term care insurance policies."

Alternative Procedure for Claim Dispute Resolution

Section 627.7015, F. S., establishes procedures for a mediated claim resolution process for all claimants and insureds under personal lines and commercial residential policies. The process is available prior to the commencing of the appraisal process or commencing litigation. If requested by the insured, legal counsel is permitted. The process explicitly excludes commercial coverages, motor vehicle coverages, or liability disputes on a property insurance policy. When a first party claim is filed for the mediation process, the insurer is obligated to notify all first-party claimants of their right to participate in the mediation program. If the insurer fails to comply with its obligations, the insured is relieved from any contractual obligation to participate in the loss appraisal process as a precondition to legal action. For purposes of the alternative dispute resolution procedure, the term "claim" means any dispute between an insurer and an insured over a material issue of fact, with four exceptions, specified as follows:

- When the insurer has a reasonable basis to suspect fraud;
- When, based on agreed-upon facts as to the cause of the loss, there is no coverage under the policy;
- When the insurer has a reasonable basis to believe the claimant has intentionally made a material misrepresentation relevant to the claim, and the entire claim is denied based on the misrepresentation; and
- When the controversy is less than $500, unless the parties agree to mediate the dispute.

Cancellation of Motor Vehicle Insurance Policies

Prior to the effective date of a private passenger motor vehicle insurance policy or a binder for such a policy, the insurer or agent must collect from the insured an amount equal to two months premium. This is not applicable if:

- The insured or member of the insured's family is renewing or replacing a policy or a binder for such policy written by the same insurer or a member of the same insurer group.
- The insurer issues private passenger motor vehicle coverage primarily to active duty or former military personnel or their dependents.
- All policy payments are paid through a payroll deduction plan or an automatic electronic funds transfer payment plan from the policyholder.[9]

For policies under which the first two months of premium are not required to be paid up front, the insurer may not cancel the new policy or binder during the first 60 days immediately following the effective date of the policy or binder except for nonpayment of premium.

Overdue Payments of Personal Injury Protection (PIP) Benefits

Section 627.736(4)(d), F.S., provides that when an insurer fails to meet the statutory requirements for timely payment of PIP benefits, the obligation will accrue interest at the rate established in the contract or the statutory interest rate established to apply to judgments and decrees,[10] whichever is greater. The interest rate for judgments is established by the Chief

[9] Section 627.7295(7), F.S.
[10] Section 55.03, F.S.

Financial Officer (CFO) four times[11] a year to apply to each calendar quarter in the year.[12] The CFO is to average the discount rate of the Federal Reserve Bank of New York for the preceding 12 months, then add 400 basis points. The statute states that the interest is to be applied "for the year in which the payment became overdue." [13]

III. Effect of Proposed Changes:

Section 1 amends s. 320.27, F.S., relating to requirements imposed on licensed Florida motor vehicle dealers. The bill specifies that a salvage motor vehicle dealer, as defined in s. 320.27(1)(c)5., F.S., is not required to carry the $25,000 combined single-limit liability coverage for bodily injury and property damage, or the $10,000 PIP coverage, for vehicles that have been issued a certificate of destruction and cannot be operated legally on state roads. The liability and PIP coverage requirements cover risk that arises only when a motor vehicle is being driven; this provision of the bill removes the requirement of coverage for vehicles that cannot be driven.

Section 2 amends s. 624.501(9), F.S., relating to the fees applicable for the original appointment and biennial renewal fee for limited appointments as agents. Current law provides a fee of $60 (including tax) for the original appointment fee and the biennial renewal fee for an appointment for each agent, with an exception that is applicable only to agents selling or soliciting motor vehicle rental insurance. For those limited agents, the original appointment fee and the biennial renewal fee is also $60, but the fee is not required to be paid for each individual that sells the product, but rather the fee must be paid only for each office, branch office, or place of business covered by the license.

The bill adds travel insurance to the exception that is currently applicable only to motor vehicle rental insurance. As a result, for the sale of travel insurance, an insurer would be required to pay the $60 original appointment fee and the $60 biennial renewal fee only for each office, branch office, or place of business covered by the license.

Section 3 amends s. 624.610(11)(c), F.S., by clarifying that the exemption from filing specified reinsurance information applies to any insurer with less than $500,000 in direct written premiums in Florida in the preceding calendar year, as long as that insurer did not write more than $250,000 of premium during the preceding calendar quarter, or to any insurer with less than 1,000 policyholders at the end of the preceding calendar year, or to any insurer with more than $100 million in surplus as to policyholders.

Section 4 creates s. 626.261(5), F.S., which allows the DFS to provide licensing examinations in Spanish. Applicants seeking to be given an examination in Spanish must bear the full cost incurred by the DFS in developing, administering, grading and evaluating the examination. In determining whether to allow the examination to be translated and administered in Spanish, the DFS must consider the percentage of population who speak Spanish.

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[11] The CFO is to establish the interest rate on December 1, March 1, June 1, and September 1.
[12] The quarters are specified as beginning January 1, April 1, July 1, and October 1.
[13] Section 627.736(4)(d), F.S.

Section 5 amends s. 626.321, F.S., relating to limited agent licenses. The bill removes a current reference to the OIR's review of travel insurance under s. 624.605(1)(q), F.S., which refers to a miscellaneous subcomponent of the definition of casualty insurance. The bill adds event cancellation and damage to travel accommodations as permissible perils for inclusion under travel insurance. The bill increases the maximum allowable duration of travel or accommodations which a travel insurance policy or certificate may cover from the current 60 days limit to 90 days. The bill expands the list of individuals or entities to whom a limited license for travel insurance may be issued to include full-time salaried employees of a licensed general lines agent and business entities that offer travel planning services when the insurance activities are in connection with travel, providing:

- The license issued to a business entity offering travel planning services encompasses each office, branch office, or place of business using the entity's business name to sell insurance.
- The application for licensure must list the name, address, and phone number for each place of business covered under the license, and the licensee is obligated to provide updated information to the DFS for every place of business that is added to or deleted from the license within 30 days of the change.
- The licensed entity is directly responsible for the acts of those acting under the license.

Section 6 amends s. 626.753, F.S., relating to the sharing of agents' commissions. The bill prohibits a patronage dividend or other payment from being paid to a production credit association or a federal land bank association, if the payment is directly or indirectly based on the premium charged to that member for crop hail or multi-peril crop insurance. The bill specifies that any such payment is an unlawful rebate in violation of ss. 626.573, F.S., and 626.9541(1)(h), F.S. The bill further provides that an agent engaging in commission sharing with a production credit association or a federal land bank association, who has knowledge that the association is providing patronage dividends or other payments is in violation of the unlawful rebate provisions.

Section 7 creates s. 626.8675, F.S., providing an exemption from part VI of ch. 626, F.S., for portable electronics insurance claims employees. The bill allows a licensed independent adjuster or a licensed agent to supervise up to 25 individuals who are not required to obtain a license to perform functions in connection with entering data into an automated claims adjudication system. "Automated claims adjudication system" is defined as a preprogrammed computer system for the resolution of portable electronics insurance claims, as long as the system:

- Is used only by a licensed independent adjuster, a licensed agent, or an individual supervised under this provision;
- Complies with all claims payment requirements of the Florida Insurance Code; and
- Is certified as compliant by a licensed independent adjuster who is an officer of a business entity licensed under ch. 626, F.S.

The bill provides that a resident of Canada cannot obtain a license as a nonresident independent adjuster for the purposes of adjusting portable electronics insurance claims, unless the individual obtains an adjuster license in another state.

Section 8 amends s. 627.351.(2)(b)3., F.S. by changing the threshold level of surplus to qualify as an LAC under this section from the current $20 million to $25 million. As a result, the statutory definitions and cross-references for LACs will be consistent. An insurer with surplus as

to policyholders of $25 million or less can qualify as an LAC for all statutory purposes, including being qualified to receive advances from the FHCF under s. 215.555(4)(e)3., F.S.

Section 9 creates s. 627.6011, F.S., relating to mandated health insurance coverages. The bill provides that, rather than the current practice of designating all exemptions within each statutory section that describes the specific mandate being imposed, every "mandatory health benefit" applies only to the type of health benefit plan defined in s. 627.6699(3), F.S.,[14] unless the mandate specifically designates otherwise. The bill defines "mandatory health benefits" to mean those set forth in s. 627.6401, F.S., through s. 627.64193, F.S., along with any cross-references, and all mandatory treatment or health coverages or benefits that are enacted after the effective date of the bill.

Section 10 amends s. 627.7015, F.S., relating to alternative procedures for claim dispute resolution for personal lines and commercial residential property insurance. The bill specifies that the alternative dispute resolution procedure can be requested only by the policyholder, as a first-party claimant, or by the insurer. For all purposes within the alternative dispute resolution procedure, every current reference to either "insured" or "first-party claimant" is replaced in the bill with the term "policyholder." The bill adds an exception to the circumstances under which a claim would qualify for the alternative procedure for claim dispute resolution. Under current law, for purposes of the alternative dispute resolution procedure, the term "claim" means any dispute between an insurer and an insured over a material issue of fact, with four specified exceptions. The bill adds a fifth specific exception, namely that when the notice of loss is reported more than 36 months after a declaration of a state of emergency by the Governor in response to a hurricane, the alternative claim dispute resolution process is not available.

Section 11 amends s. 627.7295, F.S., relating to motor vehicle insurance contracts. The bill allows the cancellation of a private passenger motor vehicle insurance policy, regardless of whether the first two months of premiums need to be paid up front, within the first 60 days for nonpayment of premium when the check or other method of payment presented is subsequently dishonored. The bill also removes current language that limits the cancellation of policies within the first 60 days only for the reason of nonpayment of premium. This section is effective upon the act becoming a law.

Section 12 amends s. 627.736, F.S., by clarifying that when an insurer fails to meet the statutory requirements for timely payment of PIP benefits, the obligation will accrue interest at the rate established in the contract or the statutory interest rate that applies to judgments and decrees, whichever is greater, that is in effect on the date the payment became overdue. This provision specifies a more precise date than the current statutory language which states that the interest is to be applied "for the year in which the payment became overdue." This section is effective upon the act becoming a law.

Section 13 provides an effective date of July 1, 2012, except for sections 11 and 12, which are effective upon the act becoming a law.

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[14] Section 627.6699(3)(b), F.S., defines the "basic health benefit plan" and the "standard health benefit plan," with a cross reference s. 627.6699(12), F.S. Section 627.6699(3)(k), F.S., defines "health benefit plan." Section 627.6699(3)(m), F.S., defines "limited benefit policy or contract," to provide specified-disease or specified-accident coverage, or one that fulfills an experimental or reasonable need.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Salvage motor vehicle dealers will save the cost of the premiums for the purchase of the $25,000 combined single-limit liability coverage for bodily injury and property damage, and the $10,000 PIP coverage, for vehicles that have been issued a certificate of destruction and cannot be operated legally on state roads.

A residential property insurer with surplus as to policyholders of greater than $20 million, but not more than $25 million can now qualify as an LAC for the purpose of receiving advances from the FHCF under s. 215.555(4)(e)3, F.S.

C. Government Sector Impact:

The bill allows the DFS to administer licensing examinations in Spanish, depending on the percentage of the population who speak Spanish. If the DFS determines that it will provide examinations in Spanish, it will incur incremental costs to develop, administer, and grade the Spanish examinations. The DFS estimates that the development of new examination would be $45,000. These incremental costs are to be borne by the applicants who elect to take the examinations in Spanish. Based on data obtained from Texas, which administers a Spanish translation examination, the DFS estimates that a candidate taking the Spanish translation examination would pay $341 for the examination, rather than the current cost of $43 to take the examination in English.

The DFS reports that in order to comply with the bill's procedure for travel insurance agents, it will need to make changes to its computer system, which it estimates will cost approximately $5,000 which the department states can be absorbed within its existing budget.

Provisions in the bill will require policy contract changes for travel insurance, motor vehicle insurance, health insurance and residential property insurance contracts and rates.

The OIR anticipates that its product review units will have workload increases. The amount of this impact is indeterminate at this point.

VI. Technical Deficiencies:

Section 9 of the bill specifies that mandatory health benefits are to be applied only to the types of health benefit plan that is defined in s. 627.6699(3), F.S., unless specifically designated otherwise. However, s. 627.6699(3)(m), F.S., defines "limited benefit policy or contract," as providing specified-disease or specified-accident coverage. These are two of the most prevalent exemptions from mandated coverages under current law.

VII. Related Issues:

Section 6 of the bill defines an "automated claims adjudication system" as a preprogrammed computer system used to resolve portable electronics insurance claims. The term portable electronics insurance is not currently defined in the insurance code nor in the bill.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on February 2, 2012:

The CS prohibits a patronage dividend or other payment from being be paid to a production credit association or a federal land bank association, if the payment is directly or indirectly based on the premium charged to that member for crop hail or multi-peril crop insurance, and specifies that any such payment is an unlawful rebate in violation of ss. 626.573, F.S., and 626.9541(1)(h), F.S.

The CS removes provisions in the original bill that would have established 120 days as the notice requirement for cancelling or nonrenewing residential property insurance policies in most circumstances.

The CS provides that if requested by the policyholder, any person having relevant information would be allowed to attend a session of the mediated claim resolution process for personal lines and commercial residential policies.

The CS provides that sections 11 and 12 of the bill are to be effective upon the act becoming a law.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Latvala) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 88 - 90
4 and insert:
5 <u>personal injury protection insurance on those vehicles that</u>
6 <u>cannot be legally operated on roads, highways, or streets in</u>
7 <u>this state.</u> Franchise dealers
8
9 Between lines 119 and 120
10 insert:
11 Section 2. Subsection (8) of section 624.402, Florida
12 Statutes, is amended, and subsection (9) is added to that

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13 section, to read:
14 624.402 Exceptions, certificate of authority required.—A
15 certificate of authority shall not be required of an insurer
16 with respect to:
17 (8)(a) An insurer domiciled outside the United States
18 covering only persons who, at the time of issuance or renewal,
19 are nonresidents of the United States if:
20 1. The insurer ~~or any affiliated person as defined in s.~~
21 ~~624.04 under common ownership or control with the insurer~~ does
22 not solicit, sell, or accept application for any insurance
23 policy or contract to be delivered or issued for delivery to any
24 person in any state;
25 2. The insurer registers with the office via a letter of
26 notification upon commencing business from this state;
27 3. The insurer provides the following information, in
28 English, to the office annually by March 1:
29 a. The name of the insurer; the country of domicile; the
30 address of the insurer's principal office and office in this
31 state; the names of the owners of the insurer and their
32 percentage of ownership; the names of the officers and directors
33 of the insurer; the name, e-mail, and telephone number of a
34 contact person for the insurer; and the number of individuals
35 who are employed by the insurer or its affiliates in this state;
36 b. The lines of insurance and types of products offered by
37 the insurer;
38 c. A statement from the applicable regulatory body of the
39 insurer's domicile certifying that the insurer is licensed or
40 registered for those lines of insurance and types of products in
41 that domicile; and

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42 d. A copy of the filings required by the applicable
43 regulatory body of the insurer's country of domicile in that
44 country's official language or in English, if available;
45 4. All certificates, policies, or contracts issued in this
46 state showing coverage under the insurer's policy include the
47 following statement in a contrasting color and at least 10-point
48 type: "The policy providing your coverage and the insurer
49 providing this policy have not been approved by the Florida
50 Office of Insurance Regulation"; and
51 5. If ~~In the event~~ the insurer ceases to do business from
52 this state, the insurer will provide written notification to the
53 office within 30 days after cessation.
54 (b) As used in ~~For purposes of~~ this subsection, the term
55 "nonresident" means a trust or other entity organized and
56 domiciled under the laws of a country other than the United
57 States or a person who resides in and maintains a physical place
58 of domicile in a country other than the United States, which he
59 or she recognizes as and intends to maintain as his or her
60 permanent home. A nonresident does not include an unauthorized
61 immigrant present in the United States. Notwithstanding any
62 other provision of law, it is conclusively presumed, for
63 purposes of this subsection, that a person is a resident of the
64 United States if such person has:
65 1. Had his or her principal place of domicile in the United
66 States for 180 days or more in the 365 days before ~~prior to~~
67 issuance or renewal of the policy;
68 2. Registered to vote in any state;
69 3. Made a statement of domicile in any state; or
70 4. Filed for homestead tax exemption on property in any

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71 state.
72 (c) Subject to the limitations provided in this subsection,
73 services, including those listed in s. 624.10, may be provided
74 by the insurer or an affiliated person as defined in s. 624.04
75 under common ownership or control with the insurer.
76 (d) An alien insurer transacting insurance in this state
77 without complying with this subsection is ~~shall~~ be in violation
78 of this chapter and subject to the penalties provided in s.
79 624.15.
80 (9)(a) Life insurance policies or annuity contracts may be
81 solicited, sold, or issued in this state by an insurer domiciled
82 outside the United States covering only persons who, at the time
83 of issuance, are nonresidents of the United States if:
84 1. The insurer is an authorized insurer in the insurer's
85 country of domicile of the kinds of insurance proposed to be
86 offered and has been an authorized insurer for at least the
87 immediately preceding 3 years, or is the wholly owned subsidiary
88 of an authorized insurer or the wholly owned subsidiary of an
89 already eligible authorized insurer for the kinds of insurance
90 proposed for at least the immediately preceding 3 years. The
91 office may waive the 3-year requirement if the insurer has
92 operated successfully for at least the immediately preceding
93 year and has capital and surplus of at least $25 million.
94 2. The insurer furnishes the office with an authenticated
95 copy of its current annual financial statement, in English, with
96 all monetary values therein expressed in United States dollars,
97 at an exchange rate that is current at the time and shown in the
98 statement, in the case of statements originally made in the
99 currencies of other countries, and with such additional

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100 information relative to the insurer as the office may request.
101 3. The insurer has and maintains surplus as to
102 policyholders of at least $15 million. Such surplus must be
103 represented by investments consisting of eligible investments
104 for like funds of like domestic insurers under part II of
105 chapter 625. However, such surplus may be represented by
106 investments permitted by the domestic regulator of an alien
107 insurance company if the investments are substantially similar
108 in terms of quality, liquidity, and security to eligible
109 investments for like funds of like domestic insurers under part
110 II of chapter 625.
111 4. The insurer has a good reputation for providing service
112 to its policyholders and for the payment of losses and claims.
113 5. To maintain eligibility, the insurer furnishes the
114 office within the time period specified in s. 624.424(1) an
115 authenticated copy of its current annual and quarterly financial
116 statements, in English, with all monetary values therein
117 expressed in United States dollars, at an exchange rate that is
118 current at the time and shown in the statement, in the case of
119 statements originally made in the currencies of other countries,
120 and with such additional information relative to the insurer as
121 the office may request.
122 6. An insurer determined eligible under this subsection
123 agrees to make its books and records pertaining to its
124 operations in this state available for inspection during normal
125 business hours upon request of the office.
126 7. The insurer notifies the applicant in clear and
127 conspicuous language:
128 a. Of the date of the insurer’s organization.

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129 b. Of the identity of and rating assigned by each
130 recognized insurance company rating organization that has rated
131 the insurer or, if applicable, that the insurer is unrated.
132 c. That the insurer does not hold a certificate of
133 authority issued in this state and that the office does not
134 exercise regulatory oversight over the insurer.
135 d. Of the identity and address of the regulatory authority
136 exercising oversight of the insurer. This sub-subparagraph does
137 not impose upon the office any duty or responsibility to
138 determine the actual financial condition or claims practices of
139 any unauthorized insurer, and the status of eligibility, if
140 granted by the office, indicates only that the insurer appears
141 to be financially sound and to have satisfactory claims
142 practices and that the office has no credible evidence to the
143 contrary.
144 (b) If the office has reason to believe that an insurer
145 issuing policies or contracts pursuant to this subsection is
146 insolvent or is in unsound financial condition, does not make
147 reasonable prompt payment of benefits, or is no longer eligible
148 under the conditions specified in this subsection, the office
149 may conduct an examination or investigation in accordance with
150 s. 624.316, s. 624.3161, or s. 624.320 and, if the findings of
151 the examination or investigation warrant, may withdraw the
152 eligibility of the insurer to issue policies or contracts
153 pursuant to this subsection without having a certificate of
154 authority issued by the office.
155 (c) This subsection does not provide an exception to the
156 agent licensure requirements of chapter 626. An insurer issuing
157 policies or contracts pursuant to this subsection shall appoint

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158 the agents that the insurer uses to sell such policies or
159 contracts as provided in chapter 626.
160 (d) An insurer issuing policies or contracts pursuant to
161 this subsection is subject to part IX of chapter 626, the Unfair
162 Insurance Trade Practices Act, and the office may take such
163 actions against the insurer for a violation as are provided in
164 that part.
165 (e) Policies and contracts issued pursuant to this
166 subsection are not subject to the premium tax specified in s.
167 624.509.
168 (f) Applications for life insurance coverage offered under
169 this subsection must contain the following statement, in
170 contrasting color and at least 12-point type, on the same page
171 as the applicant's signature:
172
173 This policy is primarily governed by the laws of a
174 foreign country. As a result, all of the rating and
175 underwriting laws applicable to policies filed in this
176 state do not apply to this coverage, which may result
177 in your premiums being higher than would be
178 permissible under a Florida-approved policy. A
179 purchase of individual life insurance should be
180 considered carefully, as future medical conditions may
181 make it impossible to qualify for another individual
182 life policy. If the insurer issuing your policy
183 becomes insolvent, this policy is not covered by the
184 Florida Life and Health Insurance Guaranty
185 Association. For information concerning individual
186 life coverage under a Florida-approved policy, consult

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187 your agent or the Florida Department of Financial
188 Services.
189
190 (g) All life insurance policies and annuity contracts
191 issued pursuant to this subsection must contain on the first
192 page of the policy or contract the following statement, in
193 contrasting color and at least 10-point type:
194
195 The benefits of the policy providing your coverage are
196 governed primarily by the law of a country other than
197 the United States.
198
199 (h) All single-premium life insurance policies and single-
200 premium annuity contracts issued to persons who are not
201 residents of the United States and are not nonresidents
202 illegally residing in the United States are subject to chapter
203 896.
204 (i) As used in this subsection, the term "nonresident" has
205 the same meaning as provided in subsection (8).
206 (j) An alien insurer transacting insurance in this state
207 without complying with this subsection is in violation of this
208 chapter and subject to the penalties provided in s. 624.15 and
209 must pay the fine required for each violation as prescribed by
210 s. 626.910.
211
212 Delete line 147
213 and insert:
214 calendar quarter, and which had fewer ~~or with less~~ than 1,000
215

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216 Delete lines 244 - 260
217 and insert:
218 Section 6. Effective January 1, 2013, section 626.8675,
219 Florida Statutes, is created
220
221 Delete lines 289 - 290
222 and insert:
223 Section 8. Effective upon this act becoming a law,
224 paragraph (e) of subsection (2) of section 626.7491, Florida
225 Statutes, is amended to read:
226 626.7491 Business transacted with producer controlled
227 property and casualty insurer.—
228 (2) DEFINITIONS.—As used in this section:
229 (e) “Licensed insurer” or “insurer” means any person, firm,
230 association, or corporation licensed to transact a property or
231 casualty insurance business in this state. The following are not
232 licensed insurers for the purposes of this section:
233 1. Any risk retention group as defined in:
234 a. The Superfund Amendments Reauthorization Act of 1986,
235 Pub. L. No. 99-499, 100 Stat. 1613 (1986);
236 b. The Risk Retention Act, 15 U.S.C. ss. 3901 et seq. (1982
237 and Supp. 1986); or
238 c. Section 627.942(9).
239 2. Any residual market pool or joint underwriting authority
240 or association; and
241 3. Any captive <u>insurance company</u> ~~insurer~~ as defined in s.
242 628.901.
243 Section 9. Section 626.9201, Florida Statutes, is amended
244 to read:

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245 626.9201 Notice of cancellation or nonrenewal.—
246 (1) An insurer issuing a policy providing coverage for
247 property, casualty, surety, or marine insurance must ~~shall~~ give
248 the named insured at least 45 days' advance written notice of
249 nonrenewal. If the policy is not to be renewed, the written
250 notice shall state the reason ~~or reasons~~ as to why the policy is
251 not to be renewed. This subsection does not apply if:
252 (a) If the insurer has manifested its willingness to renew,
253 and the offer is not rescinded before the expiration of the
254 policy; or
255 (b) If a notice of cancellation for nonpayment of premium
256 is provided under subsection (2).
257 (2) An insurer issuing a policy providing coverage for
258 property, casualty, surety, or marine insurance must ~~shall~~ give
259 the named insured written notice of cancellation or termination
260 other than nonrenewal at least 45 days before ~~prior to~~ the
261 effective date of the cancellation or termination, including in
262 the written notice the reason ~~or reasons~~ for the cancellation or
263 termination, except that:
264 (a) If ~~When~~ cancellation is for nonpayment of premium, ~~at~~
265 ~~least 10 days'~~ written notice of cancellation accompanied by the
266 reason for cancellation must ~~therefor shall~~ be given at least 10
267 days before the cancellation. As used in this paragraph, the
268 term "nonpayment of premium" means the failure of the named
269 insured to discharge when due any of his or her obligations in
270 connection with the payment of premiums on a policy or an
271 installment of such a premium, whether the premium or
272 installment is payable directly to the insurer or its agent or
273 indirectly under a ~~any~~ plan for financing premiums or extension

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274 of credit or the failure of the named insured to maintain
275 membership in an organization if such membership is a condition
276 precedent to insurance coverage. The term also includes the
277 failure of a financial institution to honor the check of an
278 applicant for insurance which was delivered to a licensed agent
279 for payment of a premium, even if the agent previously delivered
280 or transferred the premium to the insurer. If a correctly
281 dishonored check represents payment of the initial premium, the
282 contract and all contractual obligations are void ab initio
283 unless the nonpayment is cured within the earlier of 5 days
284 after actual notice by certified mail is received by the
285 applicant or 15 days after notice is sent to the applicant by
286 certified mail or registered mail, and, if the contract is void,
287 any premium received by the insurer from a third party shall be
288 refunded to that party in full; and
289 (b) If ~~When such~~ cancellation or termination occurs during
290 the first 90 days during which the insurance is in force and if
291 the insurance is canceled or terminated for reasons other than
292 nonpayment, ~~at least 20 days'~~ written notice of cancellation or
293 termination accompanied by the reason for cancellation or
294 termination must ~~therefor shall~~ be given at least 20 days before
295 cancellation or termination, except if ~~where~~ there has been a
296 material misstatement or misrepresentation or failure to comply
297 with the underwriting requirements established by the insurer.
298 (3) If an insurer fails to provide the ~~45-day or 20-day~~
299 written notice required under this section, the coverage
300 provided to the named insured remains ~~shall remain~~ in effect
301 until 45 days after the notice is given or until the effective
302 date of replacement coverage obtained by the named insured,

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303 whichever occurs first. The premium for the coverage remains
304 ~~shall remain~~ the same during any such extension period.
305 Section 10. Paragraph (a) of subsection (1) of section
306 626.9541, Florida Statutes, is amended to read:
307 626.9541 Unfair methods of competition and unfair or
308 deceptive acts or practices defined.—
309 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
310 ACTS.—The following are defined as unfair methods of competition
311 and unfair or deceptive acts or practices:
312 (a) *Misrepresentations and false advertising of insurance*
313 *policies*.—Knowingly making, issuing, circulating, or causing to
314 be made, issued, or circulated, any estimate, illustration,
315 circular, statement, sales presentation, omission, ~~or~~
316 comparison, or property and casualty certificate of insurance
317 altered after being issued which:
318 1. Misrepresents the benefits, advantages, conditions, or
319 terms of any insurance policy.
320 2. Misrepresents the dividends or share of the surplus to
321 be received on any insurance policy.
322 3. Makes any false or misleading statements as to the
323 dividends or share of surplus previously paid on any insurance
324 policy.
325 4. Is misleading, or is a misrepresentation, as to the
326 financial condition of any person or as to the legal reserve
327 system upon which any life insurer operates.
328 5. Uses any name or title of any insurance policy or class
329 of insurance policies misrepresenting the true nature thereof.
330 6. Is a misrepresentation for the purpose of inducing, or
331 tending to induce, the lapse, forfeiture, exchange, conversion,

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332 or surrender of any insurance policy.
333 7. Is a misrepresentation for the purpose of effecting a
334 pledge or assignment of, or effecting a loan against, any
335 insurance policy.
336 8. Misrepresents any insurance policy as being shares of
337 stock or misrepresents ownership interest in the company.
338 9. Uses any advertisement that would mislead or otherwise cause
339 a reasonable person to believe mistakenly that the state or the
340 Federal Government is responsible for the insurance sales
341 activities of any person or stands behind any person's credit or
342 that any person, the state, or the Federal Government guarantees
343 any returns on insurance products or is a source of payment of
344 any insurance obligation of or sold by any person.
345 Section 11. Paragraph (b) of subsection (2) and paragraph
346 (c) of subsection (6) of section 627.351, Florida Statutes, are
347 amended, and paragraph (ff) is added to subsection (6) of that
348 section, to read:
349
350 Delete lines 818 - 898
351 and insert:
352 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—
353 (c) The corporation's plan of operation:
354 1. Must provide for adoption of residential property and
355 casualty insurance policy forms and commercial residential and
356 nonresidential property insurance forms, which must be approved
357 by the office before use. The corporation shall adopt the
358 following policy forms:
359 a. Standard personal lines policy forms that are
360 comprehensive multiperil policies providing full coverage of a

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361 residential property equivalent to the coverage provided in the
362 private insurance market under an HO-3, HO-4, or HO-6 policy.
363 b. Basic personal lines policy forms that are policies
364 similar to an HO-8 policy or a dwelling fire policy that provide
365 coverage meeting the requirements of the secondary mortgage
366 market, but which is more limited than the coverage under a
367 standard policy.
368 c. Commercial lines residential and nonresidential policy
369 forms that are generally similar to the basic perils of full
370 coverage obtainable for commercial residential structures and
371 commercial nonresidential structures in the admitted voluntary
372 market.
373 d. Personal lines and commercial lines residential property
374 insurance forms that cover the peril of wind only. The forms are
375 applicable only to residential properties located in areas
376 eligible for coverage under the coastal account referred to in
377 sub-subparagraph (b)2.a.
378 e. Commercial lines nonresidential property insurance forms
379 that cover the peril of wind only. The forms are applicable only
380 to nonresidential properties located in areas eligible for
381 coverage under the coastal account referred to in sub-
382 subparagraph (b)2.a.
383 f. The corporation may adopt variations of the policy forms
384 listed in sub-subparagraphs a.-e. which contain more restrictive
385 coverage.
386 g. Effective January 1, 2013, the corporation shall offer a
387 basic personal lines policy similar to an HO-8 policy with
388 dwelling repair based on common construction materials and
389 methods.

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390 2. Must provide that the corporation adopt a program in
391 which the corporation and authorized insurers enter into quota
392 share primary insurance agreements for hurricane coverage, as
393 defined in s. 627.4025(2)(a), for eligible risks, and adopt
394 property insurance forms for eligible risks which cover the
395 peril of wind only.
396 a. As used in this subsection, the term:
397 (I) "Quota share primary insurance" means an arrangement in
398 which the primary hurricane coverage of an eligible risk is
399 provided in specified percentages by the corporation and an
400 authorized insurer. The corporation and authorized insurer are
401 each solely responsible for a specified percentage of hurricane
402 coverage of an eligible risk as set forth in a quota share
403 primary insurance agreement between the corporation and an
404 authorized insurer and the insurance contract. The
405 responsibility of the corporation or authorized insurer to pay
406 its specified percentage of hurricane losses of an eligible
407 risk, as set forth in the agreement, may not be altered by the
408 inability of the other party to pay its specified percentage of
409 losses. Eligible risks that are provided hurricane coverage
410 through a quota share primary insurance arrangement must be
411 provided policy forms that set forth the obligations of the
412 corporation and authorized insurer under the arrangement,
413 clearly specify the percentages of quota share primary insurance
414 provided by the corporation and authorized insurer, and
415 conspicuously and clearly state that the authorized insurer and
416 the corporation may not be held responsible beyond their
417 specified percentage of coverage of hurricane losses.
418 (II) "Eligible risks" means personal lines residential and

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419 commercial lines residential risks that meet the underwriting
420 criteria of the corporation and are located in areas that were
421 eligible for coverage by the Florida Windstorm Underwriting
422 Association on January 1, 2002.
423 b. The corporation may enter into quota share primary
424 insurance agreements with authorized insurers at corporation
425 coverage levels of 90 percent and 50 percent.
426 c. If the corporation determines that additional coverage
427 levels are necessary to maximize participation in quota share
428 primary insurance agreements by authorized insurers, the
429 corporation may establish additional coverage levels. However,
430 the corporation’s quota share primary insurance coverage level
431 may not exceed 90 percent.
432 d. Any quota share primary insurance agreement entered into
433 between an authorized insurer and the corporation must provide
434 for a uniform specified percentage of coverage of hurricane
435 losses, by county or territory as set forth by the corporation
436 board, for all eligible risks of the authorized insurer covered
437 under the agreement.
438 e. Any quota share primary insurance agreement entered into
439 between an authorized insurer and the corporation is subject to
440 review and approval by the office. However, such agreement shall
441 be authorized only as to insurance contracts entered into
442 between an authorized insurer and an insured who is already
443 insured by the corporation for wind coverage.
444 f. For all eligible risks covered under quota share primary
445 insurance agreements, the exposure and coverage levels for both
446 the corporation and authorized insurers shall be reported by the
447 corporation to the Florida Hurricane Catastrophe Fund. For all

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448 policies of eligible risks covered under such agreements, the
449 corporation and the authorized insurer must maintain complete
450 and accurate records for the purpose of exposure and loss
451 reimbursement audits as required by fund rules. The corporation
452 and the authorized insurer shall each maintain duplicate copies
453 of policy declaration pages and supporting claims documents.
454 g. The corporation board shall establish in its plan of
455 operation standards for quota share agreements which ensure that
456 there is no discriminatory application among insurers as to the
457 terms of the agreements, pricing of the agreements, incentive
458 provisions if any, and consideration paid for servicing policies
459 or adjusting claims.
460 h. The quota share primary insurance agreement between the
461 corporation and an authorized insurer must set forth the
462 specific terms under which coverage is provided, including, but
463 not limited to, the sale and servicing of policies issued under
464 the agreement by the insurance agent of the authorized insurer
465 producing the business, the reporting of information concerning
466 eligible risks, the payment of premium to the corporation, and
467 arrangements for the adjustment and payment of hurricane claims
468 incurred on eligible risks by the claims adjuster and personnel
469 of the authorized insurer. Entering into a quota sharing
470 insurance agreement between the corporation and an authorized
471 insurer is voluntary and at the discretion of the authorized
472 insurer.
473 3.a. May provide that the corporation may employ or
474 otherwise contract with individuals or other entities to provide
475 administrative or professional services that may be appropriate
476 to effectuate the plan. The corporation may borrow funds by

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477 issuing bonds or by incurring other indebtedness, and shall have
478 other powers reasonably necessary to effectuate the requirements
479 of this subsection, including, without limitation, the power to
480 issue bonds and incur other indebtedness in order to refinance
481 outstanding bonds or other indebtedness. The corporation may
482 seek judicial validation of its bonds or other indebtedness
483 under chapter 75. The corporation may issue bonds or incur other
484 indebtedness, or have bonds issued on its behalf by a unit of
485 local government pursuant to subparagraph (q)2. in the absence
486 of a hurricane or other weather-related event, upon a
487 determination by the corporation, subject to approval by the
488 office, that such action would enable it to efficiently meet the
489 financial obligations of the corporation and that such
490 financings are reasonably necessary to effectuate the
491 requirements of this subsection. The corporation may take all
492 actions needed to facilitate tax-free status for such bonds or
493 indebtedness, including formation of trusts or other affiliated
494 entities. The corporation may pledge assessments, projected
495 recoveries from the Florida Hurricane Catastrophe Fund, other
496 reinsurance recoverables, market equalization and other
497 surcharges, and other funds available to the corporation as
498 security for bonds or other indebtedness. In recognition of s.
499 10, Art. I of the State Constitution, prohibiting the impairment
500 of obligations of contracts, it is the intent of the Legislature
501 that no action be taken whose purpose is to impair any bond
502 indenture or financing agreement or any revenue source committed
503 by contract to such bond or other indebtedness.
504 b. To ensure that the corporation is operating in an
505 efficient and economic manner while providing quality service to

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506 policyholders, applicants, and agents, the board shall
507 commission an independent third-party consultant having
508 expertise in insurance company management or insurance company
509 management consulting to prepare a report and make
510 recommendations on the relative costs and benefits of
511 outsourcing various policy issuance and service functions to
512 private servicing carriers or entities performing similar
513 functions in the private market for a fee, rather than
514 performing such functions in-house. In making such
515 recommendations, the consultant shall consider how other
516 residual markets, both in this state and around the country,
517 outsource appropriate functions or use servicing carriers to
518 better match expenses with revenues that fluctuate based on a
519 widely varying policy count. The report must be completed by
520 July 1, 2012. Upon receiving the report, the board shall develop
521 a plan to implement the report and submit the plan for review,
522 modification, and approval to the Financial Services Commission.
523 Upon the commission’s approval of the plan, the board shall
524 begin implementing the plan by January 1, 2013.
525 4. Must require that the corporation operate subject to the
526 supervision and approval of a board of governors consisting of
527 eight individuals who are residents of this state, from
528 different geographical areas of this state.
529 a. The Governor, the Chief Financial Officer, the President
530 of the Senate, and the Speaker of the House of Representatives
531 shall each appoint two members of the board. At least one of the
532 two members appointed by each appointing officer must have
533 demonstrated expertise in insurance and is deemed to be within
534 the scope of the exemption provided in s. 112.313(7)(b). The

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535 Chief Financial Officer shall designate one of the appointees as
536 chair. All board members serve at the pleasure of the appointing
537 officer. All members of the board are subject to removal at will
538 by the officers who appointed them. All board members, including
539 the chair, must be appointed to serve for 3-year terms beginning
540 annually on a date designated by the plan. However, for the
541 first term beginning on or after July 1, 2009, each appointing
542 officer shall appoint one member of the board for a 2-year term
543 and one member for a 3-year term. A board vacancy shall be
544 filled for the unexpired term by the appointing officer. The
545 Chief Financial Officer shall appoint a technical advisory group
546 to provide information and advice to the board in connection
547 with the board's duties under this subsection. The executive
548 director and senior managers of the corporation shall be engaged
549 by the board and serve at the pleasure of the board. Any
550 executive director appointed on or after July 1, 2006, is
551 subject to confirmation by the Senate. The executive director is
552 responsible for employing other staff as the corporation may
553 require, subject to review and concurrence by the board.
554 b. The board shall create a Market Accountability Advisory
555 Committee to assist the corporation in developing awareness of
556 its rates and its customer and agent service levels in
557 relationship to the voluntary market insurers writing similar
558 coverage.
559 (I) The members of the advisory committee consist of the
560 following 11 persons, one of whom must be elected chair by the
561 members of the committee: four representatives, one appointed by
562 the Florida Association of Insurance Agents, one by the Florida
563 Association of Insurance and Financial Advisors, one by the

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564 Professional Insurance Agents of Florida, and one by the Latin
565 American Association of Insurance Agencies; three
566 representatives appointed by the insurers with the three highest
567 voluntary market share of residential property insurance
568 business in the state; one representative from the Office of
569 Insurance Regulation; one consumer appointed by the board who is
570 insured by the corporation at the time of appointment to the
571 committee; one representative appointed by the Florida
572 Association of Realtors; and one representative appointed by the
573 Florida Bankers Association. All members shall be appointed to
574 3-year terms and may serve for consecutive terms.
575 (II) The committee shall report to the corporation at each
576 board meeting on insurance market issues which may include rates
577 and rate competition with the voluntary market; service,
578 including policy issuance, claims processing, and general
579 responsiveness to policyholders, applicants, and agents; and
580 matters relating to depopulation.
581 5. Must provide a procedure for determining the eligibility
582 of a risk for coverage, as follows:
583 a. Subject to s. 627.3517, with respect to personal lines
584 residential risks, if the risk is offered coverage from an
585 authorized insurer at the insurer’s approved rate under a
586 standard policy including wind coverage or, if consistent with
587 the insurer’s underwriting rules as filed with the office, a
588 basic policy including wind coverage, for a new application to
589 the corporation for coverage, the risk is not eligible for any
590 policy issued by the corporation unless the premium for coverage
591 from the authorized insurer is more than 15 percent greater than
592 the premium for comparable coverage from the corporation. If the

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593 risk is not able to obtain such offer, the risk is eligible for
594 a standard policy including wind coverage or a basic policy
595 including wind coverage issued by the corporation; however, if
596 the risk could not be insured under a standard policy including
597 wind coverage regardless of market conditions, the risk is
598 eligible for a basic policy including wind coverage unless
599 rejected under subparagraph 8. However, a policyholder of the
600 corporation or a policyholder removed from the corporation
601 through an assumption agreement until the end of the assumption
602 period remains eligible for coverage from the corporation
603 regardless of any offer of coverage from an authorized insurer
604 or surplus lines insurer. The corporation shall determine the
605 type of policy to be provided on the basis of objective
606 standards specified in the underwriting manual and based on
607 generally accepted underwriting practices.
608 (I) If the risk accepts an offer of coverage through the
609 market assistance plan or through a mechanism established by the
610 corporation before a policy is issued to the risk by the
611 corporation or during the first 30 days of coverage by the
612 corporation, and the producing agent who submitted the
613 application to the plan or to the corporation is not currently
614 appointed by the insurer, the insurer shall:
615 (A) Pay to the producing agent of record of the policy for
616 the first year, an amount that is the greater of the insurer's
617 usual and customary commission for the type of policy written or
618 a fee equal to the usual and customary commission of the
619 corporation; or
620 (B) Offer to allow the producing agent of record of the
621 policy to continue servicing the policy for at least 1 year and

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622 offer to pay the agent the greater of the insurer’s or the
623 corporation’s usual and customary commission for the type of
624 policy written.
625
626 If the producing agent is unwilling or unable to accept
627 appointment, the new insurer shall pay the agent in accordance
628 with sub-sub-sub-subparagraph (A).
629 (II) If the corporation enters into a contractual agreement
630 for a take-out plan, the producing agent of record of the
631 corporation policy is entitled to retain any unearned commission
632 on the policy, and the insurer shall:
633 (A) Pay to the producing agent of record, for the first
634 year, an amount that is the greater of the insurer’s usual and
635 customary commission for the type of policy written or a fee
636 equal to the usual and customary commission of the corporation;
637 or
638 (B) Offer to allow the producing agent of record to
639 continue servicing the policy for at least 1 year and offer to
640 pay the agent the greater of the insurer’s or the corporation’s
641 usual and customary commission for the type of policy written.
642
643 If the producing agent is unwilling or unable to accept
644 appointment, the new insurer shall pay the agent in accordance
645 with sub-sub-sub-subparagraph (A).
646 b. With respect to commercial lines residential risks, for
647 a new application to the corporation for coverage, if the risk
648 is offered coverage under a policy including wind coverage from
649 an authorized insurer at its approved rate, the risk is not
650 eligible for a policy issued by the corporation unless the

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651 premium for coverage from the authorized insurer is more than 15
652 percent greater than the premium for comparable coverage from
653 the corporation. If the risk is not able to obtain any such
654 offer, the risk is eligible for a policy including wind coverage
655 issued by the corporation. However, a policyholder of the
656 corporation or a policyholder removed from the corporation
657 through an assumption agreement until the end of the assumption
658 period remains eligible for coverage from the corporation
659 regardless of an offer of coverage from an authorized insurer or
660 surplus lines insurer.
661 (I) If the risk accepts an offer of coverage through the
662 market assistance plan or through a mechanism established by the
663 corporation before a policy is issued to the risk by the
664 corporation or during the first 30 days of coverage by the
665 corporation, and the producing agent who submitted the
666 application to the plan or the corporation is not currently
667 appointed by the insurer, the insurer shall:
668 (A) Pay to the producing agent of record of the policy, for
669 the first year, an amount that is the greater of the insurer's
670 usual and customary commission for the type of policy written or
671 a fee equal to the usual and customary commission of the
672 corporation; or
673 (B) Offer to allow the producing agent of record of the
674 policy to continue servicing the policy for at least 1 year and
675 offer to pay the agent the greater of the insurer's or the
676 corporation's usual and customary commission for the type of
677 policy written.
678
679 If the producing agent is unwilling or unable to accept

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680 appointment, the new insurer shall pay the agent in accordance
681 with sub-sub-sub-subparagraph (A).
682 (II) If the corporation enters into a contractual agreement
683 for a take-out plan, the producing agent of record of the
684 corporation policy is entitled to retain any unearned commission
685 on the policy, and the insurer shall:
686 (A) Pay to the producing agent of record, for the first
687 year, an amount that is the greater of the insurer's usual and
688 customary commission for the type of policy written or a fee
689 equal to the usual and customary commission of the corporation;
690 or
691 (B) Offer to allow the producing agent of record to
692 continue servicing the policy for at least 1 year and offer to
693 pay the agent the greater of the insurer's or the corporation's
694 usual and customary commission for the type of policy written.
695
696 If the producing agent is unwilling or unable to accept
697 appointment, the new insurer shall pay the agent in accordance
698 with sub-sub-sub-subparagraph (A).
699 c. For purposes of determining comparable coverage under
700 sub-subparagraphs a. and b., the comparison must be based on
701 those forms and coverages that are reasonably comparable. The
702 corporation may rely on a determination of comparable coverage
703 and premium made by the producing agent who submits the
704 application to the corporation, made in the agent's capacity as
705 the corporation's agent. A comparison may be made solely of the
706 premium with respect to the main building or structure only on
707 the following basis: the same coverage A or other building
708 limits; the same percentage hurricane deductible that applies on

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709 an annual basis or that applies to each hurricane for commercial
710 residential property; the same percentage of ordinance and law
711 coverage, if the same limit is offered by both the corporation
712 and the authorized insurer; the same mitigation credits, to the
713 extent the same types of credits are offered both by the
714 corporation and the authorized insurer; the same method for loss
715 payment, such as replacement cost or actual cash value, if the
716 same method is offered both by the corporation and the
717 authorized insurer in accordance with underwriting rules; and
718 any other form or coverage that is reasonably comparable as
719 determined by the board. If an application is submitted to the
720 corporation for wind-only coverage in the coastal account, the
721 premium for the corporation’s wind-only policy plus the premium
722 for the ex-wind policy that is offered by an authorized insurer
723 to the applicant must be compared to the premium for multiperil
724 coverage offered by an authorized insurer, subject to the
725 standards for comparison specified in this subparagraph. If the
726 corporation or the applicant requests from the authorized
727 insurer a breakdown of the premium of the offer by types of
728 coverage so that a comparison may be made by the corporation or
729 its agent and the authorized insurer refuses or is unable to
730 provide such information, the corporation may treat the offer as
731 not being an offer of coverage from an authorized insurer at the
732 insurer’s approved rate.
733 6. Must include rules for classifications of risks and
734 rates.
735 7. Must provide that if premium and investment income for
736 an account attributable to a particular calendar year are in
737 excess of projected losses and expenses for the account

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738 attributable to that year, such excess shall be held in surplus
739 in the account. Such surplus must be available to defray
740 deficits in that account as to future years and used for that
741 purpose before assessing assessable insurers and assessable
742 insureds as to any calendar year.
743 8. Must provide objective criteria and procedures to be
744 uniformly applied to all applicants in determining whether an
745 individual risk is so hazardous as to be uninsurable. In making
746 this determination and in establishing the criteria and
747 procedures, the following must be considered:
748 a. Whether the likelihood of a loss for the individual risk
749 is substantially higher than for other risks of the same class;
750 and
751 b. Whether the uncertainty associated with the individual
752 risk is such that an appropriate premium cannot be determined.
753
754 The acceptance or rejection of a risk by the corporation shall
755 be construed as the private placement of insurance, and the
756 provisions of chapter 120 do not apply.
757 9. Must provide that the corporation make its best efforts
758 to procure catastrophe reinsurance at reasonable rates, to cover
759 its projected 100-year probable maximum loss as determined by
760 the board of governors.
761 10. The policies issued by the corporation must provide
762 that if the corporation or the market assistance plan obtains an
763 offer from an authorized insurer to cover the risk at its
764 approved rates, the risk is no longer eligible for renewal
765 through the corporation, except as otherwise provided in this
766 subsection.

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767 11. Corporation policies and applications must include a
768 notice that the corporation policy could, under this section, be
769 replaced with a policy issued by an authorized insurer which
770 does not provide coverage identical to the coverage provided by
771 the corporation. The notice must also specify that acceptance of
772 corporation coverage creates a conclusive presumption that the
773 applicant or policyholder is aware of this potential.
774 12. May establish, subject to approval by the office,
775 different eligibility requirements and operational procedures
776 for any line or type of coverage for any specified county or
777 area if the board determines that such changes are justified due
778 to the voluntary market being sufficiently stable and
779 competitive in such area or for such line or type of coverage
780 and that consumers who, in good faith, are unable to obtain
781 insurance through the voluntary market through ordinary methods
782 continue to have access to coverage from the corporation. If
783 coverage is sought in connection with a real property transfer,
784 the requirements and procedures may not provide an effective
785 date of coverage later than the date of the closing of the
786 transfer as established by the transferor, the transferee, and,
787 if applicable, the lender.
788 13. Must provide that, with respect to the coastal account,
789 any assessable insurer with a surplus as to policyholders of $25
790 million or less writing 25 percent or more of its total
791 countrywide property insurance premiums in this state may
792 petition the office, within the first 90 days of each calendar
793 year, to qualify as a limited apportionment company. A regular
794 assessment levied by the corporation on a limited apportionment
795 company for a deficit incurred by the corporation for the

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796 coastal account may be paid to the corporation on a monthly
797 basis as the assessments are collected by the limited
798 apportionment company from its insureds pursuant to s. 627.3512,
799 but the regular assessment must be paid in full within 12 months
800 after being levied by the corporation. A limited apportionment
801 company shall collect from its policyholders any emergency
802 assessment imposed under sub-subparagraph (b)3.d. The plan must
803 provide that, if the office determines that any regular
804 assessment will result in an impairment of the surplus of a
805 limited apportionment company, the office may direct that all or
806 part of such assessment be deferred as provided in subparagraph
807 (q)4. However, an emergency assessment to be collected from
808 policyholders under sub-subparagraph (b)3.d. may not be limited
809 or deferred.
810 14. Must provide that the corporation appoint as its
811 licensed agents only those agents who also hold an appointment
812 as defined in s. 626.015(3) with an insurer who at the time of
813 the agent’s initial appointment by the corporation is authorized
814 to write and is actually writing personal lines residential
815 property coverage, commercial residential property coverage, or
816 commercial nonresidential property coverage within the state.
817 15. Must provide a premium payment plan option to its
818 policyholders which, at a minimum, allows for quarterly and
819 semiannual payment of premiums. A monthly payment plan may, but
820 is not required to, be offered.
821 16. Must limit coverage on mobile homes or manufactured
822 homes built before 1994 to actual cash value of the dwelling
823 rather than replacement costs of the dwelling.
824 17. May provide such limits of coverage as the board

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825 determines, consistent with the requirements of this subsection.
826 18. May require commercial property to meet specified
827 hurricane mitigation construction features as a condition of
828 eligibility for coverage.
829 19. Must provide that new or renewal policies issued by the
830 corporation on or after January 1, 2012, which cover sinkhole
831 loss do not include coverage for any loss to appurtenant
832 structures, driveways, sidewalks, decks, or patios that are
833 directly or indirectly caused by sinkhole activity. The
834 corporation shall exclude such coverage using a notice of
835 coverage change, which may be included with the policy renewal,
836 and not by issuance of a notice of nonrenewal of the excluded
837 coverage upon renewal of the current policy.
838 20. As of January 1, 2012, must require that the agent
839 obtain from an applicant for coverage from the corporation an
840 acknowledgement signed by the applicant, which includes, at a
841 minimum, the following statement:
842
843 ACKNOWLEDGEMENT OF POTENTIAL SURCHARGE
844 AND ASSESSMENT LIABILITY:
845
846 1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE
847 CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A
848 DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,
849 MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND
850 PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE
851 POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT
852 OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA
853 LEGISLATURE.

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854 2. I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY
855 ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER
856 INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE
857 FLORIDA LEGISLATURE.
858 3. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE
859 CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE
860 STATE OF FLORIDA.
861
862 a. The corporation shall maintain, in electronic format or
863 otherwise, a copy of the applicant's signed acknowledgement and
864 provide a copy of the statement to the policyholder as part of
865 the first renewal after the effective date of this subparagraph.
866 b. The signed acknowledgement form creates a conclusive
867 presumption that the policyholder understood and accepted his or
868 her potential surcharge and assessment liability as a
869 policyholder of the corporation.
870 (ff) In establishing replacement costs for coverage on a
871 dwelling insured by the corporation, the corporation must accept
872 a valuation from any of the following sources and must use the
873 lowest valuation as the insured value of the dwelling, excluding
874 land value, if the valuation was completed within the 12 months
875 before the application or renewal date of coverage:
876 1. A replacement cost valuation software that is
877 specifically designed for use in establishing insurance
878 replacement costs and that includes an itemized calculation of
879 the cost of reconstruction;
880 2. A replacement cost valuation prepared by a real estate
881 appraiser certified or licensed under part II of chapter 475
882 which is specifically formulated to establish insurance

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883 replacement cost, rather than market value, and which includes
884 an itemized calculation of the cost of reconstruction; or
885 3. A replacement cost valuation prepared by a general,
886 building, or residential contractor licensed under s. 489.113,
887 or a professional engineer licensed under s. 471.015, which
888 includes an itemized calculation of the total price of
889 reconstruction.
890 Section 12. Section 627.6011, Florida Statutes, is created
891 to read:
892 627.6011 Mandated coverages.—Mandatory health benefits
893 regulated under this chapter which must be covered by an insurer
894 are not intended to apply to the types of health benefit plan
895 listed in s. 627.6561(5)(b)-(e), issued in any market, unless
896 specifically designated otherwise. For purposes of this section,
897 the term "mandatory health benefits" means those benefits set
898 forth in ss. 627.6401-627.64193 and any cross-references to
899 these sections, and any other mandatory treatment or health
900 coverages or benefits enacted on or after July 1, 2012.
901 Section 13. Paragraph (d) of subsection (3) of section
902 627.6699, Florida Statutes, is amended to read:
903 627.6699 Employee Health Care Access Act.—
904 (3) DEFINITIONS.—As used in this section, the term:
905 (d) "Carrier" means a person who provides health benefit
906 plans in this state, including an authorized insurer, a health
907 maintenance organization, a multiple-employer welfare
908 arrangement, or any other person providing a health benefit plan
909 that is subject to insurance regulation in this state. However,
910 the term does not include a multiple-employer welfare
911 arrangement or voluntary employees' beneficiary association, as

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912 defined under 26 U.S.C. s. 501(c)(9), which ~~multiple-employer~~
913 ~~welfare arrangement~~ operates solely for the benefit of the
914 members or the members and the employees of such members, is
915 located in this state, and was in existence on January 1, 1992;
916 or an authorized insurer or health maintenance organization that
917 insures the members or the members and the employees of such
918 members of a multiple-employer welfare arrangement or voluntary
919 employees' beneficiary association in existence on January 1,
920 1992.
921 Section 14. Subsections (1), (2), (7), and (9) of section
922 627.7015, Florida Statutes, are amended to read:
923 627.7015 Alternative procedure for resolution of disputed
924 property insurance claims.—
925 (1) ~~PURPOSE AND SCOPE.—~~This section sets forth a
926 nonadversarial alternative dispute resolution procedure for a
927 mediated claim resolution conference prompted by the need for
928 effective, fair, and timely handling of property insurance
929 claims. There is a particular need for an informal,
930 nonthreatening forum for helping parties who elect this
931 procedure to resolve their claims disputes because most
932 homeowner's and commercial residential insurance policies
933 obligate policyholders ~~insureds~~ to participate in a potentially
934 expensive and time-consuming adversarial appraisal process
935 before ~~prior to~~ litigation. The procedure set forth in this
936 section is designed to bring the parties together for a mediated
937 claims settlement conference without any of the trappings or
938 drawbacks of an adversarial process. Before resorting to these
939 procedures, policyholders ~~insureds~~ and insurers are encouraged
940 to resolve claims as quickly and fairly as possible. This

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941 section is available with respect to claims under personal lines
942 and commercial residential policies before ~~for all claimants and~~
943 ~~insurers prior to~~ commencing the appraisal process, or before
944 commencing litigation. Mediation may be requested only by the
945 policyholder, as a first-party claimant, or the insurer. If
946 requested by the policyholder ~~insured~~, participation by legal
947 counsel or any other person having relevant information is ~~shall~~
948 ~~be~~ permitted. Mediation under this section is also available to
949 litigants referred to the department by a county court or
950 circuit court. This section does not apply to commercial
951 coverages, to private passenger motor vehicle insurance
952 coverages, or to disputes relating to liability coverages in
953 policies of property insurance.
954 (2) At the time a first-party claim within the scope of
955 this section is filed by the policyholder, the insurer shall
956 notify the policyholder ~~all first-party claimants~~ of the
957 policyholder's ~~their~~ right to participate in the mediation
958 program under this section. The department shall prepare a
959 consumer information pamphlet for distribution to persons
960 participating in mediation ~~under this section~~.
961 (7) If the insurer fails to comply with subsection (2) by
962 failing to notify a policyholder ~~first-party claimant~~ of the
963 policyholder's ~~its~~ right to participate in the mediation program
964 under this section or if the insurer requests the mediation, and
965 the mediation results are rejected by either party, the
966 policyholder is ~~insured shall~~ not ~~be~~ required to submit to or
967 participate in any contractual loss appraisal process of the
968 property loss damage as a precondition to legal action for
969 breach of contract against the insurer for its failure to pay

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970 the policyholder's claims covered by the policy.
971 (9) For purposes of this section, the term "claim" refers
972 to any dispute between an insurer and a policyholder ~~an insured~~
973 relating to a material issue of fact other than a dispute:
974 (a) With respect to which the insurer has a reasonable
975 basis to suspect fraud;
976 (b) Where, based on agreed-upon facts as to the cause of
977 loss, there is no coverage under the policy;
978 (c) With respect to which the insurer has a reasonable
979 basis to believe that the policyholder ~~claimant~~ has
980 intentionally made a material misrepresentation of fact which is
981 relevant to the claim, and the entire request for payment of a
982 loss has been denied on the basis of the material
983 misrepresentation; ~~or~~
984 (d) With respect to which the amount in controversy is less
985 than $500, unless the parties agree to mediate a dispute
986 involving a lesser amount; or
987 (e) With respect to a windstorm or hurricane loss that does
988 not comply with s. 627.70132.
989 Section 15. Subsection (4) of section 627.706, Florida
990 Statutes, is amended to read:
991 627.706 Sinkhole insurance; catastrophic ground cover
992 collapse; definitions.—
993 (4) An insurer offering sinkhole coverage to policyholders
994 before or after the adoption of s. 30, chapter 2007-1, Laws of
995 Florida, may renew pursuant to s. 627.43141 or nonrenew the
996 policies of policyholders maintaining sinkhole coverage, at the
997 option of the insurer, and provide an offer of coverage or
998 renewal that includes catastrophic ground cover collapse and

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999 excludes sinkhole coverage. Insurers acting in accordance with
1000 this subsection are subject to the following requirements:
1001 (a) Policyholders must be notified that the renewal or ~~a~~
1002 nonrenewal is for purposes of removing sinkhole coverage, and
1003 that the policyholder is being offered a policy that provides
1004 coverage for catastrophic ground cover collapse.
1005 (b) Policyholders must be provided an actuarially
1006 reasonable premium credit or discount for the removal of
1007 sinkhole coverage and provision of only catastrophic ground
1008 cover collapse.
1009 (c) Subject to the provisions of this subsection and the
1010 insurer's approved underwriting or insurability guidelines, the
1011 insurer shall provide each policyholder with the opportunity to
1012 purchase an endorsement to his or her policy providing sinkhole
1013 coverage and may require an inspection of the property before
1014 issuance of a sinkhole coverage endorsement.
1015 (d) Section 624.4305 does not apply to nonrenewal notices
1016 issued pursuant to this subsection.
1017 Section 16. Paragraph (e) of subsection (5) of section
1018 627.707, Florida Statutes, is amended, and paragraph (f) is
1019 added to that subsection, to read:
1020 627.707 Investigation of sinkhole claims; insurer payment;
1021 nonrenewals.—Upon receipt of a claim for a sinkhole loss to a
1022 covered building, an insurer must meet the following standards
1023 in investigating a claim:
1024 (5) If a sinkhole loss is verified, the insurer shall pay
1025 to stabilize the land and building and repair the foundation in
1026 accordance with the recommendations of the professional engineer
1027 retained pursuant to subsection (2), with notice to the

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1028 policyholder, subject to the coverage and terms of the policy.
1029 The insurer shall pay for other repairs to the structure and
1030 contents in accordance with the terms of the policy. If a
1031 covered building suffers a sinkhole loss or a catastrophic
1032 ground cover collapse, the insured must repair such damage or
1033 loss in accordance with the insurer's professional engineer's
1034 recommended repairs. However, if the insurer's professional
1035 engineer determines that the repair cannot be completed within
1036 policy limits, the insurer must pay to complete the repairs
1037 recommended by the insurer's professional engineer or tender the
1038 policy limits to the policyholder.
1039 (e) Upon the insurer's obtaining the written approval of
1040 any lienholder, the insurer may make payment directly to the
1041 persons selected by the policyholder to perform the land and
1042 building stabilization and foundation repairs. The decision by
1043 the insurer to make payment to such persons does not hold the
1044 insurer liable for the work performed.
1045 (f) The policyholder may not accept a rebate from any
1046 person performing the repairs specified in this section. If a
1047 policyholder does receive a rebate, coverage is void and the
1048 policyholder must refund the amount of the rebate to the
1049 insurer. Any person making the repairs specified in this section
1050 who offers a rebate commits insurance fraud punishable as a
1051 third-degree ~~third degree~~ felony as provided in s. 775.082, s.
1052 775.083, or s. 775.084. As used in this paragraph, the term
1053 "rebate" means a remuneration, payment, gift, discount, or
1054 transfer of any item of value to the policyholder by or on
1055 behalf of a person performing the repairs specified in this
1056 section as an incentive or inducement to obtain repairs

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1057 performed by that person.
1058 Section 17. Section 627.7405, Florida Statutes, is amended
1059 to read:
1060 627.7405 Insurers' right of reimbursement.—
1061 (1) Notwithstanding any other provisions of ss. 627.730-
1062 627.7405, any insurer providing personal injury protection
1063 benefits on a private passenger motor vehicle shall have, to the
1064 extent of any personal injury protection benefits paid to any
1065 person as a benefit arising out of such private passenger motor
1066 vehicle insurance, a right of reimbursement against the owner or
1067 the insurer of the owner of a commercial motor vehicle, if the
1068 benefits paid result from such person having been an occupant of
1069 the commercial motor vehicle or having been struck by the
1070 commercial motor vehicle while not an occupant of any self-
1071 propelled vehicle.
1072 (2) For purposes of this section, an owner or registrant
1073 identified in s. 627.733(1)(b) is not liable for a right of
1074 reimbursement.
1075 Section 18. Effective upon this act becoming a law, section
1076 628.901, Florida Statutes, is amended to read:
1077 628.901 Definitions ~~"Captive insurer" defined~~.—As used in
1078 ~~For the purposes of~~ this part, the term: ~~except as provided in~~
1079 ~~s. 628.903, a "captive insurer" is a domestic insurer~~
1080 ~~established under part I to insure the risks of a specific~~
1081 ~~corporation or group of corporations under common ownership~~
1082 ~~owned by the corporation or corporations from which it accepts~~
1083 ~~risk under a contract of insurance.~~
1084 (1) "Affiliated company" means a company in the same
1085 corporate system as a parent, an industrial insured, or a member

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1086 organization by virtue of common ownership, control, operation,
1087 or management.
1088 (2) "Captive insurance company" means a domestic insurer
1089 established under this part. A captive insurance company
1090 includes a pure captive insurance company, special purpose
1091 captive insurance company, or industrial insured captive
1092 insurance company formed and licensed under this part.
1093 (3) "Captive reinsurance company" means a reinsurance
1094 company that is formed and licensed under this part and is
1095 wholly owned by a qualifying reinsurance parent company. A
1096 captive reinsurance company is a stock corporation and may not
1097 directly insure risks. A captive reinsurance company may
1098 reinsure only risks.
1099 (4) "Consolidated debt to total capital ratio" means the
1100 ratio of the sum of all debts and hybrid capital instruments as
1101 described in paragraph (a) to total capital as described in
1102 paragraph (b).
1103 (a) Debts and hybrid capital instruments include, but are
1104 not limited to, all borrowings from banks, all senior debt, all
1105 subordinated debts, all trust preferred shares, and all other
1106 hybrid capital instruments that are not included in the
1107 determination of consolidated GAAP net worth issued and
1108 outstanding.
1109 (b) Total capital consists of all debts and hybrid capital
1110 instruments as described in paragraph (a) plus owners' equity
1111 determined in accordance with GAAP for reporting to the United
1112 States Securities and Exchange Commission.
1113 (5) "Consolidated GAAP net worth" means the consolidated
1114 owners' equity determined in accordance with generally accepted

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1115 accounting principles for reporting to the United States
1116 Securities and Exchange Commission.
1117 (6) “Controlled unaffiliated business” means a company:
1118 (a) That is not in the corporate system of a parent and
1119 affiliated companies;
1120 (b) That has an existing contractual relationship with a
1121 parent or affiliated company; and
1122 (c) Whose risks are managed by a captive insurance company
1123 in accordance with s. 628.919.
1124 (7) “GAAP” means generally accepted accounting principles.
1125 (8) “Industrial insured” means an insured that:
1126 (a) Has gross assets in excess of $50 million;
1127 (b) Procures insurance through the use of a full-time
1128 employee of the insured who acts as an insurance manager or
1129 buyer or through the services of a person licensed as a property
1130 and casualty insurance agent, broker, or consultant in such
1131 person’s state of domicile;
1132 (c) Has at least 100 full-time employees; and
1133 (d) Pays annual premiums of at least $200,000 for each line
1134 of insurance purchased from the industrial insured captive
1135 insurer or at least $75,000 for any line of coverage in excess
1136 of at least $25 million in the annual aggregate. The purchase of
1137 umbrella or general liability coverage in excess of $25 million
1138 in the annual aggregate shall be deemed to be the purchase of a
1139 single line of insurance.
1140 (9) “Industrial insured captive insurance company” means a
1141 captive insurance company that provides insurance only to the
1142 industrial insureds that are its stockholders or members, and
1143 affiliates thereof, or to the stockholders, and affiliates

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1144 thereof, of its parent corporation. An industrial insured
1145 captive insurance company can also provide reinsurance to
1146 insurers only on risks written by such insurers for the
1147 industrial insureds that are the stockholders or members, and
1148 affiliates thereof, of the industrial insured captive insurer,
1149 or the stockholders, and affiliates thereof, of the parent
1150 corporation of the industrial insured captive insurer.
1151 (10) "Office" means the Office of Insurance Regulation.
1152 (11) "Parent" means any corporation, limited liability
1153 company, partnership, or individual that directly or indirectly
1154 owns, controls, or holds with power to vote more than 50 percent
1155 of the outstanding voting interests of a captive insurance
1156 company.
1157 (12) "Pure captive insurance company" means a company that
1158 insures risks of its parent, affiliated companies, controlled
1159 unaffiliated businesses, or a combination thereof.
1160 (13) "Qualifying reinsurer parent company" means a
1161 reinsurer which currently holds a certificate of authority,
1162 letter of eligibility or is an accredited or a satisfactory non-
1163 approved reinsurer in this state possessing a consolidated GAAP
1164 net worth of at least $500 million and a consolidated debt to
1165 total capital ratio of not greater than 0.50.
1166 (14) "Special purpose captive insurance company" means a
1167 captive insurance company that is formed or licensed under this
1168 chapter that does not meet the definition of any other type of
1169 captive insurance company defined in this section.
1170 (15) "Treasury rates" means the United States Treasury
1171 STRIPS asked yield as published in the Wall Street Journal as of
1172 a balance sheet date.

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1173 Section 19. Effective upon this act becoming a law, section
1174 628.903, Florida Statutes, is repealed.
1175 Section 20. Effective upon this act becoming a law, section
1176 628.905, Florida Statutes, is amended to read:
1177 628.905 Licensing; authority.—
1178 (1) A ~~Any~~ captive insurer, if ~~when~~ permitted by its charter
1179 or articles of incorporation, may apply to the office for a
1180 license to do any and all insurance authorized under the
1181 insurance code, ~~provide commercial property, commercial~~
1182 ~~casualty, and commercial marine insurance coverage~~ other than
1183 workers' compensation and employer's liability, life, health,
1184 personal motor vehicle, and personal residential property
1185 insurance ~~coverage~~, except that: ~~an industrial insured captive~~
1186 ~~insurer may apply for a license to provide workers' compensation~~
1187 ~~and employer's liability insurance as set forth in subsection~~
1188 ~~(6).~~
1189 (a) A pure captive insurance company may not insure any
1190 risks other than those of its parent, affiliated companies,
1191 controlled unaffiliated businesses, or a combination thereof.
1192 (b) An industrial insured captive insurance company may not
1193 insure any risks other than those of the industrial insureds
1194 that comprise the industrial insured group and their affiliated
1195 companies.
1196 (c) A special purpose captive insurance company may insure
1197 only the risks of its parent.
1198 (d) A captive insurance company may not accept or cede
1199 reinsurance except as provided in this part.
1200 (2) To conduct insurance business in this state, a ~~No~~
1201 ~~captive insurer, other than an industrial insured~~ captive

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1202 insurer must:~~, shall insure or accept reinsurance on any risks~~
1203 ~~other than those of its parent and affiliated companies.~~
1204 (a) Obtain from the office a license authorizing it to
1205 conduct insurance business in this state;
1206 (b) Hold at least one board of directors' meeting each year
1207 in this state;
1208 (c) Maintain its principal place of business in this state;
1209 and
1210 (d) Appoint a resident registered agent to accept service
1211 of process and to otherwise act on its behalf in this state. In
1212 the case of a captive insurance company formed as a corporation
1213 or a nonprofit corporation, if the registered agent cannot with
1214 reasonable diligence be found at the registered office of the
1215 captive insurance company, the Chief Financial Officer of this
1216 state must be an agent of the captive insurance company upon
1217 whom any process, notice, or demand may be served.
1218 (3) Before receiving a license, a captive insurance company
1219 formed as a corporation or a nonprofit corporation must file
1220 with the office a certified copy of its articles of
1221 incorporation and bylaws, a statement under oath of its
1222 president and secretary showing its financial condition, and any
1223 other statements or documents required by the office. In
1224 addition, an applicant captive insurance company must file with
1225 the office evidence of:
1226 (a) The amount and liquidity of the proposed captive
1227 insurance company's assets relative to the risks to be assumed;
1228 (b) The adequacy of the expertise, experience, and
1229 character of the person or persons who will manage the company;
1230 (c) The overall soundness of the company's plan of

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1231 operation;
1232 (d) The adequacy of the loss prevention programs of the
1233 company's parent, member organizations, or industrial insureds,
1234 as applicable; and
1235 (e) Any other factors considered relevant by the office in
1236 ascertaining whether the company will be able to meet its policy
1237 obligations. ~~In addition to information otherwise required by~~
1238 ~~this code, each applicant captive insurer shall file with the~~
1239 ~~office evidence of the adequacy of the loss prevention program~~
1240 ~~of its insureds.~~
1241 (4) A captive insurance company or captive reinsurance
1242 company must pay to the office a nonrefundable fee of $1,500 for
1243 processing its application for license.
1244 (a) A captive insurance company or captive reinsurance
1245 company must also pay an annual renewal fee of $1,000.
1246 (b) The office may charge a fee of $5 for any document
1247 requiring certification of authenticity or the signature of the
1248 commissioner or his or her designee. ~~An industrial insured~~
1249 ~~captive insurer need not be incorporated in this state if it has~~
1250 ~~been validly incorporated under the laws of another~~
1251 ~~jurisdiction.~~
1252 (5) If the commissioner is satisfied that the documents and
1253 statements filed by the captive insurance company comply with
1254 this chapter, the commissioner may grant a license authorizing
1255 the company to conduct insurance business in this state until
1256 the next succeeding March 1, at which time the license may be
1257 renewed. ~~An industrial insured captive insurer is subject to all~~
1258 ~~provisions of this part except as otherwise indicated.~~
1259 (6) Upon approval of the office, a foreign or alien captive

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1260 insurance company may become a domestic captive insurance
1261 company by complying with all of the requirements of law
1262 relative to the organization and licensing of a domestic captive
1263 insurance company of the same or equivalent type in this state
1264 and by filing with the Secretary of State its charter or other
1265 organizational documents, together with any appropriate
1266 amendments that have been adopted in accordance with the laws of
1267 this state to bring the charter or other organizational
1268 documents into compliance with the laws of this state, along
1269 with a certificate of good standing issued by the office. The
1270 captive insurance company is then entitled to the necessary or
1271 appropriate certificates and licenses to continue transacting
1272 business in this state and is subject to the authority and
1273 jurisdiction of this state. In connection with this
1274 redomestication, the office may waive any requirements for
1275 public hearings. It is not necessary for a captive insurance
1276 company redomesticating into this state to merge, consolidate,
1277 transfer assets, or otherwise engage in any other
1278 reorganization, other than as specified in this section. ~~An~~
1279 ~~industrial insured captive insurer may not provide workers'~~
1280 ~~compensation and employer's liability insurance except in excess~~
1281 ~~of at least $25 million in the annual aggregate.~~
1282 (7) An industrial insured captive insurance company need
1283 not be incorporated in this state if it has been validly
1284 incorporated under the laws of another jurisdiction.
1285 Section 21. Effective upon this act becoming a law, section
1286 628.906, Florida Statutes, is created to read:
1287 628.906 Application requirements; restrictions on
1288 eligibility of officers and directors.—

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1289 (1) To evidence competence and trustworthiness of its
1290 officers and directors, the application for a license to act as
1291 a captive insurance company or captive reinsurance company shall
1292 include, but not be limited to, background investigations,
1293 biographical affidavits, and fingerprint cards for all officers
1294 and directors. Fingerprints must be taken by a law enforcement
1295 agency or other entity approved by the office, be accompanied by
1296 the fingerprint processing fee specified in s. 624.501, and
1297 processed in accordance with s. 624.34.
1298 (2) The office may deny, suspend, or revoke the license to
1299 transact captive insurance or captive reinsurance in this state
1300 if any person who was an officer or director of an insurer,
1301 reinsurer, captive insurance company, captive reinsurance
1302 company, financial institution, or financial services business
1303 doing business in the United States, any state, or under the law
1304 of any other country and who served in that capacity within the
1305 2-year period prior to the date the insurer, reinsurer, captive
1306 insurance company, captive reinsurance company, financial
1307 institution, or financial services business became insolvent,
1308 serves as an officer or director of a captive insurance company
1309 or officer or director of a captive reinsurance company licensed
1310 in this state unless the officer or director demonstrates that
1311 his or her personal actions or omissions were not a contributing
1312 cause to the insolvency or unless the officer or director is
1313 immediately removed from the captive insurance company or
1314 captive reinsurance company.
1315 (3) The office may deny, suspend, or revoke the license to
1316 transact insurance or reinsurance in this state of a captive
1317 insurance company or captive reinsurance company if any officer

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1318 or director, any stockholder that owns 10 percent or more of the
1319 outstanding voting securities of the captive insurance company
1320 or captive reinsurance company, or incorporator has been found
1321 guilty of, or has pleaded guilty or nolo contendere to, any
1322 felony or crime involving moral turpitude, including a crime of
1323 dishonesty or breach of trust, punishable by imprisonment of 1
1324 year or more under the law of the United States or any state
1325 thereof or under the law of any other country without regard to
1326 whether a judgment of conviction has been entered by the court
1327 having jurisdiction in such case. However, in the case of a
1328 captive insurance company or captive reinsurance company
1329 operating under a subsisting license, the captive insurance
1330 company or captive reinsurance company shall remove any such
1331 person immediately upon discovery of the conditions set forth in
1332 this subsection when applicable to such person or upon the order
1333 of the office, and the failure to so act shall be grounds for
1334 revocation or suspension of the captive insurance company's or
1335 captive reinsurance company's license.
1336 Section 22. Effective upon this act becoming a law, section
1337 628.907, Florida Statutes, is amended to read:
1338 628.907 Minimum capital and net assets requirements;
1339 restriction on payment of dividends ~~surplus~~.—
1340 (1) A ~~No~~ captive insurer may not ~~shall~~ be issued a license
1341 unless it possesses and thereafter maintains~~:~~
1342 ~~(1)~~ unimpaired paid-in capital of:
1343 (a) In the case of a pure captive insurance company, at
1344 least $100,000. ~~$500,000; and~~
1345 (b) In the case of an industrial insured captive insurance
1346 company incorporated as a stock insurer, at least $200,000.

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1347 (c) In the case of a special purpose captive insurance
1348 company, an amount determined by the office after giving due
1349 consideration to the company's business plan, feasibility study,
1350 and pro forma financial statements and projections, including
1351 the nature of the risks to be insured.
1352 (2) The office may not issue a license to a captive
1353 insurance company incorporated as a nonprofit corporation unless
1354 the company possesses and maintains unrestricted net assets of:
1355 (a) In the case of a pure captive insurance company,
1356 ~~Unimpaired surplus of~~ at least $250,000.
1357 (b) In the case of a special purpose captive insurance
1358 company, an amount determined by the office after giving due
1359 consideration to the company's business plan, feasibility study,
1360 and pro forma financial statements and projections, including
1361 the nature of the risks to be insured.
1362 (3) Contributions to a captive insurance company
1363 incorporated as a nonprofit corporation must be in the form of
1364 cash, cash equivalent, or an irrevocable letter of credit issued
1365 by a bank chartered by this state or a member bank of the
1366 Federal Reserve System with a branch office in this state, or as
1367 approved by the office.
1368 (4) For purposes of this section, the office may issue a
1369 license expressly conditioned upon the captive insurance company
1370 providing to the office satisfactory evidence of possession of
1371 the minimum required unimpaired paid-in capital. Until this
1372 evidence is provided, the captive insurance company may not
1373 issue any policy, assume any liability, or otherwise provide
1374 coverage. The office may revoke the conditional license if
1375 satisfactory evidence of the required capital is not provided

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1376 within a maximum period of time, not to exceed 1 year, to be
1377 established by the office at the time the conditional license is
1378 issued.
1379 (5) The office may prescribe additional capital or net
1380 assets based upon the type, volume, and nature of insurance
1381 business transacted. Contributions in connection with these
1382 prescribed additional net assets or capital must be in the form
1383 of:
1384 (a) Cash;
1385 (b) Cash equivalent;
1386 (c) An irrevocable letter of credit issued by a bank
1387 chartered by this state or a member bank of the Federal Reserve
1388 System with a branch office in this state, or as approved by the
1389 office; or
1390 (d) Securities invested as provided in part II of chapter
1391 625.
1392 (6) A captive insurance company may not pay a dividend out
1393 of, or other distribution with respect to, capital or surplus in
1394 excess of the limitations set forth in this chapter without the
1395 prior approval of the office. Approval of an ongoing plan for
1396 the payment of dividends or other distributions must be
1397 conditioned upon the retention, at the time of each payment, of
1398 capital or surplus in excess of amounts specified by, or
1399 determined in accordance with formulas approved by, the office.
1400 (7) An irrevocable letter of credit that is issued by a
1401 financial institution other than a bank chartered by this state
1402 or a member bank of the Federal Reserve System must meet the
1403 same standards as an irrevocable letter of credit that has been
1404 issued by a bank chartered by this state or a member bank of the

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1405 Federal Reserve System.
1406 Section 23. Effective upon this act becoming a law, section
1407 628.908, Florida Statutes, is created to read:
1408 628.908 Surplus requirements; restriction on payment of
1409 dividends.—
1410 (1) The office may not issue a license to a captive
1411 insurance company unless the company possesses and maintains
1412 unimpaired surplus of:
1413 (a) In the case of a pure captive insurance company, at
1414 least $150,000.
1415 (b) In the case of an industrial insured captive insurance
1416 company incorporated as a stock insurer, at least $300,000.
1417 (c) In the case of an industrial insured captive insurance
1418 company incorporated as a mutual insurer, at least $500,000.
1419 (d) In the case of a special purpose captive insurance
1420 company, an amount determined by the office after giving due
1421 consideration to the company's business plan, feasibility study,
1422 and pro forma financial statements and projections, including
1423 the nature of the risks to be insured.
1424 (2) For purposes of this section, the office may issue a
1425 license expressly conditioned upon the captive insurance company
1426 providing to the office satisfactory evidence of possession of
1427 the minimum required unimpaired surplus. Until this evidence is
1428 provided, the captive insurance company may not issue any
1429 policy, assume any liability, or otherwise provide coverage. The
1430 office may revoke the conditional license if satisfactory
1431 evidence of the required surplus is not provided within a
1432 maximum period of time, not to exceed 1 year, to be established
1433 by the office at the time the conditional license is issued.

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1434 (3) A captive insurance company may not pay a dividend out
1435 of, or other distribution with respect to, capital or surplus in
1436 excess of the limitations set forth in this chapter without the
1437 prior approval of the office. Approval of an ongoing plan for
1438 the payment of dividends or other distribution must be
1439 conditioned upon the retention, at the time of each payment, of
1440 capital or surplus in excess of amounts specified by, or
1441 determined in accordance with formulas approved by, the office.
1442 (4) An irrevocable letter of credit that is issued by a
1443 financial institution other than a bank chartered by this state
1444 or a member bank of the Federal Reserve System must meet the
1445 same standards as an irrevocable letter of credit that has been
1446 issued by a bank chartered by this state or a member bank of the
1447 Federal Reserve System.
1448 Section 24. Effective upon this act becoming a law, section
1449 628.909, Florida Statutes, is amended to read:
1450 628.909 Applicability of other laws.—
1451 (1) The Florida Insurance Code does ~~shall~~ not apply to
1452 captive insurers or industrial insured captive insurers except
1453 as provided in this part and subsections (2) and (3).
1454 (2) The following provisions of the Florida Insurance Code
1455 ~~shall~~ apply to captive insurers who are not industrial insured
1456 captive insurers to the extent that such provisions are not
1457 inconsistent with this part:
1458 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,
1459 624.40851, 624.4095, 624.425, and 624.426.
1460 (b) Chapter 625, part II.
1461 (c) Chapter 626, part IX.
1462 (d) Sections 627.730-627.7405, when no-fault coverage is

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1463 provided.
1464 (e) Chapter 628.
1465 (3) The following provisions of the Florida Insurance Code
1466 ~~shall~~ apply to industrial insured captive insurers to the extent
1467 that such provisions are not inconsistent with this part:
1468 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,
1469 624.40851, 624.4095, 624.425, 624.426, and 624.609(1).
1470 (b) Chapter 625, part II, if the industrial insured captive
1471 insurer is incorporated in this state.
1472 (c) Chapter 626, part IX.
1473 (d) Sections 627.730-627.7405 when no-fault coverage is
1474 provided.
1475 (e) Chapter 628, except for ss. 628.341, 628.351, and
1476 628.6018.
1477 Section 25. Effective upon this act becoming a law, section
1478 628.910, Florida Statutes, is created to read:
1479 628.910 Incorporation options and requirements.—
1480 (1) A pure captive insurance company may be:
1481 (a) Incorporated as a stock insurer with its capital
1482 divided into shares and held by the stockholders; or
1483 (b) Incorporated as a public benefit, mutual benefit, or
1484 religious nonprofit corporation with members in accordance with
1485 the Florida Not For Profit Corporation Act.
1486 (2) An industrial insured captive insurance company may be:
1487 (a) Incorporated as a stock insurer with its capital
1488 divided into shares and held by the stockholders; or
1489 (b) Incorporated as a mutual insurer without capital stock,
1490 the governing body of which is elected by its members.
1491 (3) A captive insurance company may not have fewer than

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1492 three incorporators of whom not fewer than two must be residents
1493 of this state.
1494 (4) In the case of a captive insurance company formed as a
1495 corporation or a nonprofit corporation, before the articles of
1496 incorporation are transmitted to the Secretary of State, the
1497 incorporators shall file the articles of incorporation in
1498 triplicate with the office. The office shall promptly examine
1499 the articles of incorporation. If it finds that the articles of
1500 incorporation conform to law, it shall endorse its approval on
1501 each of the triplicate originals of the articles of
1502 incorporation, retain one copy for its files, and return the
1503 remaining copies to the incorporators for filing with the
1504 Department of State.
1505 (5) The articles of incorporation, the certificate issued
1506 pursuant to this section, and the organization fees required by
1507 the Florida Business Corporation Act or the Florida Not For
1508 Profit Corporation Act, as applicable, must be transmitted to
1509 the Secretary of State, who must record the articles of
1510 incorporation and the certificate.
1511 (6) The capital stock of a captive insurance company
1512 incorporated as a stock insurer must be issued at par value of
1513 not less than $1 or more than $100 per share.
1514 (7) In the case of a captive insurance company formed as a
1515 corporation or a nonprofit corporation, at least one of the
1516 members of the board of directors of a captive insurance company
1517 incorporated in this state must be a resident of this state.
1518 (8) A captive insurance company formed as a corporation or
1519 a nonprofit corporation, pursuant to the provisions of this
1520 chapter, has the privileges and is subject to the provisions of

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1521 the general corporation law, including the Florida Not For
1522 Profit Corporation Act for nonprofit corporations, as
1523 applicable, as well as the applicable provisions contained in
1524 this chapter. If a conflict occurs between a provision of the
1525 general corporation law, including the Florida Not For Profit
1526 Corporation Act for nonprofit corporations, as applicable, and a
1527 provision of this chapter, the latter controls. The provisions
1528 of this title pertaining to mergers, consolidations,
1529 conversions, mutualizations, and redomestications apply in
1530 determining the procedures to be followed by a captive insurance
1531 company in carrying out any of the transactions described in
1532 such provisions, except that the office may waive or modify the
1533 requirements for public notice and hearing in accordance with
1534 rules the office may adopt addressing categories of
1535 transactions. If a notice of public hearing is required, but no
1536 one requests a hearing, the office may cancel the hearing.
1537 (9) The articles of incorporation or bylaws of a captive
1538 insurance company may authorize a quorum of a board of directors
1539 to consist of no fewer than one-third of the fixed or prescribed
1540 number of directors as provided for by the Florida Business
1541 Corporation Act or the Florida Not For Profit Corporation Act.
1542 Section 26. Effective upon this act becoming a law, section
1543 628.911, Florida Statutes, is amended to read:
1544 628.911 Reports and statements.—
1545 (1) A captive insurance company may ~~insurer shall~~ not be
1546 required to make any annual report except as provided in this
1547 part ~~section~~.
1548 (2) Annually no later than March 1, a captive insurance
1549 company or a captive reinsurance company ~~insurer~~ shall~~, within~~

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1550 ~~60 days after the end of its fiscal year and as often as the~~
1551 ~~office may deem necessary,~~ submit to the office a report of its
1552 financial condition verified by oath of two of its executive
1553 officers. Except as provided in this part, a captive insurance
1554 company or a captive reinsurance company must report using
1555 generally accepted accounting principles, unless the office
1556 approves the use of statutory accounting principles, with useful
1557 or necessary modifications or adaptations required or approved
1558 or accepted by the office for the type of insurance and kinds of
1559 insurers to be reported upon, and as supplemented by additional
1560 information required by the office. The Financial Services
1561 Commission may adopt by rule the form in which captive insurance
1562 companies ~~insurers~~ shall report.
1563 (3) A captive insurance company may make written
1564 application for filing the required report on a fiscal year end
1565 that is consistent with the parent company's fiscal year. If an
1566 alternative reporting date is granted, the annual report is due
1567 60 days after the fiscal year end.
1568 Section 27. Effective upon this act becoming a law, section
1569 628.912, Florida Statutes, is created to read:
1570 628.912 Discounting of loss and loss adjustment expense
1571 reserves.—
1572 (1) A captive reinsurance company may discount its loss and
1573 loss adjustment expense reserves at treasury rates applied to
1574 the applicable payments projected through the use of the
1575 expected payment pattern associated with the reserves.
1576 (2) A captive reinsurance company must file annually an
1577 actuarial opinion on loss and loss adjustment expense reserves
1578 provided by an independent actuary. The actuary may not be an

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1579 employee of the captive reinsurance company or its affiliates.
1580 (3) The office may disallow the discounting of reserves if
1581 a captive reinsurance company violates a provision of this part.
1582 Section 28. Effective upon this act becoming a law, section
1583 628.913, Florida Statutes, is amended to read:
1584 (Substantial rewording of section. See
1585 s. 628.913, F.S., for present text.)
1586 628.913 Captive reinsurance companies.—
1587 (1) A captive reinsurance company, if permitted by its
1588 articles of incorporation or charter, may apply to the office
1589 for a license to write reinsurance covering property and
1590 casualty insurance or reinsurance contracts. A captive
1591 reinsurance company authorized by the office may write
1592 reinsurance contracts covering risks in any state; however, a
1593 captive reinsurance company authorized by the office may not
1594 directly insure risks.
1595 (2) To conduct business in this state, a captive
1596 reinsurance company must:
1597 (a) Obtain from the office a license authorizing it to
1598 conduct business as a captive reinsurance company in this state;
1599 (b) Hold at least one board of directors' meeting each year
1600 in this state;
1601 (c) Maintain its principal place of business in this state;
1602 and
1603 (d) Appoint a registered agent to accept service of process
1604 and act otherwise on its behalf in this state.
1605 (3) Before receiving a license, a captive reinsurance
1606 company must file with the office:
1607 (a) A certified copy of its charter and bylaws;

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1608 (b) A statement under oath of its president and secretary
1609 showing its financial condition; and
1610 (c) Other documents required by the office.
1611 (4) In addition to the information required by this
1612 section, the captive reinsurance company must file with the
1613 office evidence of:
1614 (a) The amount and liquidity of the captive reinsurance
1615 company's assets relative to the risks to be assumed;
1616 (b) The adequacy of the expertise, experience, and
1617 character of the person who manages the company;
1618 (c) The overall soundness of the company's plan of
1619 operation; and
1620 (d) Other overall factors considered relevant by the office
1621 in ascertaining if the company would be able to meet its policy
1622 obligations.
1623 Section 29. Effective upon this act becoming a law, section
1624 628.914, Florida Statutes, is created to read:
1625 628.914 Minimum capitalization or reserves for captive
1626 reinsurance companies.—
1627 (1) The office may not issue a license to a captive
1628 reinsurance company unless the company possesses and maintains
1629 capital or unimpaired surplus of at least the greater of $300
1630 million or 10 percent of reserves. The surplus may be in the
1631 form of cash or securities as permitted by part II of chapter
1632 625.
1633 (2) The office may prescribe additional capital or surplus
1634 based upon the type, volume, and nature of the insurance
1635 business transacted.
1636 (3) A captive reinsurance company may not pay a dividend

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1637 out of, or other distribution with respect to, capital or
1638 surplus in excess of the limitations without the prior approval
1639 of the office. Approval of an ongoing plan for the payment of
1640 dividends or other distributions must be conditioned upon the
1641 retention, at the time of each payment, of capital or surplus in
1642 excess of amounts specified by, or determined in accordance with
1643 formulas approved by, the office.
1644 Section 30. Effective upon this act becoming a law, section
1645 628.9141, Florida Statutes, is created to read:
1646 628.9141 Incorporation of a captive reinsurance company.—
1647 (1) A captive reinsurance company must be incorporated as a
1648 stock insurer with its capital divided into shares and held by
1649 its shareholders.
1650 (2) A captive reinsurance company may not have fewer than
1651 three incorporators of whom at least two must be residents of
1652 this state.
1653 (3) Before the articles of incorporation are transmitted to
1654 the Secretary of State, the incorporators must comply with all
1655 the requirements of s. 628.091.
1656 (4) The capital stock of a captive reinsurance company must
1657 be issued at par value of not less than $1 or more than $100 per
1658 share.
1659 (5) At least one of the members of the board of directors
1660 of a captive reinsurance company incorporated in this state must
1661 be a resident of this state.
1662 Section 31. Effective upon this act becoming a law, section
1663 628.9142, Florida Statutes, is created to read:
1664 628.9142 Reinsurance; effect on reserves.—
1665 (1) A captive insurance company may provide reinsurance, as

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1666 authorized in this part, on risks ceded by any other insurer.
1667 (2) A captive insurance company may take credit for
1668 reserves on risks or portions of risks ceded to authorized
1669 insurers or reinsurers and unauthorized insurers or reinsurers
1670 complying with s. 624.610. A captive insurer may not take credit
1671 for reserves on risks or portions of risks ceded to an
1672 unauthorized insurer or reinsurer if the insurer or reinsurer is
1673 not in compliance with s. 624.610.
1674 Section 32. Effective upon this act becoming a law, section
1675 628.918, Florida Statutes, is created to read:
1676 628.918 Management of assets of captive reinsurance
1677 company.—At least 35 percent of the assets of a captive
1678 reinsurance company must be managed by an asset manager
1679 domiciled in this state.
1680 Section 33. Effective upon this act becoming a law, section
1681 628.919, Florida Statutes, is created to read:
1682 628.919 Standards to ensure risk management control by
1683 parent company.—The Financial Services Commission shall adopt
1684 rules establishing standards to ensure that a parent or
1685 affiliated company is able to exercise control of the risk
1686 management function of any controlled unaffiliated business to
1687 be insured by the pure captive insurance company.
1688 Section 34. Effective upon this act becoming a law, section
1689 628.920, Florida Statutes, is created to read:
1690 628.920 Eligibility of licensed captive insurance company
1691 for certificate of authority to act as insurer.—A licensed
1692 captive insurance company that meets the necessary requirements
1693 of this part imposed upon an insurer must be considered for
1694 issuance of a certificate of authority to act as an insurer in

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1695 this state.
1696 Section 35. Section 631.271, Florida Statutes, is amended
1697 to read:
1698 631.271 Priority of claims.—
1699 (1) The priority of distribution of claims from the
1700 insurer's estate shall be in accordance with the order in which
1701 each class of claims is set forth in this subsection. Every
1702 claim in each class shall be paid in full or adequate funds
1703 shall be retained for such payment before the members of the
1704 next class may receive any payment. No subclasses may be
1705 established within any class. The order of distribution of
1706 claims shall be:
1707 (a) *Class 1.*—
1708 1. All of the receiver's costs and expenses of
1709 administration.
1710 2. All of the expenses of a guaranty association or foreign
1711 guaranty association in handling claims.
1712 (b) *Class 2.*—All claims under policies for losses incurred,
1713 including third-party claims, all claims against the insurer for
1714 liability for bodily injury or for injury to or destruction of
1715 tangible property which claims are not under policies, and all
1716 claims of a guaranty association or foreign guaranty
1717 association. All claims under life insurance and annuity
1718 policies, whether for death proceeds, annuity proceeds, or
1719 investment values, shall be treated as loss claims. That portion
1720 of any loss, indemnification for which is provided by other
1721 benefits or advantages recovered by the claimant, may not be
1722 included in this class, other than benefits or advantages
1723 recovered or recoverable in discharge of familial obligations of

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1724 support or by way of succession at death or as proceeds of life
1725 insurance, or as gratuities. No payment by an employer to her or
1726 his employee may be treated as a gratuity.
1727 (c) *Class 3.*—Claims under nonassessable policies for
1728 unearned premiums or premium refunds.
1729 (d) *Class 4.*—Claims of the Federal Government.
1730 (e) *Class 5.*—Debts due to employees for services performed,
1731 to the extent that the debts do not exceed $2,000 for each
1732 employee and represent payment for services performed within 6
1733 months before the filing of the petition for liquidation.
1734 Officers and directors are not entitled to the benefit of this
1735 priority. This priority is in lieu of any other similar priority
1736 that is authorized by law as to wages or compensation of
1737 employees.
1738 (f) *Class 6.*—Claims of general creditors.
1739 (g) *Class 7.*—Claims of any state or local government.
1740 Claims, including those of any state or local government for a
1741 penalty or forfeiture, shall be allowed in this class, but only
1742 to the extent of the pecuniary loss sustained from the act,
1743 transaction, or proceeding out of which the penalty or
1744 forfeiture arose, with reasonable and actual costs occasioned
1745 thereby. The remainder of such claims shall be postponed to the
1746 class of claims under paragraph (k) ~~(j)~~.
1747 (h) *Class 8.*—Claims filed after the time specified in s.
1748 631.181(3), except when ordered otherwise by the court to
1749 prevent manifest injustice, or any claims other than claims
1750 under paragraph (i) or under paragraph (k) ~~(j)~~.
1751 (i) *Class 9.*—Surplus or contribution notes, or similar
1752 obligations, and premium refunds on assessable policies.

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1753 Payments to members of domestic mutual insurance companies shall
1754 be limited in accordance with law.
1755 (j) *Class 10.*—Interest on allowed claims of Classes 1
1756 through 9, according to the terms of a plan to pay interest on
1757 allowed claims proposed by the liquidator and approved by the
1758 receivership court.
1759 (k) *Class 11.*—The claims of shareholders or other owners.
1760 (2) In a liquidation proceeding involving one or more
1761 reciprocal states, the order of distribution of the domiciliary
1762 state shall control as to all claims of residents of this and
1763 reciprocal states. All claims of residents of reciprocal states
1764 shall be given equal priority of payment from general assets
1765 regardless of where such assets are located.
1766
1767 Between lines 936 and 937
1768 insert:
1769 Section 16. If CS for SB 578 or similar legislation is
1770 adopted in the same legislative session or an extension thereof
1771 and becomes law, a surplus lines insurer removing policies from
1772 the Citizens Property Insurance Corporation must, pursuant to s.
1773 627.351(6)(q)3.d.(II)(B), Florida Statutes, maintain an A.M.
1774 Best Financial Strength Rating of A- or better or, in the
1775 alternative, a Demotech Financial Stability Rating of A or
1776 better.
1777
1778 ========== T I T L E A M E N D M E N T ==========
1779 And the title is amended as follows:
1780 Delete line 5
1781 and insert:

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1782 that cannot be legally operated on roads, highways, or
1783 streets; amending s. 624.402, F.S.; revising a
1784 provision exempting alien insurers from the
1785 requirement to obtain a certificate of authority;
1786 revising the definition of the term “nonresident”;
1787 providing that a life insurance policy or annuity
1788 contract may be issued by an insurer domiciled outside
1789 the United States under certain conditions; specifying
1790 the terms and conditions that must be satisfied before
1791 an alien insured may issue a policy or contract;
1792 authorizing the Office of Insurance Regulation to
1793 conduct an examination of an alien insurer if the
1794 office has reason to believe that the insurer is
1795 insolvent or is in unsound financial condition;
1796 providing that an alien insurer issuing policies or
1797 contracts in this state is subject to the Unfair
1798 Insurance Trade Practices Act; providing that policies
1799 and contracts issued pursuant to the act are not
1800 subject to the premium tax; requiring that an
1801 application for a life insurance policy or an annuity
1802 contract contain certain specified statements to
1803 protect consumers;
1804
1805 Delete lines 18 - 20
1806 and insert:
1807 circumstances; creating s. 626.8675, F.S.; providing
1808 that
1809
1810 Delete line 24

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1811 and insert:
1812 electronics insurance claims; amending s. 626.9201,
1813 F.S.; clarifying the definition of the term “licensed
1814 insurer” or “insurer”; amending s. 626.9201, F.S.;
1815 providing certain exceptions to the notice of
1816 cancellation or nonrenewal requirements; amending s.
1817 626.9541, F.S.; including knowingly altered property
1818 and casualty certificates of insurance to the list of
1819 unfair or deceptive acts or practices; amending s.
1820 627.351,
1821
1822 Delete line 27
1823 and insert:
1824 company; requiring the corporation to offer certain
1825 types of basic personal lines policy; providing
1826 valuation criteria for establishing replacement costs
1827 for coverage on a dwelling issued by the corporation;
1828 creating s. 627.6011, F.S.; providing that
1829
1830 Delete line 29
1831 and insert:
1832 benefit plans; amending s. 627.6699, F.S.; revising
1833 the definition of “carrier”; amending s. 627.7015,
1834 F.S.; revising
1835
1836 Between lines 31 and 32
1837 insert:
1838 amending s. 627.706, F.S.; providing criteria for the
1839 renewal of sinkhole insurance; amending s. 627.707,

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1840 F.S.; defining the term “rebate”;
1841
1842 Delete line 37
1843 and insert:
1844 protection benefits; amending s. 627.7405, F.S.;
1845 providing that certain owners or registrants are not
1846 liable for an insurers’ right of reimbursement;
1847 amending s. 628.901, F.S.; providing definitions;
1848 repealing s. 628.903, F.S., relating to the definition
1849 of the term “industrial insured captive insurer”;
1850 amending s. 628.905, F.S.; expanding the kinds of
1851 insurance for which a captive insurer may seek
1852 licensure; limiting the risks that certain captive
1853 insurers may insure; specifying requirements and
1854 conditions relating to a captive insurer’s authority
1855 to conduct business; requiring that before licensure
1856 certain captive insurers must file or submit to the
1857 Office of Insurance Regulation specified information,
1858 documents, and statements; requiring a captive
1859 insurance company to file specific evidence with the
1860 office relating to the financial condition and quality
1861 of management and operations of the company;
1862 specifying certain fees to be paid by captive
1863 insurance companies; authorizing a foreign or alien
1864 captive insurance company to become a domestic captive
1865 insurance company by complying with specified
1866 requirements; authorizing the office to waive any
1867 requirements for public hearings relating to the
1868 redomestication of an alien captive insurance company;

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1869 creating s. 628.906, F.S.; requiring biographical
1870 affidavits, background investigations, and fingerprint
1871 cards for all officers and directors; providing
1872 restrictions on officers and directors involved with
1873 insolvent insurers under certain conditions; providing
1874 restrictions on officers and directors that are found
1875 guilty of, or have pleaded guilty or nolo contendere
1876 to, any felony or crime involving moral turpitude,
1877 including a crime of dishonesty or breach of trust;
1878 amending s. 628.907, F.S.; revising capitalization
1879 requirements for specified captive insurance
1880 companies; requiring capital of specified captive
1881 insurance companies to be held in certain forms;
1882 requiring contributions to captive insurance companies
1883 that are stock insurer corporations to be in a certain
1884 form; authorizing the office to issue a captive
1885 insurance company license conditioned upon certain
1886 evidence relating to possession of specified capital;
1887 authorizing revocation of a conditional license under
1888 certain circumstances; authorizing the office to
1889 prescribe certain additional capital and net asset
1890 requirements; requiring such additional requirements
1891 relating to capital and net assets to be held in
1892 specified forms; requiring dividends or distributions
1893 of capital or surplus to meet certain conditions and
1894 be approved by the office; requiring certain
1895 irrevocable letters of credit to meet certain
1896 standards; creating s. 628.908, F.S.; prohibiting the
1897 issuance of a license to specified captive insurance

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1898 companies unless such companies possess and maintain
1899 certain levels of unimpaired surplus; authorizing the
1900 office to condition issuance of a captive insurance
1901 company license upon the provision of certain evidence
1902 relating to the possession of a minimum amount of
1903 unimpaired surplus; authorizing revocation of a
1904 conditional license under certain circumstances;
1905 requiring dividends or distributions of capital or
1906 surplus to meet certain conditions and be approved by
1907 the office; requiring certain irrevocable letters of
1908 credit to meet certain standards; amending s. 628.909,
1909 F.S.; providing for applicability of certain statutory
1910 provisions to specified captive insurers; creating s.
1911 628.910, F.S.; providing requirements, options, and
1912 conditions relating to how a captive insurance company
1913 may be incorporated or organized as a business;
1914 amending s. 628.911, F.S.; providing reporting
1915 requirements for specified captive insurance companies
1916 and captive reinsurance companies; creating s.
1917 628.912, F.S.; authorizing a captive reinsurance
1918 company to discount specified losses subject to
1919 certain conditions; amending s. 628.913, F.S.;
1920 authorizing a captive reinsurance company to apply to
1921 the office for licensure to write reinsurance covering
1922 property and casualty insurance or reinsurance
1923 contracts; authorizing the office to allow a captive
1924 reinsurance company to write reinsurance contracts
1925 covering risks in any state; specifying that a captive
1926 reinsurance company is subject to specified

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1927 requirements and must meet specified conditions in
1928 order to conduct business in this state; creating s.
1929 628.914, F.S.; specifying requirements and conditions
1930 relating to the capitalization or maintenance of
1931 reserves by a captive reinsurance company; creating s.
1932 628.9141, F.S.; specifying requirements and conditions
1933 relating to the incorporation of a captive reinsurance
1934 company; creating s. 628.9142, F.S.; providing for the
1935 effect on reserves of certain actions taken by a
1936 captive insurance company relating to providing
1937 reinsurance for specified risks; creating s. 628.918,
1938 F.S.; requiring a specified percentage of a captive
1939 reinsurance company's assets to be managed by an asset
1940 manager domiciled in this state; creating s. 628.919,
1941 F.S.; authorizing the Financial Services Commission to
1942 adopt rules establishing certain standards for control
1943 of an unaffiliated business by a parent or affiliated
1944 company relating to coverage by a pure captive
1945 insurance company; creating s. 628.920, F.S.;
1946 requiring that a licensed captive insurance company
1947 must be considered for issuance of a certificate of
1948 authority as an insurer under certain circumstances;
1949 amending s. 631.271, F.S.; providing for the order of
1950 distribution for interest on allowed claims; providing
1951 that if CS for SB 578 or similar legislation becomes
1952 law, a surplus lines insurer removing policies from
1953 the Citizens Property Insurance Corporation must
1954 maintain a certain financial rating; providing
1955 effective dates.

626670

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Hays) recommended the following:

Senate Amendment to Amendment (148180) (with title amendment)

Delete lines 989 - 1016.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 1838 - 1839
and insert:
amending s. 627.707,

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Hays) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Between lines 119 and 120
4 insert:
5 Section 2. Paragraph (e) of subsection (1) of section
6 624.4625, Florida Statutes, is amended, present subsection (5)
7 of that section is renumbered as subsection (6), and a new
8 subsection (5) is added to that section, to read:
9 624.4625 Corporation not for profit self-insurance funds.—
10 (1) Notwithstanding any other provision of law, any two or
11 more corporations not for profit located in and organized under
12 the laws of this state may form a self-insurance fund for the

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13 purpose of pooling and spreading liabilities of its group
14 members in any one or combination of property or casualty risk,
15 provided the corporation not for profit self-insurance fund that
16 is created:
17 (e) Maintains a continuing program of excess insurance
18 coverage and reserve evaluation to protect the financial
19 stability of the fund in an amount and manner determined by a
20 qualified actuary. At a minimum, this program must:
21 1. Purchase excess insurance from authorized insurance
22 carriers or eligible surplus lines insurers or reinsurers.
23 2. Retain a per-loss occurrence that does not exceed
24 $350,000.
25 (5) A corporation not for profit self-insurance fund formed
26 under this section, which is hereby deemed to be an association
27 in compliance with s. 627.654, may purchase for its members, on
28 a group basis, any one or more policies of health, accident, or
29 hospitalization coverage, if:
30 (a) An insurance policy purchased to provide coverage under
31 this subsection is purchased only from an authorized insurance
32 company that participates in the Florida Life and Health
33 Insurance Guaranty Association and the policy forms have been
34 filed with and approved by the office;
35 (b) The corporation not for profit self-insurance fund
36 retains no risk related to coverage provided under this
37 subsection;
38 (c) An insurance policy purchased to provide coverage under
39 this subsection is not subject to the restrictions relating to
40 the premium rates for small employer groups under chapter 627;
41 and

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42 (d) The premium paid for an insurance policy purchased
43 pursuant to paragraph (a) does not count toward the $5 million
44 requirement in paragraph (1)(a).
45
46 An individual not-for-profit entity participating as a member of
47 the association for the purchase of a master health, accident,
48 or hospitalization policy by the association under this
49 subsection may retain its individual insurance agent and the
50 agent shall be deemed an additional agent of record for the
51 master policy issued to the association.
52
53 ========== T I T L E A M E N D M E N T ==========
54 And the title is amended as follows:
55 Between lines 5 and 6
56 insert:
57 amending s. 624.4625, F.S.; authorizing corporation
58 not for profit self-insurance funds that are required
59 to maintain a continuing program of excess insurance
60 coverage and reserve evaluation to purchase excess
61 insurance from eligible surplus lines insurers or
62 reinsurers; authorizing certain corporation not for
63 profit self-insurance funds to purchase certain group
64 insurance coverage for its members; providing
65 requirements and conditions relating to such
66 purchases;

By the Committee on Banking and Insurance; and Senator Richter

597-02859-12 20121620c1

A bill to be entitled

An act relating to insurance; amending s. 320.27, F.S.; providing that a salvage motor vehicle dealer is not required to carry certain insurance on vehicles that have been issued a certificate of destruction; amending s. 624.501, F.S.; conforming a cross-reference; amending s. 624.610, F.S.; revising provisions specifying which insurers are not subject to certain filing requirements relating to reinsurance; amending s. 626.261, F.S.; authorizing the Department of Financial Services to provide examinations in Spanish; amending s. 626.321, F.S.; revising provisions relating to limited licenses for travel insurance; providing that a full-time salaried employee of a licensed general lines agent or a business entity that offers travel planning services may be issued such license under certain circumstances; amending s. 626.753, F.S., relating to the sharing of commissions; prohibiting certain rebates; creating s. 626.8675, F.S.; providing that provisions relating to insurance adjusters do not apply to individuals who conduct data entry into an automated claims adjustment system for portable electronics insurance claims; amending s. 627.351, F.S.; increasing the amount of surplus required for an association to qualify as a limited apportionment company; creating s. 627.6011, F.S.; providing that mandatory health benefits apply only to certain health benefit plans; amending s. 627.7015, F.S.; revising

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

597-02859-12 20121620c1

provisions relating to alternative procedures for the resolution of disputed property insurance claims; amending s. 627.7295, F.S.; revising provisions relating to cancellation for nonpayment of premiums for motor vehicle insurance; amending s. 627.736, F.S.; clarifying provisions relating to the amount of interest on overdue payments for personal injury protection benefits; providing effective dates.

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

Section 1. Subsection (3) of section 320.27, Florida Statutes, is amended to read:

320.27 Motor vehicle dealers.—

(3) APPLICATION AND FEE.—The application for the license shall be in such form as may be prescribed by the department and shall be subject to such rules with respect thereto as may be so prescribed by it. Such application shall be verified by oath or affirmation and shall contain a full statement of the name and birth date of the person or persons applying therefor; the name of the firm or copartnership, with the names and places of residence of all members thereof, if such applicant is a firm or copartnership; the names and places of residence of the principal officers, if the applicant is a body corporate or other artificial body; the name of the state under whose laws the corporation is organized; the present and former place or places of residence of the applicant; and prior business in which the applicant has been engaged and the location thereof. Such application shall describe the exact location of the place

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

59 of business and shall state whether the place of business is
60 owned by the applicant and when acquired, or, if leased, a true
61 copy of the lease shall be attached to the application. The
62 applicant shall certify that the location provides an adequately
63 equipped office and is not a residence; that the location
64 affords sufficient unoccupied space upon and within which
65 adequately to store all motor vehicles offered and displayed for
66 sale; and that the location is a suitable place where the
67 applicant can in good faith carry on such business and keep and
68 maintain books, records, and files necessary to conduct such
69 business, which will be available at all reasonable hours to
70 inspection by the department or any of its inspectors or other
71 employees. The applicant shall certify that the business of a
72 motor vehicle dealer is the principal business which shall be
73 conducted at that location. Such application shall contain a
74 statement that the applicant is either franchised by a
75 manufacturer of motor vehicles, in which case the name of each
76 motor vehicle that the applicant is franchised to sell shall be
77 included, or an independent (nonfranchised) motor vehicle
78 dealer. Such application shall contain such other relevant
79 information as may be required by the department, including
80 evidence that the applicant is insured under a garage liability
81 insurance policy or a general liability insurance policy coupled
82 with a business automobile policy, which shall include, at a
83 minimum, $25,000 combined single-limit liability coverage
84 including bodily injury and property damage protection and
85 $10,000 personal injury protection. However, a salvage motor
86 vehicle dealer as defined in subparagraph (1)(c)5. is exempt
87 from the requirements for garage liability insurance and

88 personal injury protection insurance on those vehicles that have
89 been issued a certificate of destruction and cannot be operated
90 legally on state roads, highways, or streets. Franchise dealers
91 must submit a garage liability insurance policy, and all other
92 dealers must submit a garage liability insurance policy or a
93 general liability insurance policy coupled with a business
94 automobile policy. Such policy shall be for the license period,
95 and evidence of a new or continued policy shall be delivered to
96 the department at the beginning of each license period. Upon
97 making initial application, the applicant shall pay to the
98 department a fee of $300 in addition to any other fees now
99 required by law; upon making a subsequent renewal application,
100 the applicant shall pay to the department a fee of $75 in
101 addition to any other fees now required by law. Upon making an
102 application for a change of location, the person shall pay a fee
103 of $50 in addition to any other fees now required by law. The
104 department shall, in the case of every application for initial
105 licensure, verify whether certain facts set forth in the
106 application are true. Each applicant, general partner in the
107 case of a partnership, or corporate officer and director in the
108 case of a corporate applicant, must file a set of fingerprints
109 with the department for the purpose of determining any prior
110 criminal record or any outstanding warrants. The department
111 shall submit the fingerprints to the Department of Law
112 Enforcement for state processing and forwarding to the Federal
113 Bureau of Investigation for federal processing. The actual cost
114 of state and federal processing shall be borne by the applicant
115 and is in addition to the fee for licensure. The department may
116 issue a license to an applicant pending the results of the

fingerprint investigation, which license is fully revocable if the department subsequently determines that any facts set forth in the application are not true or correctly represented.

Section 2. Paragraph (b) of subsection (9) of section 624.501, Florida Statutes, is amended to read:

624.501 Filing, license, appointment, and miscellaneous fees.—The department, commission, or office, as appropriate, shall collect in advance, and persons so served shall pay to it in advance, fees, licenses, and miscellaneous charges as follows:

(9)

(b) For all limited appointments as agent, as provided ~~for~~ in s. 626.321(1)(c) and (d) ~~626.321(1)(d)~~, the agent's original appointment and biennial renewal or continuation thereof for each insurer is ~~shall be~~ equal to the number of offices, branch offices, or places of business covered by the license multiplied by the fees set forth in paragraph (a).

Section 3. Paragraph (c) of subsection (11) of section 624.610, Florida Statutes, is amended to read:

624.610 Reinsurance.—

(11)

(c) This subsection applies to cessions of directly written risk or loss. This subsection does not apply to contracts of facultative reinsurance or to any ceding insurer that has a ~~with~~ surplus as to policyholders which ~~that~~ exceeds $100 million as of the immediately preceding December 31. A ~~Additionally, any~~ ceding insurer otherwise subject to this section which had ~~with~~ less than $500,000 in direct premiums written in this state during the preceding calendar year and no more than $250,000 in

direct premiums written in this state during the preceding calendar quarter, or which had fewer ~~with less~~ than 1,000 policyholders at the end of the preceding calendar year, is exempt from ~~the requirements of~~ this subsection. ~~However, any ceding insurer otherwise subject to this section with more than $250,000 in direct premiums written in this state during the preceding calendar quarter is not exempt from the requirements of this subsection.~~

Section 4. Subsection (5) is added to section 626.261, Florida Statutes, to read:

626.261 Conduct of examination.—

(5) The department may provide licensure examinations in Spanish. Applicants requesting examination or reexamination in Spanish must bear the full cost of the department's development, preparation, administration, grading, and evaluation of the Spanish-language examination. When determining whether it is in the public interest to allow the examination to be translated into and administered in Spanish, the department shall consider the percentage of the population who speak Spanish.

Section 5. Paragraph (c) of subsection (1) of section 626.321, Florida Statutes, is amended to read:

626.321 Limited licenses.—

(1) The department shall issue to a qualified individual, or a qualified individual or entity under paragraphs (c), (d), (e), and (i), a license as agent authorized to transact a limited class of business in any of the following categories:

(c) *Travel insurance.*—License covering only policies and certificates of travel insurance, which are subject to review by the office ~~under s. 624.605(1)(q)~~. Policies and certificates of

175 travel insurance may provide coverage for risks incidental to
176 travel, planned travel, or accommodations while traveling,
177 including, but not limited to, accidental death and
178 dismemberment of a traveler; trip or event cancellation,
179 interruption, or delay; loss of or damage to personal effects or
180 travel documents; damages to travel accommodations; baggage
181 delay; emergency medical travel or evacuation of a traveler; or
182 medical, surgical, and hospital expenses related to an illness
183 or emergency of a traveler. ~~Any~~ Such policy or certificate may
184 be issued for terms longer than 90 ~~60~~ days, but ~~each policy or~~
185 ~~certificate~~, other than a policy or certificate providing
186 coverage for air ambulatory services only, each policy or
187 certificate must be limited to coverage for travel or use of
188 accommodations of no longer than 90 ~~60~~ days. The license may be
189 issued only:
190 1. To a full-time salaried employee of a common carrier or
191 a full-time salaried employee or owner of a transportation
192 ticket agency and may authorize the sale of such ticket policies
193 only in connection with the sale of transportation tickets, or
194 to the full-time salaried employee of such an agent. ~~No~~ Such
195 policy may not ~~shall~~ be for ~~a duration of~~ more than 48 hours or
196 more than ~~for~~ the duration of a specified one-way trip or round
197 trip.
198 2. To an entity or individual that is:
199 a. The developer of a timeshare plan that is the subject of
200 an approved public offering statement under chapter 721;
201 b. An exchange company operating an exchange program
202 approved under chapter 721;
203 c. A managing entity operating a timeshare plan approved

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204 under chapter 721;
205 d. A seller of travel as defined in chapter 559; or
206 e. A subsidiary or affiliate of any of the entities
207 described in sub-subparagraphs a.-d.
208 3. To a full-time salaried employee of a licensed general
209 lines agent or to a business entity that offers travel planning
210 services if insurance sales activities authorized by the license
211 are in connection with, and incidental to, travel.
212 a. A license issued to a business entity that offers travel
213 planning services must encompass each office, branch office, or
214 place of business making use of the entity's business name in
215 order to offer, solicit, and sell insurance pursuant to this
216 paragraph.
217 b. The application for licensure must list the name,
218 address, and phone number for each office, branch office, or
219 place of business that is to be covered by the license. The
220 licensee shall notify the department of the name, address, and
221 phone number of any new location that is to be covered by the
222 license before the new office, branch office, or place of
223 business engages in the sale of insurance pursuant to this
224 paragraph. The licensee shall notify the department within 30
225 days after the closing or terminating of an office, branch
226 office, or place of business. Upon receipt of the notice, the
227 department shall delete the office, branch office, or place of
228 business from the license.
229 c. A licensed and appointed entity is directly responsible
230 and accountable for all acts of the licensee's employees and
231 parties with whom the licensee has entered into a contractual
232 agreement to offer travel insurance.

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233

234 A licensee shall require each individual ~~employee~~ who offers
235 policies or certificates under subparagraph 2. or subparagraph
236 3. ~~this subparagraph~~ to receive initial training from a general
237 lines agent or an insurer authorized under chapter 624 to
238 transact insurance within this state. For an entity applying for
239 a license as a travel insurance agent, the fingerprinting
240 requirement of this section applies only to the president,
241 secretary, and treasurer and to any other officer or person who
242 directs or controls the travel insurance operations of the
243 entity.
244 Section 6. Present subsection (4) of section 626.753,
245 Florida Statutes, is renumbered as subsection (6), and new
246 subsections (4) and (5) are added to that section to read:
247 626.753 Sharing commissions; penalty.—
248 (4) Any patronage dividend or other payment, discount, or
249 credit provided to a member of a production credit association
250 or federal land bank association which is directly or indirectly
251 calculated on the basis of the premium charged to that member
252 for crop hail or multiple-peril crop insurance is an unlawful
253 rebate in violation of ss. 626.572 and 626.9541(1)(h).
254 (5) An agent who engages in commission sharing with a
255 production credit association or federal land bank association,
256 and who has knowledge that the association provides patronage
257 dividends or other payments, discounts, or credits that
258 constitute unlawful rebates as described in subsection (4), is
259 participating in a violation of this section.
260 Section 7. Section 626.8675, Florida Statutes, is created
261 to read:

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262 626.8675 Portable electronics insurance claims employee
263 exemption.—
264 (1) This part does not apply to individuals who collect
265 claims information from, or furnish claims information to,
266 insureds or claimants, and who conduct data entry, including
267 entering data into an automated claims adjudication system, if
268 such individuals are employees of a business entity licensed
269 under this chapter, or its affiliate, where up to 25 such
270 individuals are under the supervision of a licensed independent
271 adjuster or licensed agent who is exempt from licensure pursuant
272 to s. 626.862. For purposes of this section, "automated claims
273 adjudication system" means a preprogrammed computer system
274 designed for the collection, data entry, calculation, and final
275 resolution of portable electronics insurance claims that:
276 (a) May be used only by a licensed independent adjuster,
277 licensed agent, or supervised individual operating pursuant to
278 this section;
279 (b) Must comply with all claims payment requirements of the
280 insurance code; and
281 (c) Must be certified as compliant with this section by a
282 licensed independent adjuster who is an officer of a licensed
283 business entity under this chapter.
284 (2) Notwithstanding any other provision of law, a resident
285 of Canada may not be licensed as a nonresident independent
286 adjuster for purposes of adjusting portable electronics
287 insurance claims unless that person has successfully obtained an
288 adjuster license in another state.
289 Section 8. Paragraph (b) of subsection (2) of section
290 627.351, Florida Statutes, is amended to read:

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291 627.351 Insurance risk apportionment plans.—
292 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.—
293 (b) The department shall require all insurers holding a
294 certificate of authority to transact property insurance on a
295 direct basis in this state, other than joint underwriting
296 associations and other entities formed pursuant to this section,
297 to provide windstorm coverage to applicants from areas
298 determined to be eligible pursuant to paragraph (c) who in good
299 faith are entitled to, but are unable to procure, such coverage
300 through ordinary means; or it shall adopt a reasonable plan or
301 plans for the equitable apportionment or sharing among such
302 insurers of windstorm coverage, which may include formation of
303 an association for this purpose. As used in this subsection, the
304 term "property insurance" means insurance on real or personal
305 property, as defined in s. 624.604, including insurance for
306 fire, industrial fire, allied lines, farmowners multiperil,
307 homeowners' multiperil, commercial multiperil, and mobile homes,
308 and including liability coverages on all such insurance, but
309 excluding inland marine as defined in s. 624.607(3) and
310 excluding vehicle insurance as defined in s. 624.605(1)(a) other
311 than insurance on mobile homes used as permanent dwellings. The
312 department shall adopt rules that provide a formula for the
313 recovery and repayment of any deferred assessments.
314 1. For the purpose of this section, properties eligible for
315 such windstorm coverage are defined as dwellings, buildings, and
316 other structures, including mobile homes which are used as
317 dwellings and which are tied down in compliance with mobile home
318 tie-down requirements prescribed by the Department of Highway
319 Safety and Motor Vehicles pursuant to s. 320.8325, and the

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320 contents of all such properties. An applicant or policyholder is
321 eligible for coverage only if an offer of coverage cannot be
322 obtained by or for the applicant or policyholder from an
323 admitted insurer at approved rates.
324 2.a.(I) All insurers required to be members of such
325 association shall participate in its writings, expenses, and
326 losses. Surplus of the association shall be retained for the
327 payment of claims and shall not be distributed to the member
328 insurers. Such participation by member insurers shall be in the
329 proportion that the net direct premiums of each member insurer
330 written for property insurance in this state during the
331 preceding calendar year bear to the aggregate net direct
332 premiums for property insurance of all member insurers, as
333 reduced by any credits for voluntary writings, in this state
334 during the preceding calendar year. For the purposes of this
335 subsection, the term "net direct premiums" means direct written
336 premiums for property insurance, reduced by premium for
337 liability coverage and for the following if included in allied
338 lines: rain and hail on growing crops; livestock; association
339 direct premiums booked; National Flood Insurance Program direct
340 premiums; and similar deductions specifically authorized by the
341 plan of operation and approved by the department. A member's
342 participation shall begin on the first day of the calendar year
343 following the year in which it is issued a certificate of
344 authority to transact property insurance in the state and shall
345 terminate 1 year after the end of the calendar year during which
346 it no longer holds a certificate of authority to transact
347 property insurance in the state. The commissioner, after review
348 of annual statements, other reports, and any other statistics

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349 that the commissioner deems necessary, shall certify to the
350 association the aggregate direct premiums written for property
351 insurance in this state by all member insurers.
352 (II) Effective July 1, 2002, the association shall operate
353 subject to the supervision and approval of a board of governors
354 who are the same individuals that have been appointed by the
355 Treasurer to serve on the board of governors of the Citizens
356 Property Insurance Corporation.
357 (III) The plan of operation shall provide a formula whereby
358 a company voluntarily providing windstorm coverage in affected
359 areas will be relieved wholly or partially from apportionment of
360 a regular assessment pursuant to sub-sub-subparagraph d.(I) or
361 sub-sub-subparagraph d.(II).
362 (IV) A company which is a member of a group of companies
363 under common management may elect to have its credits applied on
364 a group basis, and any company or group may elect to have its
365 credits applied to any other company or group.
366 (V) There shall be no credits or relief from apportionment
367 to a company for emergency assessments collected from its
368 policyholders under sub-sub-subparagraph d.(III).
369 (VI) The plan of operation may also provide for the award
370 of credits, for a period not to exceed 3 years, from a regular
371 assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-
372 subparagraph d.(II) as an incentive for taking policies out of
373 the Residential Property and Casualty Joint Underwriting
374 Association. In order to qualify for the exemption under this
375 sub-sub-subparagraph, the take-out plan must provide that at
376 least 40 percent of the policies removed from the Residential
377 Property and Casualty Joint Underwriting Association cover risks

378 located in Miami-Dade, Broward, and Palm Beach Counties or at
379 least 30 percent of the policies so removed cover risks located
380 in Miami-Dade, Broward, and Palm Beach Counties and an
381 additional 50 percent of the policies so removed cover risks
382 located in other coastal counties, and must also provide that no
383 more than 15 percent of the policies so removed may exclude
384 windstorm coverage. With the approval of the department, the
385 association may waive these geographic criteria for a take-out
386 plan that removes at least the lesser of 100,000 Residential
387 Property and Casualty Joint Underwriting Association policies or
388 15 percent of the total number of Residential Property and
389 Casualty Joint Underwriting Association policies, provided the
390 governing board of the Residential Property and Casualty Joint
391 Underwriting Association certifies that the take-out plan will
392 materially reduce the Residential Property and Casualty Joint
393 Underwriting Association's 100-year probable maximum loss from
394 hurricanes. With the approval of the department, the board may
395 extend such credits for an additional year if the insurer
396 guarantees an additional year of renewability for all policies
397 removed from the Residential Property and Casualty Joint
398 Underwriting Association, or for 2 additional years if the
399 insurer guarantees 2 additional years of renewability for all
400 policies removed from the Residential Property and Casualty
401 Joint Underwriting Association.
402 b. Assessments to pay deficits in the association under
403 this subparagraph shall be included as an appropriate factor in
404 the making of rates as provided in s. 627.3512.
405 c. The Legislature finds that the potential for unlimited
406 deficit assessments under this subparagraph may induce insurers

407 to attempt to reduce their writings in the voluntary market, and
408 that such actions would worsen the availability problems that
409 the association was created to remedy. It is the intent of the
410 Legislature that insurers remain fully responsible for paying
411 regular assessments and collecting emergency assessments for any
412 deficits of the association; however, it is also the intent of
413 the Legislature to provide a means by which assessment
414 liabilities may be amortized over a period of years.
415 d.(I) When the deficit incurred in a particular calendar
416 year is 10 percent or less of the aggregate statewide direct
417 written premium for property insurance for the prior calendar
418 year for all member insurers, the association shall levy an
419 assessment on member insurers in an amount equal to the deficit.
420 (II) When the deficit incurred in a particular calendar
421 year exceeds 10 percent of the aggregate statewide direct
422 written premium for property insurance for the prior calendar
423 year for all member insurers, the association shall levy an
424 assessment on member insurers in an amount equal to the greater
425 of 10 percent of the deficit or 10 percent of the aggregate
426 statewide direct written premium for property insurance for the
427 prior calendar year for member insurers. Any remaining deficit
428 shall be recovered through emergency assessments under sub-sub-
429 subparagraph (III).
430 (III) Upon a determination by the board of directors that a
431 deficit exceeds the amount that will be recovered through
432 regular assessments on member insurers, pursuant to sub-sub-
433 subparagraph (I) or sub-sub-subparagraph (II), the board shall
434 levy, after verification by the department, emergency
435 assessments to be collected by member insurers and by

436 underwriting associations created pursuant to this section which
437 write property insurance, upon issuance or renewal of property
438 insurance policies other than National Flood Insurance policies
439 in the year or years following levy of the regular assessments.
440 The amount of the emergency assessment collected in a particular
441 year shall be a uniform percentage of that year's direct written
442 premium for property insurance for all member insurers and
443 underwriting associations, excluding National Flood Insurance
444 policy premiums, as annually determined by the board and
445 verified by the department. The department shall verify the
446 arithmetic calculations involved in the board's determination
447 within 30 days after receipt of the information on which the
448 determination was based. Notwithstanding any other provision of
449 law, each member insurer and each underwriting association
450 created pursuant to this section shall collect emergency
451 assessments from its policyholders without such obligation being
452 affected by any credit, limitation, exemption, or deferment. The
453 emergency assessments so collected shall be transferred directly
454 to the association on a periodic basis as determined by the
455 association. The aggregate amount of emergency assessments
456 levied under this sub-sub-subparagraph in any calendar year may
457 not exceed the greater of 10 percent of the amount needed to
458 cover the original deficit, plus interest, fees, commissions,
459 required reserves, and other costs associated with financing of
460 the original deficit, or 10 percent of the aggregate statewide
461 direct written premium for property insurance written by member
462 insurers and underwriting associations for the prior year, plus
463 interest, fees, commissions, required reserves, and other costs
464 associated with financing the original deficit. The board may

465 pledge the proceeds of the emergency assessments under this sub-
466 sub-subparagraph as the source of revenue for bonds, to retire
467 any other debt incurred as a result of the deficit or events
468 giving rise to the deficit, or in any other way that the board
469 determines will efficiently recover the deficit. The emergency
470 assessments under this sub-sub-subparagraph shall continue as
471 long as any bonds issued or other indebtedness incurred with
472 respect to a deficit for which the assessment was imposed remain
473 outstanding, unless adequate provision has been made for the
474 payment of such bonds or other indebtedness pursuant to the
475 document governing such bonds or other indebtedness. Emergency
476 assessments collected under this sub-sub-subparagraph are not
477 part of an insurer's rates, are not premium, and are not subject
478 to premium tax, fees, or commissions; however, failure to pay
479 the emergency assessment shall be treated as failure to pay
480 premium.
481 (IV) Each member insurer's share of the total regular
482 assessments under sub-sub-subparagraph (I) or sub-sub-
483 subparagraph (II) shall be in the proportion that the insurer's
484 net direct premium for property insurance in this state, for the
485 year preceding the assessment bears to the aggregate statewide
486 net direct premium for property insurance of all member
487 insurers, as reduced by any credits for voluntary writings for
488 that year.
489 (V) If regular deficit assessments are made under sub-sub-
490 subparagraph (I) or sub-sub-subparagraph (II), or by the
491 Residential Property and Casualty Joint Underwriting Association
492 under sub-subparagraph (6)(b)3.a. ~~or sub-subparagraph~~
493 ~~(6)(b)3.b.~~, the association shall levy upon the association's

494 policyholders, as part of its next rate filing, or by a separate
495 rate filing solely for this purpose, a market equalization
496 surcharge in a percentage equal to the total amount of such
497 regular assessments divided by the aggregate statewide direct
498 written premium for property insurance for member insurers for
499 the prior calendar year. Market equalization surcharges under
500 this sub-sub-subparagraph are not considered premium and are not
501 subject to commissions, fees, or premium taxes; however, failure
502 to pay a market equalization surcharge shall be treated as
503 failure to pay premium.
504 e. The governing body of any unit of local government, any
505 residents of which are insured under the plan, may issue bonds
506 as defined in s. 125.013 or s. 166.101 to fund an assistance
507 program, in conjunction with the association, for the purpose of
508 defraying deficits of the association. In order to avoid
509 needless and indiscriminate proliferation, duplication, and
510 fragmentation of such assistance programs, any unit of local
511 government, any residents of which are insured by the
512 association, may provide for the payment of losses, regardless
513 of whether or not the losses occurred within or outside of the
514 territorial jurisdiction of the local government. Revenue bonds
515 may not be issued until validated pursuant to chapter 75, unless
516 a state of emergency is declared by executive order or
517 proclamation of the Governor pursuant to s. 252.36 making such
518 findings as are necessary to determine that it is in the best
519 interests of, and necessary for, the protection of the public
520 health, safety, and general welfare of residents of this state
521 and the protection and preservation of the economic stability of
522 insurers operating in this state, and declaring it an essential

523 public purpose to permit certain municipalities or counties to
524 issue bonds as will provide relief to claimants and
525 policyholders of the association and insurers responsible for
526 apportionment of plan losses. Any such unit of local government
527 may enter into such contracts with the association and with any
528 other entity created pursuant to this subsection as are
529 necessary to carry out this paragraph. Any bonds issued under
530 this sub-subparagraph shall be payable from and secured by
531 moneys received by the association from assessments under this
532 subparagraph, and assigned and pledged to or on behalf of the
533 unit of local government for the benefit of the holders of such
534 bonds. The funds, credit, property, and taxing power of the
535 state or of the unit of local government shall not be pledged
536 for the payment of such bonds. If any of the bonds remain unsold
537 60 days after issuance, the department shall require all
538 insurers subject to assessment to purchase the bonds, which
539 shall be treated as admitted assets; each insurer shall be
540 required to purchase that percentage of the unsold portion of
541 the bond issue that equals the insurer's relative share of
542 assessment liability under this subsection. An insurer shall not
543 be required to purchase the bonds to the extent that the
544 department determines that the purchase would endanger or impair
545 the solvency of the insurer. The authority granted by this sub-
546 subparagraph is additional to any bonding authority granted by
547 subparagraph 6.
548 3. The plan shall also provide that any member with a
549 surplus as to policyholders of $25 ~~$20~~ million or less writing
550 25 percent or more of its total countrywide property insurance
551 premiums in this state may petition the department, within the

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552 first 90 days of each calendar year, to qualify as a limited
553 apportionment company. The apportionment of such a member
554 company in any calendar year for which it is qualified shall not
555 exceed its gross participation, which shall not be affected by
556 the formula for voluntary writings. In no event shall a limited
557 apportionment company be required to participate in any
558 apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I)
559 or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds
560 $50 million after payment of available plan funds in any
561 calendar year. However, a limited apportionment company shall
562 collect from its policyholders any emergency assessment imposed
563 under sub-sub-subparagraph 2.d.(III). The plan shall provide
564 that, if the department determines that any regular assessment
565 will result in an impairment of the surplus of a limited
566 apportionment company, the department may direct that all or
567 part of such assessment be deferred. However, there shall be no
568 limitation or deferment of an emergency assessment to be
569 collected from policyholders under sub-sub-subparagraph
570 2.d.(III).
571 4. The plan shall provide for the deferment, in whole or in
572 part, of a regular assessment of a member insurer under sub-sub-
573 subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but not
574 for an emergency assessment collected from policyholders under
575 sub-sub-subparagraph 2.d.(III), if, in the opinion of the
576 commissioner, payment of such regular assessment would endanger
577 or impair the solvency of the member insurer. In the event a
578 regular assessment against a member insurer is deferred in whole
579 or in part, the amount by which such assessment is deferred may
580 be assessed against the other member insurers in a manner

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581 consistent with the basis for assessments set forth in sub-sub-
582 subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).
583 5.a. The plan of operation may include deductibles and
584 rules for classification of risks and rate modifications
585 consistent with the objective of providing and maintaining funds
586 sufficient to pay catastrophe losses.
587 b. It is the intent of the Legislature that the rates for
588 coverage provided by the association be actuarially sound and
589 not competitive with approved rates charged in the admitted
590 voluntary market such that the association functions as a
591 residual market mechanism to provide insurance only when the
592 insurance cannot be procured in the voluntary market. The plan
593 of operation shall provide a mechanism to assure that, beginning
594 no later than January 1, 1999, the rates charged by the
595 association for each line of business are reflective of approved
596 rates in the voluntary market for hurricane coverage for each
597 line of business in the various areas eligible for association
598 coverage.
599 c. The association shall provide for windstorm coverage on
600 residential properties in limits up to $10 million for
601 commercial lines residential risks and up to $1 million for
602 personal lines residential risks. If coverage with the
603 association is sought for a residential risk valued in excess of
604 these limits, coverage shall be available to the risk up to the
605 replacement cost or actual cash value of the property, at the
606 option of the insured, if coverage for the risk cannot be
607 located in the authorized market. The association must accept a
608 commercial lines residential risk with limits above $10 million
609 or a personal lines residential risk with limits above $1

610 million if coverage is not available in the authorized market.
611 The association may write coverage above the limits specified in
612 this subparagraph with or without facultative or other
613 reinsurance coverage, as the association determines appropriate.
614 d. The plan of operation must provide objective criteria
615 and procedures, approved by the department, to be uniformly
616 applied for all applicants in determining whether an individual
617 risk is so hazardous as to be uninsurable. In making this
618 determination and in establishing the criteria and procedures,
619 the following shall be considered:
620 (I) Whether the likelihood of a loss for the individual
621 risk is substantially higher than for other risks of the same
622 class; and
623 (II) Whether the uncertainty associated with the individual
624 risk is such that an appropriate premium cannot be determined.
625
626 The acceptance or rejection of a risk by the association
627 pursuant to such criteria and procedures must be construed as
628 the private placement of insurance, and the provisions of
629 chapter 120 do not apply.
630 e. If the risk accepts an offer of coverage through the
631 market assistance program or through a mechanism established by
632 the association, either before the policy is issued by the
633 association or during the first 30 days of coverage by the
634 association, and the producing agent who submitted the
635 application to the association is not currently appointed by the
636 insurer, the insurer shall:
637 (I) Pay to the producing agent of record of the policy, for
638 the first year, an amount that is the greater of the insurer's

639 usual and customary commission for the type of policy written or
640 a fee equal to the usual and customary commission of the
641 association; or
642 (II) Offer to allow the producing agent of record of the
643 policy to continue servicing the policy for a period of not less
644 than 1 year and offer to pay the agent the greater of the
645 insurer's or the association's usual and customary commission
646 for the type of policy written.
647
648 If the producing agent is unwilling or unable to accept
649 appointment, the new insurer shall pay the agent in accordance
650 with sub-sub-subparagraph (I). Subject to the provisions of s.
651 627.3517, the policies issued by the association must provide
652 that if the association obtains an offer from an authorized
653 insurer to cover the risk at its approved rates under either a
654 standard policy including wind coverage or, if consistent with
655 the insurer's underwriting rules as filed with the department, a
656 basic policy including wind coverage, the risk is no longer
657 eligible for coverage through the association. Upon termination
658 of eligibility, the association shall provide written notice to
659 the policyholder and agent of record stating that the
660 association policy must be canceled as of 60 days after the date
661 of the notice because of the offer of coverage from an
662 authorized insurer. Other provisions of the insurance code
663 relating to cancellation and notice of cancellation do not apply
664 to actions under this sub-subparagraph.
665 f. When the association enters into a contractual agreement
666 for a take-out plan, the producing agent of record of the
667 association policy is entitled to retain any unearned commission

668 on the policy, and the insurer shall:
669 (I) Pay to the producing agent of record of the association
670 policy, for the first year, an amount that is the greater of the
671 insurer's usual and customary commission for the type of policy
672 written or a fee equal to the usual and customary commission of
673 the association; or
674 (II) Offer to allow the producing agent of record of the
675 association policy to continue servicing the policy for a period
676 of not less than 1 year and offer to pay the agent the greater
677 of the insurer's or the association's usual and customary
678 commission for the type of policy written.
679
680 If the producing agent is unwilling or unable to accept
681 appointment, the new insurer shall pay the agent in accordance
682 with sub-sub-subparagraph (I).
683 6.a. The plan of operation may authorize the formation of a
684 private nonprofit corporation, a private nonprofit
685 unincorporated association, a partnership, a trust, a limited
686 liability company, or a nonprofit mutual company which may be
687 empowered, among other things, to borrow money by issuing bonds
688 or by incurring other indebtedness and to accumulate reserves or
689 funds to be used for the payment of insured catastrophe losses.
690 The plan may authorize all actions necessary to facilitate the
691 issuance of bonds, including the pledging of assessments or
692 other revenues.
693 b. Any entity created under this subsection, or any entity
694 formed for the purposes of this subsection, may sue and be sued,
695 may borrow money; issue bonds, notes, or debt instruments;
696 pledge or sell assessments, market equalization surcharges and

697 other surcharges, rights, premiums, contractual rights,
698 projected recoveries from the Florida Hurricane Catastrophe
699 Fund, other reinsurance recoverables, and other assets as
700 security for such bonds, notes, or debt instruments; enter into
701 any contracts or agreements necessary or proper to accomplish
702 such borrowings; and take other actions necessary to carry out
703 the purposes of this subsection. The association may issue bonds
704 or incur other indebtedness, or have bonds issued on its behalf
705 by a unit of local government pursuant to subparagraph (6)(q)2.,
706 in the absence of a hurricane or other weather-related event,
707 upon a determination by the association subject to approval by
708 the department that such action would enable it to efficiently
709 meet the financial obligations of the association and that such
710 financings are reasonably necessary to effectuate the
711 requirements of this subsection. Any such entity may accumulate
712 reserves and retain surpluses as of the end of any association
713 year to provide for the payment of losses incurred by the
714 association during that year or any future year. The association
715 shall incorporate and continue the plan of operation and
716 articles of agreement in effect on the effective date of chapter
717 76-96, Laws of Florida, to the extent that it is not
718 inconsistent with chapter 76-96, and as subsequently modified
719 consistent with chapter 76-96. The board of directors and
720 officers currently serving shall continue to serve until their
721 successors are duly qualified as provided under the plan. The
722 assets and obligations of the plan in effect immediately prior
723 to the effective date of chapter 76-96 shall be construed to be
724 the assets and obligations of the successor plan created herein.
725 c. In recognition of s. 10, Art. I of the State

726 Constitution, prohibiting the impairment of obligations of
727 contracts, it is the intent of the Legislature that no action be
728 taken whose purpose is to impair any bond indenture or financing
729 agreement or any revenue source committed by contract to such
730 bond or other indebtedness issued or incurred by the association
731 or any other entity created under this subsection.
732 7. On such coverage, an agent's remuneration shall be that
733 amount of money payable to the agent by the terms of his or her
734 contract with the company with which the business is placed.
735 However, no commission will be paid on that portion of the
736 premium which is in excess of the standard premium of that
737 company.
738 8. Subject to approval by the department, the association
739 may establish different eligibility requirements and operational
740 procedures for any line or type of coverage for any specified
741 eligible area or portion of an eligible area if the board
742 determines that such changes to the eligibility requirements and
743 operational procedures are justified due to the voluntary market
744 being sufficiently stable and competitive in such area or for
745 such line or type of coverage and that consumers who, in good
746 faith, are unable to obtain insurance through the voluntary
747 market through ordinary methods would continue to have access to
748 coverage from the association. When coverage is sought in
749 connection with a real property transfer, such requirements and
750 procedures shall not provide for an effective date of coverage
751 later than the date of the closing of the transfer as
752 established by the transferor, the transferee, and, if
753 applicable, the lender.
754 9. Notwithstanding any other provision of law:

755 a. The pledge or sale of, the lien upon, and the security
756 interest in any rights, revenues, or other assets of the
757 association created or purported to be created pursuant to any
758 financing documents to secure any bonds or other indebtedness of
759 the association shall be and remain valid and enforceable,
760 notwithstanding the commencement of and during the continuation
761 of, and after, any rehabilitation, insolvency, liquidation,
762 bankruptcy, receivership, conservatorship, reorganization, or
763 similar proceeding against the association under the laws of
764 this state or any other applicable laws.
765 b. No such proceeding shall relieve the association of its
766 obligation, or otherwise affect its ability to perform its
767 obligation, to continue to collect, or levy and collect,
768 assessments, market equalization or other surcharges, projected
769 recoveries from the Florida Hurricane Catastrophe Fund,
770 reinsurance recoverables, or any other rights, revenues, or
771 other assets of the association pledged.
772 c. Each such pledge or sale of, lien upon, and security
773 interest in, including the priority of such pledge, lien, or
774 security interest, any such assessments, emergency assessments,
775 market equalization or renewal surcharges, projected recoveries
776 from the Florida Hurricane Catastrophe Fund, reinsurance
777 recoverables, or other rights, revenues, or other assets which
778 are collected, or levied and collected, after the commencement
779 of and during the pendency of or after any such proceeding shall
780 continue unaffected by such proceeding.
781 d. As used in this subsection, the term "financing
782 documents" means any agreement, instrument, or other document
783 now existing or hereafter created evidencing any bonds or other

784 indebtedness of the association or pursuant to which any such
785 bonds or other indebtedness has been or may be issued and
786 pursuant to which any rights, revenues, or other assets of the
787 association are pledged or sold to secure the repayment of such
788 bonds or indebtedness, together with the payment of interest on
789 such bonds or such indebtedness, or the payment of any other
790 obligation of the association related to such bonds or
791 indebtedness.
792 e. Any such pledge or sale of assessments, revenues,
793 contract rights or other rights or assets of the association
794 shall constitute a lien and security interest, or sale, as the
795 case may be, that is immediately effective and attaches to such
796 assessments, revenues, contract, or other rights or assets,
797 whether or not imposed or collected at the time the pledge or
798 sale is made. Any such pledge or sale is effective, valid,
799 binding, and enforceable against the association or other entity
800 making such pledge or sale, and valid and binding against and
801 superior to any competing claims or obligations owed to any
802 other person or entity, including policyholders in this state,
803 asserting rights in any such assessments, revenues, contract, or
804 other rights or assets to the extent set forth in and in
805 accordance with the terms of the pledge or sale contained in the
806 applicable financing documents, whether or not any such person
807 or entity has notice of such pledge or sale and without the need
808 for any physical delivery, recordation, filing, or other action.
809 f. There shall be no liability on the part of, and no cause
810 of action of any nature shall arise against, any member insurer
811 or its agents or employees, agents or employees of the
812 association, members of the board of directors of the

813 association, or the department or its representatives, for any
814 action taken by them in the performance of their duties or
815 responsibilities under this subsection. Such immunity does not
816 apply to actions for breach of any contract or agreement
817 pertaining to insurance, or any willful tort.
818 Section 9. Section 627.6011, Florida Statutes, is created
819 to read:
820 627.6011 Mandated coverages.—Mandatory health benefits
821 regulated under this chapter which must be covered by an insurer
822 are intended to apply only to the type of health benefit plan
823 defined in s. 627.6699(3), issued in any market, unless
824 specifically designated otherwise. For purposes of this section,
825 the term "mandatory health benefits" means those benefits set
826 forth in ss. 627.6401-627.64193 and any cross-references to
827 these sections, and any other mandatory treatment or health
828 coverages or benefits enacted on or after July 1, 2012.
829 Section 10. Subsections (1), (2), (7), and (9) of section
830 627.7015, Florida Statutes, are amended to read:
831 627.7015 Alternative procedure for resolution of disputed
832 property insurance claims.—
833 (1) ~~PURPOSE AND SCOPE.—~~This section sets forth a
834 nonadversarial alternative dispute resolution procedure for a
835 mediated claim resolution conference prompted by the need for
836 effective, fair, and timely handling of property insurance
837 claims. There is a particular need for an informal,
838 nonthreatening forum for helping parties who elect this
839 procedure to resolve their claims disputes because most
840 homeowner's and commercial residential insurance policies
841 obligate policyholders ~~insureds~~ to participate in a potentially

842 expensive and time-consuming adversarial appraisal process
843 before ~~prior to~~ litigation. The procedure set forth in this
844 section is designed to bring the parties together for a mediated
845 claims settlement conference without any of the trappings or
846 drawbacks of an adversarial process. Before resorting to these
847 procedures, policyholders ~~insureds~~ and insurers are encouraged
848 to resolve claims as quickly and fairly as possible. This
849 section is available with respect to claims under personal lines
850 and commercial residential policies before ~~for all claimants and~~
851 ~~insurers prior to~~ commencing the appraisal process, or before
852 commencing litigation. Mediation may be requested only by the
853 policyholder, as a first-party claimant, or the insurer. If
854 requested by the policyholder ~~insured~~, participation by legal
855 counsel or any other person having relevant information is ~~shall~~
856 ~~be~~ permitted. Mediation under this section is also available to
857 litigants referred to the department by a county court or
858 circuit court. This section does not apply to commercial
859 coverages, to private passenger motor vehicle insurance
860 coverages, or to disputes relating to liability coverages in
861 policies of property insurance.
862 (2) At the time a first-party claim within the scope of
863 this section is filed by the policyholder, the insurer shall
864 notify the policyholder ~~all first-party claimants~~ of its ~~their~~
865 right to participate in the mediation program under this
866 section. The department shall prepare a consumer information
867 pamphlet for distribution to persons participating in mediation
868 ~~under this section~~.
869 (7) If the insurer fails to comply with subsection (2) by
870 failing to notify a policyholder ~~first-party claimant~~ of its

871 right to participate in the mediation program under this section
872 or if the insurer requests the mediation, and the mediation
873 results are rejected by either party, the policyholder is
874 ~~insured shall~~ not ~~be~~ required to submit to or participate in any
875 contractual loss appraisal process of the property loss damage
876 as a precondition to legal action for breach of contract against
877 the insurer for its failure to pay the policyholder's claims
878 covered by the policy.
879 (9) For purposes of this section, the term "claim" refers
880 to any dispute between an insurer and a policyholder ~~an insured~~
881 relating to a material issue of fact other than a dispute:
882 (a) With respect to which the insurer has a reasonable
883 basis to suspect fraud;
884 (b) Where, based on agreed-upon facts as to the cause of
885 loss, there is no coverage under the policy;
886 (c) With respect to which the insurer has a reasonable
887 basis to believe that the policyholder ~~claimant~~ has
888 intentionally made a material misrepresentation of fact which is
889 relevant to the claim, and the entire request for payment of a
890 loss has been denied on the basis of the material
891 misrepresentation; ~~or~~
892 (d) With respect to which the amount in controversy is less
893 than $500, unless the parties agree to mediate a dispute
894 involving a lesser amount; or~~.~~
895 (e) Where the notice of loss is reported to the insurer
896 more than 36 months after the declaration of a state of
897 emergency by the Governor in response to a hurricane that makes
898 landfall in this state.
899 Section 11. Effective upon this act becoming a law,

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

900 subsection (4) of section 627.7295, Florida Statutes, is amended
901 to read:
902 627.7295 Motor vehicle insurance contracts.—
903 (4) ~~If subsection (7) does not apply,~~ The insurer may
904 cancel the policy in accordance with this code except that,
905 notwithstanding s. 627.728, an insurer may not cancel a new
906 policy or binder during the first 60 days immediately following
907 the effective date of the policy or binder ~~except~~ for nonpayment
908 of premium unless the reason for the cancellation is the
909 issuance of a check for the premium that is dishonored for any
910 reason or any other type of premium payment that was
911 subsequently determined to be rejected or invalid.
912 Section 12. Effective upon this act becoming a law,
913 paragraph (d) of subsection (4) of section 627.736, Florida
914 Statutes, is amended to read:
915 627.736 Required personal injury protection benefits;
916 exclusions; priority; claims.—
917 (4) BENEFITS; WHEN DUE.—Benefits due from an insurer under
918 ss. 627.730-627.7405 shall be primary, except that benefits
919 received under any workers' compensation law shall be credited
920 against the benefits provided by subsection (1) and shall be due
921 and payable as loss accrues, upon receipt of reasonable proof of
922 such loss and the amount of expenses and loss incurred which are
923 covered by the policy issued under ss. 627.730-627.7405. When
924 the Agency for Health Care Administration provides, pays, or
925 becomes liable for medical assistance under the Medicaid program
926 related to injury, sickness, disease, or death arising out of
927 the ownership, maintenance, or use of a motor vehicle, benefits
928 under ss. 627.730-627.7405 shall be subject to the provisions of

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

929 the Medicaid program.
930 (d) All overdue payments ~~shall~~ bear simple interest fixed
931 at the rate established under s. 55.03 or the rate established
932 in the insurance contract, whichever is greater, in effect on
933 the date ~~for the year in which~~ the payment became overdue,
934 calculated from the date the insurer was furnished with written
935 notice of the amount of covered loss. Interest is ~~shall be~~ due
936 at the time payment of the overdue claim is made.
937 Section 13. Except as otherwise expressly provided in this
938 act and except for this section, which shall take effect upon
939 this act becoming a law, this act shall take effect July 1,
940 2012.

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

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/28/12
Date

1620
and Bill Number

148180
Barcode

Name Josh Aubuchon

Phone

Address 215 S. Monroe St.
Street

E-mail

Tallahassee FL 32301
City State Zip

Job Title attorney

Speaking: [✓] For [ ] Against [ ] Information

Appearing at request of Chair [ ]

Subject Insurance

Representing State Farm

Lobbyist registered with Legislature: [✓] Yes [ ] No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2.28.2012
Date

1620
Bill Number

148180
Barcode

Name Ivette Arango

Phone 305 345-7746

Address 80 SW 8 St. Ste 2100
Street

E-mail iarango@beacncouncil.com

Miami FL
City *State* *Zip*

Job Title V.P.

Speaking: [X] For [ ] Against [ ] Information

Appearing at request of Chair [ ]

Subject Insurance

Representing The Beacon Council

Lobbyist registered with Legislature: [X] Yes [ ] No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ____ .m. to _____ ____ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-28-12
Meeting Date

Topic: Insurance

Bill Number: 1620 *(if applicable)*

Name: Beth A. Vecchioli

Amendment Barcode: *(if applicable)*

Job Title: Sr. Gov't. Consultant

Address: 215 S. Monroe St., Ste 500
Street

Tally, FL 32301
City *State* *Zip*

Phone: 850-513-3609

E-mail: bvecchioli@earthfields.com

Speaking: [X] For [ ] Against [ ] Information

Representing: The Beacon Council

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/28
Date

1620
Bill Number

Barcode

Name DONOVAN BROWN

Phone

Address
Street

E-mail

City State Zip

Job Title

Speaking: [✓] For [ ] Against [ ] Information

Appearing at request of Chair [ ]

Subject

Representing PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA

Lobbyist registered with Legislature: [✓] Yes [ ] No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from ___ .m. to ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Banking and Insurance, *Chair*
Budget
Budget - Subcommittee on Health and Human Services Appropriations
Community Affairs
Judiciary
Rules
Rules - Subcommittee on Ethics and Elections

JOINT COMMITTEE:
Legislative Budget Commission

SENATOR GARRETT RICHTER
37th District

February 8, 2012

Honorable Alan Hays, Chair
Committee on General Government Appropriations
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Hays:

Senate Bill 1620, related to insurance, has been referred to General Government Appropriations as its second committee of reference. The bill has passed the Banking and Insurance Committee by unanimous vote. I would appreciate the placing of this bill on your committee's next agenda.

Thank you for your consideration.

Sincerely,

Garrett Richter

cc: Jamie DeLoach, Staff Director

REPLY TO:
☐ 3299 East Tamiami Trail, Suite 203, Naples, Florida 34112 (239) 417-6205
☐ 1039 S.E. 9th Place, Room 310, Cape Coral, Florida 33990 (239) 338-2777
☐ 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5124

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: SB 438

INTRODUCER: Senator Bennett

SUBJECT: Consumer Finance Charges

DATE: February 27, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	**Favorable**
2.	Philo	Hrdlicka	CM	**Favorable**
3.	Howard	DeLoach	BGA	**Favorable**
4.				
5.				
6.				

I. Summary:

Chapter 516, F.S., the Florida Consumer Finance Act (act), defines "consumer finance loan" as a loan of money, credit, goods, or provision of a line of credit, in an amount or to a value of $25,000 or less at an interest rate greater than 18 percent per annum. The allowable interest rates on consumer finance loans are tiered and limited based on the principal amount that falls within each tier of the loan. As the principal amount increases, the allowable interest rate decreases, as follows:

- $1 - $2,000 principal, up to 30 percent allowable interest;
- $2,001 - $3,000 principal, up to 24 percent allowable interest;
- $3,001 - $25,000 principal, up to 18 percent allowable interest.

The bill increases by $1,000 the principal amount that would be subject to the maximum amount of interest that is allowed to be charged within each tier. The bill increases from $10 to $15, the maximum amount that can be charged to a borrower for making a payment that is in default for at least 10 days.

The bill conforms the fees that can be charged for worthless checks to the amounts permissible under s. 68.065, F.S.

This bill substantially amends ss. 516.031 and 516.19, F.S.

II. Present Situation:

Under ch. 516, F.S., the Florida Consumer Finance Act (act), the Office of Financial Regulation (OFR) licenses entities that issue consumer finance loans.[1] The license fees under the act are $625 for the initial application, plus a $200 investigation fee, and $625 for a renewal.[2] A license is valid for not more than two years.[3] Under the requirements a licensee must maintain evidence of liquid assets of at least $25,000.[4] The OFR is authorized to examine and investigate any licensee, and take disciplinary actions against licensees violating the act.[5] As of October 20, 2011, there were 301 licensed locations in Florida.[6]

Under the act, interest rates on consumer finance loans are tiered and limited based on the principal amount subject to each tier of the loan:

- For principal amounts up to $2,000, maximum interest rate of 30 percent per annum;
- For principal amounts between $2,001 and $3,000, maximum interest rate of 24 percent per annum;
- For principal amounts between $3,001 and $25,000, maximum interest rate of 18 percent per annum.[7]

The principal amounts upon which interest rates are computed were last addressed by the Legislature in 1997.[8]

Additionally, the act allows a lender to charge a delinquency fee of up to $10 for each payment that is in default for at least 10 days. Under the act, the delinquency fee must first be agreed upon in writing by both parties.[9] The delinquency fee was last addressed by the Legislature in 2000.[10]

Under the act, lenders are also permitted to impose a bad check charge of no more than $20, or the actual fee charged to the lender by a depository institution for the return of the unpaid or dishonored instrument.[11] The last time the bad check fee was addressed by the Legislature was in 1994.[12]

---

[1] Section 516.01(2), F.S., defines "consumer finance loan" as a loan of money, credit, goods, or provision of a line of credit, in an amount or to a value of $25,000 or less at an interest rate greater than 18 percent per annum.
[2] Section 516.03(1), F.S.
[3] Section 516.05(1), F.S.
[4] Sections 516.03(1) and 516.07(1)(b), F.S.
[5] Sections 516.05-516.11, F.S.
[6] OFR, *Analysis of HB 275 by Representative Burgin* (Nov. 7, 2011), at 2 (on file with the Senate Committee on Commerce and Tourism).
[7] Section 516.031(1), F.S.
[8] Chapter 97-181, s. 1, L.O.F.
[9] Section 516.031(3)(a)9., F.S.
[10] Chapter 2000-127, s. 1, L.O.F.
[11] Section 516.031(3)(b), F.S.
[12] Chapter 94-108, s. 1, L.O.F.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 516.031, F.S., to increase by $1,000 the principal amount that would be subject to the maximum amount of interest that is allowed to be charged for each principal tier:

Interest Rate	Current Law		Senate Bill 438	
30% per annum	Principal	$1 - $2,000	Principal	$1 - 3,000
24% per annum	Principal	>$2,000 - $3,000	Principal	>$3,000 - 4,000
18% per annum	Principal	>$3,000 - 25,000	Principal	>$4,000 - 25,000

The bill also increases from $10 to $15, the maximum amount that can be charged for a payment in default for at least 10 days, and keeps the requirement that both parties must first agree in writing to the delinquency fee.

The bill also increases the maximum permissible bad check charge and places it on a sliding scale consistent with existing maximum worthless check service charges applicable in civil actions[13] and the state attorney bad check diversion program.[14] The new bad check charge will be: $25, if the face value does not exceed $50; $30, if the face value exceeds $50 but does not exceed $300; $40, if the face value exceeds $300; or, 5 percent of the face amount of the check, whichever is greater.

Section 2 of the bill reenacts and grammatically amends s. 516.19, F.S., to provide that any person who violates any of the subject provisions "commits" (as opposed to "is guilty of") a first-degree misdemeanor.

Section 3 of the bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[13] Section 68.065(2), F.S.
[14] Section 832.08(5), F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Consumers who borrow will be subject to an additional 6 percent of annual interest on up to $1,000 on monies borrowed above $2,000 and another 6 percent of annual interest on up to $1,000 on monies borrowed above $3,000. Using a national company's average loan amount reported by the Florida Financial Services Association, for an amortized loan of $3,400, the impact of the proposed increases would be as follows:[15]

Amortization Period	Interest Under Current Law	Interest Under SB 438	Amount of Interest Increase
6 Months	$288.00	$301.50	$13.50
12 Months	$549.50	$574.34	$24.84
24 Months	$1,102.45	$1,156.41	$53.96

Borrowers who default on a payment will be subject to an additional $5 in charges for each defaulted payment.

Borrowers who issue bad checks as payment to a lender will be subject to additional fees consistent with existing maximum bad check service charges: $25, if the face value does not exceed $50; $30, if the face value exceeds $50 but does not exceed $300; $40, if the face value exceeds $300; or, 5 percent of the face amount of the check, whichever is greater.[16]

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[15] Memoranda to Florida House of Representatives Insurance and Banking Subcommittee from Legislative Consultants James H. Thompson and Joseph S. Shuler (Nov. 8 & 14, 2011), and OFR, *Chart: Recap of Interest Accrual Calculations* (all on file with the Senate Committee on Commerce and Tourism).
[16] OFR Bill Analysis, at 2.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Bennett

21-00422A-12 2012438__

A bill to be entitled

An act relating to consumer finance charges; amending s. 516.031, F.S.; increasing the proportionate loan amounts that are subject to descending maximum rates of interest; increasing the maximum delinquency charge that may be imposed for each loan payment in default for not less than a specified time; revising the maximum amount that a lender may impose as a service charge on a borrower who gives the lender a bad check in full or partial payment of a loan; reenacting and amending s. 516.19, F.S., relating to penalties, for the purpose of incorporating the amendment made to s. 516.031, F.S., in a reference thereto; providing penalties; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 516.031, Florida Statutes, are amended to read:

516.031 Finance charge; maximum rates.—

(1) INTEREST RATES.—Every licensee may lend any sum of money not exceeding $25,000. A licensee may not take a security interest secured by land on any loan less than $1,000. The licensee may charge, contract for, and receive thereon interest charges as provided and authorized by this section. The maximum interest rate shall be 30 percent per annum, computed on the first $3,000 ~~$2,000~~ of the principal amount as computed from time to time; 24 percent per annum on that part of the principal amount as computed from time to time exceeding $3,000 ~~$2,000~~ and

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not exceeding $4,000 ~~$3,000~~; and 18 percent per annum on that part of the principal amount as computed from time to time exceeding $4,000 ~~$3,000~~ and not exceeding $25,000. The original principal amount as used in this section shall be the same amount as the amount financed as defined by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. In determining compliance with the statutory maximum interest and finance charges set forth herein, the computations utilized shall be simple interest and not add-on interest or any other computations. When two or more interest rates are to be applied to the principal amount of a loan, the licensee may charge, contract for, and receive interest at that single annual percentage rate which if applied according to the actuarial method to each of the scheduled periodic balances of principal would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed.

(3) OTHER CHARGES.—

(a) In addition to the interest, delinquency, and insurance charges herein provided for, no further or other charges or amount whatsoever for any examination, service, commission, or other thing or otherwise shall be directly or indirectly charged, contracted for, or received as a condition to the grant of a loan, except:

1. An amount not to exceed $25 to reimburse a portion of the costs for investigating the character and credit of the person applying for the loan;

2. An annual fee of $25 on the anniversary date of each

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

line-of-credit account;

3. Charges paid for brokerage fee on a loan or line of credit of more than $10,000, title insurance, and the appraisal of real property offered as security when paid to a third party and supported by an actual expenditure;

4. Intangible personal property tax on the loan note or obligation when secured by a lien on real property;

5. The documentary excise tax and lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which fees may be collected when the loan is made or at any time thereafter;

6. The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the licensee in connection with the loan, if the premium does not exceed the fees which would otherwise be payable, which premium may be collected when the loan is made or at any time thereafter;

7. Actual and reasonable attorney's fees and court costs as determined by the court in which suit is filed;

8. Actual and commercially reasonable expenses of repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security; or

9. A delinquency charge not to exceed $15 ~~$10~~ for each payment in default for a period of not less than 10 days, if the charge is agreed upon, in writing, between the parties before imposing the charge.

Any charges, including interest, in excess of the combined total

of all charges authorized and permitted by this chapter constitute a violation of chapter 687 governing interest and usury, and the penalties of that chapter apply. In the event of a bona fide error, the licensee shall refund or credit the borrower with the amount of the overcharge immediately but within 20 days from the discovery of such error.

(b) Notwithstanding the provisions of paragraph (a), any lender of money who receives a check, draft, negotiable order of withdrawal, or like instrument drawn on a bank or other depository institution, which instrument is given by a borrower as full or partial repayment of a loan, may, if such instrument is not paid or is dishonored by such institution, make and collect from the borrower a bad check charge of not greater than the maximum worthless check service charge permissible under s. 68.065 ~~more than the greater of $20 or an amount equal to the actual charge made to the lender by the depository institution for the return of the unpaid or dishonored instrument~~.

Section 2. For the purpose of incorporating the amendment made by this act to section 516.031, Florida Statutes, in a reference thereto, section 516.19, Florida Statutes, is reenacted and amended to read:

516.19 Penalties.—Any person who violates any of the provisions of s. 516.02, s. 516.031, s. 516.05(3), s. 516.05(6), or s. 516.07(1)(e) commits ~~is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-27-12
Meeting Date

Topic: Consumer Finance

Bill Number: SB 438 *(if applicable)*

Name: James Harold Thompson

Amendment Barcode: *(if applicable)*

Job Title:

Address: 123 S. Calhoun St.
Street

Tallahassee, Fl 32301
City *State* *Zip*

Phone: 850-425-5363

E-mail: jthompson@ausley.com

Speaking: [x] For [ ] Against [ ] Information

Representing: Florida Financial Services Assoc.

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Banking and Insurance
Budget - Subcommittee on Criminal and Civil Justice Appropriations
Budget - Subcommittee on Transportation, Tourism, and Economic Development Appropriations
Criminal Justice
Military Affairs, Space, and Domestic Security

SENATOR MICHAEL S. "MIKE" BENNETT
President Pro Tempore
21st District

February 9, 2012

The Honorable Alan Hayes
Chair, General Government Apps Committee
201 The Capitol
404 S. Monroe St.
Tallahassee, Fl 32399

Dear Chairman Hayes:

I am requesting that you place S438, relating to Consumer Finance, on your committee agenda as soon as possible.

If you have any questions, please let me know. Thank you for your consideration.

Sincerely,

Michael S. "Mike" Bennett
/cre
Cc:

- Jamie DeLoach,
  Staff Director
- Lisa Waddell,
- Administrative Assistant

REPLY TO:
☐ Wildewood Professional Park, Suite 90, 3653 Cortez Road West, Bradenton, Florida 34210 (941) 727-6349
☐ 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5078

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/CS/SB 540

INTRODUCER: Criminal Justice Committee; Community Affairs Committee; Commerce and Tourism Committee; and Senator Smith and others

SUBJECT: Secondhand Dealers and Secondary Metals Recyclers

DATE: February 27, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Juliachs	Hrdlicka	CM	**Fav/CS**
2.	Toman	Yeatman	CA	**Fav/CS**
3.	Dugger	Cannon	CJ	**Fav/CS**
4.	Blizzard	DeLoach	BGA	**Favorable**
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill regulates both secondhand dealers and secondary metals recyclers; defines the terms appropriate law enforcement official and personal identification card; requires that secondary metals recyclers maintain and daily transmit an electronic record of all the previous day's purchase transactions to the appropriate law enforcement official; revises the timeframe that secondary metals recyclers are required to maintain purchase transaction records; creates the definition of restricted regulated metals property; limits the liability of secondary metals recyclers for the conversion of motor vehicles to scrap metal, as well as in premise liability cases; modifies the acceptable forms of payment and outlines time restrictions relating to purchase transactions of regulated metals property; expands the application of s. 812.145, F.S., to those who assist with the taking of copper and other nonferrous metals; assigns liability for these offenses; and provides that the regulation of regulated metals property is preempted to the state except with respect to ordinances enacted prior to March 1, 2012.

This bill amends sections 538.03, 538.04, 538.18, 319.30, 538.19, 538.235, 538.25, 538.26, 538.23, and 812.145, Florida Statutes. This bill creates section 538.28, Florida Statutes.

II. Present Situation

Secondhand Dealers and Secondary Metals Recyclers

Chapter 538, F.S., addresses in part I, the regulation of secondhand dealers[1] and in part II, purchase transactions[2] by secondary metals recyclers[3] that involve "regulated metals property."[4] With respect to the latter group, the economic recession has seen the value of metals rise significantly, prompting an increase in metal theft crimes statewide. Law enforcement agencies have testified before county commission boards as to the negative consequences that increased criminal activity relating to the theft of secondary metals and secondary metal products has had on their respective jurisdictions.[5]

Additionally, the unlawful removing of metal from private property and government structures has caused economic loss for both the private and public sectors.[6] In an issue paper published by the National Conference of State Legislatures, it was noted that "stealing copper and other metals from utilities can cause electric outages and [that] expensive repairs impact ratepayers." "The Department of Energy estimates that a theft of just $100 in copper wire can cost the utility more than $5,000 to repair."[7] In Miami Dade County alone, "since 2009, the County's Public Works Department has spent thousands of dollars to repair or replace vandalized light poles."[8] Furthermore, with the influx of the number of foreclosures, metal theft has become common in unoccupied properties, which has impeded the ability of property owners, banks, and mortgage holders to sell both residential and commercial properties.[9]

In 2008, the Legislature revised part II of ch. 538, F.S., considerably. The new statutory provisions included increasing the record keeping requirements for purchase transactions by requiring additional seller information to be obtained; providing for enhanced penalties for third or subsequent violations of the statute and for providing false verification of ownership or false or altered identification to a secondary metals recycler; prohibiting secondary metals recyclers from entering into cash transactions for over the amount of $1,000; as well as requiring that all secondary metals recyclers register with the Department of Revenue prior to engaging in business.[10, 11] In 2009, part II of ch. 538, F.S., was once again amended when s. 538.21, F.S.,

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[1] The definition for "secondhand dealer" is defined in s. 538.03(1)(a), F.S.
[2] Section 538.18(6), F.S. ("Any transaction in which a secondary metals recycler gives consideration for regulated metals property.").
[3] The definition for "secondary metals recyclers" is defined in s. 538.18(8)(a), F.S.
[4] Section 538.18(7) F.S. ("Any item composed primarily of any nonferrous metals, but shall not include aluminum beverage containers, used beverage containers, or similar beverage containers . . .").
[5] *See* Orange County, Fla. Ordinance 2010-16, pmbl (Dec. 7, 2010); *See also* Miami-Dade County, Fla. Ordinance 11-17, pmbl (April 4, 2011).
[6] Jacquelyn Pless, *Copper Theft Can Cause Major Outages and Impact Ratepayers: A Hot Issue in 2011* (October 2011), NCSL.org, *available at* http://www.ncsl.org/default.aspx?tabid=23720 (last visited December 16, 2011).
[7] *Id.* (citing U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, *An Assessment of Copper Wire Thefts from Electric Utilities*, DOE.org, *available at* http://www.oe.netl.doe.gov/docs/copper042707.pdf. (April 2007).
[8] Miami-Dade County, Fla. Ordinance 11-17, pmbl (April 4, 2011).
[9] *Id.*
[10] Chapter 2008-69, L.O.F.
[11] In 2008, the number of secondary metals recyclers registered with the Florida Department of Revenue was 278. As of August 2011, that number increased to 769. *See*, Fla. Dept. of Revenue, *Secondary Dealers and Secondary Metals Recyclers*

added a clause whereby all municipal and county ordinances relating to the issuance of hold notices by law enforcement were preempted.[12]

In light of these changes, county boards of commission have elected to enact more stringent ordinances.[13] Common trends among these ordinances include the following: the creation of a new classification of selected items that are more strictly regulated entitled "restricted regulated metals property"; prohibition of cash payment for any purchase transaction involving a "restricted regulated metals property"; imposition of heightened ownership verification requirements from sellers of "restricted regulated metals property"; as well as a requirement that records be maintained for a period of not less than five years.[14]

Theft of Copper or Other Nonferrous Metals

Section 812.145, F.S., provides that a person who knowingly and intentionally takes copper or other nonferrous metals from a utility or communications services provider commits a felony of the first degree, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S. The statute does not address liability related to such theft.

III. Effect of Proposed Changes:

Section 1 amends s. 538.03, F.S., by requiring that a secondary metals recycler acting as a secondhand dealer must also conform to the requirements for a secondhand dealer pursuant to part I of ch. 538, F.S. Any person purchasing, consigning, or trading secondhand goods at a flea market must also now conform to the requirements found in this chapter.

In addition, "appropriate law enforcement official" is defined as follows: "the sheriff of the county in which a secondhand dealer is located or, if the secondhand dealer is located within a municipality, both the police chief of the municipality and the sheriff; however, the sheriff or police chief may designate as the appropriate law enforcement official for that county or municipality, as applicable, any law enforcement officer working within that respective county or municipality. This paragraph does not limit the authority or duties of the sheriff."

Section 2 amends s. 538.04, F.S., by revising existing language to conform to modern standards, as well as to the definition of "appropriate law enforcement official" as defined in section 1.

Section 3 amends s. 538.18, F.S., to define the terms "appropriate law enforcement official," "personal identification card," "restricted regulated metals," and "utility."

"Appropriate law enforcement official" is defined as follows: "the sheriff of the county in which a secondary metals recycler is located or, if the secondary metals recycler is located within a

by County (August 2011), *available at* http://dor.myflorida.com/dor/taxes/pdf/secondhand_dealers_recyclers.pdf (last visited January 3, 2012).

[12] Chapter 2009-162, L.O.F. (creating s. 538.21(4), F.S., effective October 1, 2009).

[13] According to the Senate Committee on Commerce and Tourism's best knowledge, 10 counties have enacted ordinances regulating secondary metals recyclers. They are as follows: Broward, Hillsborough, Lake, Miami-Dade, Orange, Osceola, Sarasota Seminole, Volusia and Washington. On December 13, 2011, Duval County filed Ordinance 2011-766, which would add a new section regulating secondary metals recyclers if approved by the Board of County Commissioners.

[14] Miami-Dade County, Fla. Ordinance 11-17 (April 4, 2011); Orange County, Fla. Ordinance 2010-16 (Dec. 7, 2010).

municipality, the police chief of the municipality in which the secondary metals recycler is located; however, the sheriff or police chief may designate as the appropriate law enforcement official for the county or municipality, as applicable, any law enforcement officer working within that respective county or municipality. This subsection does not limit the authority or duties of the sheriff."

The definition of "personal identification card" is more specifically defined as "a valid Florida driver license, a Florida identification card issued by the Department of Highway Safety and Motor Vehicles, an equivalent form of identification issued by another state, a passport, or an employment authorization issued by the United States Bureau of Citizenship and Immigration Services that contains an individual's photograph and current address."

The bill also defines "restricted regulated metals property." Specifically, section 7 of the bill amends s. 538.26, F.S., to set forth a list of items that are classified as "restricted regulated metals property."[15]

The term "utility" is defined to mean "a public utility or electric utility as defined in s. 366.02 or a person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, or telephone, telegraph, radio, or telecommunications services."

Finally, the definition of "regulated metals property" is to include stainless steel beer kegs "and items made of ferrous metal obtained from any restricted regulated metals property."

Section 4 amends s. 319.30, F.S., to correct a cross-reference to the definition of secondary metals recycler.

Section 5 amends s. 538.19, F.S., by requiring that secondary metals recyclers maintain both a paper and electronic record of all purchase transactions. The format for the electronic record must be approved by the Department of Law Enforcement.

[15] Restricted regulated metals property includes the following items: manhole cover; electric light pole or other utility structure and its fixtures, wires, and hardware that are readily identifiable as connected to the utility structure; guard rail; street sign, traffic sign, or traffic sign and its fixtures and hardware; communication, transmission, distribution, and service wire from a utility, including copper or aluminum bus bars, connectors, grounding plates, or grounding wire; funeral marker or funeral vase; historical marker, railroad equipment, including, but not limited to, a tie plate, signal house, control box, switch plate, E-clip, or rail tie junction; any metal item that is observably marked upon reasonable inspection with any form of the name, initials, or logo of a governmental entity, utility company, cemetery, or railroad; copper aluminum or aluminum-copper condensing or evaporator coil, including its tubing or rods, from an air conditioning or heating unit, excluding coils from window air conditioning or heating units and motor vehicle air conditioning or heating units; aluminum or stainless steel container or bottle designed to hold propane for fueling forklifts; stainless steel beer keg; catalytic converter or any nonferrous part of a catalytic converter unless purchased as part of a motor vehicle; metallic wire that has been burned in whole or in part to remove insulation; a brass or bronze commercial valve or fitting, referred to as a "fire department connection and control valve" or an "FDC valve," which is commonly used on structures for access to water for the purpose of extinguishing fires; brass or bronze commercial portable water backflow preventer valve that is commonly used to prevent backflow of potable water from commercial structures into municipal domestic water service system; shopping cart; brass water meter; storm grate; and brass sprinkler head used in commercial agriculture.

The record for all purchase transactions shall be electronically transmitted to the appropriate law enforcement official no later than 10 a.m. of the business day following the date of the purchase transaction. A person who submits an electronic file to law enforcement is not required to deliver the manuscript documents unless there is an ongoing criminal investigation. In such a case, the secondary metals recycler must make the manuscript documents available within 24 hours from the request. The time period that a secondary metals recycler is required to maintain information concerning purchase transactions is three years.

Additionally, a provision is also added whereby a secondary metals recycler will not be found liable for a seller's failure to comply with the titling requirements for conversion of a motor vehicle to scrap metal if the secondary metals recycler obtains and maintains a signed statement from the seller stating that the seller has surrendered the vehicle's certificate of title to the Department of Highway Safety and Motor Vehicles or otherwise complied with the titling requirements provided by law.

Section 6 amends s. 538.235, F.S., by requiring a secondary metals recycler to mail a check for payment to the seller or the seller's employer within three days following a purchase transaction. A check may not be mailed to a post office box. Only in a limited number of cases will the seller be allowed to issue a check to the seller at the time of the purchase transaction.[16]

Furthermore, cash transactions for the purchase of "regulated metals property" in excess of $1,000 and for the purchase of any "restricted regulated metals property" are prohibited. Accordingly, the acceptable forms of payments are as follows: a check issued and payable to the seller or by electronic payment to the seller's bank account or to the bank account of the seller's employer.

Section 7 amends s. 538.25, F.S., to state that the Department of Revenue shall only accept secondary metals recycler registration applications from a fixed address. A hotel or motel room, a vehicle, or a post office box are explicitly designated as unacceptable addresses.

Section 8 amends s. 538.26, F.S., by prohibiting the sale of regulated metals property on weekdays before 7 a.m. or after 6 p.m., on Saturdays before 7 a.m. or after 1 p.m., or on Sundays at any place other than the fixed place of business.

This section also prohibits a secondary metals recycler from purchasing regulated metals from a seller who is not using his or her real name; a person younger than 18; or someone under the influence of drugs or alcohol.

[16] The issuance of a check at the time of the purchase transaction is permitted when the seller is one of the following: an organization, corporation, or association registered with the state as a charitable, philanthropic, religious, fraternal, civic, patriotic, social, or school-sponsored organization or association, or is a nonprofit corporation or association; a law enforcement officer acting in an official capacity; a trustee in bankruptcy or an executor, administrator, or receiver who has presented proof of such status to the secondary metals recycler; a public official acting under judicial process or authority who has presented proof of such status to the secondary metals recycler; a sheriff acting under the authority of a court's writ of execution, or by virtue of any process issued by a court, if proof thereof has been presented to the secondary metals recycler; or a manufacturing, industrial, or other commercial vendor that generates regulated materials in the ordinary course of business.

Additionally, this section lists the items considered to be "restricted regulated metals property," which are subject to heightened ownership verification requirements. Specifically, a secondary metals recycler is prohibited from purchasing any "restricted regulated metals property" unless the seller is the owner. If the seller is the owner of the property, reasonable proof of ownership is satisfied by presenting a secondary metals recycler with a receipt or bill of sale showing that the seller is the owner. When the seller is an employee, agent, or contractor of the property's owner who is authorized to sell the property, reasonable proof is satisfied with a signed letter on the owner's letterhead, dated no later than 90 days before the sale, authorizing the seller to sell the property.

Lastly, the removal of language concerning the failure to pay sales tax owed to the Department of Revenue or have a sales tax registration number streamlines statutory language given that existing provisions under ch. 212, F.S., require secondary metals recyclers to register as dealers and remit such taxes.

Section 9 creates s. 538.28, F.S., and provides that the regulation of purchase transactions involving "regulated metals property" is preempted to the state with the exception of those ordinances enacted prior to March 1, 2012. However, such ordinances or regulations may only be subsequently amended to meet or exceed the requirements found in part II of ch. 538, F.S. Additionally, a local ordinance may not require verification of compliance with federal law, 40 C.F.R. part 82, relating to refrigerant removal in items sold to a secondary metals recycler.

Section 10 amends s. 538.23, F.S., to correct a cross-reference.

Section 11 amends s. 812.145, F.S., by expanding the definition of utility in subsection (1) to mean "a public utility or electric utility as defined in s. 366.02, or a person, firm, cooperative, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of heat, water, oil, sewer service, telephone or telegraph service, radio, telecommunications, communications, gas, or electricity services."

A person who knowingly and intentionally "assists with the taking of copper or other nonferrous metals from a utility or communications service provider," which results in damage to its facilities, commits a violation of subsection (2), which is a felony of the 1st degree.[17]

In addition, the newly created subsection (3) provides that a person who is found in a civil action to have illegally taken copper or other nonferrous metals from a utility or communications services provider based upon a conviction for a violation of subsection (2), is liable to the utility or communications services provider for damages in an amount equal to three times the actual damages sustained by the utility or communications services provider due to any personal injury, wrongful death, or property damage caused by the illegal taking of the nonferrous metals, or an amount equal to three times any claim made against the utility or communications services provider for any personal injury, wrongful death, or property damage caused by the malfunction

[17] A felony of the 1st degree is punishable by up to 30 years of imprisonment and a fine of up to $10,000. *See* ss. 775.082(3)(b) and 775.083(1)(b), F.S.

of the facilities of the utility or communications services provider resulting from the violation, whichever is greater.

Section 12 creates an undesignated section of law and provides that a secondary metals recycler is not liable to a person who is injured during theft or attempted theft of metal from their property. Furthermore, a secondary metals recycler is not liable for injuries caused by a dangerous condition created as a result of the theft or attempted theft of the owner's property if the owner did not know, or have reason to know, of the dangerous condition.

Section 13 provides that this act shall take effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Preemption

Section 538.28, F.S., created by this bill provides that the regulation of purchase transactions involving "regulated metals property" is preempted to the state. Preemption takes a topic or a field in which local government might otherwise establish appropriate local laws and reserves that topic for regulation exclusively by the Legislature.[18] As such, express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[19] As created by this bill, s. 538.28, F.S., would likely accomplish that effect.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[18] *Phantom of Brevard, Inc. v. Brevard*, 3 So. 3d 309, 314 (Fla. 2008).
[19] *Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880 (Fla. 1996).

B. Private Sector Impact:

Persons purchasing, consigning, or trading secondhand goods at a flea market will now be subject to the statutory provisions required of secondhand dealers as well as any costs to comply with these provisions.

The bill requires that an electronic record of all the previous day's purchase transactions made by a secondary metals recycler be submitted to the appropriate law enforcement official. As such, secondary metals recyclers may be required to devote financial resources towards obtaining proper electronic devices and additional staffing to comply with the record-keeping requirements.

C. Government Sector Impact:

Law enforcement officials will now be required to implement the statutory provisions related to secondhand dealers for persons purchasing, consigning, or trading secondhand goods at a flea market. Agencies enforcing these provisions will incur additional costs.

The bill requires that an electronic record of all the previous day's purchase transactions made by a secondary metals recycler be submitted to the appropriate law enforcement official. As such, law enforcement agencies may be required to devote financial resources towards obtaining proper electronic devices and additional staffing to comply with the record-keeping requirements.

The Criminal Justice Impact Conference met on January 30, 2012, and found that similar bills, CS/SB 1324 and CS/HB 1323, will have an insignificant impact upon prison beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

An exception to preemption is provided for in section 8 of the bill which creates s. 538.28(2), F.S., stating:

> [T]his part does not preempt an ordinance or regulation originally enacted by a county or municipality before March 1, 2012. Such an ordinance or regulation may subsequently be amended to meet or exceed the requirements of this part.

As currently written, the effect of this language would be to immune pre-March 1, 2012, ordinances from preemption. Accordingly, it should be noted that this language will result in the existence of pre-March 1, 2012, ordinances that fall below the requirements found in part II of ch. 538, F.S., as amended by this bill.[20]

[20] According to Senate Committee on Commerce and Tourism's the best knowledge, three counties have ordinances that would fall below the requirements of part II of ch. 538, F.S., as amended by this bill. They are as follows: Osceola, Washington, and Volusia.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Criminal Justice on January 31, 2012:

- Reinstates the current law exemption for any auction business.
- Provides that a local ordinance may not require verification of compliance with federal law relating to refrigerant removal pursuant to 40 C.F.R. part 82.
- Clarifies that the newly created civil treble damages provision applies to a person who has been convicted for illegally taking or assisting in taking copper or other nonferrous metals from a utility or communications services provider.

CS/CS by Community Affairs on January 23, 2012:

- Specifies that the Department of Revenue shall only accept secondary metals recyclers registration applications from a fixed address.
- Prohibits a secondary metals recycler from purchasing regulated metals from a seller: not using his or her real name, a person younger than 18, or someone under the influence of drugs or alcohol.
- Provides that a secondary metals recycler shall make an original transaction form available within 24 hours of a request by law enforcement.
- Expands the definition of "utility" as it relates to the theft of copper and other nonferrous materials.
- Provides that a person who steals copper or other nonferrous materials from a utility or communications services provider is liable for damages equal to three times actual damages or claims sustained by or made against the utility or communications services provider.
- Makes conforming cross references.

CS by Commerce and Tourism on January 9, 2012:

- Regulates both secondary metals recyclers and secondhand dealers.
- Inserts an information-sharing provision that requires all secondary metals recyclers to submit data relating to the previous day's purchase transactions of regulated metals to law enforcement officials in a format to be determined by the Department of Law Enforcement.
- Requires that records concerning purchase transactions must be maintained for 3 years. In the original bill, the period was reduced from 5 to 2 years.
- Prohibits a secondary metals recycler from issuing a payment at the time of the purchase transaction, but rather requires that payment be performed either by check through mail or electronically. A mailing address to a post office box is not accepted.
- Prohibits the selling of regulated metals property on weekdays before 7 a.m. or after 6 p.m., on Saturdays before 7 a.m. or after 1 p.m., or on Sundays. Moreover, purchases can only take place at a fixed location.

- Inserts the following items into the definition of a restricted regulated metals property: brass water meter, storm grate, and brass sprinkler head used in commercial agriculture.
- Allows for ordinances passed prior to May 1, 2012, to be exempted from preemption, but requires that subsequent amendments to such ordinances meet or exceed the requirements of part II of ch. 538, F.S.
- Provides that a person who knowingly and intentionally "assists with the taking of copper or other nonferrous metals from a utility or communications service provider," which results in damage to its facilities, commits a felony of the 1st degree.
- Provides that a secondary metals recycler is not liable to a person who is injured during theft or attempted theft of metal property. Furthermore, a secondary metals recycler is not liable for injuries caused by a dangerous condition created as a result of the theft or attempted theft of the owner's property if the owner did not know, or have reason to know, of the dangerous condition.
- Removes the creation of a statutory inference.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

421202

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/29/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Hays) recommended the following:

1 **Senate Amendment**
2 Delete lines 571 - 573
3 and insert:
4 regulated metals property, or ferrous metals before 7 a.m. or
5 after 7 p.m. ~~between the hours of 9 p.m. and 6 a.m.~~

By the Committees on Criminal Justice; Community Affairs; and Commerce and Tourism; and Senators Smith, Montford, Evers, and Lynn

A bill to be entitled

An act relating to secondhand dealers and secondary metals recyclers; amending s. 538.03, F.S.; requiring that a secondary metals recycler conform to the requirements for a secondhand dealer; defining the term “appropriate law enforcement official”; deleting exemptions from regulation as a secondhand dealer which relate to flea market transactions; conforming terminology; amending s. 538.04, F.S., relating to recordkeeping requirements; conforming terminology and clarifying provisions; amending s. 538.18, F.S.; revising and providing definitions; amending s. 319.30, F.S.; conforming a cross-reference; amending s. 538.19, F.S.; revising requirements for the types of information that secondary metals recyclers must obtain and maintain regarding purchase transactions, including requirements for the maintenance and transmission of electronic records of such transactions; revising the period required for secondary metals recyclers to maintain certain information regarding purchase transactions involving regulated metals property; limiting the liability of secondary metals recyclers for the conversion of motor vehicles to scrap metal under certain circumstances; amending s. 538.235, F.S.; revising requirements for payments made by secondary metals recyclers to sellers of regulated metals property to prohibit certain cash transactions; providing penalties; providing methods of payment for restricted regulated metals property;

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

requiring that purchases of certain property be made by check or by electronic payment; providing procedures; amending s. 538.25, F.S.; requiring the Department of Revenue to accept applications from a fixed business address; prohibiting the department from accepting an application that provides an address from a hotel or motel room, a vehicle, or a post office box; amending s. 538.26, F.S.; prohibiting secondary metals recyclers from purchasing regulated metals property, restricted regulated metals property, or ferrous metals during specified times or from certain locations; prohibiting the purchase of regulated metal property from a seller who uses a name other than his or her own name or the registered name of the business, is younger than 18 years of age, or is under the influence of drugs or alcohol, if such a condition is visible or apparent; prohibiting the purchase of specified restricted regulated metals property without obtaining certain proof of the seller’s ownership and authorization to sell the property; providing penalties; creating s. 538.28, F.S.; preempting to the state the regulation of secondary metals recyclers and purchase transactions involving regulated metals property; exempting county and municipal ordinances and regulations enacted before March 1, 2012, from preemption; prohibiting requirements for verification of compliance with certain federal regulations; reenacting and amending s. 538.23(1)(a), F.S., relating to violations and

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

59 penalties, to incorporate the amendments made by this
60 act to ss. 538.19 and 538.235, F.S., in references
61 thereto; correcting a cross-reference; amending s.
62 812.145, F.S.; redefining the term "utility";
63 providing that a person who assists in the taking of
64 certain metals commits a felony of the first degree;
65 providing that a person who illegally takes copper or
66 other nonferrous metals from a utility or
67 communications services provider is liable to the
68 utility or communications provider for damages equal
69 to three times the amount of any claim against the
70 utility or communication services provider resulting
71 from the illegal taking of copper or other nonferrous
72 metals; limiting the liability of a public or private
73 owner of metal property for injuries occurring during
74 the theft or attempted theft of metal property and for
75 injuries occurring as the result of the theft or
76 attempted theft; providing that no additional duty of
77 care is imposed on the owner of metal property;
78 providing an effective date.
79
80 Be It Enacted by the Legislature of the State of Florida:
81
82 Section 1. Subsection (1) of section 538.03, Florida
83 Statutes, is reordered and amended, present paragraphs (l)
84 through (q) of subsection (2) of that section are redesignated
85 as paragraphs (k) through (p), respectively, and present
86 paragraphs (k) and (n) of that subsection are amended, to read:
87 538.03 Definitions; applicability.—

88 (1) As used in this part, the term:
89 (g) ~~(a)~~ "Secondhand dealer" means any person, corporation,
90 or other business organization or entity that ~~which~~ is not a
91 secondary metals recycler subject to part II and that ~~which~~ is
92 engaged in the business of purchasing, consigning, or trading
93 secondhand goods. A secondary metals recycler may not act as a
94 secondhand dealer without also conforming to the requirements
95 for a secondhand dealer pursuant to this part.
96 (f) ~~(b)~~ "Precious metals dealer" means a secondhand dealer
97 who normally or regularly engages in the business of buying used
98 precious metals for resale. The term does not include those
99 persons involved in the bulk sale of precious metals from one
100 secondhand or precious metals dealer to another.
101 (i) ~~(c)~~ "Secondhand store" means the place or premises at
102 which a secondhand dealer is registered to conduct business as a
103 secondhand dealer or conducts business.
104 (c) ~~(d)~~ "Consignment shop" means a shop engaging in the
105 business of accepting for sale, on consignment, secondhand goods
106 that ~~which~~, having once been used or transferred from the
107 manufacturer to the dealer, are then received into the
108 possession of a third party.
109 (a) ~~(e)~~ "Acquire" means to obtain by purchase, consignment,
110 or trade.
111 (h) ~~(f)~~ "Secondhand goods" means personal property
112 previously owned or used, which is not regulated metals property
113 regulated under part II and which is purchased, consigned, or
114 traded as used property. Such secondhand goods do not include
115 office furniture, pianos, books, clothing, organs, coins, motor
116 vehicles, costume jewelry, cardio and strength training or

117 conditioning equipment designed primarily for indoor use, and
118 secondhand sports equipment that is not permanently labeled with
119 a serial number. For purposes of this paragraph, "secondhand
120 sports equipment" does not include golf clubs.
121 (j) ~~(g)~~ "Transaction" means any purchase, consignment, or
122 trade of secondhand goods by a secondhand dealer.
123 (e) ~~(h)~~ "Precious metals" means any item containing any
124 gold, silver, or platinum, or any combination thereof, excluding
125 any chemical or any automotive, photographic, electrical,
126 medical, or dental materials or electronic parts.
127 (d) ~~(i)~~ "Department" means the Department of Revenue.
128 (b) "Appropriate law enforcement official" means the
129 sheriff of the county in which a secondhand dealer is located
130 or, if the secondhand dealer is located within a municipality,
131 both the police chief of the municipality and the sheriff;
132 however, the sheriff or police chief may designate as the
133 appropriate law enforcement official for that county or
134 municipality, as applicable, any law enforcement officer working
135 within that respective county or municipality. This paragraph
136 does not limit the authority or duties of the sheriff.
137 (2) This chapter does not apply to:
138 ~~(k) Any person purchasing, consigning, or trading~~
139 ~~secondhand goods at a flea market regardless of whether at a~~
140 ~~temporary or permanent business location at the flea market.~~
141 (m) ~~(n)~~ A business that contracts with other persons or
142 entities to offer its secondhand goods for sale, purchase,
143 consignment, or trade via an Internet website, and that
144 maintains a shop, store, or other business premises for this
145 purpose, if all of the following apply:

146 1. The secondhand goods must be available on the website
147 for viewing by the public at no charge;
148 2. The records of the sale, purchase, consignment, or trade
149 must be maintained for at least 2 years;
150 3. The records of the sale, purchase, consignment, or
151 trade, and the description of the secondhand goods as listed on
152 the website, must contain the serial number of each item, if
153 any;
154 4. The secondhand goods listed on the website must be
155 searchable based upon the state or zip code;
156 5. The business must provide the appropriate law
157 enforcement official ~~agency~~ with the name or names under which
158 it conducts business on the website;
159 6. The business must allow the appropriate law enforcement
160 official ~~agency~~ to inspect its business premises at any time
161 during normal business hours;
162 7. Any payment by the business resulting from such a sale,
163 purchase, consignment, or trade must be made to the person or
164 entity with whom the business contracted to offer the goods and
165 must be made by check or via a money services business licensed
166 under part II of chapter 560; and
167 8.a. At least 48 hours after the estimated time of
168 contracting to offer the secondhand goods, the business must
169 verify that any item having a serial number is not stolen
170 property by entering the serial number of the item into the
171 Department of Law Enforcement's stolen article database located
172 at the Florida Crime Information Center's public access system
173 website. The business shall record the date and time of such
174 verification on the contract covering the goods. If such

175 verification reveals that an item is stolen property, the
176 business shall immediately remove the item from any website on
177 which it is being offered and notify the appropriate law
178 enforcement official ~~agency~~; or
179 b. The business must provide the appropriate law
180 enforcement official ~~agency~~ with an electronic copy of the name,
181 address, phone number, driver ~~driver's~~ license number, and
182 issuing state of the person with whom the business contracted to
183 offer the goods, as well as an accurate description of the
184 goods, including make, model, serial number, and any other
185 unique identifying marks, numbers, names, or letters that may be
186 on an item, in a format agreed upon by the business and the
187 appropriate law enforcement official ~~agency~~. This information
188 must be provided to the appropriate law enforcement official
189 ~~agency~~ within 24 hours after entering into the contract unless
190 other arrangements are made between the business and the law
191 enforcement official ~~agency~~.
192 Section 2. Subsections (1), (6), and (7) of section 538.04,
193 Florida Statutes, are amended to read:
194 538.04 Recordkeeping requirements; penalties.—
195 (1) A secondhand dealer ~~dealers~~ shall complete a secondhand
196 dealers transaction form at the time of the actual transaction.
197 A secondhand dealer shall maintain a copy of a completed
198 transaction form on the registered premises for at least 1 year
199 after the date of the transaction. However, the secondhand
200 dealer shall maintain a copy of the transaction form for not
201 less than 3 years. Unless other arrangements are ~~have been~~
202 agreed upon by the secondhand dealer and the appropriate law
203 enforcement official ~~agency~~, the secondhand dealer shall, within

204 24 hours after acquiring ~~the acquisition of~~ any secondhand
205 goods, deliver to such official ~~the police department of the~~
206 ~~municipality where the goods were acquired or, if the goods were~~
207 ~~acquired outside of a municipality, to the sheriff's department~~
208 ~~of the county where the goods were acquired,~~ a record of the
209 transaction on a form approved by the Department of Law
210 Enforcement. Such record shall contain:
211 (a) The time, date, and place of the transaction.
212 (b) A complete and accurate description of the goods
213 acquired, including the following information, if applicable:
214 1. Brand name.
215 2. Model number.
216 3. Manufacturer's serial number.
217 4. Size.
218 5. Color, as apparent to the untrained eye.
219 6. Precious metal type, weight, and content if known.
220 7. Gemstone description, including the number of stones, if
221 applicable.
222 8. In the case of firearms, the type of action, caliber or
223 gauge, number of barrels, barrel length, and finish.
224 9. Any other unique identifying marks, numbers, or letters.
225 (c) A description of the person from whom the goods were
226 acquired, including:
227 1. Full name, current residential address, workplace, and
228 home and work phone numbers.
229 2. Height, weight, date of birth, race, gender, hair color,
230 eye color, and any other identifying marks.
231 3. The right thumbprint, free of smudges and smears, of the
232 person from whom the goods were acquired.

(d) Any other information required by the form approved by the Department of Law Enforcement.

(6) If the appropriate law enforcement official ~~agency~~ supplies a secondhand dealer with appropriate software and the secondhand dealer has computer capability, the secondhand dealer must ~~transactions shall be~~ electronically transmit secondhand dealer transactions required by this section to such official ~~transferred~~. If a secondhand dealer does not have computer capability, the appropriate law enforcement official ~~agency~~ may provide the secondhand dealer with a computer and all equipment necessary to ~~equipment for the purpose of~~ electronically transmit ~~transferring~~ secondhand dealer transactions. The appropriate law enforcement official ~~agency~~ shall retain ownership of the computer, unless otherwise agreed upon, and~~.~~ the secondhand dealer shall maintain the computer in good working order, except for ordinary wear ~~and tear excepted~~. A ~~If the~~ secondhand dealer who transmits ~~transfers~~ secondhand dealer transactions electronically~~, the secondhand dealer~~ is not required to also deliver ~~to the appropriate law enforcement agency~~ the original or paper copies of the secondhand transaction forms to the appropriate law enforcement official. However, such official may, for purposes ~~the purpose~~ of a criminal investigation, ~~the appropriate law enforcement agency may~~ request ~~that~~ the secondhand dealer to deliver the ~~produce an~~ original ~~of a~~ transaction form that was ~~has been~~ electronically transmitted ~~transferred~~. The secondhand dealer shall deliver the ~~this~~ form to the appropriate law enforcement official ~~agency~~ within 24 hours after receipt of the request.

(7) If the original transaction form is lost or destroyed

by the appropriate law enforcement official ~~agency~~, a copy may be used by the secondhand dealer as evidence in court. When an electronic image of a customer's identification is accepted for a transaction, the secondhand dealer must maintain the electronic image in order to meet the recordkeeping requirements applicable to the original transaction form. If a criminal investigation occurs, the secondhand dealer shall, upon request, provide a clear and legible copy of the image to the appropriate law enforcement official ~~agency~~.

Section 3. Section 538.18, Florida Statutes, is reordered and amended to read:

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

(1) "Appropriate law enforcement official" means the sheriff of the county in which a secondary metals recycler is located or, if the secondary metals recycler is located within a municipality, the police chief of the municipality in which the secondary metals recycler is located; however, the sheriff or police chief may designate as the appropriate law enforcement official for the county or municipality, as applicable, any law enforcement officer working within that respective county or municipality. This subsection does not limit the authority or duties of the sheriff.

(3) ~~(1)~~ "Ferrous metals" means any metals containing significant quantities of iron or steel.

(4) ~~(2)~~ "Fixed location" means any site occupied by a secondary metals recycler as owner of the site or as lessee of the site under a lease or other rental agreement providing for occupation of the site by the secondary metals recycler for a total duration of not less than 364 days.

(5) ~~(3)~~ "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as part of its currency.

(6) ~~(4)~~ "Nonferrous metals" means metals not containing significant quantities of iron or steel, including, without limitation, copper, brass, aluminum, bronze, lead, zinc, nickel, and alloys thereof, excluding precious metals subject to regulation under part I.

(7) ~~(5)~~ "Personal identification card" means a valid Florida driver license, a Florida identification card issued by the Department of Highway Safety and Motor Vehicles, an equivalent form of identification issued by another state, a passport, or an employment authorization issued by the United States Bureau of Citizenship and Immigration Services that contains an individual's photograph and current address ~~any government-issued photographic identification card~~.

(8) ~~(6)~~ "Purchase transaction" means a transaction in which a secondary metals recycler gives consideration for regulated metals property.

(9) ~~(7)~~ "Regulated metals property" means any item composed primarily of any nonferrous metals. The term does~~, but shall~~ not include aluminum beverage containers, used beverage containers, or similar beverage containers; however, ~~.~~ the term includes ~~shall include~~ stainless steel beer kegs and items made of ferrous metal obtained from any restricted regulated metals property.

(11) ~~(8)~~ "Secondary metals recycler" means any person who:

(a) Is engaged, from a fixed location or otherwise, in the business of purchase transactions, gathering or obtaining

ferrous or nonferrous metals that have served their original economic purpose, or ~~is in the business of~~ performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or

(b) Has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof.

A secondary metals recycler may not act as a secondhand dealer without also conforming to the requirements of a secondhand dealer pursuant to this part.

(2) ~~(9)~~ "Department" means the Department of Revenue.

(10) "Restricted regulated metals property" means any regulated metals property listed in s. 538.26(5)(b) the sale of which is restricted as provided in s. 538.26(5)(a).

(12) "Utility" means a public utility or electric utility as defined in s. 366.02 or a person, firm, cooperative, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of heat, water, oil, sewer service, or telephone, telegraph, radio, telecommunications, or communications service.

349 Section 4. Paragraph (u) of subsection (1) of section
350 319.30, Florida Statutes, is amended to read:
351 319.30 Definitions; dismantling, destruction, change of
352 identity of motor vehicle or mobile home; salvage.—
353 (1) As used in this section, the term:
354 (u) "Secondary metals recycler" means secondary metals
355 recycler as defined in s. 538.18 ~~538.18(8)~~.
356 Section 5. Section 538.19, Florida Statutes, is amended to
357 read:
358 538.19 Records required; limitation of liability.—
359 (1) A secondary metals recycler shall maintain a legible
360 paper record of all purchase transactions to which such
361 secondary metals recycler is a party. A secondary metals
362 recycler shall also maintain a legible electronic record, in the
363 English language, of all such purchase transactions. The
364 appropriate law enforcement official may provide data
365 specifications regarding the electronic record format, but such
366 format must be approved by the Department of Law Enforcement. An
367 electronic record of a purchase transaction shall be
368 electronically transmitted to the appropriate law enforcement
369 official no later than 10 a.m. of the business day following the
370 date of the purchase transaction. A secondary metals recycler
371 who transmits such records electronically is not required to
372 also deliver the original or paper copies of the transaction
373 forms to the appropriate law enforcement official. However, such
374 official may, for purposes of a criminal investigation, request
375 the secondary metals recycler to deliver the original
376 transaction form that was electronically transmitted. The
377 secondary metals recycler shall make available the form to the

378 appropriate law enforcement official within 24 hours after
379 receipt of the request.
380 (2) The following information must be maintained on the ~~a~~
381 form approved by the Department of Law Enforcement for each
382 purchase transaction:
383 (a) The name and address of the secondary metals recycler.
384 (b) The name, initials, or other identification of the
385 individual entering the information on the ticket.
386 (c) The date and time of the transaction.
387 (d) The weight, quantity, or volume, and a description of
388 the type of regulated metals property purchased in a purchase
389 transaction.
390 (e) The amount of consideration given in a purchase
391 transaction for the regulated metals property.
392 (f) A signed statement from the person delivering the
393 regulated metals property stating that she or he is the rightful
394 owner of, or is entitled to sell, the regulated metals property
395 being sold. If the purchase involves a stainless steel beer keg,
396 the seller must provide written documentation from the
397 manufacturer that the seller is the owner of the stainless steel
398 beer keg or is an employee or agent of the manufacturer.
399 (g) The distinctive number from the personal identification
400 card of the person delivering the regulated metals property to
401 the secondary metals recycler.
402 (h) A description of the person from whom the regulated
403 metals property was ~~goods were~~ acquired, including:
404 1. Full name, current residential address, workplace, and
405 home and work phone numbers.
406 2. Height, weight, date of birth, race, gender, hair color,

407 eye color, and any other identifying marks.
408 3. The right thumbprint, free of smudges and smears.
409 4. Vehicle description to include the make, model, and tag
410 number of the vehicle and trailer of the person selling the
411 regulated metals property.
412 5. Any other information required by the form approved by
413 the Department of Law Enforcement.
414 (i) A photograph, videotape, or digital image of the
415 regulated metals being sold.
416 (j) A photograph, videotape, or similar likeness of the
417 person receiving consideration in which such person's facial
418 features are clearly visible.
419 (3) ~~Any secondary metals recycler that maintains an~~
420 ~~electronic database containing the information required in~~
421 ~~paragraph (2)(h), along with an oath of ownership with a~~
422 ~~signature of the seller of the secondary metals being purchased~~
423 ~~by the secondary metals recycler and a right thumbprint that has~~
424 ~~no smudges and smears on the oath of ownership for each purchase~~
425 ~~transaction, shall be exempt from the records requirement of~~
426 ~~paragraph (2)(h).~~ A secondary metals recycler complies with the
427 requirements of this section if it maintains an electronic
428 database containing the information required by subsection (2)
429 ~~paragraph (2)(h)~~ as long as the electronic information required
430 by subsection (2) ~~paragraph (2)(h)~~, along with an electronic
431 oath of ownership with an electronic signature of the seller of
432 the secondary metals being purchased by the secondary metals
433 recyclers and an electronic image of the seller's right
434 thumbprint that has no smudges and smears, can be downloaded
435 onto a paper form in the image of the form approved by the

436 Department of Law Enforcement as provided in subsection (2).
437 (4) A secondary metals recycler shall maintain or cause to
438 be maintained the information required by this section for not
439 less than 3 ~~5~~ years from the date of the purchase transaction.
440 (5) ~~If a purchase transaction involves the transfer of~~
441 ~~regulated metals property from~~ A secondary metals recycler
442 registered with the department who purchases a motor vehicle
443 from a licensed salvage motor vehicle dealer as defined in s.
444 320.27 or ~~to~~ another secondary metals recycler registered with
445 the department and uses a mechanical crusher to convert the
446 vehicle to scrap metal must obtain a signed statement from the
447 seller stating that the seller has surrendered the vehicle's
448 certificate of title to the Department of Highway Safety and
449 Motor Vehicles as provided in s. 319.30 or has otherwise
450 complied with the titling requirements provided by law for
451 conversion of the vehicle to scrap metal. A~~, the~~ secondary
452 metals recycler is not liable for the seller's failure to comply
453 with the titling requirements provided by law for conversion of
454 a motor vehicle to scrap metal if the secondary metals recycler
455 obtains and maintains the seller's signed statement ~~receiving~~
456 ~~the regulated metals property shall record the name and address~~
457 ~~of the secondary metals recycler from which it received the~~
458 ~~regulated metals property in lieu of the requirements of~~
459 ~~paragraph (2)(h)~~.
460 Section 6. Section 538.235, Florida Statutes, is amended to
461 read:
462 538.235 Method of payment.—
463 (1) A secondary metals recycler may ~~shall~~ not enter into
464 any cash transaction:

465 (a) In excess of $1,000 ~~in payment~~ for the purchase of
466 regulated metals property; or
467 (b) In any amount for the purchase of restricted regulated
468 metals property.
469 (2) Payment in excess of $1,000 for the purchase of
470 regulated metals property shall be made by check issued to the
471 seller of the metal and payable to the seller.
472 (3) Payment for the purchase of restricted regulated metals
473 property shall be made by check issued to the seller of the
474 metal and payable to the seller or by electronic payment to the
475 seller's bank account or the seller's employer's bank account.
476 (a) Each check shall be mailed by the secondary metals
477 recycler directly to the street address of the seller which is
478 on file with the secondary metals recycler, unless otherwise
479 provided in this part. A check may not be mailed to a post
480 office box. Electronic payments shall be transmitted to an
481 account for which the seller is listed as an account holder or
482 an employee or agent of the seller.
483 (b) Each check or electronic payment shall be mailed or
484 transmitted by the secondary metals recycler to the seller
485 within 3 days after the purchase transaction, unless otherwise
486 provided in this section.
487 (c) The secondary metals recycler may provide a check at
488 the time of the purchase transaction rather than mailing the
489 check as required in paragraph (a), if the seller is:
490 1. An organization, corporation, or association registered
491 with the state as a charitable, philanthropic, religious,
492 fraternal, civic, patriotic, social, or school-sponsored
493 organization or association, or is a nonprofit corporation or

494 association;
495 2. A law enforcement officer acting in an official
496 capacity;
497 3. A trustee in bankruptcy or an executor, administrator,
498 or receiver who has presented proof of such status to the
499 secondary metals recycler;
500 4. A public official acting under judicial process or
501 authority who has presented proof of such status to the
502 secondary metals recycler;
503 5. A sheriff acting under the authority of a court's writ
504 of execution, or by virtue of any process issued by a court, if
505 proof thereof has been presented to the secondary metals
506 recycler; or
507 6. A manufacturing, industrial, or other commercial vendor
508 that generates regulated materials in the ordinary course of
509 business.
510 Section 7. Subsection (1) of section 538.25, Florida
511 Statutes, is amended to read:
512 538.25 Registration.—
513 (1) A ~~No~~ person may not ~~shall~~ engage in business as a
514 secondary metals recycler at any location without registering
515 with the department. The department shall accept applications
516 only from a fixed business address. The department may not
517 accept an application that provides an address of a hotel or
518 motel room, a vehicle, or a post office box.
519 (a) A fee equal to the federal and state costs for
520 processing required fingerprints must be submitted to the
521 department with each application for registration. One
522 application is required for each secondary metals recycler. If a

523 secondary metals recycler is the owner of more than one
524 secondary metals recycling location, the application must list
525 each location, and the department shall issue a duplicate
526 registration for each location. For purposes of subsections (3),
527 (4), and (5), these duplicate registrations shall be deemed
528 individual registrations. A secondary metals recycler shall pay
529 a fee of $6 per location at the time of registration and an
530 annual renewal fee of $6 per location on October 1 of each year.
531 All fees collected, less costs of administration, shall be
532 transferred into the Operating Trust Fund.
533 (b) The department shall forward the full set of
534 fingerprints to the Department of Law Enforcement for state and
535 federal processing, provided the federal service is available,
536 to be processed for any criminal justice information as defined
537 in s. 943.045. The cost of processing such fingerprints shall be
538 payable to the Department of Law Enforcement by the department.
539 The department may issue a temporary registration to each
540 location pending completion of the background check by state and
541 federal law enforcement agencies, but shall revoke such
542 temporary registration if the completed background check reveals
543 a prohibited criminal background. The Department of Law
544 Enforcement shall report its findings to the Department of
545 Revenue within 30 days after the date fingerprint cards are
546 submitted for criminal justice information.
547 (c) An applicant for a secondary metals recycler
548 registration must be a natural person who has reached the age of
549 18 years or a corporation organized or qualified to do business
550 in the state.
551 1. If the applicant is a natural person, the registration

552 must include a complete set of her or his fingerprints,
553 certified by an authorized law enforcement officer, and a recent
554 fullface photographic identification card of herself or himself.
555 2. If the applicant is a partnership, all the partners must
556 make application for registration.
557 3. If the applicant is a corporation, the registration must
558 include the name and address of such corporation's registered
559 agent for service of process in the state and a certified copy
560 of statement from the Secretary of State that the corporation is
561 duly organized in the state or, if the corporation is organized
562 in a state other than Florida, a certified copy of the statement
563 that the corporation is duly qualified to do business in this
564 state.
565 Section 8. Section 538.26, Florida Statutes, is amended to
566 read:
567 538.26 Certain acts and practices prohibited.—It is
568 unlawful for a secondary metals recycler to do or allow any of
569 the following acts:
570 (1) Purchase regulated metals property, restricted
571 regulated metals property, or ferrous metals on weekdays before
572 7 a.m. or after 6 p.m., on Saturdays before 7 a.m. or after 1
573 p.m., or on Sundays. ~~between the hours of 9 p.m. and 6 a.m.~~
574 ~~(2) Fail to pay any sales tax owed to the department or~~
575 ~~fail to have a sales tax registration number.~~
576 ~~(3) Purchase regulated metals property at a location other~~
577 ~~than the place of business set forth on the registration.~~
578 (2) ~~(4)~~ Purchase regulated metals property, restricted
579 regulated metals property, or ferrous metals from any seller who
580 presents such property for sale at the registered location of

the secondary metals recycler when such property was not transported in a motor vehicle.

(3) ~~(5)~~ Purchase regulated metals property, restricted regulated metals property, or ferrous metals ~~in return for money~~ from ~~a trailer, a vehicle, or~~ any location other than a fixed location ~~or from any person who is required to prove ownership pursuant to subsection (4)~~. ~~However, regulated metals may be purchased from a nonfixed location, or from such person, with any negotiable or nonnegotiable instrument, including a check or draft or any other type of instrument purchased with money and sold for the purpose of making payments or transfers to others.~~

(4) Purchase regulated metals property from a seller who:

(a) Uses a name other than his or her own name or the registered name of the seller's business;

(b) Is younger than 18 years of age; or

(c) Is under the influence of drugs or alcohol, if such condition is visible or apparent.

(5)(a) Purchase any restricted regulated metals property listed in paragraph (b), unless the secondary metals recycler obtains reasonable proof that the seller:

1. Owns such property. Reasonable proof of ownership may include, but is not limited to, a receipt or bill of sale; or

2. Is an employee, agent, or contractor of the property's owner who is authorized to sell the property on behalf of the owner. Reasonable proof of authorization to sell the property includes, but is not limited to, a signed letter on the owner's letterhead, dated no later than 90 days before the sale, authorizing the seller to sell the property.

(b) The purchase of any of the following regulated metals

property is subject to the restrictions provided in paragraph (a):

1. A manhole cover.

2. An electric light pole or other utility structure and its fixtures, wires, and hardware that are readily identifiable as connected to the utility structure.

3. A guard rail.

4. A street sign, traffic sign, or traffic signal and its fixtures and hardware.

5. Communication, transmission, distribution, and service wire from a utility, including copper or aluminum bus bars, connectors, grounding plates, or grounding wire.

6. A funeral marker or funeral vase.

7. A historical marker.

8. Railroad equipment, including, but not limited to, a tie plate, signal house, control box, switch plate, E clip, or rail tie junction.

9. Any metal item that is observably marked upon reasonable inspection with any form of the name, initials, or logo of a governmental entity, utility company, cemetery, or railroad.

10. A copper, aluminum, or aluminum-copper condensing or evaporator coil, including its tubing or rods, from an air-conditioning or heating unit, excluding coils from window air-conditioning or heating units and motor vehicle air-conditioning or heating units.

11. An aluminum or stainless steel container or bottle designed to hold propane for fueling forklifts.

12. A stainless steel beer keg.

13. A catalytic converter or any nonferrous part of a

639 catalytic converter unless purchased as part of a motor vehicle.
640 14. Metallic wire that has been burned in whole or in part
641 to remove insulation.
642 15. A brass or bronze commercial valve or fitting, referred
643 to as a "fire department connection and control valve" or an
644 "FDC valve," that is commonly used on structures for access to
645 water for the purpose of extinguishing fires.
646 16. A brass or bronze commercial potable water backflow
647 preventer valve that is commonly used to prevent backflow of
648 potable water from commercial structures into municipal domestic
649 water service systems.
650 17. A shopping cart.
651 18. A brass water meter.
652 19. A storm grate.
653 20. A brass sprinkler head used in commercial agriculture.
654 Section 9. Section 538.28, Florida Statutes, is created to
655 read:
656 538.28 Local government regulation; preemption.—
657 (1) The regulation of purchase transactions involving
658 regulated metals property is preempted to the state. Except as
659 provided in subsection (2), an ordinance or regulation adopted
660 by a county or municipality relating to the purchase or sale of
661 regulated metals property or the registration or licensure of
662 secondary metals recyclers is void.
663 (2) This part does not preempt an ordinance or regulation
664 originally enacted by a county or municipality before March 1,
665 2012. Such an ordinance or regulation may subsequently be
666 amended to meet or exceed the requirements of this part.
667 (3) A county or municipal ordinance may not require

668 verification of compliance with 40 C.F.R. part 82.
669 Section 10. For the purpose of incorporating the amendments
670 made by this act to sections 538.19 and 538.235, Florida
671 Statutes, in references thereto, paragraph (a) of subsection (1)
672 of section 538.23, Florida Statutes, is reenacted and amended to
673 read:
674 538.23 Violations and penalties.—
675 (1)(a) Except as provided in paragraph (b), a secondary
676 metals recycler who knowingly and intentionally:
677 1. Violates s. 538.20 or s. 538.21;
678 2. Engages in a pattern of failing to keep records required
679 by s. 538.19;
680 3. Violates s. 538.26(2) ~~538.26(4)~~; or
681 4. Violates s. 538.235,
682
683 commits a misdemeanor of the first degree, punishable as
684 provided in s. 775.082.
685 Section 11. Paragraph (d) of subsection (1) and subsection
686 (2) of section 812.145, Florida Statutes, are amended, and
687 subsection (3) is added to that section, to read:
688 812.145 Theft of copper or other nonferrous metals.—
689 (1) As used in this section, the terms:
690 (d) "Utility" means a public utility or electric utility as
691 defined in s. 366.02, or a ~~includes any~~ person, firm,
692 cooperative, corporation, association, or political subdivision,
693 whether private, municipal, county, or cooperative, which is
694 engaged in the sale, generation, provision, or delivery of heat,
695 water, oil, sewer service, telephone or telegraph service,
696 radio, telecommunications, communications, gas, or electricity

697 services.
698 (2) A person who knowingly and intentionally takes or
699 assists with the taking of copper or other nonferrous metals
700 from a utility or communications services provider, thereby
701 causing damage to the facilities of a utility or communications
702 services provider, interrupting or interfering with utility
703 service or communications services, or interfering with the
704 ability of a utility or communications services provider to
705 provide service, commits a felony of the first degree,
706 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
707 (3) A person who is found in a civil action to have
708 illegally taken copper or other nonferrous metals from a utility
709 or communications services provider based upon a conviction for
710 a violation of subsection (2) is liable to the utility or
711 communications services provider for damages in an amount equal
712 to three times the actual damages sustained by the utility or
713 communications services provider due to any personal injury,
714 wrongful death, or property damage caused by the illegal taking
715 of the nonferrous metals or an amount equal to three times any
716 claim made against the utility or communications services
717 provider for any personal injury, wrongful death, or property
718 damage caused by the malfunction of the facilities of the
719 utility or communications services provider resulting from the
720 violation of subsection (2), whichever is greater.
721 Section 12. (1) A public or private owner of metal property
722 is not civilly liable to a person who is injured during the
723 theft or attempted theft of metal property.
724 (2) A public or private owner of metal property is not
725 civilly liable to a person for injuries caused by a dangerous

726 condition created as a result of the theft or attempted theft of
727 the owner's metal property when the owner did not know, and
728 could not have reasonably known, of the dangerous condition.
729 (3) This section does not create or impose a duty of care
730 upon an owner of metal property which would not otherwise exist
731 under common law.
732 Section 13. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2-28-12
Date

SB ~~340~~ 540
Bill Number

Barcode

Name Frank Nemensmith

Phone 576-5858

Address 2901 Pl Bradford
Street

E-mail

Tall FL
City State Zip

Job Title

Speaking: [X] For [ ] Against [ ] Information

Appearing at request of Chair [ ]

Subject Secondary Metals

Representing Florida Sheriffs Assoc.

Lobbyist registered with Legislature: [X] Yes [ ] No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2.28.12
Date

540
Bill Number

Barcode

Name Sarah Busk

Phone 850.222.8900

Address 215 S. Monroe St #602
Street

E-mail sjb@cardenaspartners.com

Tallahassee, FL 32301
City State Zip

Job Title Dir of Gov'l Affs

Speaking: [✓] For [ ] Against [ ] Information

Appearing at request of Chair [ ]

Subject Secondary Metals Recyclers

Representing City of Ocala

Lobbyist registered with Legislature: [✓] Yes [ ] No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/28/12
Date

540
Bill Number

Barcode

Name JIM MAGILL

Phone 681-0411

Address 101 N. MONROE ST SUITE 1090
Street

E-mail

TALLAHASSEE FL 32301
City State Zip

Job Title LOBBYIST

Speaking: [X] For [ ] Against [ ] Information

Appearing at request of Chair [ ]

Subject SECONDARY METAL

Representing FL A RECYCLERS / TRADEMARK METALS

Lobbyist registered with Legislature: [X] Yes [ ] No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/28/12
Date

540
Bill Number

Barcode

Name Alan Hill

Phone 813 363 0375

Address 2008 E. 8th Avenue
Street

E-mail Lbowden@hcso.tampa.fl.us

Tampa FL 33601
City State Zip

Job Title Major

Speaking: [X] For [ ] Against [ ] Information

Appearing at request of Chair [X]

Subject Secondhand Dealers

Representing Hillsborough County Sheriff's Office

Lobbyist registered with Legislature: [ ] Yes [X] No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/28/2012
Meeting Date

Topic: Second Hand Dealers

Bill Number: SB-540 *(if applicable)*

Name: Jim Morgan

Amendment Barcode: *(if applicable)*

Job Title: Lieutenant, Volusia County Sheriffs office

Address: 1330 Indian Ck. Rd.
Street

Daytona Beach, Fl. 32174
City *State* *Zip*

Phone: (386) 804-8423

E-mail: jmorgan@vcso.us

Speaking: [X] For [ ] Against [ ] Information

Representing: Florida Sheriff's Association

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/28/12
Meeting Date

Topic: HOURS OF OPERATION

Bill Number: 540

Name: JIM STELLING

Amendment Barcode: CHAIR BY ALAN HAYES (if applicable)

Job Title:

Address: 8261 DAY LILY PLACE
Street

SANFORD
City State Zip

Phone: 407-383-8746

E-mail: jstelling@cfl.rr.com

Speaking: [X] For [ ] Against [ ] Information

Representing: 419 METAL & AUTO RECYCLING CENTER

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator D. Alan Hays, Chair
Committee on General Government Appropriations

Subject: Committee Agenda Request

Date: February 13, 2012

I respectfully request that **Senate Bill #540**, relating to Secondhand Dealers and Secondary Metals Recyclers, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Christopher L. "Chris" Smith
Florida Senate, District 29

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/CS/SB 602

INTRODUCER: Budget Subcommittee on General Government Appropriations; Transportation and Community Affairs Committees and Senator Storms

SUBJECT: Stormwater Management Permits

DATE: February 28, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	**Favorable**
2.	Uchino	Yeatman	CA	**Fav/CS**
3.	Looke	Buford	TR	**Fav/CS**
4.	Pigott	DeLoach	BGA	**Fav/CS**
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill expands eligibility for entities created by special act, local ordinance, or interlocal agreement of counties or municipalities that are entitled to a permit processing fee waiver or reduction. It directs the Department of Environmental Protection (DEP) to initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports. The bill requires that the water management districts (WMDs), in consultation with the DEP, establish an urban redevelopment conceptual permitting program and specifies that urban redevelopment projects may qualify for a noticed general permit. Finally, the bill requires areas covered by a conceptual permit to adhere to federally delegated pollution abatement programs administered by the state.

This bill substantially amends sections 218.075 and 373.118 and creates section 373.4131 of the Florida Statutes.

II. Present Situation:

Waiver or Reduction of Permit Fees

The DEP and the WMDs are authorized to reduce or waive permit processing fees for certain specified small counties and municipalities with a population of 25,000 or less, or any county or municipality not included within a metropolitan statistical area.[1] Fee reductions or waivers are approved on the basis of fiscal hardship or environmental need for a particular project or activity. The governing body must certify that the cost of the permit processing fee is a fiscal hardship due to one of the following factors:

- Per capita taxable value is less than the statewide average for the current fiscal year;
- Percentage of assessed property value that is exempt from ad valorem taxation is higher than the statewide average for the current fiscal year;
- Any condition specified in s. 218.503(1), F.S., which results in the county or municipality being in a state of financial emergency;
- Ad valorem operating millage rate for the current fiscal year is greater than 8 mills; or
- A financial condition that is documented in annual financial statements at the end of the current fiscal year and indicates an inability to pay the permit processing fee during that fiscal year.

The permit applicant must be the governing body of a county or municipality or a third party under contract with a county or municipality and the project for which the fee reduction or waiver is sought must serve a public purpose. If a permit processing fee is reduced, the total fee shall not exceed $100.

Airside Stormwater Management

The Federal Aviation Authority (FAA) provides grants to the Florida Department of Transportation (DOT) Aviation Office for airport airside improvements. The grants have 18-month time frames making it difficult to permit and complete a stormwater project within the required time to take advantage of the grant. A solution to the abbreviated time frame would be for the DEP to create a general environmental resource permit for stormwater systems serving airside activities at Florida's airports.

In 1977, the FAA set limitations on stormwater designs on airports to limit wildlife strikes in an advisory circular.[2] The FAA found that stormwater management systems known as "wet ponds" attracted birds and posed a threat to airline safety. In 1998, the DOT, the DEP and three WMDs outlined a study to evaluate airport runway, taxiway and apron stormwater quality. Another joint study by the DEP and the FAA has evaluated chemical loading characteristics of airside runoff

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[1] *See* U.S. Census Bureau, *Metropolitan and Micropolitan*, http://www.census.gov/population/www/metroareas/metrodef.html (last visited Nov. 30, 2011).

[2] U.S. Dep't of Transportation Federal Aviation Administration, Advisory Circular 150/5200-33, *Hazardous Wildlife Attractants On or Near Airports* (May 1997), available at http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/53bdbf1c5aa1083986256c690074ebab/$FILE/150-5200-33.pdf (last visited Nov. 11, 2011).

and how best management practices can help airports meet federal and state water quality standards.

A secondary phase of the study will be funded by the FAA once a general permit for these stormwater systems is developed and adopted. This phase will convert the wet pond at Orlando International Airport into a wet detention system that complies with the 1997 advisory circular. The system will be monitored for pollutant loading and remediation, including nutrients. About 30 percent of Florida's airports have soil and water table considerations that prevent the use of wet detention systems.[3]

The Community Redevelopment Act of 1969[4]

The Community Redevelopment Act of 1969 was developed to revitalize economically distressed areas in order to improve public welfare and increase the local tax base. The act provides a funding mechanism by which counties and municipalities may undertake community redevelopment.[5] It allows counties or municipalities to retain tax increment revenues from certain community taxing districts to fund redevelopment within a designated Community Redevelopment Area (CRA). To obtain this revenue, a local government must create a community redevelopment agency, designate an area or areas to be a CRA, create a community redevelopment plan, and establish a trust fund to receive the tax increment revenues.[6]

The Growth Policy Act of 1999

The Growth Policy Act authorizes local governments to designate urban infill and redevelopment areas for the purpose of stimulating investment in distressed urban areas and strengthening urban centers.[7] The Act defines "urban infill and redevelopment area" as an area or areas where:

- Public services such as water and wastewater, transportation, schools, and recreation are already available or are scheduled to be provided within five years.
- The area, or one or more neighborhoods within the area, suffers from pervasive poverty, unemployment, and general distress.
- The proportion of properties that are substandard, overcrowded, dilapidated, vacant or abandoned, or functionally obsolete is higher than the average for the local government.
- More than 50 percent of the area is within a quarter of a mile of a transit stop, or a sufficient number of such transit stops will be made available concurrent with the designation.
- The area includes or is adjacent to community redevelopment areas, brownfields, enterprise zones, or Main Street programs, or has been designated by the state or federal government as an urban redevelopment area or similar designation.[8]

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[3] *See generally*, Email from Eric H. Livingston, Program Administrator, NPDES Stormwater Section, Dep't of Environmental Protection, to analyst (Mar. 21, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation).
[4] See ch. 163, Part III, F.S.
[5] Section 163.353, F.S.
[6] *See supra* note 4.
[7] *See* ss. 163.2511 through 163.2523, F.S.
[8] Section 163.2514(2), F.S.

Pursuant to s. 163.2517, F.S., local governments that want to designate urban infill and redevelopment areas must develop plans describing redevelopment objectives and strategies or amend existing plans. Local governments must also adopt urban infill and redevelopment plans by ordinance and amend their comprehensive plans to delineate urban infill and redevelopment area boundaries.

Urban Stormwater Management

Unmanaged urban stormwater creates a wide variety of effects on Florida's surface and ground waters. Urbanization leads to:

- Compaction of soil,
- Addition of impervious surfaces such as roads and parking lots,
- Alteration of natural landscape features such as natural depressional areas that hold water, floodplains and wetlands,
- Construction of highly efficient drainage systems that alter the ability of the land to assimilate precipitation, and
- Pollutant loading of receiving water bodies from stormwater discharge.[9]

Urbanization within a watershed decreases the amount of rainwater that seeps into the soil. Rainwater is critical for recharging aquifers, maintaining water levels in lakes and wetlands, and maintaining spring and stream flows. The increased volume, speed, and pollutant loading in stormwater discharged from developed areas leads to flooding, water quality problems and loss of habitat.[10]

In 1982, to manage urban stormwater and minimize impacts to our natural systems, Florida adopted a technology-based rule requiring the treatment of stormwater to a specified level of pollutant load reduction for all new development. The rule included a performance standard for the minimum level of treatment and design criteria for best management practices (BMPs) that will achieve the performance standard. It also included a rebuttable presumption that discharges from a stormwater management system designed in accordance with the BMP design criteria would meet water quality standards.[11] The performance standard was to reduce post-development stormwater pollutant loading of Total Suspended Solids[12] by 80 percent, or by 95 percent for Outstanding Florida Waters (OFWs).[13]

In 1990 the DEP developed and implemented the State Water Resource Implementation Rule (originally known as the State Water Policy rule).[14] This rule sets forth the broad guidelines for the implementation of Florida's stormwater program and describes the roles of the DEP, the

[9] Florida Dep't of Environmental Protection, *State Stormwater Treatment Rule Development Background*, http://www.dep.state.fl.us/water/wetlands/erp/rules/stormwater/background.htm (last visited Nov. 30, 2011).
[10] Id.
[11] Id.
[12] Total Suspended Solid is listed as a conventional pollutant under s. 304(a)(4) of the federal Clean Water Act. A conventional pollutant is a water pollutant that is amenable to treatment by a municipal sewage treatment plant.
[13] Rule 62-302.700, F.A.C., provides that an OFW is a water body designated worthy of special protection because of its natural attributes. This special designation is applied to certain water bodies, and is intended to protect and preserve their existing states.
[14] *See supra* note 9. See also ch. 62-40, F.A.C.

WMDs and local governments. One of the primary goals of the program is to maintain the predevelopment stormwater characteristics of a site. The rule sets a minimum performance standard for stormwater treatment systems to remove 80 percent of the post development stormwater pollutant loading of pollutants "that cause or contribute to violations of water quality standards."[15]

The DEP and the WMDs jointly administer the environmental resource permit (ERP) program for activities that alter surface water flows.[16] Alteration or construction of new stormwater management systems in urban redevelopment areas is regulated by the ERP program pursuant to s. 373.413, F.S., and must comply with all other relevant sections of part IV of ch. 373, F.S.

Delegated Federal Permitting Programs in Florida

The total maximum daily load (TMDL) program is administered by the DEP under a delegated authority by the U.S. Environmental Protection Agency (EPA) contained in the federal Clean Water Act (CWA) and pursuant to s. 403.067(7), F.S.[17] A TMDL is the maximum allowable pollutant a water body can absorb and still maintain its intended purpose, e.g., fishable/swimmable. Under the CWA, TMDLs must be developed for all water bodies that are not meeting their classification standards and are deemed impaired. There can be multiple TMDLs for one water body if there are multiple pollutants contributing to water quality standards violations.[18]

Once a TMDL is established for an impaired water body, the DEP creates a basin management action plan (BMAP) in cooperation with local stakeholders.[19] BMAPs are the blueprints used to create restoration and recovery strategies for an impaired water body. Activities, permitted and otherwise, contributing to pollutant loading of an impaired water body are assessed in order to develop strategies to reduce loading. These strategies may include reducing permit limits, developing BMPs and creating or revising conservation programs. Local stakeholder input and commitment to the BMAP are crucial to ensure recovery of an impaired water body.[20]

In addition to the TMDL and BMAP programs, the DEP also administers the National Pollutant Discharge Elimination System (NPDES) permitting program under delegated authority from the EPA and pursuant to s. 403.0885, F.S. The NPDES permitting program regulates point source discharges of stormwater into surface waters of the state from certain municipal, industrial and construction activities.[21]

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[15] *See supra* note 9.
[16] *See* ch. 373, Part IV, F.S. See also Florida Dep't of Environmental Protection, *Environmental Resource Permitting (ERP) Program*, http://www.dep.state.fl.us/water/wetlands/erp/index.htm (last visited Nov. 30, 2011).
[17] 33 U.S.C. s. 1342. *See also* s. 303(d) of the federal Clean Water Act.
[18] Florida Dep't of Environmental Protection, *The Total Maximum Daily Load Program – Overview* (Jan. 20, 2003), *available at* http://www.dep.state.fl.us/water/tmdl/docs/TMDL_Program_Overview.pdf (last visited Dec. 1, 2011).
[19] Florida Dep't of Environmental Protection, *Total Maximum Daily Loads*, http://www.dep.state.fl.us/water/tmdl/ (last visited Dec. 1, 2011).
[20] Florida Dep't of Environmental Protection, *Watershed Management*, http://www.dep.state.fl.us/water/watersheds/bmap.htm (last visited Dec. 1, 2011).
[21] Florida Dep't of Environmental Protection, *NPDES Stormwater Program*, http://www.dep.state.fl.us/water/stormwater/npdes/ (last visited Jan. 13, 2012).

III. Effect of Proposed Changes:

Section 1 amends s. 218.075, F.S., allowing an entity created by special act, local ordinance or interlocal agreement of counties or municipalities that are entitled to a permit processing fee waiver or reduction to also receive a waiver or reduction.

Section 2 amends s. 373.118, F.S., directing the DEP to initiate rulemaking to adopt a general permit for stormwater management systems serving airports. The permit applies statewide and may be administered by any WMD or delegated local government. The bill specifies that no additional rulemaking is required and the rules are not subject to any special rulemaking requirements related to small business.

Section 3 creates s. 373.4131, F.S., addressing conceptual permits for urban redevelopment projects. The bill allows counties and municipalities creating urban redevelopment areas or urban infill and redevelopment areas to adopt stormwater adaptive management plans that address stormwater quality and quantity discharging from those areas. A local government that adopts a plan may obtain a conceptual permit from a WMD or the DEP on the basis of its stormwater adaptive management plan.

The bill directs the WMDs, in consultation with the DEP, to establish the conceptual permit. The conceptual permit:

- Allows discharges from an urban redevelopment area created under ch. 163, F.S., or an urban infill and redevelopment area designated under s. 163.2517, F.S., to continue up to the maximum rate and volume in that area as of the date a stormwater adaptive management plan was adopted.
- Presumes that stormwater discharges from an urban redevelopment area that result in a net improvement of discharge quality as compared to discharges that existed at the time the stormwater adaptive management plan was adopted do not cause or contribute to violations of water quality criteria.
- Cannot contain additional or more stringent limitations on stormwater discharges than those in this section of the bill.
- Must be issued for a duration of at least 20 years, and may be renewed, unless an applicant requests a shorter duration.

The bill directs that urban redevelopment projects that meet all requirements qualify for a noticed general permit for construction and operation of the permitted system.

Finally, the bill requires areas covered by a conceptual permit to adhere to federally delegated pollution abatement programs administered by the state pursuant to ss. 403.0885 and 403.067(7), F.S. These sections address the NPDES permitting program, and the total maximum daily loads and basin management action plan programs, respectively.

Section 4 requires that a challenge to a consolidated environmental resource permit or associated variance or any sovereign submerged lands authorization proposed or issued by DEP in connection with deepwater ports be conducted within 30 days after a party files a motion for summary hearing. Also requires the DEP to issue the final order within 45 working days after receipt of the administrative law judge's recommended order.

Section 5 provides an effective date of July 1, 2012 except where otherwise expressly stated.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

An entity created by special act, local ordinance or interlocal agreement of a county or municipality may receive a reduction or waiver of permit processing fees. The DEP's fee revenues from such permits may be reduced; however, the impact is indeterminate.

The DOT may more fully take advantage of the FAA's grants to address stormwater management systems for airside activities. Since rulemaking has not yet taken place, the impact is indeterminate.

The DEP and WMDs will be required to expend funds to create and implement the permitting program created by this bill. It is expected that the DEP and WMDs can absorb these costs with existing staff and resources. Additionally, local governments may have to expend funds to modify plans for stormwater management plans in urban redevelopment areas. It is also expected that local governments can absorb these costs with existing staff and resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Budget Subcommittee on General Government Appropriations on February 28, 2012:

- Requires that a challenge to a consolidated environmental resource permit or associated variance or any sovereign submerged lands authorization proposed or issued by DEP in connection with deepwater ports be conducted within 30 days after a party files a motion for summary hearing; and
- Requires the DEP to issue the final order within 45 working days after receipt of the administrative law judge's recommended order.

CS/CS by Transportation on January 26, 2012:

Allows conceptual permits for urban redevelopment projects to be issued for periods longer than 20 years and allows for renewal of such permits.

CS by Community Affairs on January 12, 2012:

- Allows a county or municipality that has created a community redevelopment area or an urban infill and redevelopment area to adopt a stormwater adaptive management plan;
- Authorizes the WMDs, in consultation with the DEP, to establish a conceptual permit;
- Deletes the definition for "stormwater management plan";
- Removes the renewal option for a 20-year conceptual permit;
- Specifies that areas meeting the criteria in the conceptual permit qualify for a noticed general permit;
- Clarifies that the noticed general permit authorizes construction and operation for the duration of the conceptual permit; and
- Requires areas covered by a conceptual permit adhere to NPDES, TMDL and BMAP programs.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
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	.	

The Committee on Budget Subcommittee on General Government Appropriations (Latvala) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete line 129
4 and insert:
5 Section 4. Notwithstanding s. 120.569, s. 120.57, or s.
6 373.427, Florida Statutes, or any other provision of law to the
7 contrary, a challenge to a consolidated environmental resource
8 permit or any associated variance or any sovereign submerged
9 lands authorization proposed or issued by the Department of
10 Environmental Protection in connection with the state's
11 deepwater ports, as listed in s. 403.021(9), Florida Statutes,
12 shall be conducted pursuant to the summary hearing provisions of

866662

13 s. 120.574, Florida Statutes. However, the summary proceeding
14 shall be conducted within 30 days after a party files a motion
15 for a summary hearing, regardless of whether the parties agree
16 to the summary proceeding, and the administrative law judge's
17 decision shall be in the form of a recommended order and does
18 not constitute final agency action of the department. The
19 department shall issue the final order within 45 working days
20 after receipt of the administrative law judge's recommended
21 order. The summary hearing provisions of this section apply to
22 pending administrative proceedings. However, the provisions of
23 s. 120.574(1)(b) and (d), Florida Statutes, do not apply to
24 pending administrative proceedings. This section shall take
25 effect upon this act becoming a law.
26 Section 5. Except as otherwise expressly provided in this
27 act and except for this section, which shall take effect upon
28 this act becoming a law, this act shall take effect July 1,
29 2012.
30
31 ========== T I T L E A M E N D M E N T ==========
32 And the title is amended as follows:
33 Delete line 27
34 and insert:
35 programs; requiring a challenge to a consolidated
36 environmental resource permit or associated variance
37 or any sovereign submerged lands authorization
38 proposed or issued by the Department of Environmental
39 Protection in connection with specified deepwater
40 ports to be conducted pursuant specified summary
41 hearing provisions and within a certain timeframe;

866662

42 providing that the administrative law judge's decision
43 is a recommended order and does not constitute final
44 agency action of the department; requiring the
45 department to issue the final order within a certain
46 timeframe; providing applicability; providing
47 effective dates.

By the Committees on Transportation; and Community Affairs; and Senator Storms

596-02447-12 2012602c2

A bill to be entitled

An act relating to stormwater management permits; amending s. 218.075, F.S.; allowing an entity created by special act, local ordinance, or interlocal agreement of a county or municipality to receive certain reduced or waived permit processing fees; amending s. 373.118, F.S.; requiring that the Department of Environmental Protection initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports; providing for statewide application of the general permit; providing for any water management district or delegated local government to administer the general permit; providing that the rules are not subject to any special rulemaking requirements relating to small business; creating s. 373.4131, F.S.; authorizing certain municipalities and counties to adopt stormwater adaptive management plans and obtain conceptual permits for urban redevelopment projects; providing requirements for establishment of such permits by water management districts in consultation with the Department of Environmental Protection; providing that certain urban redevelopment projects qualify for a noticed general permit; providing that provisions may not conflict with existing federally delegated pollution reduction programs; providing an effective date.

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

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

596-02447-12 2012602c2

Section 1. Section 218.075, Florida Statutes, is amended to read:

218.075 Reduction or waiver of permit processing fees.—Notwithstanding any other provision of law, the Department of Environmental Protection and the water management districts shall reduce or waive permit processing fees for counties with a population of 50,000 or fewer ~~less~~ on April 1, 1994, until such counties exceed a population of 75,000 and municipalities with a population of 25,000 or fewer; an entity created by special act, local ordinance, or interlocal agreement of such counties or municipalities; ~~less,~~ or any county or municipality not included within a metropolitan statistical area. Fee reductions or waivers shall be approved on the basis of fiscal hardship or environmental need for a particular project or activity. The governing body must certify that the cost of the permit processing fee is a fiscal hardship due to one of the following factors:

(1) Per capita taxable value is less than the statewide average for the current fiscal year;

(2) Percentage of assessed property value that is exempt from ad valorem taxation is higher than the statewide average for the current fiscal year;

(3) Any condition specified in s. 218.503(1) which results in the county or municipality being in a state of financial emergency;

(4) Ad valorem operating millage rate for the current fiscal year is greater than 8 mills; or

(5) A financial condition that is documented in annual

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

59 financial statements at the end of the current fiscal year and
60 indicates an inability to pay the permit processing fee during
61 that fiscal year.
62
63 The permit applicant must be the governing body of a county or
64 municipality, ~~or~~ a third party under contract with a county or
65 municipality, or an entity created by special act, local
66 ordinance, or interlocal agreement and the project for which the
67 fee reduction or waiver is sought must serve a public purpose.
68 If a permit processing fee is reduced, the total fee may ~~shall~~
69 not exceed $100.
70 Section 2. Subsection (6) is added to section 373.118,
71 Florida Statutes, to read:
72 373.118 General permits; delegation.—
73 (6) By July 1, 2012, the department shall initiate
74 rulemaking to adopt a general permit for stormwater management
75 systems serving airside activities at airports. The general
76 permit applies statewide and shall be administered by any water
77 management district or any delegated local government pursuant
78 to the operating agreements applicable to part IV of this
79 chapter, with no additional rulemaking required. These rules are
80 not subject to any special rulemaking requirements related to
81 small business.
82 Section 3. Section 373.4131, Florida Statutes, is created
83 to read:
84 373.4131 Conceptual permits for urban redevelopment
85 projects.—
86 (1) A municipality or county that has created a community
87 redevelopment area or an urban infill and redevelopment area

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

88 pursuant to chapter 163 may adopt a stormwater adaptive
89 management plan that addresses the quantity and quality of
90 stormwater discharges for the area and may obtain a conceptual
91 permit from a water management district or the Department of
92 Environmental Protection.
93 (2) The conceptual permit shall be established by a water
94 management district in consultation with the department and:
95 (a) Must allow for the rate and volume of stormwater
96 discharges for stormwater management systems of urban
97 redevelopment projects located within a community redevelopment
98 area created under part III of chapter 163 or an urban infill
99 and redevelopment area designated under s. 163.2517 to continue
100 up to the maximum rate and volume of stormwater discharges
101 within the area as of the date the stormwater adaptive
102 management plan was adopted.
103 (b) Must presume that stormwater discharges for stormwater
104 management systems of urban redevelopment projects located
105 within a community redevelopment area created under part III of
106 chapter 163 or an urban infill and redevelopment area designated
107 under s. 163.2517 which demonstrate a net improvement of the
108 quality of the discharged water that existed as of the date the
109 stormwater adaptive management plan was adopted for any
110 applicable pollutants of concern in the receiving water body do
111 not cause or contribute to violations of water quality criteria.
112 (c) May not prescribe additional or more stringent
113 limitations concerning the quantity and quality of stormwater
114 discharges from stormwater management systems than provided in
115 this section.
116 (d) Shall be issued for a duration of at least 20 years and

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

117 may be renewed, unless a shorter duration is requested by the
118 applicant.
119 (3) Urban redevelopment projects that meet the criteria
120 established in the conceptual permit pursuant to this section
121 qualify for a noticed general permit that authorizes
122 construction and operation for the duration of the conceptual
123 permit.
124 (4) Notwithstanding subsections (1)-(3), permits issued
125 pursuant to this section may not conflict with the requirements
126 of a federally approved program pursuant to s. 403.0885 or with
127 the implementation of s. 403.067(7) regarding total maximum
128 daily loads and basin management plans.
129 Section 4. This act shall take effect July 1, 2012.

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

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2-28-12
Date

602
Bill Number

Barcode

Name C. Scott Dudley

Phone 222-9684

Address 301 S. Bronough
Street

E-mail

Tall FL 32301
City State Zip

Job Title

Speaking: ☑ For ☐ Against ☐ Information

Appearing at request of Chair ☐

Subject

Representing FLORIDA LEAGUE of CITIES

Lobbyist registered with Legislature: ☑ ~~Yes~~ ☐ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from ____ ___.m. to ____ ___.m.

S-001 (04/14/10)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/SB 624

INTRODUCER: Budget Subcommittee on General Government Appropriations; Senator Richter

SUBJECT: Household Pharmaceuticals Collection and Disposal Trust Fund/DEP

DATE: February 28, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman	EP	**Fav/1 amendment**
2.	Looke	Stovall	HR	**Favorable**
3.	Pigott	DeLoach	BGA	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	x	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill creates the Household Pharmaceuticals Collection and Disposal Trust Fund within the Department of Environmental Protection (DEP) and provides for sources, purposes and management of the funds. This bill is contingent upon passage of SB 626, which creates a grant program for household pharmaceuticals collection and disposal.

As required by the constitution, the trust fund takes effect July 1, 2012, and is terminated on July 1, 2016, but only if enacted by a three-fifths vote of the membership of each house of the Legislature.

This bill creates section 403.7451, Florida Statutes.

II. Present Situation:

Section 19(f), Art. III of the State Constitution, requires that every trust fund be created by a three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of creating that trust fund. The Constitution also provides that all newly created trust funds terminate not more than four years after the initial creation unless recreated.

III. Effect of Proposed Changes:

Section 1 creates the Household Pharmaceuticals Collection and Disposal Trust Fund within the DEP. Revenues deposited into the fund will be generated from a surcharge of $21 in addition to any sanction for violation of sections 893.13, 893.135, or 893.1351, F.S. relating to possession or trafficking of a controlled substance. The funds deposited into the trust fund will be used for the grant program established in s. 403.745, F.S., by SB 626 to reimburse local law enforcement agencies for the expenses associated with the collection and disposal of household pharmaceuticals. The trust fund sunsets on July 1, 2016, unless terminated sooner. The trust fund must be reviewed prior to its scheduled termination as provided in ss. 215.3206 (1) and (2), F.S.

Section 2 provides an effective date of July 1, 2012, and is contingent upon the passage of SB 626 or similar legislation becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

Article III, section 19(f)(1), of the Florida Constitution, provides no trust fund of the state or other public body may be created without three-fifths vote of the membership of each house of the Legislature in a separate bill for that purpose only.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Budget Subcommittee on General Government Appropriations on February 28, 2012:

- Clarifies that the Household Pharmaceuticals Collection and Disposal Trust Fund is contingent upon passage of SB 626 or similar legislation becoming law.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

304776

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/06/2012	.	
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The Committee on Environmental Preservation and Conservation (Detert) recommended the following:

1 **Senate Amendment**
2
3 Delete line 37
4 and insert:
5 Senate Bill 626 or similar legislation is adopted in the same

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/SB 626

INTRODUCER: Budget Subcommittee on General Government Appropriations; Senator Richter

SUBJECT: Collection and Disposal of Household Pharmaceuticals

DATE: February 28, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman	EP	**Fav/1 amendment**
2.	Looke	Stovall	HR	**Favorable**
3.	Pigott	DeLoach	BGA	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	x	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill requires the Department of Environmental Protection (DEP) to establish a grant program to reimburse local law enforcement agencies for the expenses associated with the collection and proper disposal of household pharmaceuticals.

This bill also imposes a new $21 surcharge against persons who violate certain statutes regulating controlled substances in order to pay for the grant program. Of the $21surcharge, $20 will fund the grant program, and $1 will be retained by the clerk of the court that imposed the surcharge.

This bill creates sections 403.745 and 938.16, Florida Statutes.

II. Present Situation:

According to the DEP, there are two main issues related to pharmaceutical disposal, drug diversion and environmental impacts.

Drug Diversion

A recent Florida Department of Law Enforcement report found that legal prescription drugs were found to be the cause of more deaths than illegal drugs[1] and "studies show that a majority of prescription drugs are obtained from family and friends."[2] Section 499.005, F.S., prohibits certain specific acts regarding prescription drugs including, but not limited to, "[t]he sale or transfer of a prescription drug to a person that is not authorized under the law of the jurisdiction in which the person receives the drug to purchase or possess prescription drugs from the person selling or transferring the prescription drug…[and the] purchase or receipt of a prescription drug from a person that is not authorized under this chapter to distribute prescription drugs to that purchaser or recipient." Such acts are criminalized and punishable as provided in s. 499.0051, F.S.

Controlled substances with the potential for abuse are regulated under ch. 893, F.S., which sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act, and classifies controlled substances into five categories, known as schedules. The distinguishing factors between the schedule of one substance when compared with another is the potential for abuse, as defined in s. 893.02(2), F.S., and whether there is a currently accepted medical use. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances.[3]

- A **Schedule I** substance has a high potential for abuse, currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards. Examples: heroin and methaqualone.

- A **Schedule II** substance has a high potential for abuse but also has a currently accepted but severely restricted medical use in treatment in the United States. Abuse of a Schedule II substance may lead to severe psychological or physical dependence. Examples: cocaine and morphine.

- A **Schedule III** substance has less potential for abuse than a Schedule I or II substance and a currently accepted medical use in treatment in the United States. However, abuse of a Schedule III substance may lead to varying degrees of psychological dependence or, in the case of anabolic steroids, to physical damage. Examples: lysergic acid; ketamine; and some anabolic steroids.

- A **Schedule IV** substance has a low potential for abuse relative to the substances in Schedule III and a currently accepted medical use in treatment in the United States. Abuse of a Schedule IV substance may lead to limited physical or psychological dependence. Examples: alprazolam; diazepam; and phenobarbital.

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[1] Florida Department of Law Enforcement, *Drugs Identified in Deceased Persons by Medical Examiners,* 2010.
[2] Florida Department of Environmental Protection, *Draft Bill Analysis on SB 626*, 1/20/2012, on file with the Senate Health Regulation Committee.
[3] *See*, s. 893.03, F.S.

- A **Schedule V** substance has a low potential for abuse and a currently accepted medical use in treatment in the United States. Abuse of a Schedule V substance may lead to limited physical or psychological dependence. Examples: low dosage levels of codeine; certain stimulants; and certain narcotic compounds.

Section 893.13, F.S., makes it unlawful for any person to sell, manufacture, deliver, or possess with intent to sell, manufacture, or deliver a controlled substance except as authorized by ch. 893 and 499, F.S.; s. 893.135, F.S., relates to trafficking in controlled substances; and s. 893.1351, F.S., provides that a person may not own or lease a place with the knowledge that it will be used for the purpose of trafficking in a controlled substance. A person who violates ch. 893, F.S., may be found guilty of committing a crime ranging anywhere from a Misdemeanor of the First Degree up to and including a Felony of the First Degree.

Environmental Impacts

The environmental impacts of improper disposal of pharmaceuticals are harder to demonstrate empirically. Recently, a national study has found certain pharmaceuticals in Florida's waters at concentrations of parts per million, which is on par with many other water bodies across the nation.[4] However, due to widespread use of drugs, such as antibiotics, in agriculture and animal husbandry, and the low metabolism rate of some of these substances in the human body, it is difficult to pinpoint exactly how these pharmaceuticals are being introduced into the water.[5]

Collection Programs

Currently, no standardized collection program for household pharmaceuticals exists for the whole state of Florida and many people, instead of disposing of expired or unused household pharmaceuticals properly, simply throw them out or flush them down the toilet. Local jurisdictions occasionally run such collection programs, though. For example, the Broward County Sherriff's Office runs Operation Medicine Cabinet which sets up locations and times, at least once a month, to allow participants to "drop off prescription drugs with no questions asked and receive a $5 gift card to local stores and pharmacies."[6] Also, other law enforcement agencies periodically collaborate with retail stores to host community events to collect and safely dispose of expired or unused pharmaceuticals. According to the DEP, at a pharmaceutical collection event in Tallahassee held in October of 2011, citizens were polled on how they typically disposed of expired or unused pharmaceuticals assuming a collection event was not available. Of the citizens polled, 26 percent reported that they threw the pharmaceuticals in the trash, 18 percent reported that they flushed them down the toilet, and 54 percent reported that they simply stored them.[7]

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[4] Id.
[5] Id.
[6] Broward Sherriff's Office, *Operation Medicine Cabinet*, found at http://sheriff.org/safety/operation_medicine_cabinet/, last viewed on Feb. 20, 2012.
[7] Id.

III. Effect of Proposed Changes:

Section 1 creates s. 403.745, F.S., which establishes a grant program to reimburse local law enforcement agencies for the expenses associated with the collection and disposal of household pharmaceuticals. To be eligible for a grant, a law enforcement agency must conduct the collection and disposal of household pharmaceuticals in a manner consistent with the DEP rules and state and federal requirements.

Section 2 creates s. 938.16, F.S., in order to fund the household pharmaceuticals collection and disposal grant program. It provides that, in addition to any sanction imposed for a violation of ss. 893.13, 893.135, or 893.1351, F.S., the court must impose a surcharge of $21. Payment of the surcharge will be a condition of probation, community control, or any other court-ordered supervision. Twenty dollars of the surcharge shall be remitted to the DOR to be deposited into the Household Pharmaceuticals Collection and Disposal Trust Fund established in s. 403.7451, F.S., and the clerk of the court will retain $1 of each surcharge that they collect as a service charge.

Section 3 establishes an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Staff estimate that in 2011 approximately 22,116 or more violations occurred related to ss. 893.13, 893.135, or 893.1351, F.S. Based on this estimate, approximately $464,436 would be generated from the $21 surcharge, of which, $442,320 would be deposited into the Household Pharmaceuticals Collection and Disposal Trust Fund, created in SB 624. A impact conference is needed to determine the estimated revenue.

B. Private Sector Impact:

This bill may provide new opportunities for businesses that provide collection and disposal services of prescription drugs.

This bill will impose an additional $21 surcharge on persons who violate ss. 893.13, 893.135, or 893.1351, F.S.

C. Government Sector Impact:

This bill will create a grant program within the DEP. The DEP has indicated that they can administer this program within existing staff and resources but would require budget authority to distribute the revenues generated by the surcharge. Additional budget authority may be provided pursuant to the provisions in chapter 216, F.S. or through the agency Legislative Budget Request.

If local law enforcement agencies choose to hold collection events, their costs would be reimbursed through the grant program. It is anticipated that there would be no additional costs to local governments other than the costs associated with managing the grant receipts and processing requests for reimbursement under the grants. However, according to the Florida Association of County Clerks this bill is expected to have an indeterminate fiscal impact on the various offices of the clerks of county courts that process the new surcharge[8] due to the costs of processing and the $1 surcharge which may offset such costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Budget Subcommittee on General Government Appropriations on February 28, 2012:

- Clarifies that $20 of the surcharge shall be remitted to the Department of Revenue for deposit into the Household Pharmaceuticals Collection and Disposal Trust Fund.

[8] Association of County Clerks, *RE: SENATE BILL # 626 Collection and Disposal of Household Pharmaceuticals*, Nov. 8, 2011, on file with the Senate Health Regulation Committee.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Richter

37-00684-12 2012626__

A bill to be entitled

An act relating to the collection and disposal of household pharmaceuticals; creating s. 403.745, F.S.; requiring the Department of Environmental Protection to establish a grant program to reimburse local law enforcement agencies for the expenses associated with the collection and disposal of household pharmaceuticals; providing eligibility requirements; creating s. 938.16, F.S.; requiring that the court impose an additional surcharge for specified offenses; providing for the proceeds of the surcharge to be deposited into the Household Pharmaceuticals Collection and Disposal Trust Fund; providing for the clerk of the court to retain a service charge; providing an effective date.

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

Section 1. Section 403.745, Florida Statutes, is created to read:

403.745 Household pharmaceuticals collection and disposal grant program.—The department shall establish a grant program to reimburse local law enforcement agencies for the expenses associated with the collection and disposal of household pharmaceuticals. To be eligible for a grant, a law enforcement agency must conduct the collection and disposal of household pharmaceuticals in a manner consistent with applicable rules of the department and applicable state and federal requirements.

Section 2. Section 938.16, Florida Statutes, is created to

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

37-00684-12 2012626__

read:

938.16 Additional cost to fund the household pharmaceuticals collection and disposal grant program.—In addition to any sanction imposed for a violation of s. 893.13, s. 893.135, or s. 893.1351, the court shall impose a surcharge of $21. Payment of the surcharge shall be a condition of probation, community control, or any other court-ordered supervision. Twenty dollars of the surcharge shall be deposited into the Household Pharmaceuticals Collection and Disposal Trust Fund established in s. 403.7451. The clerk of the court shall retain $1 of each surcharge that the clerk of the court collects as a service charge of the clerk's office.

Section 3. This act shall take effect July 1, 2012.

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

631912

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/06/2012	.	
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	.	

The Committee on Environmental Preservation and Conservation (Detert) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete line 37
4 and insert:
5 supervision. Twenty dollars of the surcharge shall be remitted
6 to the Department of Revenue for deposit
7
8 ========== T I T L E A M E N D M E N T ==========
9 And the title is amended as follows:
10 Delete line 12
11 and insert:
12 remitted to the Department of Revenue for deposit into

631912

13 the Household Pharmaceuticals

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: SB 648

INTRODUCER: Senator Hays and others

SUBJECT: Florida Climate Protection Act

DATE: February 27, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	**Favorable**
2.	Uchino	Yeatman	EP	**Favorable**
3.	Pigott	DeLoach	BGA	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

The bill repeals s. 403.44, F.S., known as the Florida Climate Protection Act (act), which authorizes the Department of Environmental Protection (DEP) to adopt rules to create a cap-and-trade regulatory program to reduce greenhouse gas emissions. It also deletes a related provision in s. 366.8255, F.S., on the recovery of costs associated with greenhouse gas registries.

The bill repeals s. 403.44 and substantially amends s. 366.8255 of the Florida Statutes.

II. Present Situation:

Section 403.44, F.S., known as the Florida Climate Protection Act, was created in 2008. The statute contains legislative findings that it is in the best interest of the state to document, to the greatest extent practicable, greenhouse gas emissions and to pursue a market-based emissions abatement program, such as cap and trade, to address greenhouse gas emissions reductions. It defines the following terms:

- "Allowance" means a credit issued by the DEP through allotments or auction that represents an authorization to emit specific amounts of greenhouse gases, as further defined in rule.
- "Cap and trade" or "emissions trading" means an administrative approach used to control pollution by providing a limit on total allowable emissions, providing for allowances to emit pollutants, and providing for the transfer of the allowances among pollutant sources as a means of compliance with emission limits.
- "Greenhouse gas" or "GHG" means carbon dioxide, methane, nitrous oxide, and fluorinated gases such as hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.
- "Leakage" means the offset of emission abatement that is achieved in one location subject to emission control regulation by increased emissions in unregulated locations.

- "Major emitter" means an electric utility regulated under ch. 403, F.S., which includes all electric utilities.

Initially, each major emitter was required to use The Climate Registry for purposes of emission registration and reporting. The DEP was required to establish the methodologies, reporting periods, and reporting systems that were to be used when major emitters report to The Climate Registry. In 2010, section 2 of chapter 2010-143, Laws of Florida, deleted these requirements.

The act authorizes the DEP to adopt rules for a cap-and-trade regulatory program to reduce greenhouse gas emissions from major emitters. It specifically provides that, when the DEP is developing the rules, it must consult with the Florida Energy and Climate Commission and the Florida Public Service Commission and may consult with the Governor's Action Team for Energy and Climate Change. The act provides that the DEP may not adopt rules until after January 1, 2010, and the rules may not become effective until ratified by the Legislature.

The act requires that the rules of the cap-and-trade regulatory program include the following provisions:

- A statewide limit or cap on the amount of greenhouse gases emitted by major emitters.
- Methods, requirements, and conditions for allocating the cap among major emitters.
- Methods, requirements, and conditions for emissions allowances and the process for issuing emissions allowances.
- The relationship between allowances and the specific amounts of greenhouse gas emissions they represent.
- The length of allowance periods and the time over which entities must account for emissions and surrender allowances equal to emissions.
- The timeline of allowances from the initiation of the program through 2050.
- A process for the trade of allowances between major emitters, including a registry, tracking, or accounting system for such trades.
- Cost containment mechanisms to reduce price and cost risks associated with the electric generation market in this state.
- A process to allow the DEP to exercise its authority to discourage leakage of GHG emissions to neighboring states attributable to the implementation of this program.
- Provisions for a trial period on the trading of allowances before full implementation of a trading system.

The statute requires that the following factors be considered in recommending and evaluating proposed features of the cap-and-trade system:

- The overall cost-effectiveness of the cap-and-trade system in combination with other policies and measures in meeting statewide targets.
- Minimization of the administrative burden to the state of implementing, monitoring and enforcing the program.
- Minimization of the administrative burden on entities covered under the cap.
- The impacts on electricity prices for consumers.
- The specific benefits to the state's economy for early adoption of a cap-and-trade system for greenhouse gases in the context of federal climate change legislation and the development of new international compacts.

- The specific benefits to the state's economy associated with the creation and sale of emissions offsets from economic sectors outside of the emissions cap.
- The potential effects on leakage if economic activity relocates out of the state.
- The effectiveness of the combination of measures in meeting identified targets.
- The implications for near-term periods of long-term targets specified in the overall policy.
- The overall costs and benefits of a cap-and-trade system to the state economy.
- Strategies to moderate financial impacts to low-income consumers that result from energy price increases.
- Consistency of the program with other state and possible federal efforts.
- The feasibility and cost-effectiveness of extending the program scope as broadly as possible among emitting activities and sinks in Florida.
- Evaluation of the conditions under which Florida should consider linking its trading system to the systems of other states or other countries and how that might be affected by the potential inclusion in the rule of a safety valve.

The act also states that, "recognizing that the international, national, and neighboring state policies and the science of climate change will evolve, prior to submitting the proposed rules to the Legislature for consideration," the DEP must submit the proposed rules to the Florida Energy and Climate Commission, which must review the proposed rules and submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the DEP. The report must address:

- The overall cost-effectiveness of the proposed cap-and-trade system in combination with other policies and measures in meeting statewide targets.
- The administrative burden to the state of implementing, monitoring, and enforcing the program.
- The administrative burden on entities covered under the cap.
- The impacts on electricity prices for consumers.
- The specific benefits to the state's economy for early adoption of a cap-and-trade system for greenhouse gases in the context of federal climate change legislation and the development of new international compacts.
- The specific benefits to the state's economy associated with the creation and sale of emissions offsets from economic sectors outside of the emissions cap.
- The potential effects on leakage if economic activity relocates out of the state.
- The effectiveness of the combination of measures in meeting identified targets.
- The economic implications for near-term periods of short-term and long-term targets specified in the overall policy.
- The overall costs and benefits of a cap-and-trade system to the economy of the state.
- The financial impacts to low-income consumers that result from energy price increases.
- The consistency of the program with other state and possible federal efforts.
- The evaluation of the conditions under which the state should consider linking its trading system to the systems of other states or other countries and how that might be affected by the potential inclusion in the rule of a safety valve.
- The timing and changes in the external environment, such as proposals by other states or implementation of a federal program that would spur reevaluation of the Florida program.

- The conditions and options for eliminating the Florida program if a federal program were to supplant it.
- The need for a regular reevaluation of the progress of other emitting regions of the country and of the world, and whether other regions are abating emissions in a commensurate manner.
- The desirability and possibility of broadening the scope of the state's cap-and-trade system at a later date to include more emitting activities as well as sinks in Florida, the conditions that would need to be met to do so, and how the program would encourage these conditions to be met, including developing monitoring and measuring techniques for land use emissions and sinks, regulating sources upstream, and other considerations.

Section 366.8255, F.S., authorizes an investor-owned electric utility to recover costs of compliance with federal, state, or local environmental laws or regulations. When the act was enacted in 2008, this section was amended to allow recovery of costs or expenses prudently incurred for the quantification, reporting, and third-party verification as required for participation in greenhouse gas emission registries for greenhouse gases.

III. Effect of Proposed Changes:

The bill repeals s. 403.44, F.S., known as the Florida Climate Protection Act, and deletes the provision in s. 366.8255, F.S., relating to recovery of costs associated with greenhouse gas registries.

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Electric utilities will not incur costs of a state cap-and-trade program if this bill is passed. Consequently, ratepayers will not be required to pay for such costs.

C. Government Sector Impact:

According to the DEP, the provisions of s. 403.44, F.S., have not been implemented. If this legislation is passed, the DEP will not incur costs associated with rulemaking, implementation and recurring programmatic costs as required for a cap-and-trade regulatory program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Hays

20-00707-12 2012648__

A bill to be entitled

An act relating to the Florida Climate Protection Act; repealing s. 403.44, F.S., relating to a cap-and-trade regulatory program to reduce greenhouse gas emissions from electric utilities; amending s. 366.8255, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Section 403.44, Florida Statutes, is repealed.

Section 2. Paragraph (d) of subsection (1) of section 366.8255, Florida Statutes, is amended to read:

366.8255 Environmental cost recovery.—

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

(d) "Environmental compliance costs" includes all costs or expenses incurred by an electric utility in complying with environmental laws or regulations, including, but not limited to:

1. Inservice capital investments, including the electric utility's last authorized rate of return on equity thereon.

2. Operation and maintenance expenses.

3. Fuel procurement costs.

4. Purchased power costs.

5. Emission allowance costs.

6. Direct taxes on environmental equipment.

7. Costs or expenses prudently incurred by an electric utility pursuant to an agreement entered into on or after the effective date of this act and prior to October 1, 2002, between

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20-00707-12 2012648__

the electric utility and the Florida Department of Environmental Protection or the United States Environmental Protection Agency for the exclusive purpose of ensuring compliance with ozone ambient air quality standards by an electrical generating facility owned by the electric utility.

~~8. Costs or expenses prudently incurred for the quantification, reporting, and third-party verification as required for participation in greenhouse gas emission registries for greenhouse gases as defined in s. 403.44.~~

8.~~9.~~ Costs or expenses prudently incurred for scientific research and geological assessments of carbon capture and storage conducted in this state for the purpose of reducing an electric utility's greenhouse gas emissions when such costs or expenses are incurred in joint research projects with Florida state government agencies and Florida state universities.

Section 3. This act shall take effect July 1, 2012.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: SB 676

INTRODUCER: Senator Smith

SUBJECT: Worker's Compensation Certificate-of-Exemption Process

DATE: February 27, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	**Favorable**
2.	Philo	Hrdlicka	CM	**Favorable**
3.	Betta	DeLoach	BGA	**Favorable**
4.				
5.				
6.				

I. Summary:

SB 676 amends laws related to the workers' compensation certificate of exemption process. This bill addresses three issues:

First, a full-time member of a non-construction limited liability company (LLC) is currently not an "employee" as defined by workers' compensation law. The bill allows such a person to elect to be included in the definition of "employee" by mailing a notice to that effect to the Department of Financial Services (DFS).

Second, corporate officers (both generally and specifically as to the construction industry) are defined as "employees" under current workers' compensation law, but may elect to be exempt from the law by mailing written notice of the election to the DFS. Construction industry corporate officers making such an election must currently submit certain additional information and documentation. The bill streamlines the process by providing for electronic submission (as opposed to paper mailing), and alters the required information and documentation to facilitate such submission.

Third, the resulting certificates of election issued by the DFS are currently valid for two years from issuance in the construction industry. The bill applies this two year limit to all certificates (not just to those issued in the construction industry) issued on or after January 1, 2013.

This bill substantially amends sections 440.02 and 440.05, F.S.

II. Present Situation:

Non-Construction LLCs

Under ch. 440, F.S., Florida employers are required to maintain workers' compensation coverage for "employees." Full-time sole proprietors or partners not engaged in the construction industry may include themselves in the definition of "employee" by mailing a notice of election (opt-in) as provided in section 440.05(2), F.S. If no notice is made, the sole proprietor or partner shall not be considered an employee and not eligible for workers' compensation benefits. Full-time members of a non-construction LLC are not currently afforded such an opt-in provision. The Florida Limited Liability Companies Act defines an LLC member as "any person who has been admitted to a limited liability company as a member in accordance with this chapter and has an economic interest in a limited liability company which may, but need not, be represented by a capital account or, in the case of a foreign limited liability company, has been admitted to a limited liability company as a member in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized."[1]

Corporate Officers

The term "employee" is further defined to include corporate officers.[2] A "corporate officer" is in turn defined as any person who fills a position provided for in the articles of incorporation filed with the Division of Corporations of the Department of State, or as permitted or required by ch. 607, F.S.[3] Specifically as to the construction industry, the term "corporate officer" includes a member owning at least 10 percent of an LLC created and approved under ch. 608, F.S. Corporate officers (both generally and specifically as to the construction industry) may elect to be exempt from workers' compensation law by mailing a written notice of the election to the DFS on a form prescribed by the department.[4]

The prescribed form (DWC-Form 250) in turn calls for, among other things, the corporate officer's name, social security number, federal tax identification number, all certified or registered licenses issued pursuant to ch. 489, F.S. held by the person seeking the exemption, the registration number of the corporation, and sworn notarization of the corporate officers signature. For construction corporate officers, the form further calls for a $50 filing fee and documentary proof of the required 10 percent ownership in the corporation.[5]

Upon receipt of the notice of exemption, the DFS has 30 days to determine if the corporate officer is eligible for exemption. If the requirements are met, the DFS will issue a Certificate of Election to be Exempt.[6] During FY 2010-2011, the DFS issued 73,741 exemptions.[7]

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[1] Section 608.402(21), F.S.
[2] Section 440.02(15)(b), F.S.
[3] Section 440.02(9), F.S.
[4] *See* section 440.05(1), and (3), F.S.
[5] Section 440.05(8)(a), F.S.
[6] Section 44.05(5), F.S.
[7] DFS Staff Review, November 16, 2011, on file with the Senate Committee on Commerce and Tourism.

Expiration of Certificate

Construction certificates of election are valid for two years from issuance and, within 60 days prior to the expiration date of the certificate, the DFS must send to the certificateholder both a notice of the expiration date and an application for renewal.[8]

III. Effect of Proposed Changes:

SB 676 amends laws related to the workers' compensation certificate of exemption process.

Section 1 amends section 440.02, F.S., to allow a member of a non-construction LLC who devotes full time to the LLC to elect to be included in the definition of employee for the purposes of workers' compensation. If no election is made, the member would not be considered an employee for premium calculation purposes and would not be eligible for workers' compensation benefits.

Section 2 amends section 440.05, F.S., to require corporate officers in the construction industry to submit their notices of election electronically (as opposed to paper mailing). They will no longer be required to provide their social security number, a copy of relevant documentation as to employment status filed with the Internal Revenue Service as specified by the DFS, a copy of the relevant occupational license in the primary jurisdiction of the business, or a copy of the stock certificate evidencing the required ownership; however, they will be newly required to provide their date of birth and Florida driver's license number or Florida identification card number. The notice will no longer need to be notarized under oath. These changes will presumably make the process easier, more efficient, and less expensive for all involved.[9]

Section 3 amends section 440.05, F.S., to apply a two year limit to all certificates of election (not just to those issued in the construction industry) issued on or after January 1, 2013. The bill allows the DFS to send its notice of the expiration date to the certificateholder via e-mail, and deletes the requirement that it simultaneously provide an application for renewal. This section is effective January 1, 2013.

Section 4 provides an effective date upon becoming law, except as otherwise provided.

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[8] Section 440.05(6), F.S.

[9] These changes were made in the subsection of the statute specifically addressing construction corporate officers (section 440.05(3), F.S.). The subsection of the statute addressing corporate officers (as opposed to construction corporate officers) remains unchanged and will continue to require that they "shall mail to the department in Tallahassee [their notice of intent] in accordance with a form prescribed by the department." Section 440.05(1), F.S. Significantly, the "form prescribed by the department" in this context is DWC-Form 250, which DFS uses for both corporate officers and construction corporate officers alike. Changes DFS will necessarily make to its form based on this bill will thus de facto apply to both. Moreover, the term "mail" in section 440.05(1), F.S., can be broadly construed to encompass the electronic submission contemplated in section 440.05(3), F.S. See generally Black's Law Dictionary (9th ed. 2009) (defining "mail" as, among other things, "[o]ne or more written or oral messages sent electronically (e.g., through e-mail or voicemail")). Thus, while a technical argument can be made otherwise, the changes at issue can be legitimately construed to apply to both corporate officers generally and construction corporate officers specifically.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Allowing members of full-time non-construction LLCs the choice on whether to elect to be included in the definition of employee for the purposes of workers' compensation will allow the LLCs to avoid the expense of workers' compensation coverage if they so choose.

The regulatory steps and cost of submitting notices is reduced for employers with the elimination of the notary requirement. The DFS will continue to provide walk-in assistance in all district offices and will provide computers in its district offices for exemption applicants who may not have access to a computer.

C. Government Sector Impact:

The DFS indicates allowing non-construction LLCs to elect to be considered employees will result in less governmental regulation of similarly situated LLCs and eliminate the time and resources the DFS spends on administrative challenges to denials of non-construction certificates of exemption.

According to the department, requiring an electronic application process for notices of election for exemption would eliminate the need for eight positions who review and process exemptions. This is a 23 percent reduction of exemption processing staff and a savings of $287,416 in salaries and $14,000 in benefits for a total of $301,816 for the FY 2012-2013 budget.[10]

[10] DFS Staff Review, November 16, 2011, on file with the Senate Committee on Commerce and Tourism.

VI. Technical Deficiencies:

See footnote 9, supra.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

272220

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/29/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Braynon) recommended the following:

1 **Senate Amendment (with directory and title amendments)**
2
3 Between lines 22 and 23
4 insert:
5 (9) "Corporate officer" or "officer of a corporation" means
6 any person who fills an office provided for in the corporate
7 charter or articles of incorporation filed with the Division of
8 Corporations of the Department of State or as permitted or
9 required by chapter 607. ~~As to persons engaged in the~~
10 ~~construction industry,~~ The term "officer of a corporation"
11 includes a member owning at least 10 percent of a limited
12 liability company created and approved under chapter 608.

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13
14 Delete lines 60 - 77.
15
16 Delete lines 82 - 87.
17
18 ====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
19 And the directory clause is amended as follows:
20 Delete line 18
21 and insert:
22 Section 1. Subsection (9) and paragraph (b) of subsection
23 (15) of
24
25 Delete line 78
26 and insert:
27 Section 2. Subsections (3) and (6) of section 440.05,
28
29 ================ T I T L E A M E N D M E N T ================
30 And the title is amended as follows:
31 Delete lines 4 - 8
32 and insert:
33 F.S.; redefining the terms “corporate officer” and
34 “employee” for purposes of workers’ compensation;
35 amending s. 440.05, F.S.; revising

By Senator Smith

29-00485A-12 2012676__

A bill to be entitled

An act relating to the workers' compensation certificate-of-exemption process; amending s. 440.02, F.S.; redefining the term "employee" for purposes of workers' compensation; amending s. 440.05, F.S.; revising requirements relating to election of exemption from coverage to include applicability to members of limited liability companies; revising requirements for submitting a notice of election of exemption; revising duties of the Department of Financial Services relating to the expiration of certificates of exemption; expanding applicability of requirements relating to certificates of exemption; providing effective dates.

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

Section 1. Paragraphs (b) and (c) of subsection (15) of section 440.02, Florida Statutes, are amended to read:

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(15)

(b) "Employee" includes any person who is an officer of a corporation and who performs services for remuneration for such corporation within this state, whether or not such services are continuous.

1. Any officer of a corporation may elect to be exempt from this chapter by filing ~~written~~ notice of the election with the

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29-00485A-12 2012676__

department as provided in s. 440.05.

2. As to officers of a corporation who are engaged in the construction industry, no more than three officers of a corporation or of any group of affiliated corporations may elect to be exempt from this chapter by filing ~~written~~ notice of the election with the department as provided in s. 440.05. Officers must be shareholders, each owning at least 10 percent of the stock of such corporation and listed as an officer of such corporation with the Division of Corporations of the Department of State, in order to elect exemptions under this chapter. For purposes of this subparagraph, the term "affiliated" means and includes one or more corporations or entities, any one of which is a corporation engaged in the construction industry, under the same or substantially the same control of a group of business entities which are connected or associated so that one entity controls or has the power to control each of the other business entities. The term "affiliated" includes, but is not limited to, the officers, directors, executives, shareholders active in management, employees, and agents of the affiliated corporation. The ownership by one business entity of a controlling interest in another business entity or a pooling of equipment or income among business entities shall be prima facie evidence that one business is affiliated with the other.

3. An officer of a corporation who elects to be exempt from this chapter by filing a ~~written~~ notice of the election with the department as provided in s. 440.05 is not an employee.

Services are presumed to have been rendered to the corporation if the officer is compensated by other than dividends upon

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shares of stock of the corporation which the officer owns.

(c) "Employee" includes:

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

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

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

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

Section 2. Subsections (2), (3), and (6) of section 440.05, Florida Statutes, are amended to read:

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

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

(3) Each officer of a corporation who is engaged in the construction industry and who elects an exemption from this chapter or who, after electing such exemption, revokes that exemption, must submit ~~mail~~ a ~~written~~ notice to such effect to the department on a form prescribed by the department. ~~The notice of election to be exempt from the provisions of this chapter must be notarized and under oath.~~ The notice of election to be exempt which is electronically submitted to the department by the officer of a corporation who is allowed to claim an exemption as provided by this chapter must list the name, federal tax identification number, date of birth, Florida driver's license number or Florida identification card number ~~social security number~~, all certified or registered licenses issued pursuant to chapter 489 held by the person seeking the exemption, ~~a copy of relevant documentation as to employment status filed with the Internal Revenue Service as specified by the department, a copy of the relevant occupational license in the primary jurisdiction of the business, and~~ the registration number of the corporation filed with the Division of Corporations of the Department of State, and the percentage of ownership ~~along with a copy of the stock certificate~~ evidencing the required ownership under this chapter. The notice of election to be exempt must identify each corporation that employs the person electing the exemption and must list the social security number or federal tax identification number of each such employer and the additional documentation required by this section. In addition, the notice of election to be exempt must provide that the officer electing an exemption is not entitled to benefits under this chapter, must provide that the

117 election does not exceed exemption limits for officers provided
118 in s. 440.02, and must certify that any employees of the
119 corporation whose officer elects an exemption are covered by
120 workers' compensation insurance. Upon receipt of the notice of
121 the election to be exempt, receipt of all application fees, and
122 a determination by the department that the notice meets the
123 requirements of this subsection, the department shall issue a
124 certification of the election to the officer, unless the
125 department determines that the information contained in the
126 notice is invalid. The department shall revoke a certificate of
127 election to be exempt from coverage upon a determination by the
128 department that the person does not meet the requirements for
129 exemption or that the information contained in the notice of
130 election to be exempt is invalid. The certificate of election
131 must list the name of the corporation listed in the request for
132 exemption. A new certificate of election must be obtained each
133 time the person is employed by a new or different corporation
134 that is not listed on the certificate of election. A copy of the
135 certificate of election must be sent to each workers'
136 compensation carrier identified in the request for exemption.
137 Upon filing a notice of revocation of election, an officer who
138 is a subcontractor or an officer of a corporate subcontractor
139 must notify her or his contractor. Upon revocation of a
140 certificate of election of exemption by the department, the
141 department shall notify the workers' compensation carriers
142 identified in the request for exemption.
143 (6) A construction industry certificate of election to be
144 exempt which is issued in accordance with this section shall be
145 valid for 2 years after the effective date stated thereon. Both

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146 the effective date and the expiration date must be listed on the
147 face of the certificate by the department. The construction
148 industry certificate must expire at midnight, 2 years from its
149 issue date, as noted on the face of the exemption certificate. A
150 construction industry certificate of election to be exempt may
151 be revoked before its expiration by the officer for whom it was
152 issued or by the department for the reasons stated in this
153 section. At least 60 days before ~~prior to~~ the expiration date of
154 a construction industry certificate of exemption ~~issued after~~
155 ~~December 1, 1998~~, the department shall send notice of the
156 expiration date ~~and an application for renewal~~ to the
157 certificateholder at the address on the certificate or to the e-
158 mail address on file with the department.
159 Section 3. Effective January 1, 2013, subsection (6) of
160 section 440.05, Florida Statutes, as amended by this act, is
161 amended to read:
162 440.05 Election of exemption; revocation of election;
163 notice; certification.—
164 (6) A ~~construction industry~~ certificate of election to be
165 exempt which is issued on or after January 1, 2013, in
166 accordance with this section shall be valid for 2 years after
167 the effective date stated thereon. Both the effective date and
168 the expiration date must be listed on the face of the
169 certificate by the department. The ~~construction industry~~
170 certificate must expire at midnight, 2 years from its issue
171 date, as noted on the face of the exemption certificate. A
172 ~~construction industry~~ certificate of election to be exempt may
173 be revoked before its expiration by the officer for whom it was
174 issued or by the department for the reasons stated in this

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

175 section. At least 60 days before the expiration date of a
176 ~~construction industry~~ certificate of exemption, the department
177 shall send notice of the expiration date to the
178 certificateholder at the address on the certificate or to the e-
179 mail address on file with the department.
180 Section 4. Except as otherwise expressly provided in this
181 act, this act shall take effect upon becoming a law.

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The Florida Senate

Committee Agenda Request

To: Senator D. Alan Hays, Chair
Committee on General Government Appropriations

Subject: Committee Agenda Request

Date: February 13, 2012

I respectfully request that **Senate Bill #676**, relating to Workers' Compensation Certificate-of-exemption Process, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Christopher L. "Chris" Smith
Florida Senate, District 29

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/CS/SB 716

INTRODUCER: Budget Subcommittee on General Government Appropriations; Environmental Preservation and Conservation Committee; Community Affairs Committee; and Senators Bennett and Evers

SUBJECT: Environmental Regulation

DATE: February 28, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	CA	**Fav/CS**
2.	Uchino	Yeatman	EP	**Fav/CS**
3.	Pigott	DeLoach	BGA	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill creates, amends and redefines provisions relating to environmental regulation. It relates to permit administration, requirements and application for various types of permits. It also addresses contaminated site cleanup and other petroleum-related issues.

Specifically, the bill does the following:

- Prohibits a county or a municipality from conditioning the processing for a development permit on an applicant obtaining a permit or approval from any other state or federal agency;
- Authorizes the DEP to issue a coastal construction permit before an applicant receives an incidental take authorization;
- Expands eligibility for those entities entitled to reduced or waived permit processing fees;
- Expands the use of Internet-based self-certification services and general permits;
- Exempts previously authorized underground injection wells from ch. 373, part III, F.S., relating to the regulation of wells, except for Class V, Group 1 wells;
- Shortens the time frame that permits must be noticed for proposed agency action from 90 days to 60;

- Provides for an expanded state programmatic general permit;
- Raises the qualifying low-scored site initiative priority ranking score from 10 to 29, and exempts certain expenditures from counting against the low-scored site initiative cleanup program;
- Revises qualifications for fiscal assistance for innocent victim petroleum storage system restoration;
- Provides expedited permitting for intermodal logistic centers receiving or sending cargo to or from Florida ports;
- Authorizes zones of discharges to groundwater for existing installations, with certain limitations;
- Revises requirements for permit revocation;
- Revises the definition for "financially disadvantaged small community";
- Revises the definition of industrial sludge;
- Specifies recycling credits available for counties that operate waste-to-energy facilities;
- Revises provisions related to solid waste disposal and management;
- Provides for a general permit for small surface water management systems;
- Expands the definition for "transient noncommunity water systems" to include religious institutions;
- Clarifies creation of regional permit action teams for expedited permitting for certain businesses;
- Allows for sale of unblended fuels for specified applications, and specifies that alternative fuels other than ethanol may be used as blending fuels for blending gasoline; and
- Prohibits the collection of permit renewal fees for those permits that were automatically extended by ch. 2011-139, ss. 73 and 79 of the Laws of Florida.

This bill substantially amends ss. 125.022, 161.041, 166.033, 218.075, 258.397, 373.026, 373.326, 373.4141, 373.4144, 376.3071, 376.30715, 380.0657, 403.061, 403.087, 403.1838, 403.7045, 403.706, 403.707, 403.7125, 403.814, 403.853, 403.973, and 526.203 of the Florida Statutes and creates an unnumbered section of law.

II. Present Situation:

The affected permitting and other areas addressed by this bill are diverse. Each programmatic area will be addressed in the "effect of proposed changes" of the bill to allow for greater clarity of how it is affected by the particular proposed change.

III. Effect of Proposed Changes:

Sections 1 and 3 amend ss. 125.022 and 166.033, F.S., respectively, relating to county and municipality development permit requirements.

Stakeholders in the business and regulated communities have expressed some frustration at the local permitting process. There is anecdotal evidence that local governments may condition approval of development permits on the applicant's first securing state and federal permits. For complicated permits requiring local, state and federal permits, this process can cause delays and drive up costs.

For development permit applications filed after July 1, 2012, the bill prohibits a county or municipality from requiring that an applicant first obtain state or federal permits or approvals before processing or issuing a development permit; however, this prohibition does not apply if a state or federal agency issues a notice of intent to deny the permit before a county's or municipality's action. The bill specifies that issuance of a county or municipal development permit does not create any right for the applicant to obtain permits from other agencies. It also clarifies that a county or municipality is not liable if an applicant fails to fulfill its legal obligations or undertakes actions in violation of state or federal law. A county or municipality may attach a disclaimer in the permit that states as much. The bill allows a county or municipality to require an applicant obtain all state and federal permits before commencing development. The bill does not prohibit a county or municipality from providing information to an applicant as to what other permits may apply.

Section 2 amends s. 161.041, relating to permits for beach and shore preservation projects.

Prior to development of coastal projects, an applicant must apply to the Department of Environmental Protection (DEP) for a coastal construction permit. The federal Endangered Species Act (ESA) governs activities that impact listed species. Section 10a(1)B of the ESA regulates incidental takings of listed species. The ESA defines a "take" as, "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." The ESA prohibits takings of listed species through direct harm or habitat destruction. The U.S. Fish and Wildlife Service issues authorizations for incidental takings, which allows permit holders to engage in legal activity that results in incidental takings of listed species.[1] Currently, the DEP will not issue a coastal construction permit before an incidental take authorization is issued.

The bill authorizes the DEP to issue a coastal construction permit before an applicant secures an incidental take authorization issued pursuant to the ESA; however, the permit must contain conditions that prohibit the authorized activity from occurring until the incidental take authorization is issued. This will allow applicants to better prepare for the permitted activity and would be considered a final agency action if any party desired to initiate a ch. 120, F.S., challenge.

Section 4 amends s. 218.075, F.S., relating to reduction or waiver of permit fees.

Section 218.075, F.S., provides that the DEP or a Water Management District (WMD) may reduce or waive permit processing fees for counties with a population of 50,000 or less until that county exceeds a population of 75,000, and for municipalities with a population of 25,000 or less. Fee reductions or waivers are approved on the basis of fiscal hardship or environmental need for a particular project or activity. The governing body must certify that the cost of the permit processing fee is a fiscal hardship.

[1] U.S. Fish and Wildlife Service, *Endangered Species Permits*, http://www.fws.gov/midwest/endangered/permits/hcp/index.html (last visited Jan. 10, 2012).

The bill expands eligibility for reductions or waivers of permit processing fees for entities created by special act, local ordinance or interlocal agreement of those local governments that would qualify under existing law.

Section 5

amends s. 373.026, F.S., relating to DEP powers and duties and Internet-based self-certification.

Self-certification of permit requirements is the process of the permitting agency allowing "applicants" to manage their own compliance for a given regulated activity. The regulating agency sets up the specific requirements of the permit, and if followed, "applicants" do not apply for permits in the traditional sense. They simply undertake the regulated activity and "self certify" that they have complied with all conditions of the permit. The DEP currently accepts certain types of permit applications online and provides an online self-certification process for private docks associated with detached individual single-family homes on the adjacent uplands. Through this electronic process, one may immediately determine whether a dock can be constructed without further notice or review by the DEP. The DEP is working on expanding its online self-certification into other permitting areas, but it is currently limited to constructing and repairing single-family docks, adding boatlifts to private docks and adding rip rap to the toe of existing seawalls.[2]

In addition, the WMDs allow users to access nearly all permitting documents and forms online. Their websites also allow interested third parties access to permitting applications and supplementary materials. According to the Legislative Committee on Intergovernmental Relations report,[3] interviews with stakeholder groups indicated some local governments often do not accept self-certification for permit-exempt projects identified in statute, rule, or listed in the DEP's website. Some local governments require a "signature" from the DEP permit review staff to verify the exempt status of a project submitted under self-certification, notwithstanding the fact that current law neither requires nor provides for a "signature" from the DEP as an alternative or as supplemental to self-certification.

The bill requires the DEP to expand the use of Internet-based self-certification services for appropriate exemptions and general permits issued by the DEP and the WMDs. The expansion of services is only required if economically feasible. In addition to expanding the use of such online services, the DEP and the WMDs must identify and develop general permits for appropriate activities currently requiring individual review that could be expedited through the use of professional certifications.

Section 6 amends s. 373.326, F.S., relating to the regulation of underground injection wells.

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[2] Florida Dep't of Environmental Protection, *FDEP's Self-Certification Process for Single-Family Docks*, http://appprod.dep.state.fl.us/erppa/ (last visited Jan. 9, 2012).

[3] Florida Legislative Committee on Intergovernmental Relations, *Improving Consistency and Predictability in Dock and Marina Permitting* (Mar. 2007), available at http://www.myfmca.org/wp-content/uploads/2009/12/007_Improving_Consistency_Predictability_Dock_Marina_Permitting_2-19-07.pdf (last visited Jan. 9, 2012).

The DEP's Underground Injection Control (UIC) Program protects the state's underground sources of drinking water (USDW) while disposing of appropriately treated fluids in underground injection wells.[4] A USDW is defined as an aquifer that contains a total dissolved solids concentration of less than 10,000 milligrams per liter of water.[5] The UIC program is charged with preventing degradation of the quality of other aquifers adjacent to the injection zone. Subsurface injection, the practice of emplacing fluids through an injection well, is one of many wastewater disposal methods used in Florida.[6]

The injection wells are required to be constructed, maintained, and operated so that the injected fluid remains in the injection zone, and the unapproved interchange of water between aquifers is prohibited. There are five classes of injection wells. Four of the well classes address the injection of hazardous and nonhazardous waste and fluids associated with the production of oil and natural gas. Class V injection wells generally inject nonhazardous fluid into or above a USDW.

Class V, Group 1 wells are closed-loop air conditioning return flow wells and qualify for a general permit from the DEP. Therefore, construction of this type of well does not have to be pre-permitted by the DEP. However, the Northwest Florida WMD does issue pre-construction permits for these types of wells.

The bill exempts all underground injection wells, except Class V, Group1, from ch. 373, part III, F.S. It specifies that all wells must be constructed by licensed persons pursuant to s. 373.323, F.S. This will prevent any unnecessary duplication between the DEP and the WMDs for regulating underground injection wells.

Section 7 amends s. 373.4141, F.S., relating to the DEP's permit processing procedures.

Upon receipt of an application for a license or an environmental resource permit (ERP) under ch. 373, part IV, F.S., the DEP or a WMD is required to examine the application and notify the applicant within 30 days of any apparent errors or omissions and requests for additional information (RAIs). The application is not deemed complete until the agency determines that it has all of the information it needs to approve or deny the application. An applicant may request the agency process the application if he or she believes that an RAI is not authorized by law or rule. The DEP or a the WMD is required to approve or deny every application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. There is no time limit on when the applicant must respond to an RAI, or limit to the number of RAIs the DEP or the WMD may issue.

The bill reduces the time frame for the DEP or a the WMD to approve, deny or issue a notice of proposed agency action from 90 to 60 days. Additionally, the bill prohibits a state agency or an agency of the state from requiring a permit from any other local, state or federal agency as a condition to approve or submit a completed application unless statutorily authorized to do so.

Section 8 amends s. 373.4144, F.S., relating to federal environmental permitting.

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[4] *See* Rule 62-528, F.A.C.
[5] Rule 62-528.200, F.A.C.
[6] Florida Dep't of Environmental Protection, *Underground Injection Control*, www.dep.state.fl.us/water/uic/ (last visited Jan. 13, 2012).

One of Florida's key characteristics is its vast wetlands, including the Everglades. Wetlands are defined as being neither dry nor covered by open water but continually influenced by water. At times, wetlands may be dry for months or even years, or they may be covered with water the majority of the time only drying out for short periods.[7]

For activities occurring in "waters of the United States" in Florida, including wetlands, the federal Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) require compliance with and regulate activities under the authority of Section 404 of the federal Clean Water Act (CWA).[8] Wetlands are also regulated under Section 10 of the federal Rivers and Harbors Act of 1899,[9] although the focus of that legislation is primarily maintaining navigable waters.[10] When a dredge and fill permit is required in addition to permits required by the state, it is issued independently from the DEP or the WMD permits and is reviewed by the Corps. However, the Corps' issuance of the permit is dependent on the applicant first receiving state water quality certification or a waiver through the state Environmental Resource Permit (ERP)[11] program. If the permitted activity is in a coastal county, the application must also have received a finding of consistency with the Florida Coastal Zone Management Program.[12]

In addition to permits issued under the CWA and the federal Rivers and Harbors Act, the Corps also administers the National Pollution Discharge Elimination System (NPDES) permit program. The Corps has delegated the authority to Florida to implement this program for stormwater systems, including municipal systems, certain industrial activities and construction activities. The WMDs do not have delegated authorization from the EPA to implement this program. The EPA has determined that the separate WMDs do not constitute a central state authority, and therefore, they do not have the state-wide consistency required for federal delegation of the NPDES permit program.

The Corps has also delegated to Florida the authority to issue federal dredge and fill permits under Section 404 of the CWA for certain activities. These are known as State Programmatic General Permits (SPGP). Under this delegated authority, the department may issue state authorizations for limited state exemptions and noticed general permits for shoreline stabilization, docks, boat ramps, and maintenance dredging that constitute federal authorization. Such authorization may be subject to additional specific federal conditions, however.[13] The DEP has expressed interest in expanding the SPGP program for activity-specific categories, subject to acreage limitations. In addition to a closer alignment of state and federal wetland delineation

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[7] Florida Dep't of Environmental Protection, *Florida State of the Environment – Wetlands: A Guide to Living with Florida's Wetlands*, available at http://www.dep.state.fl.us/water/wetlands/docs/erp/fsewet.pdf (last visited Jan. 9, 2012).
[8] 33 U.S.C. §§ 1251-1387.
[9] 33 U.S.C. § 403.
[10] Florida Dep't of Environmental Protection, *Consolidation of State and Federal Wetland Permitting Programs, Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)* (Sep. 2005), available at http://www.dep.state.fl.us/ig/reports/files/final_report016.pdf (last visited Jan. 9, 2012).
[11] *See generally* ch. 373, part IV, F.S.
[12] Florida Dep't of Environmental Protection, *Summary of the Wetland and Other Surface Water Regulatory and Proprietary Programs in Florida* (2007), available at http://www.dep.state.fl.us/water/wetlands/docs/erp/overview.pdf (last visited Jan. 9, 2012).
[13] *Id. at* 20.

methods, changes to statutes or rules must be made to address federal coordination and consultation requirements for threatened and endangered species.

The bill authorizes the DEP to obtain issuance of an expanded SPGP or a series of regional general permits from the Corps for categories of activities in waters of the United States governed by the Clean Water Act and in navigable waters governed by the Rivers and Harbors Act of 1899. An activity will only be authorized if it causes only minimal adverse environmental effects when performed separately and, when taken together, cause only minimal cumulative adverse environmental effects.

The bill directs the DEP to not seek issuance of or take any action pursuant to such permits unless the conditions are at least as protective of the environment and natural resources as existing state law and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899. It deletes the requirement that the DEP develop a consolidated wetland permitting mechanism by October 1, 2005. It also deletes the requirement that dredge and fill activities impacting 10 acres or less be processed as part of an ERP program.

The bill authorizes the DEP and the WMDs to implement a voluntary SPGP for all dredge and fill activities impacting 3 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the Corps if the general permit is at least as protective of the environment and natural resources as existing state law and federal law under the Clean Water Act and Rivers and Harbors Act of 1899. It deletes an obsolete reporting requirement. The bill would not preclude the DEP from pursuing a series of regional general permits for construction activities in wetlands or surface waters.

Section 9 amends s. 376.3071, F.S., related to the low-scored site initiative for contaminated sites.

The Legislature created the Inland Protection Trust Fund (fund) with the intent that it serve as a repository for funds which will enable the DEP to respond without delay to incidents of inland contamination related to the storage of petroleum and petroleum products in order to protect public health, safety and welfare, and to minimize environmental damage.[14] Section 376.3071(4), F.S., directs the DEP to obligate moneys available in the fund whenever incidents of inland contamination related to the storage of petroleum or petroleum products may pose a threat to the environment or public health, safety or welfare. The current law provides for:

- Prompt investigation and assessment of contaminated sites;
- Expeditious restoration or replacement of potable water supplies;
- Rehabilitation of contaminated sites;
- Maintenance and monitoring of contaminated sites;
- Payment of expenses incurred by the DEP in its efforts to obtain the payment or recovery of reasonable costs resulting from the activities described in this subsection from responsible parties;
- Payment of any other reasonable costs of administration, including those administrative costs incurred by the Department of Health in providing field and laboratory services, toxicological risk assessment and other assistance to the DEP in the investigation of drinking

[14] Section 376.3071, F.S.

water contamination complaints, and costs associated with public information and education activities;
- Establishment and implementation of a compliance verification program;
- Activities related to removal and replacement of petroleum storage systems;
- Reasonable costs of restoring property as nearly as practicable to the conditions which existed prior to activities associated with contamination assessment or remedial action;
- Repayment of loans to the fund; and
- Expenditures from the fund to cover ineligible sites or costs if the DEP deems it necessary to do so.

Section 376.3071(5), F.S., provides for the site selection and cleanup criteria that the DEP uses in determining the priority ranking for sites seeking state-funded rehabilitation. The priority ranking is based upon a scoring system for state-conducted cleanup at petroleum contamination sites based upon factors that include, but are not limited to:
- The degree to which human health, safety or welfare may be affected by exposure to the contamination;
- The size of the population or area affected by the contamination;
- The present and future uses of the affected aquifer or surface waters, with particular consideration as to the probability that the contamination is substantially affecting, or will migrate to and substantially affect, a known public or private source of potable water; and
- The effect of the contamination on the environment.

Section 376.3071(11), F.S., provides for a low-scored site initiative for sites with a priority ranking score of 10 points or less and provides conditions for voluntary participation, including:
- Upon reassessment pursuant to the DEP rule, the site retains a priority ranking score of 10 points or less;
- No excessively contaminated soil, as defined by the DEP rule, exists onsite as a result of a release of petroleum products;
- A minimum of six months of groundwater monitoring indicates that the plume is shrinking or stable;
- The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment;
- The area of groundwater containing the petroleum products' chemicals of concern is less than one-quarter acre and is confined to the source property boundaries of the real property on which the discharge originated; and
- Soils onsite that are subject to human exposure found between land surface and two feet below land surface meet the soil cleanup target levels established by the DEP rule, or human exposure is limited by appropriate institutional or engineering controls.

If these conditions are met, the DEP must issue a "No Further Action" determination, which means minimal contamination exists onsite and that contamination is not a threat to human health or the environment. If no contamination is detected, the DEP may issue a site rehabilitation completion order (SRCO). Sites that are eligible must be voluntarily initiated by the source property owner or responsible party for the contamination. For sites eligible for state restoration funding, the DEP may pre-approve the costs of the site assessment, including six months of groundwater monitoring, not to exceed $30,000 for each site. The DEP may not pay

the costs associated with the establishment of institutional or engineering controls. Assessment work must be completed no later than six months after the DEP issues its approval.

There are 4,865 sites with a priority ranking score of 29 or under. A site with a score of 29 or lower indicates that there are no wells threatened by the contamination. Industry experts estimate that as many as 40 percent of these sites are eligible for either a no further action or site rehabilitation completion order.

The bill raises the priority ranking score for voluntary participation in the low-scored site initiative from 10 to 29. It also clarifies that program deductibles, copayments, and contamination assessment report requirements do not count towards expenditures under the low-scored site initiative. These changes will allow more sites to participate and be taken off the contaminated site list.

Section 10 amends s. 376.30715, F.S., relating to innocent victim petroleum storage system restoration.

In 2005, the Legislature created the Innocent Victim Petroleum Storage System Restoration Program to provide state clean-up assistance to property owners of petroleum-contaminated sites that were acquired prior to July 1, 1990. To be eligible for clean up, the site must have ceased operating as a petroleum storage or retail business prior to January 1, 1985. A conveyance of property to a spouse, a surviving spouse in trust or free of trust, or a revocable trust created for the benefit of the settlor, does not disqualify the site from participating in the Innocent Victim Petroleum Storage System Restoration Program. The current property owner of the contaminated site must have acquired the property prior to July 1, 1990.

The bill provides that the transfer of title for a petroleum contaminated site to a child, a child in trust or a corporate entity created by the owner to hold title to the site does not disqualify the site from financial assistance. The bill allows applicants who were previously denied coverage to reapply.

Section 11 amends s. 380.0657, F.S., relating to expedited permitting for economic development projects.

The DEP and WMDs are required to adopt programs to expedite the processing of wetland resource permits and ERPs when such permits are for the purpose of economic development projects that have been identified by a municipality or county as meeting the definition of target industry businesses under s. 288.106, F.S.

Pursuant to s. 288.106(2)(q), F.S., a “target industry business” is defined as a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to the following criteria developed by the Office of Tourism, Trade and Economic Development (OTTED) in consultation with Enterprise Florida, Inc.:

- Future growth in both employment and output;
- Workforce is not subject to periodic layoffs;
- High wages compared to the surrounding area;
- Market and resource independence from Florida markets;

- Expansion or diversification of the state's or the area's economic base; and
- Strong economic benefits to the state or regional economies.

An intermodal logistics center, or inland port, is typically a distribution complex designed to provide intermodal transfers between ship, rail and truck operations. The Port of Palm Beach has limited expansion options. Its terminal size is also limiting its growth potential. To address its limitations, Port staff developed the inland port idea to be located in western Palm Beach County.[15] The project has not gotten out of the planning stage and has hit a number of delays. Two proposed sites have been scrapped due to, in large measure, environmental impacts and the potential interference with Everglades restoration. In March 2011, the Port St. Lucie Planning & Zoning Board rejected plans to annex 7,139 acres for development and to amend the comprehensive plan to change the land use from agricultural to heavy industrial.[16] The most recent plans call for collaboration between the Port of Palm Beach and Florida Crystals Corporation to develop 850 acres just north of South Bay, Florida, in unincorporated Palm Beach County.[17]

The bill specifies that any intermodal logistics center that receives and sends cargo to and from Florida's ports qualifies for expedited permitting review.

Section 12 amends s. 403.061, F.S., relating to zones of discharge to groundwater.

"Zone of Discharge" is defined in Rule 62-520.200(27), F.A.C. It means "a volume underlying or surrounding the site and extending to the base of a specifically designated aquifer or aquifers, within which an opportunity for the treatment, mixture or dispersion of wastes into receiving ground water is afforded." Additionally, Rule 62-520.300(2)(c), F.A.C., provides:

> The zone of discharge and exemption provisions are designed to provide an opportunity for the future consideration of factors relating to localized situations which could not adequately be addressed in the rulemaking hearing of March 1, 1979, including economic and social consequences, attainability, irretrievable conditions, natural background and detectability.

Further, Rule 62-520.200(10), F.A.C., defines "existing installation" as:

> [A]ny installation which had filed a complete application for a water discharge permit on or before January 1, 1983, or which submitted a ground water monitoring plan no later than six months after the date required for that type of installation as listed in former Rule 17-4.245, F.A.C. (1983), and a plan was subsequently approved by the Department; or which was in fact an installation

[15] Florida Dep't of Transportation, *South Florida Inland Port Feasibility Study – final report* (June 2007), available at http://www.dot.state.fl.us/seaport/pdfs/SFL_Inland_Port_Final_Report_11_07.pdf (last visited Jan. 9, 2012).
[16] Alexi Howk, *Planning board rejection signals dwindling support for Port St. Lucie inland port project*, TCPalm, Mar. 3, 2011, *available at* http://www.tcpalm.com/news/2011/mar/03/planning-board-rejection-signals-dwindling-for/ (last visited Feb. 8, 2012).
[17] Susan Salisbury, *Port of Palm Beach , Florida Crystals have plan for inland port in Glades*, The Palm Beach Post, July 1, 2011, *available at* http://www.palmbeachpost.com/money/port-of-palm-beach-florida-crystals-have-plan-1632419.html (last visited Feb. 8, 2012).

> reasonably expected to release contaminants into the ground water on or before July 1, 1982, and operated consistently with statutes and rules relating to ground water discharge in effect at the time of the operation.

Currently, many existing installations do not have permits or groundwater monitoring plans. It is therefore impossible in these instances for the DEP to designate a specific aquifer for discharge. The DEP has historically used the uppermost aquifer as the default and specified other aquifers if required on case-by-case basis.

The bill provides that for existing installations, as defined by rule 62-520.200(10), F.A.C., zones of discharge to groundwater are authorized horizontally to a facility's or owner's property boundary and extending vertically to the base of a specifically designated aquifer or aquifers. The bill specifies that the zones of discharge may be modified in accordance with the DEP rules. It also clarifies that exceedance of primary and secondary groundwater standards that occurs within a zone of discharge does not create liability pursuant to chs. 376 or 403, F.S., for site cleanup, and the exceedance of soil cleanup target levels is not a basis for enforcement or site cleanup, unless it is caused by an illegal discharge.

Section 13 amends s. 403.087, F.S., relating to revocation of permits by the DEP.

Currently, the DEP may revoke permits for the following reasons:

- The permit holder has submitted false or inaccurate information on the application;
- The permit holder has violated law, the DEP orders, rules, or regulations, or permit conditions;
- The permit holder has failed to submit operational reports or other information required by the DEP rule or regulation; or
- The permit holder has refused lawful inspection under s. 403.091, F.S.[18]

The bill narrows those violations that the DEP may consider in revoking a permit. The bill allows the DEP to revoke permits for the following violations:

- The permit holder has violated a law, the DEP order, rule or condition, which directly relate to the permit;
- The permit holder has failed to submit required operational reports or other information that directly relates to the permit and has refused to correct or cure such violations when requested to do so; and
- The permit holder has refused a lawful inspection at the facility authorized by the permit.

Section 14 amends s. 403.1838, F.S., relating to the small community sewer construction act.

Florida's Small Community Wastewater Facilities Grants Program is administered by the DEP. The DEP grants funds for the planning, design and construction of wastewater management systems for qualifying small municipalities. Highest priority is given to projects that address the

[18] Section 403.091(c), F.S., states that no person shall refuse reasonable entry or access to any authorized representative of the DEP who requests entry for purposes of inspection and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such inspection. The owner or operator of the premises shall receive a report, if requested, setting forth all facts found which relate to compliance status.

most serious risks to public health, are necessary to achieve compliance, or assist systems most in need based on an affordability index. The population limit to qualify as a financially disadvantaged small community is currently 7,500 or less.

The bill increases the population size from 7,500 to 10,000 or fewer to qualify as a financially disadvantaged small community. More communities will be eligible to qualify for grants.

Section 15 amends s. 403.7045, F.S., relating to industrial waste.

Currently, solid waste is defined in statute to mean sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material. Industrial byproducts are not considered hazardous wastes.

The bill clarifies that sludge from industrial waste treatment works that meet certain exemptions contained in s. 403.7045(1)(f), F.S., is not considered solid waste.

Section 16 amends s. 403.706, F.S., relating to recycling credits for waste-to-energy facilities.

According to the DEP, as of 2011, there are 11 waste-to-energy (WTE) facilities operating in Florida. Through the mass combustion of municipal solid waste and refuse-derived fuel, Florida's WTE facilities generate 3.25 million megawatts of energy per year, enough to power 300,000 homes for one year.

Section 403.706(4)(a), F.S., provides recycling credits for the production of renewable energy from solid waste that are to be counted toward the county recycling goals. Current law requires that recycling credits for WTE facilities be applied at a rate of 1 ton of recycled material per megawatt-hour (1 ton/mwh) of renewable energy produced. Section 403.406(4)(a) also provides that a county shall count additional recycling credits for WTE facilities for the following two cases:

- If a county maintains a 50 percent recycling rate by means other than renewable energy production, it shall get an additional 1 ton credit per megawatt-hour, a total of 2 tons/mwh.
- If a county with renewable energy production from solid waste has a debt service payment related to its waste to energy facility, it shall get an additional credit of 1 ton /mwh.

Therefore, if a county has a debt service funded WTE facility and maintains a 50 percent recycling rate, it receives a 3 ton/mwh recycling credit. In addition, s. 403.406(4)(a), F.S., provides that byproducts, mostly ash, resulting from the WTE process do not count as waste. The result is several counties are expected to exceed a 100 percent recycling rate.[19]

The bill reduces the additional recycling credit from 1 ton to 0.25 tons for each megawatt-hour produced from WTE facilities in counties that maintain a 50 percent recycling rate. It deletes the 1 ton/mwh credit for counties with outstanding debt service on their WTE facilities.

[19] DEP, *Waste to Energy Recycling Credits* (2012) (on file with the Senate Committee on Environmental Preservation and Conservation).

Additionally, it clarifies that byproducts, when recycled, shall count towards county recycling goals in accordance to DEP rules. Otherwise the byproducts are considered waste.

Sections 17 amends s. 403.707, F.S., relating to permitting of solid waste management facilities.

Currently, a solid waste management facility may not be operated, maintained, constructed, expanded, modified, or closed without valid permits issued by the DEP. Permits under s. 403.707, F.S., are not required for the following activities, if an activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations or orders:

- Disposal by persons of solid waste resulting from their own activities on their properties, if such waste is ordinary household waste or rocks, soils, trees, tree remains, and other vegetative matter that normally result from land development operations;
- Storage in containers by persons of solid waste resulting from their own activities on their properties, if the solid waste is collected at least once a week; and
- Disposal by persons of solid waste resulting from their own activities on their properties if the environmental effects of such disposal on groundwater and surface waters are addressed or authorized by a site certification order or a permit issued by the DEP under ch. 403, F.S., or rules adopted pursuant to ch. 403, F.S., or addressed or authorized by, or exempted from the requirement to obtain, a groundwater monitoring plan approved by the DEP.

The DEP provides guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state. Section 403.707, F.S., requires that a solid waste management facility must obtain a permit from DEP in order to operate. In addition, the DEP typically limits the amount of specific materials that a WTE facility may accept through air permit or certification conditions. For example, many facilities are limited by conditions in their air permits to accepting used oil filters that make up less than 5 percent of their waste streams. There is no statutory provision that requires or restricts this practice. However, current law allows the DEP to restrict certain types of waste to comply with air emission limitations.

Section 403.707(3), F.S., limits permit duration to 10 years for a potential source of water pollution, which includes most solid waste management facilities. The DEP rules currently limit permit duration to 5 years, except for certain long-term care permits for closed facilities, which may be approved up to 10 years. The fees for most solid waste permits are limited to $10,000.

Leachate from a landfill varies widely in composition depending on the age of the landfill and the type of waste it contains. It can usually contain both dissolved and suspended solids. The generation of leachate is caused principally by precipitation percolating through waste deposited in a landfill. The term “leachate” refers to the fluid flowing out of waste material after coming in contact with decomposing solid waste.

The risks of leachate generation can be mitigated by properly designed and engineered landfill sites, such as sites that are constructed on geologically impermeable materials or sites that use impermeable liners made of geomembranes or engineered clay.

The bill requires the DEP to allow WTE facilities to maximize acceptance and processing of nonhazardous solid and liquid waste. This will limit the DEP’s authority to restrict certain waste

types to a percentage of the total waste stream. This provision does not affect the DEP's authority to restrict waste types to comply with air emission limitations.

The bill deletes the public nuisance and adverse impact requirements in s. 403.707(2), F.S., which provide that a permit is not required if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations or orders.

The bill provides that if a facility has a permit authorizing disposal activity for solid waste resulting from their own activities on their own property, new areas where solid waste is being disposed of which are monitored by an existing or modified groundwater monitoring plan are not required to be specifically authorized in a permit or other certification.

The bill requires the DEP to issue 20-year permits for solid waste management facilities having leachate control systems that meet the DEP's requirements. This provision applies to new applications and renewals made on or after October 1, 2012

The bill also allows a permit to be issued to a solid waste management facility that does not have a leachate control system for 10 years if the applicant meets certain criteria. The applicant seeking renewal must:

- have regularly utilized the site for at least 4 and a half months before the application;
- not be subject to a notice, at the time of applying for the renewal permit, by the DEP, or be in violation of an applicable rule;
- not have been notified to implement assessment or evaluation monitoring as a result of exceedances of applicable groundwater standards, or completing corrective actions in accordance with applicable the DEP rules;
- be in compliance with the applicable financial assurance requirements.

This section also authorizes the DEP to adopt rules but does not require those rules to be submitted to the Environmental Regulation Commission for approval. The bill specifies that existing permit cap fees do not apply. The DEP is authorized to prorate existing fees for these longer permits. For example, a Class I landfill operation permit fee is currently $10,000 for a 5-year permit. If these provisions become law, the permit fee will increase to a maximum of $40,000 for a 20-year permit.

Section 18 amends s. 403.7125, F.S., relating to financial assurance for solid waste management facilities.

The EPA adopted rules for solid waste management facilities in 1991. According to the DEP, if a state's program was determined to be at least equivalent to the federal program, it would be approved and the federal regulation would not apply in that state. Florida's program was approved in 1993. One of the conditions for approval was that the DEP amend existing rules to require financial assurance for corrective actions at landfills. The DEP adopted Rules 62-701.630 and 62-701.730, F.A.C., to include provisions requiring permittees that have an approved corrective action plan to put up financial assurance for the costs of the corrective actions. The Joint Administrative Procedures Committee has stated that the DEP does not have the statutory authority for these rules. If the DEP had to repeal the existing rules, the EPA could determine

that Florida's program is no longer equivalent and disapprove it, in which case owners of solid waste management facilities would be required to comply with all of the EPA's regulations in addition to all of Florida's rules. This would create a burden on the regulated community and could create conflict since Florida's rules are not identical to EPA's.[20]

Additionally, owners and operators of landfills are jointly and severally liable for the improper operation and resulting closure of the facility.[21] To offset potential liabilities where the landfill is owned or operated by a local, state, or federal governmental entity, the owner or operator must establish and collect a fee, surcharge, or other revenue source in an amount necessary to ensure adequate funds are available in the event the landfill must be closed. The funds collected must be deposited in an interest-bearing escrow account maintained by the owner or operator.[22] Alternatively, owners or operators may provide the DEP with a financial assurance of funds for the closure of the facility, in the form of a surety bond, certificates of deposit, or other specified financial instruments.[23]

The bill directs the DEP to require, by rule, the owner or operator of a solid waste management facility receiving waste after October 9, 1993, and who is the responsible party for corrective actions for violations of water quality standards, to provide financial assurance to cover the costs of corrective actions. The bill also specifies that the financial assurance mechanisms available for closure costs shall be available for corrective actions. This change should alleviate any potential ch. 120, F.S., challenges that the DEP does not have the statutory authority for the existing rules.

Section 19 amends 403.814, F.S., relating to delegation of general permits.

Currently, the DEP is authorized to adopt rules establishing and providing for general permits for projects which have, either singularly or cumulatively, a minimal adverse environmental effect. Such rules must specify design or performance criteria that, if applied, would result in compliance with appropriate standards. Any person complying with the requirements of a general permit may use the permit 30 days after giving notice to the DEP without any agency action by the DEP.[24] Projects include, but are not limited to:

- Construction and modification of boat ramps of certain sizes,
- Installation and repair of riprap at the base of existing seawalls,
- Installation of culverts associated with stormwater discharge facilities, and
- Construction and modification of certain utility and public roadway construction activities.

The bill directs the DEP to create a general permit for construction, alteration and maintenance of surface water management systems for up to 10 acres. When the stormwater management system conforms to ch. 373, part IV, F.S., it creates a rebuttable presumption that discharges comply with state water quality standards. The bill specifies that construction of a system may proceed without action by the DEP or a WMD if, within 30 days after commencement of

[20] Conversation with a Florida Dep't of Environmental Protection representative (Jan. 6, 2012).
[21] Section 403.7125(1), F.S.
[22] Section 403.7125(2), F.S.
[23] Section 403.7125(3), F.S.
[24] Section 403.814(1), F.S.

construction, an electronic self-certification is submitted to the DEP or a WMD that certifies the system was designed by a registered professional and meets the following criteria:

- The total project area is less than 10 acres and contains less than two acres of impervious surface;
- The activities will not impact wetlands or other surface waters;
- The activities are not conducted in, on or over wetlands or other surface waters;
- Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner;
- The project is not part of a larger common plan of development or sale; and
- The project does not cause:
  - adverse water quantity or flooding to receiving waters or adjacent lands;
  - adverse impacts to existing surface water storage and conveyance capabilities;
  - violations of state water quality standards; or
  - adverse impacts to the maintenance of surface water or groundwater levels or surface water flows established pursuant to s. 373.042, F.S., or a work of a WMD provided for in s. 373.086, F.S.; and

Section 20 amends s. 403.853, F.S., relating to drinking water standards for religious institutions.

Under the federal Safe Drinking Water Act, the U.S. Environmental Protection Agency (EPA) has promulgated national primary drinking water regulations for contaminants that may adversely affect human health, if it is likely to occur in public water systems often and at levels of public health concern. The EPA will regulate the contaminant if the EPA's Administrator decides that regulating the contaminant will meaningfully reduce health risks for those served by public water systems. The federal act also authorizes states to assume implementation and enforcement. In 1977 Florida adopted the Florida Safe Drinking Water Act (FSDWA), which is jointly administered by the DEP, as lead-agency, and the Department of Health (DOH), which has specific duties and responsibilities of its own. The DOH and its agents have general supervision and control over all private water systems and public water systems not covered or included in the FSDWA. Every county health department in Florida has a minimum degree of mandatory participation in the FSDWA. This minimal level of participation is supportive in nature because most of the county health departments do not have sufficient staff or capability to be fully responsible for the program. In those counties where the county health department is without adequate capability, the appropriate the DEP office is heavily involved in administering all aspects of the program.

Under the FSDWA, a regulated "public water system" is a system that provides water for human consumption through pipes or other constructed conveyances and has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year.[25] The only exception is for those systems that, in addition to meeting the criteria for being a public water system, also meet all four criteria provided for in s. 403.853(2), F.S. The system:

- Consists of distribution and storage facilities only and cannot treat or collect water;
- Obtains all its water from a public water system but is not owned or operated by it;
- Does not sell water; and

[25] *See* s. 403.852(2), F.S.

- Is not a carrier of passengers in interstate commerce.

Public water systems are either community or noncommunity. A community water system serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. A noncommunity water system is either a nontransient noncommunity system or a transient noncommunity water system. A nontransient noncommunity water system serves at least 25 of the same persons over six months per year. A transient noncommunity water system has at least 15 service connections or regularly serves at least 25 persons daily at least 60 days out of the year but does not regularly serve 25 or more of the same persons for more than six months per year.[26]

The bill provides that the DEP, or a local county health department designated by the DEP, is authorized at the request of the owner or operator of a transient noncommunity water system using groundwater as a source of supply and serving religious institutions, except those with school or day care services, to perform a sanitary survey. Upon receipt of satisfactory results, the DEP must reduce the monitoring and reporting requirements for such religious institutions.

Section 21 amends s. 403.973, F.S., relating to expedited permitting and comprehensive plan amendments.

Section 403.973, F.S., provides for an expedited permitting and comprehensive plan amendment process for certain projects that are identified to encourage and facilitate the location and expansion of economic development, offer job creation and high wages, strengthen and diversify the state's economy, and which have been thoughtfully planned to take into consideration the protection of the state's environment.

Under s. 403.973, F.S., OTTED or a Quick Permitting County may certify a business as eligible to use the process. Recommendations on which projects should use the process may come from Enterprise Florida, any county or municipality, or the Rural Economic Development Initiative (REDI). Eligibility criteria stipulate that a business must:

- Create at least 50 jobs; or
- Create 25 jobs if the project is located in an enterprise zone, in a county with a population of fewer than 75,000, or in a county with a population of fewer than 100,000 that is contiguous to a county having a population of 75,000 residing in incorporated and unincorporated areas of the county.

Regional Permit Action Teams are established by a Memorandum of Agreement (MOA) with the secretary of the DEP directing the creation of these teams. The MOA is between the secretary and the applicant with input solicited from the DCA, DOT, Florida Department of Agriculture and Consumer Services; the Florida Fish and Wildlife Conservation Commission; the Regional Planning Councils; and the WMDs. The MOA accommodates participation by federal agencies, as necessary. At a local government's option, a special MOA may be developed on a case-by-case basis to allow some or all local development permits or orders to be covered under the expedited review. Implementation of the local government MOA requires a noticed public workshop and hearing.

[26] *See generally* s. 403.852, F.S.

Presently, certified projects receive the following benefits:

- Pre-application meeting of regulatory agencies and business representatives held within 14 days after eligibility determination;
- Identification of all necessary permits and approvals needed for the project;
- Designation of a project coordinator and regional permit action team contacts;
- Identification of the need for any special studies or reviews that may affect the time schedule;
- Identification of any areas of significant concern that may affect the outcome of the project review;
- Development of a consolidated time schedule that incorporates all required deadlines, including public meetings and notices;
- Final agency action on permit applications within 90 days from the receipt of complete application(s);
- Waiver of twice-a-year limitation on local comprehensive plan amendments; and
- Waiver of interstate highway concurrency with approved mitigation.

Appeals of expedited permitting projects are subject to the summary hearing provisions of s. 120.574, F.S. The administrative law judge's (ALJ) recommended order is not the final state agency action unless the participating agencies of the state opt at the preliminary hearing conference to allow the ALJ's decision to constitute the final agency action. Where only one state agency action is challenged, the agency of the state shall issue the final order within 10 working days of receipt of the ALJ's recommended order. In those proceedings where more than one state agency action is challenged, the Governor shall issue the final order within 10 working days of receipt of the ALJ's recommended order.

Expedited permitting provides a special assistance process for REDI counties. OTTED, working with REDI and the regional permitting teams, is to provide technical assistance in preparing permit applications for rural counties. This additional assistance may include providing guidance in land development regulations and permitting processes, and working cooperatively with state, regional and local entities to identify areas within these counties that may be suitable or adaptable for preclearance review of specified types of land uses and other activities requiring permits.

Section 403.973(19), F.S., prohibits the following projects from using the expedited process:

- A project funded and operated by a local government and located within that government's jurisdiction; or
- A project, the primary purpose of which is to:
  - Affect the final disposal of solid waste, biomedical waste, or hazardous waste in the state,
  - Produce electrical power (unless the production of electricity is incidental and not the project's primary function);
  - Extract natural resources;
  - Produce oil; or
  - Construct, maintain or operate an oil, petroleum, natural gas or sewage pipeline.

The bill revises the structure and process for expedited permitting of targeted industries. The bill expands eligibility for activities qualifying for expedited review to commercial or industrial

development projects that will be occupied by businesses that would individually or collectively create at least 50 jobs. The bill requires regional teams to be established through the execution of a project-specific MOA. It clarifies that the standard form of the MOA will be used only if the local government participates in the expedited review process. It also fixes several technical errors stemming from the creation of the Department of Economic Opportunity in 2011.

Section 22 amends s. 526.203, F.S., relating to the sale of unblended fuels.

The Federal Energy Independence and Security Act of 2007, signed into law on December 19, 2007, set the renewable fuels standard (RFS) minimum annual goal for renewable fuel use at 9.0 billion gallons in 2008 and 36 billion gallons by 2022. Beginning in 2016, all of the fuel increase in the RFS target must be met by advanced biofuels, defined as fuels derived from other than corn starch.[27] Motor gasoline and diesel fuel, both fossil fuels, make up more than 87 percent of Florida's transportation energy costs, with aviation fuel accounting for less than 10 percent.

The Legislature passed a comprehensive energy bill in 2008 that, in part, established the Florida Renewable Fuel Standard Act (Act). The act provided the following definitions:

- "Fuel ethanol" means an anhydrous denatured alcohol produced by the conversion of carbohydrates meeting the specifications as adopted by the Department of Agriculture and Consumer Services.
- "Blended gasoline" means a mixture of ninety percent gasoline and ten percent fuel ethanol meeting the specifications as adopted by the Department of Agriculture and Consumer Services. The ten percent fuel ethanol portion may be derived from any agricultural source.
- "Unblended gasoline" means gasoline that has not been blended with fuel ethanol meeting the specifications as adopted by the Department of Agriculture and Consumer Services.
- "10 percent" means 9-10 percent ethanol by volume.

The act provided that by December 31, 2010, all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender or wholesaler was to contain, at a minimum, 10 percent of agriculturally derived, denatured ethanol fuel by volume.

The following are exempt from the act:

- Fuel used in aircraft;
- Fuel sold at marinas and mooring docks for use in boats and similar watercraft;
- Fuel sold to a blender;
- Fuel sold for use in collector vehicles or vehicles eligible to be licensed as collector vehicles, offroad vehicles, motorcycles, or small engines;
- Fuel unable to comply due to requirements of the United States Environmental Protection Agency;
- Fuel bulk transferred between terminals;
- Fuel exported from the state in accordance with s. 206.052, F.S.;
- Fuel qualifying for any exemption in accordance with ch. 206, F.S.;

[27] U.S. Dep't of Energy, *Federal & State Incentives & Laws*, http://www.afdc.energy.gov/afdc/laws/eisa (last visited Jan. 13, 2012).

- Fuel at an electric power plant that is regulated by the United States Nuclear Regulatory Commission unless such commission has approved the use of fuel meeting the requirements of the act;
- Fuel for a railroad locomotive; and
- Fuel for equipment, including vehicle or vessel, covered by a warranty that would be voided, if explicitly stated in writing by the vehicle or vessel manufacturer, if it were to be operated using fuel meeting the requirements of the act.

The bill clarifies that s. 526.203, F.S., does not prohibit the sale of unblended fuels for the uses exempted in s. 526.203(3), F.S., as listed above. It also expands the definition of "blended gasoline" to include alternative fuels other than ethanol. It specifies that the alternative fuel portion of the 9 to 10 percent for blended fuels may be derived from any agricultural source. The bill defines "alternative fuel" as fuel derived from biomass to replace or reduce fossil fuels used for transportation fuel. Within the definition of "alternative fuel," the bill specifies that "biomass" means the definition provided in s. 366.91, F.S., and "alternative fuel" means the definition provided in s. 525.01(1)(c), F.S., which is suitable for blending with gasoline (not diesel-derived fuels).

Section 23 creates an unnumbered section of law addressing permit extensions granted by the Legislature to account for the economic downturn.

Chapter 2011-139, ss. 73 and 79 of the Laws of Florida provide that any building permit and any permit issued by the DEP or by a WMD, pursuant to ch. 373, part IV, F.S., which has an expiration date between January 1, 2012, and January 1, 2014, is extended and renewed for a period of two years after its previously scheduled date of expiration. The extension includes any local government-issued development order or building permit including certificates of levels of service.

The extension does not apply to permits:
- issued by the Army Corps of Engineers;
- held by an owner or operator determined to be in significant noncompliance with the conditions of the permit as established through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action by the authorizing agency; or
- that, if granted an extension, would delay or prevent compliance with a court order.

There are some local governments charging renewal fees for permits that were extended automatically by the Legislature if their expiration dates fell within the specified dates. The intent of ch. 2011-139, ss. 73 and 79 of the Laws of Florida was to automatically extend certain permits to allow for the economy to recover. It was never the intent to authorize issuing agencies to charge for permit extensions granted under these sections.

The bill specifies that the holder of a valid permit or other authorization is not required to pay a renewal fee to an authorizing agency for an extension granted under ch. 2011-139, ss. 73 or 79 of the Laws of Florida. The bill applies this provision retroactively to June 2, 2011.

Section 24 provides that certain building permits or permits issued by the DEP or a WMD pursuant to part IV of chapter 373, F. S., are extended and renewed from January 1, 2012, through January 1, 2014 for a period of two years.

Section 25 provides an effective of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Issuing agencies for permits with expiration dates between January 1, 2012 and December 31, 2012 are prohibited from collecting renewal fees. This provision is retroactive to June 2, 2012.

B. Private Sector Impact:

Reducing environmental permitting requirements, time, necessity and compliance costs will collectively save business and individuals significant amounts of money; however, the savings cannot be calculated on an individual basis. Expansion of Internet-based self-certification and additional general permits may also reduce costs for constructing qualifying projects.

Owners and operators of lined solid waste management facilities that opt for longer-term permits may benefit from the increased predictability those longer permits provide. For example, it may be easier to obtain financing for these projects and operational and design criteria are less likely to need updating and amending as frequently. After five years, the cost savings from not having to apply for and receive permit renewals will be significant.

Solid waste management facilities will have more flexibility when preparing to apply for permits as the life of the permit will be increased by 15 years. Further, the costs associated with filing renewal applications will decrease.

Owners and operators of unlined solid waste management facilities that meet the DEP's requirements may opt for longer-term permits and may benefit from the increased predictability such longer permits provide.

Owners or operators of transient noncommunity water systems using groundwater as their source of drinking water serving religious institutions may have reduced reporting and monitoring costs.

Increasing the qualifying low-scored site initiative priority ranking score from 10 to 29 may significantly benefit owners of contaminated sites who do not currently qualify. The impact, which may be significant on a cumulative and individual basis, cannot be determined because the program is voluntary.

A child of an original owner or a corporation created to hold title to a contaminated site who gained ownership of that site through the transfer of the property may qualify for financial assistance to aid cleanup of the site. Previous applicants who were denied may reapply. The DEP estimates the average cost to clean up a contaminated site is $380,000.

Producers of alternative fuels, other than ethanol, may benefit from expanding the types of fuels that may be blended with gasoline.

Lastly, an individual who paid a permit renewal fee since June 2, 2011, will get a refund of that fee if the permit qualifies. Renewal fees for qualifying permits can be hundreds of dollars.

C. Government Sector Impact:

Department of Environmental Protection (DEP)

The DEP has estimated there will be an unknown impact to the Permit Fee Trust Fund associated with reducing or waiving permit processing fees for entities created by special acts, local ordinances, and interlocal agreements by low-population counties.

Expanding the eligibility criteria for the Innocent Victim Petroleum Storage System Restoration will likely result in more sites being eligible to participate in the state-funded cleanup program. As mentioned above, the average cost of each cleanup is $380,000. The number of additional sites that may be eligible is unknown.

The DEP anticipates an increase in the amount of fees collected due to the extended length of certain permits. This increase will level out, as the new permits will not need to be renewed as often. In addition, there may be some cases when the costs associated with closing a facility would exceed the face value of the insurance policy. In this instance, Solid Waste Trust Fund dollars would need to be spent and would not be reimbursed by an insurance company.

Increasing the qualifying low-scored site initiative priority ranking score may allow the DEP to clear the backlog of contaminated sites more quickly. There are 4,865 sites that

scored 29 or lower. Due to the backlog, the DEP may not realize any savings in the short-term but may in the long-term if the backlog of contaminated sites can be eliminated. Given that participation in the program is voluntary for owners of contaminated sites, the impact is indeterminate.

All other impacts to the DEP can be absorbed by existing staff and resources.

Department of Health (DOH)

Any religious institution, without school or daycare services, with permitted transient noncommunity public drinking water systems in the nine CHDs may request waiver to some of the FSDWA requirements. The nine CHDs would have to perform certain inspections to determine eligibility. According, to DOH this workload can be absorbed within existing staff and resources.

Water Management Districts (WMD)

The WMDs will see a reduction in the number of water well construction permit applications, thereby reducing the amount of application fees collected and staff needed to process such applications.

WMD governing boards may have to schedule additional meetings in order to comply with taking a denial action within 60 days of receiving completed permit applications. However, some permits will fall within a normal governing board meeting schedule and will not require any additional costs for a WMD to take action. Meeting costs vary by WMD and cannot be determined at this time. Since denials are infrequent because the WMD staff work with applicants to avoid such action, the impact of this provision may be negligible.

Local Government Impact:

As with the private sector, when a local government is a permit applicant, reducing environmental permitting requirements, time, necessity and compliance costs will collectively save significant amounts of money; however, the savings cannot be calculated on an individual, local government basis.

When a local government is an ERP permit applicant, shortened permitting time clocks might reduce costs to obtain a permit if overall permit times are actually reduced, and the provisions do not result in additional permit denials or the need for time clock waivers.

Entities created by special acts, local ordinances or interlocal agreements of certain local governments will pay fewer permit fees so the savings would likely be passed on to the local government but without knowing how many of these entities exist, the actual effect is unknown.

Financially disadvantaged municipalities with a population between 7,500 and 10,000 will now be eligible for wastewater grants under the Small Community Sewer Construction Assistance Act.

There may be a negative impact to local governments for reductions to recycling credits issued for WTE facilities. The impact would be greatest if grants or other funding is tied to achieving or maintaining a specific recycling goal and the changes in the bill resulted in a local government falling below a specified goal.

The provision in the bill making retroactive the prohibition that holders of extended permits make payments on such permits could result in a negative impact on local government revenues if local governments are required to return any such payments they collected. However, this is not revenue the Legislature intended to authorize local governments to collect when it extended certain permits in ch. 2011-139, ss. 73 and 79 of the Laws of Florida.

VI. Technical Deficiencies:

On lines 932, 940, 956, 971 and 1052, "memoranda" should be changed to "memorandum."

VII. Related Issues:

The WMD governing boards are responsible for approving or denying certain permits. While some approval functions are delegated from the governing boards to the staffs, denial actions can only be taken by the governing boards. They typically do not meet on a schedule that would allow for consistent denials of permits within 60 days. Denials are infrequent because the WMD staff work with applicants to avoid such actions.

Section 403.707(2)(c), F.S., allows persons, which are statutorily defined to include corporations,[28] to dispose of solid waste *resulting* from their own activities on their own properties. The bill allows *facilities* to dispose of solid waste in new areas without a permit or certification if certain leachate and monitoring plans are in place. This provision, if interpreted broadly, may allow for expansion of a solid waste facility to a new area without a permit or certification even if the solid waste was not *generated* on the property where it was being disposed. This is not the intention of the bill. Clarification may be needed to ensure this provision only applies to facilities that generate and dispose of their own solid waste on their own properties.

[28] Section 403.703(22), F.S.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Budget Subcommittee on General Government Appropriations on February 28, 2012:

- Removes a provision which allowed a municipal applicant to be exempt from having to show extreme hardship when proposing a public waterfront promenade in the Biscayne Bay Aquatic Preserve.
- Provides that certain building permits or permits issued by the DEP or a WMD pursuant to part IV of chapter 373, F. S., are extended and renewed from January 1, 2012, through January 1, 2014, for a period of two years.

CS/CS by Environmental Preservation and Conservation on February 6, 2012:

- Clarifies the act applies to development permit applications filed with a county or municipality after July 1, 2012, related to conditioning permit issuance on prior state or federal permits or approvals;
- Authorizes the DEP to issue coastal construction permits before an incidental take authorization is issued pursuant to the ESA;
- Deletes provision exempting the dredge and fill activities of a public waterfront promenade in the Biscayne Bay Aquatic Preserve;
- Deletes provisions related to an intermodal logistics center or inland logistics center (inland port) for facilities designation of the Strategic Intermodal System;
- Clarifies that the State Underground Injection Control Program does not apply to Class I, II, III, IV or V wells, except for Class V, Group 1 wells;
- Deletes provisions that required counties and municipalities to apply for delegation of the ERP program or be preempted from permitting activities that affected surface water and groundwater resources;
- Raises the priority ranking score for the low-scored site initiative from 10 to 29;
- Clarifies that a facility's zone of discharge extends horizontally to the property boundary and vertically to the base of the authorized aquifer; however, it may be modified in accordance with the DEP rules;
- Clarifies the DEP may revoke a permit if the permit holder has violated a law, the DEP order, rule or condition, which directly relate to the permit;
- Reduces recycling credits for certain WTE facilities;
- Clarifies that recycled byproducts from WTE count towards a county's recycling goals or, if not recycled, is considered waste;
- Requires the DEP to allow WTE facilities to maximize their acceptance of nonhazardous solid and liquid waste;
- Deletes provisions that amended s. 403.709, F.S., relating to solid waste management facility closure accounts;
- Directs the DEP to require certain financial assurance from owners or operators of solid waste management facilities for corrective actions for violations of water quality standards;

- In Section 20, changes "and" to "or" for a list of four impacts that would make a surface water management system ineligible for a general permit;
- Specifies that alternative fuels other than ethanol may be used as blending fuels for blending gasoline;
- Provides a definition for "alternative fuel" with clarifications for "biomass" and "alternative fuel" as used within that definition; and
- Provides that payment of permit extension fees are not required for permit extension authorized in ch. 2011-139, ss. 73 and 79 of the Laws of Florida.

CS by Community Affairs on January 12, 2012:

- Deletes sections related to RAI requirements; permitting beach management projects and extending deadlines for upgrades to secondary containment systems for fuel tank systems;
- Moves provisions related to inland ports from s. 166.3180, F.S. to s. 339.63, F.S.;
- Exempts previously authorized underground injection wells from ch. 373, part III, F.S., relating to the regulation of wells;
- Directs the Secretary of Transportation to designate certain facilities as part of the SIS;
- Revises and expands eligibility for sites that may qualify for an inland port;
- Removes the 5-year duration for transportation impacts from an inland port that allows for up to a 150 percent increase in the adopted level of service;
- Requires a county or a municipality with a specified population by July 1, 2012, to apply for delegation of authority by certain deadlines for environmental resource permitting;
- Includes many provisions from CS/SB 938, related to solid waste disposal, management and permitting; and
- Expands the definitions used as part of the renewable fuel standards.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
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The Committee on Budget Subcommittee on General Government Appropriations (Jones) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 244 - 258.
4
5 ========== T I T L E A M E N D M E N T ==========
6 And the title is amended as follows:
7 Delete lines 24 - 28
8 and insert:
9 interlocal agreement;

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Jones) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1109 - 1110
and insert:
or s. 79 of chapter 2011-139, Laws of Florida, or section 25 of this act. This section applies retroactively and is effective as of June 2, 2011.
Section 25. (1) Any building permit or any permit issued by the Department of Environmental Protection or by a water management district pursuant to part IV of chapter 373, Florida Statutes, which has an expiration date from January 1, 2012, through January 1, 2014, is extended and renewed for a period of

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13 2 years after its previously scheduled date of expiration. This
14 extension includes any local government-issued development order
15 or building permit, including certificates of levels of service.
16 This section does not prohibit conversion from the construction
17 phase to the operation phase upon completion of construction.
18 This extension is in addition to any existing permit extension.
19 Extensions granted pursuant to this section; s. 14 of chapter
20 2009-96, Laws of Florida, as reauthorized by s. 47 of chapter
21 2010-147, Laws of Florida; s. 46 of chapter 2010-147, Laws of
22 Florida; or s. 74 or s. 79 of chapter 2011-139, Laws of Florida,
23 may not exceed 4 years in total. Further, specific development
24 order extensions granted pursuant to s. 380.06(19)(c)2., Florida
25 Statutes, cannot be further extended by this section.
26 (2) The commencement and completion dates for any required
27 mitigation associated with a phased construction project are
28 extended so that mitigation takes place in the same timeframe
29 relative to the phase as originally permitted.
30 (3) The holder of a valid permit or other authorization
31 that is eligible for the 2-year extension under subsection (1)
32 must provide the authorizing agency with written notice by
33 December 31, 2012, which identifies the specific authorization
34 for which the holder intends to use the extension and the
35 anticipated timeframe for acting on the authorization.
36 (4) The extension under subsection (1) does not apply to:
37 (a) A permit or other authorization under any programmatic
38 or regional general permit issued by the United States Army
39 Corps of Engineers.
40 (b) A permit or other authorization held by an owner or
41 operator determined to be in significant noncompliance with the

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42 conditions of the permit or authorization as established through
43 the issuance of a warning letter or notice of violation, the
44 initiation of formal enforcement, or other equivalent action by
45 the authorizing agency.
46 (c) A permit or other authorization, if granted an
47 extension that would delay or prevent compliance with a court
48 order.
49 (5) Permits extended under this section shall continue to
50 be governed by the rules in effect at the time the permit was
51 issued, except if it is demonstrated that the rules in effect at
52 the time the permit was issued would create an immediate threat
53 to public safety or health. This subsection applies to any
54 modification of the plans, terms, and conditions of the permit
55 which lessens the environmental impact, except that any such
56 modification does not extend the time limit beyond 2 additional
57 years.
58 (6) This section does not impair the authority of a county
59 or municipality to require the owner of a property who has
60 notified the county or municipality of the owner's intent to
61 receive the extension of time granted pursuant to this section
62 to maintain and secure the property in a safe and sanitary
63 condition in compliance with applicable laws and ordinances.
64
65 ========== T I T L E A M E N D M E N T ==========
66 And the title is amended as follows:
67 Delete line 133
68 and insert:
69 Florida, or the act; providing for retroactive
70 application; providing that certain building permits

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71 or permits issued by the Department of Environmental
72 Protection or by a water management district are
73 extended and renewed for a specified period; requiring
74 written notification by the holder of an eligible
75 permit; providing exceptions; providing an effective
76 date.

By the Committees on Environmental Preservation and Conservation; and Community Affairs; and Senators Bennett and Evers

592-03007-12 2012716c2

A bill to be entitled

An act relating to environmental regulation; amending s. 125.022, F.S.; prohibiting a county from requiring an applicant to obtain a permit or approval from any state or federal agency as a condition of processing a development permit under certain conditions; authorizing a county to attach certain disclaimers to the issuance of a development permit; amending s. 161.041, F.S.; providing conditions under which the Department of Environmental Protection is authorized to issue such permits in advance of the issuance of incidental take authorizations as provided under the Endangered Species Act; amending s. 166.033, F.S.; prohibiting a municipality from requiring an applicant to obtain a permit or approval from any state or federal agency as a condition of processing a development permit under certain conditions; authorizing a municipality to attach certain disclaimers to the issuance of a development permit; amending s. 218.075, F.S.; providing for the reduction or waiver of permit processing fees relating to projects that serve a public purpose for certain entities created by special act, local ordinance, or interlocal agreement; amending s. 258.397, F.S.; providing an exemption from a showing of extreme hardship relating to the sale, transfer, or lease of sovereignty submerged lands in the Biscayne Bay Aquatic Preserve for certain municipal applicants; amending s. 373.026, F.S.; requiring the department to

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592-03007-12 2012716c2

expand its use of Internet-based self-certification services for exemptions and permits issued by the department and water management districts; amending s. 373.326, F.S.; exempting certain underground injection control wells from permitting requirements under part III of ch. 373, F.S., relating to regulation of wells; providing a requirement for the construction of such wells; amending s. 373.4141, F.S.; reducing the time within which a permit must be approved, denied, or subject to notice of proposed agency action; prohibiting a state agency or an agency of the state from requiring additional permits or approval from a local, state, or federal agency without explicit authority; amending s. 373.4144, F.S.; providing legislative intent with respect to the coordination of regulatory duties among specified state and federal agencies; encouraging expanded use of the state programmatic general permit or regional general permits; providing for a voluntary state programmatic general permit for certain dredge and fill activities; amending s. 376.3071, F.S.; increasing the priority ranking score for participation in the low-scored site initiative; exempting program deductibles, copayments, and certain assessment report requirements from expenditures under the low-scored site initiative; amending s. 376.30715, F.S.; providing that the transfer of a contaminated site from an owner to a child of the owner or corporate entity does not disqualify the site from the innocent victim petroleum

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59 storage system restoration financial assistance
60 program; authorizing certain applicants to reapply for
61 financial assistance; amending s. 380.0657, F.S.;
62 authorizing expedited permitting for certain inland
63 multimodal facilities that individually or
64 collectively will create a minimum number of jobs;
65 amending s. 403.061, F.S.; authorizing zones of
66 discharges to groundwater for specified installations;
67 providing for modification of such zones of discharge;
68 providing that exceedance of certain groundwater
69 standards does not create liability for site cleanup;
70 providing that exceedance of soil cleanup target
71 levels is not a basis for enforcement or cleanup;
72 amending s. 403.087, F.S.; revising conditions under
73 which the department is authorized to revoke permits
74 for sources of air and water pollution; amending s.
75 403.1838, F.S.; revising the definition of the term
76 "financially disadvantaged small community" for the
77 purposes of the Small Community Sewer Construction
78 Assistance Act; amending s. 403.7045, F.S.; providing
79 conditions under which sludge from an industrial waste
80 treatment works is not solid waste; amending s.
81 403.706, F.S.; reducing the amount of recycled
82 materials certain counties are required to apply
83 toward state recycling goals; providing that certain
84 renewable energy byproducts count toward state
85 recycling goals; amending s. 403.707, F.S.; providing
86 for waste-to-energy facilities to maximize acceptance
87 and processing of nonhazardous solid and liquid waste;

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88 exempting the disposal of solid waste monitored by
89 certain groundwater monitoring plans from specific
90 authorization; specifying a permit term for solid
91 waste management facilities designed with leachate
92 control systems that meet department requirements;
93 requiring permit fees to be adjusted; providing
94 applicability; specifying a permit term for solid
95 waste management facilities that do not have leachate
96 control systems meeting department requirements under
97 certain conditions; authorizing the department to
98 adopt rules; providing that the department is not
99 required to submit the rules to the Environmental
100 Regulation Commission for approval; requiring permit
101 fee caps to be prorated; amending s. 403.7125, F.S.;
102 requiring the department to require by rule that
103 owners or operators of solid waste management
104 facilities receiving waste after October 9, 1993,
105 provide financial assurance for the cost of completing
106 certain corrective actions; amending s. 403.814, F.S.;
107 providing for issuance of general permits for the
108 construction, alteration, and maintenance of certain
109 surface water management systems without the action of
110 the department or a water management district;
111 specifying conditions for the general permits;
112 amending s. 403.853, F.S.; providing for the
113 department, or a local county health department
114 designated by the department, to perform sanitary
115 surveys for certain transient noncommunity water
116 systems; amending s. 403.973, F.S.; authorizing

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117 expedited permitting for certain commercial or
118 industrial development projects that individually or
119 collectively will create a minimum number of jobs;
120 providing for a project-specific memorandum of
121 agreement to apply to a project subject to expedited
122 permitting; clarifying the authority of the department
123 to enter final orders for the issuance of certain
124 licenses; revising criteria for the review of certain
125 sites; amending s. 526.203, F.S.; revising the
126 definitions of the terms "blended gasoline" and
127 "unblended gasoline"; defining the term "alternative
128 fuel"; authorizing the sale of unblended fuels for
129 certain uses; providing that holders of valid permits
130 or other authorizations are not required to make
131 payments to authorizing agencies for use of certain
132 extensions granted under chapter 2011-139, Laws of
133 Florida; providing an effective date.
134
135 Be It Enacted by the Legislature of the State of Florida:
136
137 Section 1. Section 125.022, Florida Statutes, is amended to
138 read:
139 125.022 Development permits.—When a county denies an
140 application for a development permit, the county shall give
141 written notice to the applicant. The notice must include a
142 citation to the applicable portions of an ordinance, rule,
143 statute, or other legal authority for the denial of the permit.
144 As used in this section, the term "development permit" has the
145 same meaning as in s. 163.3164. For any development permit

146 application filed with the county after July 1, 2012, a county
147 may not require as a condition of processing or issuing a
148 development permit that an applicant obtain a permit or approval
149 from any state or federal agency unless the agency has issued a
150 final agency action that denies the federal or state permit
151 before the county action on the local development permit.
152 Issuance of a development permit by a county does not in any way
153 create any rights on the part of the applicant to obtain a
154 permit from a state or federal agency and does not create any
155 liability on the part of the county for issuance of the permit
156 if the applicant fails to obtain requisite approvals or fulfill
157 the obligations imposed by a state or federal agency or
158 undertakes actions that result in a violation of state or
159 federal law. A county may attach such a disclaimer to the
160 issuance of a development permit and may include a permit
161 condition that all other applicable state or federal permits be
162 obtained before commencement of the development. This section
163 does not prohibit a county from providing information to an
164 applicant regarding what other state or federal permits may
165 apply.
166 Section 2. Subsection (5) is added to section 161.041,
167 Florida Statutes, to read:
168 161.041 Permits required.—
169 (5) Notwithstanding any other provision of law, the
170 department may issue a permit pursuant to this part in advance
171 of the issuance of an incidental take authorization as provided
172 under the Endangered Species Act and its implementing
173 regulations if the permit and authorization include a condition
174 requiring that authorized activities not begin until the

175 incidental take authorization is issued.
176 Section 3. Section 166.033, Florida Statutes, is amended to
177 read:
178 166.033 Development permits.—When a municipality denies an
179 application for a development permit, the municipality shall
180 give written notice to the applicant. The notice must include a
181 citation to the applicable portions of an ordinance, rule,
182 statute, or other legal authority for the denial of the permit.
183 As used in this section, the term "development permit" has the
184 same meaning as in s. 163.3164. For any development permit
185 application filed with the municipality after July 1, 2012, a
186 municipality may not require as a condition of processing or
187 issuing a development permit that an applicant obtain a permit
188 or approval from any state or federal agency unless the agency
189 has issued a final agency action that denies the federal or
190 state permit before the municipal action on the local
191 development permit. Issuance of a development permit by a
192 municipality does not in any way create any right on the part of
193 an applicant to obtain a permit from a state or federal agency
194 and does not create any liability on the part of the
195 municipality for issuance of the permit if the applicant fails
196 to obtain requisite approvals or fulfill the obligations imposed
197 by a state or federal agency or undertakes actions that result
198 in a violation of state or federal law. A municipality may
199 attach such a disclaimer to the issuance of development permits
200 and may include a permit condition that all other applicable
201 state or federal permits be obtained before commencement of the
202 development. This section does not prohibit a municipality from
203 providing information to an applicant regarding what other state

204 or federal permits may apply.
205 Section 4. Section 218.075, Florida Statutes, is amended to
206 read:
207 218.075 Reduction or waiver of permit processing fees.—
208 Notwithstanding any other provision of law, the Department of
209 Environmental Protection and the water management districts
210 shall reduce or waive permit processing fees for counties with a
211 population of 50,000 or less on April 1, 1994, until such
212 counties exceed a population of 75,000 and municipalities with a
213 population of 25,000 or less, or for an entity created by
214 special act, local ordinance, or interlocal agreement of such
215 counties or municipalities, or for any county or municipality
216 not included within a metropolitan statistical area. Fee
217 reductions or waivers shall be approved on the basis of fiscal
218 hardship or environmental need for a particular project or
219 activity. The governing body must certify that the cost of the
220 permit processing fee is a fiscal hardship due to one of the
221 following factors:
222 (1) Per capita taxable value is less than the statewide
223 average for the current fiscal year;
224 (2) Percentage of assessed property value that is exempt
225 from ad valorem taxation is higher than the statewide average
226 for the current fiscal year;
227 (3) Any condition specified in s. 218.503(1) which results
228 in the county or municipality being in a state of financial
229 emergency;
230 (4) Ad valorem operating millage rate for the current
231 fiscal year is greater than 8 mills; or
232 (5) A financial condition that is documented in annual

233 financial statements at the end of the current fiscal year and
234 indicates an inability to pay the permit processing fee during
235 that fiscal year.
236
237 The permit applicant must be the governing body of a county or
238 municipality or a third party under contract with a county or
239 municipality or an entity created by special act, local
240 ordinance, or interlocal agreement and the project for which the
241 fee reduction or waiver is sought must serve a public purpose.
242 If a permit processing fee is reduced, the total fee shall not
243 exceed $100.
244 Section 5. Paragraph (a) of subsection (3) of section
245 258.397, Florida Statutes, is amended to read:
246 258.397 Biscayne Bay Aquatic Preserve.—
247 (3) AUTHORITY OF TRUSTEES.—The Board of Trustees of the
248 Internal Improvement Trust Fund is authorized and directed to
249 maintain the aquatic preserve hereby created pursuant and
250 subject to the following provisions:
251 (a) ~~No further~~ Sale, transfer, or lease of sovereignty
252 submerged lands in the preserve may not ~~shall~~ be approved or
253 consummated by the board of trustees, except upon a showing of
254 extreme hardship on the part of the applicant and a
255 determination by the board of trustees that such sale, transfer,
256 or lease is in the public interest. A municipal applicant
257 proposing a public waterfront promenade is exempt from showing
258 extreme hardship.
259 Section 6. Subsection (10) is added to section 373.026,
260 Florida Statutes, to read:
261 373.026 General powers and duties of the department.—The

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262 department, or its successor agency, shall be responsible for
263 the administration of this chapter at the state level. However,
264 it is the policy of the state that, to the greatest extent
265 possible, the department may enter into interagency or
266 interlocal agreements with any other state agency, any water
267 management district, or any local government conducting programs
268 related to or materially affecting the water resources of the
269 state. All such agreements shall be subject to the provisions of
270 s. 373.046. In addition to its other powers and duties, the
271 department shall, to the greatest extent possible:
272 (10) Expand the use of Internet-based self-certification
273 services for appropriate exemptions and general permits issued
274 by the department and the water management districts, if such
275 expansion is economically feasible. In addition to expanding the
276 use of Internet-based self-certification services for
277 appropriate exemptions and general permits, the department and
278 water management districts shall identify and develop general
279 permits for appropriate activities currently requiring
280 individual review which could be expedited through the use of
281 applicable professional certification.
282 Section 7. Subsection (3) is added to section 373.326,
283 Florida Statutes, to read:
284 373.326 Exemptions.—
285 (3) A permit may not be required under this part for any
286 well authorized pursuant to ss. 403.061 and 403.087 under the
287 State Underground Injection Control Program identified in
288 chapter 62-528, Florida Administrative Code, as Class I, Class
289 II, Class III, Class IV, or Class V Groups 2-9. However, such
290 wells must be constructed by persons who have obtained a license

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291 pursuant to s. 373.323 as otherwise required by law.
292 Section 8. Subsection (2) of section 373.4141, Florida
293 Statutes, is amended, and subsection (4) is added to that
294 section, to read:
295 373.4141 Permits; processing.—
296 (2) A permit shall be approved, ~~or~~ denied, or subject to a
297 notice of proposed agency action within 60 ~~90~~ days after receipt
298 of the original application, the last item of timely requested
299 additional material, or the applicant's written request to begin
300 processing the permit application.
301 (4) A state agency or an agency of the state may not
302 require as a condition of approval for a permit or as an item to
303 complete a pending permit application that an applicant obtain a
304 permit or approval from any other local, state, or federal
305 agency without explicit statutory authority to require such
306 permit or approval.
307 Section 9. Section 373.4144, Florida Statutes, is amended
308 to read:
309 373.4144 Federal environmental permitting.—
310 (1) It is the intent of the Legislature to:
311 (a) Facilitate coordination and a more efficient process of
312 implementing regulatory duties and functions between the
313 Department of Environmental Protection, the water management
314 districts, the United States Army Corps of Engineers, the United
315 States Fish and Wildlife Service, the National Marine Fisheries
316 Service, the United States Environmental Protection Agency, the
317 Fish and Wildlife Conservation Commission, and other relevant
318 federal and state agencies.
319 (b) Authorize the Department of Environmental Protection to

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320 obtain issuance by the United States Army Corps of Engineers,
321 pursuant to state and federal law and as set forth in this
322 section, of an expanded state programmatic general permit, or a
323 series of regional general permits, for categories of activities
324 in waters of the United States governed by the Clean Water Act
325 and in navigable waters under the Rivers and Harbors Act of 1899
326 which are similar in nature, which will cause only minimal
327 adverse environmental effects when performed separately, and
328 which will have only minimal cumulative adverse effects on the
329 environment.
330 (c) Use the mechanism of such a state general permit or
331 such regional general permits to eliminate overlapping federal
332 regulations and state rules that seek to protect the same
333 resource and to avoid duplication of permitting between the
334 United States Army Corps of Engineers and the department for
335 minor work located in waters of the United States, including
336 navigable waters, thus eliminating, in appropriate cases, the
337 need for a separate individual approval from the United States
338 Army Corps of Engineers while ensuring the most stringent
339 protection of wetland resources.
340 (d) Direct the department not to seek issuance of or take
341 any action pursuant to any such permit or permits unless such
342 conditions are at least as protective of the environment and
343 natural resources as existing state law under this part and
344 federal law under the Clean Water Act and the Rivers and Harbors
345 Act of 1899. ~~The department is directed to develop, on or before~~
346 ~~October 1, 2005, a mechanism or plan to consolidate, to the~~
347 ~~maximum extent practicable, the federal and state wetland~~
348 ~~permitting programs. It is the intent of the Legislature that~~

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349 ~~all dredge and fill activities impacting 10 acres or less of~~
350 ~~wetlands or waters, including navigable waters, be processed by~~
351 ~~the state as part of the environmental resource permitting~~
352 ~~program implemented by the department and the water management~~
353 ~~districts. The resulting mechanism or plan shall analyze and~~
354 ~~propose the development of an expanded state programmatic~~
355 ~~general permit program in conjunction with the United States~~
356 ~~Army Corps of Engineers pursuant to s. 404 of the Clean Water~~
357 ~~Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq.,~~
358 ~~and s. 10 of the Rivers and Harbors Act of 1899. Alternatively,~~
359 ~~or in combination with an expanded state programmatic general~~
360 ~~permit, the mechanism or plan may propose the creation of a~~
361 ~~series of regional general permits issued by the United States~~
362 ~~Army Corps of Engineers pursuant to the referenced statutes. All~~
363 ~~of the regional general permits must be administered by the~~
364 ~~department or the water management districts or their designees.~~
365 (2) In order to effectuate efficient wetland permitting and
366 avoid duplication, the department and water management districts
367 are authorized to implement a voluntary state programmatic
368 general permit for all dredge and fill activities impacting 3
369 acres or less of wetlands or other surface waters, including
370 navigable waters, subject to agreement with the United States
371 Army Corps of Engineers, if the general permit is at least as
372 protective of the environment and natural resources as existing
373 state law under this part and federal law under the Clean Water
374 Act and the Rivers and Harbors Act of 1899. ~~The department is~~
375 ~~directed to file with the Speaker of the House of~~
376 ~~Representatives and the President of the Senate a report~~
377 ~~proposing any required federal and state statutory changes that~~

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378 ~~would be necessary to accomplish the directives listed in this~~
379 ~~section and to coordinate with the Florida Congressional~~
380 ~~Delegation on any necessary changes to federal law to implement~~
381 ~~the directives.~~
382 (3) ~~Nothing in~~ This section may not ~~shall~~ be construed to
383 preclude the department from pursuing a series of regional
384 general permits for construction activities in wetlands or
385 surface waters or complete assumption of federal permitting
386 programs regulating the discharge of dredged or fill material
387 pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500,
388 as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers
389 and Harbors Act of 1899, so long as the assumption encompasses
390 all dredge and fill activities in, on, or over jurisdictional
391 wetlands or waters, including navigable waters, within the
392 state.
393 Section 10. Subsection (11) of section 376.3071, Florida
394 Statutes, is amended to read:
395 376.3071 Inland Protection Trust Fund; creation; purposes;
396 funding.—
397 (11) SITE CLEANUP.—
398 (a) *Voluntary cleanup.*—~~Nothing in~~ This section shall does
399 not ~~be deemed to~~ prohibit a person from conducting site
400 rehabilitation either through his or her own personnel or
401 through responsible response action contractors or
402 subcontractors when such person is not seeking site
403 rehabilitation funding from the fund. Such voluntary cleanups
404 must meet all applicable environmental standards.
405 (b) *Low-scored site initiative.*—Notwithstanding s.
406 376.30711, any site with a priority ranking score of 29 ~~10~~

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407 points or less may voluntarily participate in the low-scored
408 site initiative, whether or not the site is eligible for state
409 restoration funding.
410 1. To participate in the low-scored site initiative, the
411 responsible party or property owner must affirmatively
412 demonstrate that the following conditions are met:
413 a. Upon reassessment pursuant to department rule, the site
414 retains a priority ranking score of 29 ~~10~~ points or less.
415 b. No excessively contaminated soil, as defined by
416 department rule, exists onsite as a result of a release of
417 petroleum products.
418 c. A minimum of 6 months of groundwater monitoring
419 indicates that the plume is shrinking or stable.
420 d. The release of petroleum products at the site does not
421 adversely affect adjacent surface waters, including their
422 effects on human health and the environment.
423 e. The area of groundwater containing the petroleum
424 products' chemicals of concern is less than one-quarter acre and
425 is confined to the source property boundaries of the real
426 property on which the discharge originated.
427 f. Soils onsite that are subject to human exposure found
428 between land surface and 2 feet below land surface meet the soil
429 cleanup target levels established by department rule or human
430 exposure is limited by appropriate institutional or engineering
431 controls.
432 2. Upon affirmative demonstration of the conditions under
433 subparagraph 1., the department shall issue a determination of
434 "No Further Action." Such determination acknowledges that
435 minimal contamination exists onsite and that such contamination

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436 is not a threat to human health or the environment. If no
437 contamination is detected, the department may issue a site
438 rehabilitation completion order.
439 3. Sites that are eligible for state restoration funding
440 may receive payment of preapproved costs for the low-scored site
441 initiative as follows:
442 a. A responsible party or property owner may submit an
443 assessment plan designed to affirmatively demonstrate that the
444 site meets the conditions under subparagraph 1. Notwithstanding
445 the priority ranking score of the site, the department may
446 preapprove the cost of the assessment pursuant to s. 376.30711,
447 including 6 months of groundwater monitoring, not to exceed
448 $30,000 for each site. The department may not pay the costs
449 associated with the establishment of institutional or
450 engineering controls.
451 b. The assessment work shall be completed no later than 6
452 months after the department issues its approval.
453 c. No more than $10 million for the low-scored site
454 initiative may ~~shall~~ be encumbered from the Inland Protection
455 Trust Fund in any fiscal year. Funds shall be made available on
456 a first-come, first-served basis and shall be limited to 10
457 sites in each fiscal year for each responsible party or property
458 owner.
459 d. Program deductibles, copayments, and the limited
460 contamination assessment report requirements under paragraph
461 (13)(c) do not apply to expenditures under this paragraph.
462 Section 11. Section 376.30715, Florida Statutes, is amended
463 to read:
464 376.30715 Innocent victim petroleum storage system

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465 restoration.—A contaminated site acquired by the current owner
466 prior to July 1, 1990, which has ceased operating as a petroleum
467 storage or retail business prior to January 1, 1985, is eligible
468 for financial assistance pursuant to s. 376.305(6),
469 notwithstanding s. 376.305(6)(a). For purposes of this section,
470 the term "acquired" means the acquisition of title to the
471 property; however, a subsequent transfer of the property to a
472 spouse or child of the owner, a surviving spouse or child of the
473 owner in trust or free of trust, ~~or~~ a revocable trust created
474 for the benefit of the settlor, or a corporate entity created by
475 the owner to hold title to the site does not disqualify the site
476 from financial assistance pursuant to s. 376.305(6) and
477 applicants previously denied coverage may reapply. Eligible
478 sites shall be ranked in accordance with s. 376.3071(5).
479 Section 12. Subsection (1) of section 380.0657, Florida
480 Statutes, is amended to read:
481 380.0657 Expedited permitting process for economic
482 development projects.—
483 (1) The Department of Environmental Protection and, as
484 appropriate, the water management districts created under
485 chapter 373 shall adopt programs to expedite the processing of
486 wetland resource and environmental resource permits for economic
487 development projects that have been identified by a municipality
488 or county as meeting the definition of target industry
489 businesses under s. 288.106, or any intermodal logistics center
490 receiving or sending cargo to or from Florida ports, with the
491 exception of those projects requiring approval by the Board of
492 Trustees of the Internal Improvement Trust Fund.
493 Section 13. Subsection (11) of section 403.061, Florida

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494 Statutes, is amended to read:
495 403.061 Department; powers and duties.—The department shall
496 have the power and the duty to control and prohibit pollution of
497 air and water in accordance with the law and rules adopted and
498 promulgated by it and, for this purpose, to:
499 (11) Establish ambient air quality and water quality
500 standards for the state as a whole or for any part thereof, and
501 also standards for the abatement of excessive and unnecessary
502 noise. The department is authorized to establish reasonable
503 zones of mixing for discharges into waters. For existing
504 installations as defined by rule 62-520.200(10), Florida
505 Administrative Code, effective July 12, 2009, zones of discharge
506 to groundwater are authorized horizontally to a facility's or
507 owner's property boundary and extending vertically to the base
508 of a specifically designated aquifer or aquifers. Such zones of
509 discharge may be modified in accordance with procedures
510 specified in department rules. Exceedance of primary and
511 secondary groundwater standards that occur within a zone of
512 discharge does not create liability pursuant to this chapter or
513 chapter 376 for site cleanup, and the exceedance of soil cleanup
514 target levels is not a basis for enforcement or site cleanup.
515 (a) When a receiving body of water fails to meet a water
516 quality standard for pollutants set forth in department rules, a
517 steam electric generating plant discharge of pollutants that is
518 existing or licensed under this chapter on July 1, 1984, may
519 nevertheless be granted a mixing zone, provided that:
520 1. The standard would not be met in the water body in the
521 absence of the discharge;
522 2. The discharge is in compliance with all applicable

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523 technology-based effluent limitations;
524 3. The discharge does not cause a measurable increase in
525 the degree of noncompliance with the standard at the boundary of
526 the mixing zone; and
527 4. The discharge otherwise complies with the mixing zone
528 provisions specified in department rules.
529 (b) ~~No~~ Mixing zones ~~zone~~ for point source discharges are
530 not ~~shall be~~ permitted in Outstanding Florida Waters except for:
531 1. Sources that have received permits from the department
532 prior to April 1, 1982, or the date of designation, whichever is
533 later;
534 2. Blowdown from new power plants certified pursuant to the
535 Florida Electrical Power Plant Siting Act;
536 3. Discharges of water necessary for water management
537 purposes which have been approved by the governing board of a
538 water management district and, if required by law, by the
539 secretary; and
540 4. The discharge of demineralization concentrate which has
541 been determined permittable under s. 403.0882 and which meets
542 the specific provisions of s. 403.0882(4)(a) and (b), if the
543 proposed discharge is clearly in the public interest.
544 (c) The department, by rule, shall establish water quality
545 criteria for wetlands which criteria give appropriate
546 recognition to the water quality of such wetlands in their
547 natural state.
548
549 ~~Nothing in~~ This act may not ~~shall~~ be construed to invalidate any
550 existing department rule relating to mixing zones. The
551 department shall cooperate with the Department of Highway Safety

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552 and Motor Vehicles in the development of regulations required by
553 s. 316.272(1).
554
555 The department shall implement such programs in conjunction with
556 its other powers and duties and shall place special emphasis on
557 reducing and eliminating contamination that presents a threat to
558 humans, animals or plants, or to the environment.
559 Section 14. Subsection (7) of section 403.087, Florida
560 Statutes, is amended to read:
561 403.087 Permits; general issuance; denial; revocation;
562 prohibition; penalty.—
563 (7) A permit issued pursuant to this section does ~~shall~~ not
564 become a vested right in the permittee. The department may
565 revoke any permit issued by it if it finds that the permitholder
566 has:
567 (a) ~~Has~~ Submitted false or inaccurate information in the
568 ~~his or her~~ application for the permit;
569 (b) ~~Has~~ Violated law, department orders, rules, ~~or~~
570 ~~regulations,~~ or ~~permit~~ conditions which directly relate to the
571 permit;
572 (c) ~~Has~~ Failed to submit operational reports or other
573 information required by department rule which directly relate to
574 the permit and has refused to correct or cure such violations
575 when requested to do so ~~or regulation~~; or
576 (d) ~~Has~~ Refused lawful inspection under s. 403.091 at the
577 facility authorized by the permit.
578 Section 15. Subsection (2) of section 403.1838, Florida
579 Statutes, is amended to read:
580 403.1838 Small Community Sewer Construction Assistance

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581 Act.—
582 (2) The department shall use funds specifically
583 appropriated to award grants under this section to assist
584 financially disadvantaged small communities with their needs for
585 adequate sewer facilities. For purposes of this section, the
586 term "financially disadvantaged small community" means a
587 municipality that has ~~with~~ a population of 10,000 ~~7,500~~ or fewer
588 ~~less~~, according to the latest decennial census and a per capita
589 annual income less than the state per capita annual income as
590 determined by the United States Department of Commerce.
591 Section 16. Paragraph (f) of subsection (1) of section
592 403.7045, Florida Statutes, is amended to read:
593 403.7045 Application of act and integration with other
594 acts.—
595 (1) The following wastes or activities shall not be
596 regulated pursuant to this act:
597 (f) Industrial byproducts, if:
598 1. A majority of the industrial byproducts are demonstrated
599 to be sold, used, or reused within 1 year.
600 2. The industrial byproducts are not discharged, deposited,
601 injected, dumped, spilled, leaked, or placed upon any land or
602 water so that such industrial byproducts, or any constituent
603 thereof, may enter other lands or be emitted into the air or
604 discharged into any waters, including groundwaters, or otherwise
605 enter the environment such that a threat of contamination in
606 excess of applicable department standards and criteria or a
607 significant threat to public health is caused.
608 3. The industrial byproducts are not hazardous wastes as
609 defined under s. 403.703 and rules adopted under this section.

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610
611 Sludge from an industrial waste treatment works that meets the
612 exemption requirements of this paragraph is not solid waste as
613 defined in s. 403.703(32).
614 Section 17. Paragraph (a) of subsection (4) of section
615 403.706, Florida Statutes, is amended to read:
616 403.706 Local government solid waste responsibilities.—
617 (4)(a) In order to promote the production of renewable
618 energy from solid waste, each megawatt-hour produced by a
619 renewable energy facility using solid waste as a fuel shall
620 count as 1 ton of recycled material and shall be applied toward
621 meeting the recycling goals set forth in this section. If a
622 county creating renewable energy from solid waste implements and
623 maintains a program to recycle at least 50 percent of municipal
624 solid waste by a means other than creating renewable energy,
625 that county shall count 1.25 ~~2~~ tons of recycled material for
626 each megawatt-hour produced. If waste originates from a county
627 other than the county in which the renewable energy facility
628 resides, the originating county shall receive such recycling
629 credit. ~~Any county that has a debt service payment related to~~
630 ~~its waste-to-energy facility shall receive 1 ton of recycled~~
631 ~~materials credit for each ton of solid waste processed at the~~
632 ~~facility.~~ Any byproduct resulting from the creation of renewable
633 energy that is recycled shall count towards the county recycling
634 goals in accordance with the methods and criteria developed
635 pursuant to paragraph (2)(h) ~~does not count as waste~~.
636 Section 18. Subsections (1), (2), and (3) of section
637 403.707, Florida Statutes, are amended to read:
638 403.707 Permits.—

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639 (1) A solid waste management facility may not be operated,
640 maintained, constructed, expanded, modified, or closed without
641 an appropriate and currently valid permit issued by the
642 department. The department may by rule exempt specified types of
643 facilities from the requirement for a permit under this part if
644 it determines that construction or operation of the facility is
645 not expected to create any significant threat to the environment
646 or public health. For purposes of this part, and only when
647 specified by department rule, a permit may include registrations
648 as well as other forms of licenses as defined in s. 120.52.
649 Solid waste construction permits issued under this section may
650 include any permit conditions necessary to achieve compliance
651 with the recycling requirements of this act. The department
652 shall pursue reasonable timeframes for closure and construction
653 requirements, considering pending federal requirements and
654 implementation costs to the permittee. The department shall
655 adopt a rule establishing performance standards for construction
656 and closure of solid waste management facilities. The standards
657 shall allow flexibility in design and consideration for site-
658 specific characteristics. For the purpose of permitting under
659 this chapter, the department shall allow waste-to-energy
660 facilities to maximize acceptance and processing of nonhazardous
661 solid and liquid waste.
662 (2) Except as provided in s. 403.722(6), a permit under
663 this section is not required for the following~~, if the activity~~
664 ~~does not create a public nuisance or any condition adversely~~
665 ~~affecting the environment or public health and does not violate~~
666 ~~other state or local laws, ordinances, rules, regulations, or~~
667 ~~orders~~:

668 (a) Disposal by persons of solid waste resulting from their
669 own activities on their own property, if such waste is ordinary
670 household waste from their residential property or is rocks,
671 soils, trees, tree remains, and other vegetative matter that
672 normally result from land development operations. Disposal of
673 materials that could create a public nuisance or adversely
674 affect the environment or public health, such as white goods;
675 automotive materials, such as batteries and tires; petroleum
676 products; pesticides; solvents; or hazardous substances, is not
677 covered under this exemption.
678 (b) Storage in containers by persons of solid waste
679 resulting from their own activities on their property, leased or
680 rented property, or property subject to a homeowners' ~~homeowners~~
681 or maintenance association for which the person contributes
682 association assessments, if the solid waste in such containers
683 is collected at least once a week.
684 (c) Disposal by persons of solid waste resulting from their
685 own activities on their property, if the environmental effects
686 of such disposal on groundwater and surface waters are:
687 1. Addressed or authorized by a site certification order
688 issued under part II or a permit issued by the department under
689 this chapter or rules adopted pursuant to this chapter; or
690 2. Addressed or authorized by, or exempted from the
691 requirement to obtain, a groundwater monitoring plan approved by
692 the department. If a facility has a permit authorizing disposal
693 activity, new areas where solid waste is being disposed of which
694 are monitored by an existing or modified groundwater monitoring
695 plan are not required to be specifically authorized in a permit
696 or other certification.

697 (d) Disposal by persons of solid waste resulting from their
698 own activities on their own property, if such disposal occurred
699 prior to October 1, 1988.
700 (e) Disposal of solid waste resulting from normal farming
701 operations as defined by department rule. Polyethylene
702 agricultural plastic, damaged, nonsalvageable, untreated wood
703 pallets, and packing material that cannot be feasibly recycled,
704 which are used in connection with agricultural operations
705 related to the growing, harvesting, or maintenance of crops, may
706 be disposed of by open burning if a public nuisance or any
707 condition adversely affecting the environment or the public
708 health is not created by the open burning and state or federal
709 ambient air quality standards are not violated.
710 (f) The use of clean debris as fill material in any area.
711 However, this paragraph does not exempt any person from
712 obtaining any other required permits, and does not affect a
713 person's responsibility to dispose of clean debris appropriately
714 if it is not to be used as fill material.
715 (g) Compost operations that produce less than 50 cubic
716 yards of compost per year when the compost produced is used on
717 the property where the compost operation is located.
718 (3)(a) All applicable provisions of ss. 403.087 and
719 403.088, relating to permits, apply to the control of solid
720 waste management facilities.
721 (b) A permit, including a general permit, issued to a solid
722 waste management facility that is designed with a leachate
723 control system meeting department requirements shall be issued
724 for a term of 20 years unless the applicant requests a shorter
725 permit term. This paragraph applies to a qualifying solid waste

726 management facility that applies for an operating or
727 construction permit or renews an existing operating or
728 construction permit on or after October 1, 2012.
729 (c) A permit, including a general permit, but not including
730 a registration, issued to a solid waste management facility that
731 does not have a leachate control system meeting department
732 requirements shall be renewed for a term of 10 years, unless the
733 applicant requests a shorter permit term, if the following
734 conditions are met:
735 1. The applicant has conducted the regulated activity at
736 the same site for which the renewal is sought for at least 4
737 years and 6 months before the date that the permit application
738 is received by the department; and
739 2. At the time of applying for the renewal permit:
740 a. The applicant is not subject to a notice of violation,
741 consent order, or administrative order issued by the department
742 for violation of an applicable law or rule;
743 b. The department has not notified the applicant that it is
744 required to implement assessment or evaluation monitoring as a
745 result of exceedances of applicable groundwater standards or
746 criteria or, if applicable, the applicant is completing
747 corrective actions in accordance with applicable department
748 rules; and
749 c. The applicant is in compliance with the applicable
750 financial assurance requirements.
751 (d) The department may adopt rules to administer this
752 subsection. However, the department is not required to submit
753 such rules to the Environmental Regulation Commission for
754 approval. Notwithstanding the limitations of s. 403.087(6)(a),

755 permit fee caps for solid waste management facilities shall be
756 prorated to reflect the extended permit term authorized by this
757 subsection.
758 Section 19. Section 403.7125, Florida Statutes, is amended
759 to read:
760 403.7125 Financial assurance ~~for closure~~.—
761 (1) Every owner or operator of a landfill is jointly and
762 severally liable for the improper operation and closure of the
763 landfill, as provided by law. As used in this section, the term
764 "owner or operator" means any owner of record of any interest in
765 land wherein a landfill is or has been located and any person or
766 corporation that owns a majority interest in any other
767 corporation that is the owner or operator of a landfill.
768 (2) The owner or operator of a landfill owned or operated
769 by a local or state government or the Federal Government shall
770 establish a fee, or a surcharge on existing fees or other
771 appropriate revenue-producing mechanism, to ensure the
772 availability of financial resources for the proper closure of
773 the landfill. However, the disposal of solid waste by persons on
774 their own property, as described in s. 403.707(2), is exempt
775 from this section.
776 (a) The revenue-producing mechanism must produce revenue at
777 a rate sufficient to generate funds to meet state and federal
778 landfill closure requirements.
779 (b) The revenue shall be deposited in an interest-bearing
780 escrow account to be held and administered by the owner or
781 operator. The owner or operator shall file with the department
782 an annual audit of the account. The audit shall be conducted by
783 an independent certified public accountant. Failure to collect

784 or report such revenue, except as allowed in subsection (3), is
785 a noncriminal violation punishable by a fine of not more than
786 $5,000 for each offense. The owner or operator may make
787 expenditures from the account and its accumulated interest only
788 for the purpose of landfill closure and, if such expenditures do
789 not deplete the fund to the detriment of eventual closure, for
790 planning and construction of resource recovery or landfill
791 facilities. Any moneys remaining in the account after paying for
792 proper and complete closure, as determined by the department,
793 shall, if the owner or operator does not operate a landfill, be
794 deposited by the owner or operator into the general fund or the
795 appropriate solid waste fund of the local government of
796 jurisdiction.
797 (c) The revenue generated under this subsection and any
798 accumulated interest thereon may be applied to the payment of,
799 or pledged as security for, the payment of revenue bonds issued
800 in whole or in part for the purpose of complying with state and
801 federal landfill closure requirements. Such application or
802 pledge may be made directly in the proceedings authorizing such
803 bonds or in an agreement with an insurer of bonds to assure such
804 insurer of additional security therefor.
805 (d) The provisions of s. 212.055 which relate to raising of
806 revenues for landfill closure or long-term maintenance do not
807 relieve a landfill owner or operator from the obligations of
808 this section.
809 (e) The owner or operator of any landfill that had
810 established an escrow account in accordance with this section
811 and the conditions of its permit prior to January 1, 2007, may
812 continue to use that escrow account to provide financial

813 assurance for closure of that landfill, even if that landfill is
814 not owned or operated by a local or state government or the
815 Federal Government.
816 (3) An owner or operator of a landfill owned or operated by
817 a local or state government or by the Federal Government may
818 provide financial assurance to the department in lieu of the
819 requirements of subsection (2). An owner or operator of any
820 other landfill, or any other solid waste management facility
821 designated by department rule, shall provide financial assurance
822 to the department for the closure of the facility. Such
823 financial assurance may include surety bonds, certificates of
824 deposit, securities, letters of credit, or other documents
825 showing that the owner or operator has sufficient financial
826 resources to cover, at a minimum, the costs of complying with
827 applicable closure requirements. The owner or operator shall
828 estimate such costs to the satisfaction of the department.
829 (4) This section does not repeal, limit, or abrogate any
830 other law authorizing local governments to fix, levy, or charge
831 rates, fees, or charges for the purpose of complying with state
832 and federal landfill closure requirements.
833 (5) The department shall by rule require that the owner or
834 operator of a solid waste management facility that receives
835 waste after October 9, 1993, and that is required by department
836 rule to undertake corrective actions for violations of water
837 quality standards provide financial assurance for the cost of
838 completing such corrective actions. The same financial assurance
839 mechanisms that are available for closure costs shall be
840 available for costs associated with undertaking corrective
841 actions.

842 (6) ~~(5)~~ The department shall adopt rules to implement this
843 section.
844 Section 20. Subsection (12) is added to section 403.814,
845 Florida Statutes, to read:
846 403.814 General permits; delegation.—
847 (12) A general permit is granted for the construction,
848 alteration, and maintenance of a stormwater management system
849 serving a total project area of up to 10 acres. When the
850 stormwater management system is designed, operated, and
851 maintained in accordance with applicable rules adopted pursuant
852 to part IV of chapter 373, there is a rebuttable presumption
853 that the discharge for such systems complies with state water
854 quality standards. The construction of such a system may proceed
855 without any further agency action by the department or water
856 management district if, within 30 days after commencement of
857 construction, an electronic self-certification is submitted to
858 the department or water management district which certifies the
859 proposed system was designed by a Florida-registered
860 professional to meet all of the requirements listed in
861 paragraphs (a)-(f):
862 (a) The total project involves less than 10 acres and less
863 than 2 acres of impervious surface;
864 (b) No activities will impact wetlands or other surface
865 waters;
866 (c) No activities are conducted in, on, or over wetlands or
867 other surface waters;
868 (d) Drainage facilities will not include pipes having
869 diameters greater than 24 inches, or the hydraulic equivalent,
870 and will not use pumps in any manner;

871 (e) The project is not part of a larger common plan,
872 development, or sale; and
873 (f) The project does not:
874 1. Cause adverse water quantity or flooding impacts to
875 receiving water and adjacent lands;
876 2. Cause adverse impacts to existing surface water storage
877 and conveyance capabilities;
878 3. Cause a violation of state water quality standards; or
879 4. Cause an adverse impact to the maintenance of surface or
880 groundwater levels or surface water flows established pursuant
881 to s. 373.042 or a work of the district established pursuant to
882 s. 373.086.
883 Section 21. Subsection (6) of section 403.853, Florida
884 Statutes, is amended to read:
885 403.853 Drinking water standards.—
886 (6) Upon the request of the owner or operator of a
887 transient noncommunity water system using groundwater as a
888 source of supply and serving religious institutions or
889 businesses, other than restaurants or other public food service
890 establishments or religious institutions with school or day care
891 services~~, and using groundwater as a source of supply~~, the
892 department, or a local county health department designated by
893 the department, shall perform a sanitary survey of the facility.
894 Upon receipt of satisfactory survey results according to
895 department criteria, the department shall reduce the
896 requirements of such owner or operator from monitoring and
897 reporting on a quarterly basis to performing these functions on
898 an annual basis. Any revised monitoring and reporting schedule
899 approved by the department under this subsection shall apply

900 until such time as a violation of applicable state or federal
901 primary drinking water standards is determined by the system
902 owner or operator, by the department, or by an agency designated
903 by the department, after a random or routine sanitary survey.
904 Certified operators are not required for transient noncommunity
905 water systems of the type and size covered by this subsection.
906 Any reports required of such system shall be limited to the
907 minimum as required by federal law. When not contrary to the
908 provisions of federal law, the department may, upon request and
909 by rule, waive additional provisions of state drinking water
910 regulations for such systems.
911 Section 22. Paragraph (a) of subsection (3) and subsections
912 (4), (5), (10), (11), (14), (15), and (18) of section 403.973,
913 Florida Statutes, are amended to read:
914 403.973 Expedited permitting; amendments to comprehensive
915 plans.—
916 (3)(a) The secretary shall direct the creation of regional
917 permit action teams for the purpose of expediting review of
918 permit applications and local comprehensive plan amendments
919 submitted by:
920 1. Businesses creating at least 50 jobs or a commercial or
921 industrial development project that will be occupied by
922 businesses that would individually or collectively create at
923 least 50 jobs; or
924 2. Businesses creating at least 25 jobs if the project is
925 located in an enterprise zone, or in a county having a
926 population of fewer than 75,000 or in a county having a
927 population of fewer than 125,000 which is contiguous to a county
928 having a population of fewer than 75,000, as determined by the

929 most recent decennial census, residing in incorporated and
930 unincorporated areas of the county.
931 (4) The regional teams shall be established through the
932 execution of a project-specific memoranda of agreement developed
933 and executed by the applicant and the secretary, with input
934 solicited from ~~the Department of Economic Opportunity and~~ the
935 respective heads of the Department of Transportation and its
936 district offices, the Department of Agriculture and Consumer
937 Services, the Fish and Wildlife Conservation Commission,
938 appropriate regional planning councils, appropriate water
939 management districts, and voluntarily participating
940 municipalities and counties. The memoranda of agreement should
941 also accommodate participation in this expedited process by
942 other local governments and federal agencies as circumstances
943 warrant.
944 (5) In order to facilitate local government's option to
945 participate in this expedited review process, the secretary
946 shall, in cooperation with local governments and participating
947 state agencies, create a standard form memorandum of agreement.
948 The standard form of the memorandum of agreement shall be used
949 only if the local government participates in the expedited
950 review process. In the absence of local government
951 participation, only the project-specific memorandum of agreement
952 executed pursuant to subsection (4) applies. A local government
953 shall hold a duly noticed public workshop to review and explain
954 to the public the expedited permitting process and the terms and
955 conditions of the standard form memorandum of agreement.
956 (10) The memoranda of agreement may provide for the waiver
957 or modification of procedural rules prescribing forms, fees,

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958 procedures, or time limits for the review or processing of
959 permit applications under the jurisdiction of those agencies
960 that are members of the regional permit action team ~~party to the~~
961 ~~memoranda of agreement~~. Notwithstanding any other provision of
962 law to the contrary, a memorandum of agreement must to the
963 extent feasible provide for proceedings and hearings otherwise
964 held separately ~~by the parties to the memorandum of agreement~~ to
965 be combined into one proceeding or held jointly and at one
966 location. Such waivers or modifications are not authorized ~~shall~~
967 ~~not be available~~ for permit applications governed by federally
968 delegated or approved permitting programs, the requirements of
969 which would prohibit, or be inconsistent with, such a waiver or
970 modification.
971 (11) The ~~standard form for~~ memoranda of agreement shall
972 include guidelines to be used in working with state, regional,
973 and local permitting authorities. Guidelines may include, but
974 are not limited to, the following:
975 (a) A central contact point for filing permit applications
976 and local comprehensive plan amendments and for obtaining
977 information on permit and local comprehensive plan amendment
978 requirements.~~;~~
979 (b) Identification of the individual or individuals within
980 each respective agency who will be responsible for processing
981 the expedited permit application or local comprehensive plan
982 amendment for that agency.~~;~~
983 (c) A mandatory preapplication review process to reduce
984 permitting conflicts by providing guidance to applicants
985 regarding the permits needed from each agency and governmental
986 entity, site planning and development, site suitability and

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987 limitations, facility design, and steps the applicant can take
988 to ensure expeditious permit application and local comprehensive
989 plan amendment review. As a part of this process, the first
990 interagency meeting to discuss a project shall be held within 14
991 days after the secretary's determination that the project is
992 eligible for expedited review. Subsequent interagency meetings
993 may be scheduled to accommodate the needs of participating local
994 governments that are unable to meet public notice requirements
995 for executing a memorandum of agreement within this timeframe.
996 This accommodation may not exceed 45 days from the secretary's
997 determination that the project is eligible for expedited
998 review.~~;~~
999 (d) The preparation of a single coordinated project
1000 description form and checklist and an agreement by state and
1001 regional agencies to reduce the burden on an applicant to
1002 provide duplicate information to multiple agencies.~~;~~
1003 (e) Establishment of a process for the adoption and review
1004 of any comprehensive plan amendment needed by any certified
1005 project within 90 days after the submission of an application
1006 for a comprehensive plan amendment. However, the memorandum of
1007 agreement may not prevent affected persons as defined in s.
1008 163.3184 from appealing or participating in this expedited plan
1009 amendment process and any review or appeals of decisions made
1010 under this paragraph.~~; and~~
1011 (f) Additional incentives for an applicant who proposes a
1012 project that provides a net ecosystem benefit.
1013 (14)(a) Challenges to state agency action in the expedited
1014 permitting process for projects processed under this section are
1015 subject to the summary hearing provisions of s. 120.574, except

1016 that the administrative law judge's decision, as provided in s.
1017 120.574(2)(f), shall be in the form of a recommended order and
1018 do not constitute the final action of the state agency. In those
1019 proceedings where the action of only one agency of the state
1020 other than the Department of Environmental Protection is
1021 challenged, the agency of the state shall issue the final order
1022 within 45 working days after receipt of the administrative law
1023 judge's recommended order, and the recommended order shall
1024 inform the parties of their right to file exceptions or
1025 responses to the recommended order in accordance with the
1026 uniform rules of procedure pursuant to s. 120.54. In those
1027 proceedings where the actions of more than one agency of the
1028 state are challenged, the Governor shall issue the final order
1029 within 45 working days after receipt of the administrative law
1030 judge's recommended order, and the recommended order shall
1031 inform the parties of their right to file exceptions or
1032 responses to the recommended order in accordance with the
1033 uniform rules of procedure pursuant to s. 120.54. For ~~This~~
1034 ~~paragraph does not apply to~~ the issuance of department licenses
1035 required under any federally delegated or approved permit
1036 program~~. In such instances~~, the department, and not the
1037 Governor, shall enter the final order. The participating
1038 agencies of the state may opt at the preliminary hearing
1039 conference to allow the administrative law judge's decision to
1040 constitute the final agency action.
1041 (b) Projects identified in paragraph (3)(f) or challenges
1042 to state agency action in the expedited permitting process for
1043 establishment of a state-of-the-art biomedical research
1044 institution and campus in this state by the grantee under s.

1045 288.955 are subject to the same requirements as challenges
1046 brought under paragraph (a), except that, notwithstanding s.
1047 120.574, summary proceedings must be conducted within 30 days
1048 after a party files the motion for summary hearing, regardless
1049 of whether the parties agree to the summary proceeding.
1050 (15) The Department of Economic Opportunity, working with
1051 the agencies providing cooperative assistance and input
1052 regarding the memoranda of agreement, shall review sites
1053 proposed for the location of facilities that the Department of
1054 Economic Opportunity has certified to be eligible for the
1055 Innovation Incentive Program under s. 288.1089. Within 20 days
1056 after the request for the review by the Department of Economic
1057 Opportunity, the agencies shall provide to the Department of
1058 Economic Opportunity a statement as to each site's necessary
1059 permits under local, state, and federal law and an
1060 identification of significant permitting issues, which if
1061 unresolved, may result in the denial of an agency permit or
1062 approval or any significant delay caused by the permitting
1063 process.
1064 (18) The Department of Economic Opportunity, working with
1065 the Rural Economic Development Initiative ~~and the agencies~~
1066 ~~participating in the memoranda of agreement~~, shall provide
1067 technical assistance in preparing permit applications and local
1068 comprehensive plan amendments for counties having a population
1069 of fewer than 75,000 residents, or counties having fewer than
1070 125,000 residents which are contiguous to counties having fewer
1071 than 75,000 residents. Additional assistance may include, but
1072 not be limited to, guidance in land development regulations and
1073 permitting processes, working cooperatively with state,

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1074 regional, and local entities to identify areas within these
1075 counties which may be suitable or adaptable for preclearance
1076 review of specified types of land uses and other activities
1077 requiring permits.
1078 Section 23. Subsection (1) of section 526.203, Florida
1079 Statutes, is amended, and subsection (5) is added to that
1080 section, to read:
1081 526.203 Renewable fuel standard.—
1082 (1) DEFINITIONS.—As used in this act:
1083 (a) "Blender," "importer," "terminal supplier," and
1084 "wholesaler" are defined as provided in s. 206.01.
1085 (b) "Blended gasoline" means a mixture of 90 to 91 percent
1086 gasoline and 9 to 10 percent fuel ethanol or other alternative
1087 fuel, by volume, that meets the specifications as adopted by the
1088 department. The fuel ethanol or other alternative fuel portion
1089 may be derived from any agricultural source.
1090 (c) "Fuel ethanol" means an anhydrous denatured alcohol
1091 produced by the conversion of carbohydrates that meets the
1092 specifications as adopted by the department.
1093 (d) "Alternative fuel" means a fuel produced from biomass
1094 that is used to replace or reduce the quantity of fossil fuel
1095 present in a petroleum fuel that meets the specifications as
1096 adopted by the department. "Biomass" means biomass as defined in
1097 s. 366.91 and "alternative fuel" means alternative fuel as
1098 defined in s. 525.01(1)(c) and that is suitable for blending
1099 with gasoline.
1100 (e) ~~(d)~~ "Unblended gasoline" means gasoline that has not
1101 been blended with fuel ethanol and that meets the specifications
1102 as adopted by the department.

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

1103 (5) SALE OF UNBLENDED GASOLINE.—This section does not
1104 prohibit the sale of unblended gasoline for the uses exempted
1105 under subsection (3).
1106 Section 24. The holder of a valid permit or other
1107 authorization is not required to make a payment to the
1108 authorizing agency for use of an extension granted under s. 73
1109 or s. 79 of chapter 2011-139, Laws of Florida. This section
1110 applies retroactively and is effective as of June 2, 2011.
1111 Section 25. This act shall take effect July 1, 2012.

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

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/28/2012
Date

SB 716
Bill Number

Amendment 711880
Barcode

Name NOAH VALENSTEIN

Phone 850 222 5805

Address 625 N ADAMS
Street

E-mail

TLH FL 32301
City State Zip

Job Title Leg Affairs Dir.

Speaking: [X] For [ ] Against [ ] Information

Appearing at request of Chair [ ]

Subject Amendment 711880 to SB 716

Representing EVERGLADES FOUNDATION

Lobbyist registered with Legislature: [X] Yes [ ] No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-28-12
Meeting Date

Topic: Biscayne Bay Aquatic Pres.

Bill Number: CS/CS/SB 716 *(if applicable)*

Name: Stephanie Kunkel

Amendment Barcode: 711880 *(if applicable)*

Job Title:

Address: 1830 Meridoc Rd
Street

Tallahassee FL 32303
City *State* *Zip*

Phone: 850-320-4208

E-mail: Stef.Kunkel@gmail.com

Speaking: [X] For [ ] Against [ ] Information

Representing: Clean Water Action

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/28/12
Meeting Date

Topic: Env, Permitting / Biscayne Bay Amendm

Bill Number: SB 716 *(if applicable)*

Name: Mary Jean Yon

Amendment Barcode: 711880 *(if applicable)*

Job Title:

Address: 3324 Charleston Rd
Street

TLH, FL 32309
City *State* *Zip*

Phone: (850) 519-7859

E-mail: maryjeanyon@comcast.net

Speaking: [x] For [ ] Against [ ] Information

Amendment

Representing: Audubon Florida

Appearing at request of Chair: [x] Yes [ ] No

Lobbyist registered with Legislature: [x] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Banking and Insurance
Budget - Subcommittee on Criminal and Civil Justice Appropriations
Budget - Subcommittee on Transportation, Tourism, and Economic Development Appropriations
Criminal Justice
Military Affairs, Space, and Domestic Security

SENATOR MICHAEL S. "MIKE" BENNETT
President Pro Tempore
21st District

February 14, 2012

The Honorable Alan Hayes
Chair, General Government Apps Committee
201 The Capitol
404 S. Monroe St.
Tallahassee, Fl 32399

Dear Chairman Hayes:

I am requesting that you place S716, relating to Environmental Regulation, on your committee agenda as soon as possible.

If you have any questions, please let me know. Thank you for your consideration.

Sincerely,

Michael S. "Mike" Bennett
/cre
Cc:

- Jamie DeLoach, Staff Director
- Lisa Waddell, Administrative Assistant

REPLY TO:
☐ Wildewood Professional Park, Suite 90, 3653 Cortez Road West, Bradenton, Florida 34210 (941) 727-6349
☐ 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5078

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/SB 738

INTRODUCER: Budget Subcommittee on General Government Appropriations; Environmental Preservation and Conservation Committee and Senator Altman

SUBJECT: Solid Waste Management Facilities

DATE: February 28, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman	EP	**Fav/CS**
2.	Wiggins	Yeatman	CA	**Favorable**
3.	Pigott	DeLoach	BGA	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill extends the duration of solid waste management facility permits that meet specified criteria from five years to 20 years. The extension will apply to a qualifying solid waste management facility that applies for an operating or construction permit or renews an existing operating or construction permit on or after October 1, 2012. The bill also provides renewal options for solid waste management facilities that do not have leachate control systems to renew their permits for a term of 10 years if certain conditions are met.

The bill clarifies that the Florida Department of Environmental Protection (DEP) has the authority to adopt rules for permitting solid waste management facilities and does not have to submit the rules for approval to the Environmental Regulation Commission (ERC).

The bill allows the DEP to utilize funds within the Solid Waste Management Trust Fund to facilitate the closing of a solid waste management facility, if the DEP expects the funds to be replenished upon receipt of payment from the designated insurance company.

The bill amends ss. 403.709 and 403.7125 of the Florida Statutes.

II. Present Situation:

The Department of Environmental Protection (DEP) provides guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state. Section 403.707, F.S., requires that a solid waste management facility must obtain a permit from the DEP in order to operate.

Section 403.707(3), F.S., limits permit duration to 10 years for a potential source of water pollution, which includes most solid waste management facilities. The DEP rules currently limit permit duration to five years, except for certain long-term care permits for closed facilities which may last up to 10 years. The fees for most solid waste permits are limited to $10,000.

Leachate from a landfill varies widely in composition depending on the age of the landfill and the type of waste it contains. It can usually contain both dissolved and suspended material. The generation of leachate is caused principally by precipitation percolating through waste deposited in a landfill. Once in contact with decomposing solid waste, the percolating water becomes contaminated and if it then flows out of the waste material it is termed leachate.

The risks of leachate generation can be mitigated by properly designed and engineered landfill sites, such as sites that are constructed on geologically impermeable materials or sites that use impermeable liners made of geomembranes or engineered clay.

To minimize the threat to public health and the environment, Solid Waste Financial Assurance requirements were adopted in 1984 to secure the proper closing of solid waste management facilities operating in the state of Florida. Owners or operators when demonstrating proof of financial assurance, can choose from a list of approved financial mechanisms that best meet their individual needs. The dollar amount of financial assurance required is directly tied to the DEP's approved closure cost estimate. The DEP's primary responsibility is to insure that the facility is in full compliance with all solid waste financial assurance requirements. This is accomplished by providing any assistance necessary to facility owners and operators as well as provider companies attempting to meet rule requirements.[1]

The DEP allows the use of insurance policies to provide financial assurance for closure of solid waste management facilities. According to the DEP, some procedural difficulties arise when the DEP has to contract with a third party to close an abandoned facility. In order to enter into a contract, the DEP must encumber funds to pay for the third party. There is no fund available for the DEP to encumber the expenses even if the insurance company is expected to reimburse the expenses.

The Environmental Protection Agency (EPA) adopted rules for solid waste management facilities in 1991. According to the DEP, if a state's program was determined to be at least equivalent to the federal program, the state program would be approved and the federal regulation would not apply in that state. Florida's program was approved in 1993, but one of the

[1] Florida Department of Environmental Protection, Bureau of Solid and Hazardous Waste, Solid Waste Financial Assurance, http://www.dep.state.fl.us/waste/categories/swfr/default.htm.

conditions for approval was that the DEP amend existing rules to require financial assurance for corrective actions at landfills. The DEP created Rules 62-701.630 and 62-701.730, to include provisions requiring permitees that have an approved corrective action plan to put up financial assurance for the costs of the corrective actions. The Joint Administrative Procedures Committee has stated that the DEP does not have the statutory authority for these rules. If the DEP had to repeal the existing rules, there is a risk that EPA could determine that Florida's program is no longer equivalent and disapprove it, in which case owners of solid waste management facilities would be required to comply with all of EPA's regulations in addition to all of Florida's rules. This would create a burden on the regulated community and could create a conflict since Florida's rules are not identical to EPA's.[2]

III. Effect of Proposed Changes:

Section 1 amends s. 403.707 (3), F.S., to provide that a permit issued after October 1, 2012, to a solid waste management facility with a leachete control system that is in compliance will be valid for up to 20 years. This change will allow the DEP to prorate existing fees for these longer permits. For example, a Class I landfill operation permit fee is currently $10,000 for a five-year permit. If the bill becomes law, the permit fee will increase to a maximum of $40,000 for a 20-year permit.

The bill also allows a permit to be issued to a solid waste management facility that does not have a leachate control system for 10 years if the applicant meets certain criteria. The applicant seeking renewal must:

- have regularly utilized the site for at least 4 and a half months before the application;
- not be subject to a notice, at the time of applying for the renewal permit, by the DEP, or be in violation of an applicable rule;
- not have been notified to implement assessment or evaluation monitoring as a result of exceedances of applicable groundwater standards, or completing corrective actions in accordance with applicable DEP rules;
- be in compliance with the applicable financial assurance requirements.

This section also authorizes the DEP to adopt rules. The provisions of Chapter 120, which require a statement of estimated regulatory cost and legislative ratification, do not apply to this rulemaking, and the DEP is not required to submit such rules to the Environmental Regulation Commission for approval.

Section 2 amends s. 403.709, F.S., to create a solid waste landfill closure account within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities. The bill enables the DEP to activate a closure of a facility in compliance with the closure plan approved by the DEP. This can only happen if the facility has been issued a permit by the DEP to operate the facility, the permittee has provided proof of financial assurance for closure in the form of an insurance certificate, and the facility has been deemed abandoned or has been ordered closed by the DEP. It also requires the DEP to have written documentation that the insurance company issuing the closure insurance policy will

[2] Conversation with Florida Department of Environmental Protection representative (DEP) (Jan. 6, 2012).

provide or reimburse most if not all of the funds required to complete closing and long-term care of the facility.

Section 3 amends s. 403.7125, F.S., to clarify that the DEP may enforce already established rules which require an owner or operator of a solid waste management facility that receives waste to undertake corrective actions for violations of water quality standards and provide financial assurance for the cost of completing such corrective actions. The financial assurances requirements for closure costs will also be available for costs associated with undertaking corrective actions.

Section 4 provides an appropriation of $2,888,460 in nonrecurring funds to the DEP from the Solid Waste Management Trust Fund.

Section 5 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Owners and operators of lined solid waste management facilities that opt for longer-term permits may benefit from the increased predictability such longer permits provide. For example, it may be easier to obtain financing for these projects and operational and design criteria are less likely to need updating and amending as frequently. After five years, the cost savings from not having to apply for and receive permit renewals will be significant.

Solid waste management facilities will have more flexibility when preparing to apply for permits as the life of the permit will be increased by 15 years. Further, the costs associated with filing renewal applications will decrease.

Owners and operators of unlined solid waste management facilities that meet the DEP's requirements may opt for longer-term permits and may benefit from the increased predictability such longer permits provide.

C. Government Sector Impact:

The DEP anticipates an increase in the amount of fees collected due to the extended length of the permit. This increase will level out, as the new permits will not need to be renewed as often. The bill provides a nonrecurring appropriation of $2,888,460 to the DEP from the Solid Waste Management Trust Fund to allow the department to enter into contracts and pay invoices for closure and long term care work. This will allow the DEP to meet the requirements of section 2 of the bill. Most, if not all, of the costs are anticipated to be reimbursed by the insurance companies.

The bill may have a indeterminate negative fiscal impact to the Solid Waste Management Trust Fund in the event the cost of closing a facility or long term care work exceeds the face value of the insurance policy. However,

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Budget Subcommittee on General Government Appropriations on February 28, 2012:

- Requires the DEP to have written documentation that the insurance company issuing the closure insurance policy will provide or reimburse most, if not all, of the funds required to complete closing and long-term care of the facility.
- Provides a nonrecurring appropriation of $2,888,460 to the DEP from the Solid Waste Management Trust Fund.

CS by Environmental Preservation and Conservation on January 9, 2012:
The CS allows a permit to be issued to a solid waste management facility that does not have a leachate control system for 10 years if the applicant meets certain criteria. The CS specifies that the provisions of Chapter 120, which require a statement of estimated regulatory cost and legislative ratification do not apply to this rulemaking. The CS creates a solid waste landfill closure account within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities. The CS enables the DEP to activate a closure of a facility in compliance with the approved closure plan. The CS amends s. 403.7125, F.S., to clarify that the DEP may

enforce already established rules which require an owner or operator of a solid waste management facility that receives waste to undertake corrective actions for violations of water quality standards and provide financial assurance for the cost of completing such corrective actions.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

811608

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Latvala) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 87 - 106
4 and insert:
5 (5) Notwithstanding the provisions of subsection (1), a
6 solid waste landfill closure account is created within the Solid
7 Waste Management Trust Fund to provide funding for the closing
8 and long-term care of solid waste management facilities. The
9 department may use funds from the account to contract with a
10 third party for the closing and long-term care of solid waste
11 management facilities, if:
12 (a) The facility had or has a department permit to operate

811608

13 the facility;
14 (b) The permittee provided proof of financial assurance for
15 closure in the form of an insurance certificate;
16 (c) The facility has been deemed to be abandoned or has
17 been ordered to close by the department;
18 (d) Closure will be accomplished in substantial accordance
19 with a closure plan approved by the department; and
20 (e) The department has written documentation that the
21 insurance company issuing the closure insurance policy will
22 provide or reimburse most or all of the funds required to
23 complete closing and long-term care of the facility.
24
25 The department shall deposit the funds received from the
26 insurance company as reimbursement for the costs of closing or
27 long-term care of the facility into the solid waste landfill
28 closure account.

782978

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete line 193
and insert:
Section 4. Effective upon this act becoming a law, the sum of $2,888,460 in nonrecurring funds is appropriated to the Department of Environmental Protection from the Solid Waste Management Trust Fund in the Fixed Capital Outlay-Agency Managed-Closing and Long-Term Care of Solid Waste Management Facilities appropriation category pursuant to s. 403.709(5), Florida Statutes.
Section 5. Except as otherwise expressly provided in this

782978

13 act and except for this section, which shall take effect upon
14 this act becoming a law, this act shall take effect July 1,
15 2012.
16
17 ========== T I T L E A M E N D M E N T ==========
18 And the title is amended as follows:
19 Delete line 30
20 and insert:
21 standards; providing an appropriation; providing
22 effective dates.

By the Committee on Environmental Preservation and Conservation; and Senator Altman

592-01733-12 2012738c1

A bill to be entitled

An act relating to solid waste management facilities; amending s. 403.707, F.S.; specifying a permit term for a solid waste management facility that is designed with a leachate control system meeting the requirements of the Department of Environmental Protection; requiring that existing permit fees be adjusted to the permit term; providing applicability; specifying a permit term for a solid waste management facility that does not have a leachate control system meeting the requirements of the department under certain conditions; authorizing the department to adopt rules; providing that the department is not required to submit the rules to the Environmental Regulation Commission for approval; requiring that permit fee caps for solid waste management facilities be prorated to reflect the extended permit term; amending s. 403.709, F.S.; creating a solid waste landfill closure account within the Solid Waste Management Trust Fund to fund the closing and long-term care of solid waste facilities under certain circumstances; requiring that the department deposit funds that are reimbursed into the solid waste landfill closure account; amending s. 403.7125, F.S.; requiring that the department require by rule that the owner or operator of a solid waste management facility receiving waste after a specified date provide financial assurance for the cost of completing corrective action for violations of water quality

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592-01733-12 2012738c1

standards; providing an effective date.

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

Section 1. Subsection (3) of section 403.707, Florida Statutes, is amended to read:

403.707 Permits.—

(3)(a) All applicable provisions of ss. 403.087 and 403.088, relating to permits, apply to the control of solid waste management facilities.

(b) A permit, including a general permit, issued to a solid waste management facility that is designed with a leachate control system meeting department requirements shall be issued for a term of 20 years unless the applicant requests a shorter permit term. Notwithstanding the limitations of s. 403.087(6)(a), existing permit fees for a qualifying solid waste management facility shall be adjusted to the permit term authorized by this section. This paragraph applies to a qualifying solid waste management facility that applies for an operating or construction permit or renews an existing operating or construction permit on or after October 1, 2012.

(c) A permit, including a general permit, but not including a registration, issued to a solid waste management facility that does not have a leachate control system meeting department requirements shall be renewed for a term of 10 years, unless the applicant requests a shorter term, if the following conditions are met:

1. The applicant has conducted the regulated activity at the same site for which the renewal is sought for at least 4

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

59 years and 6 months before the date that the permit application
60 is received by the department; and
61 2. At the time of applying for the renewal permit:
62 a. The applicant is not subject to a notice of violation,
63 consent order, or administrative order issued by the department
64 for violation of an applicable law or rule;
65 b. The department has not notified the applicant that it is
66 required to implement assessment or evaluation monitoring as a
67 result of exceedances of applicable groundwater standards or
68 criteria or, if applicable, the applicant is completing
69 corrective actions in accordance with applicable department
70 rules; and
71 c. The applicant is in compliance with the applicable
72 financial assurance requirements.
73 (d) The department may adopt rules to administer this
74 subsection; however, the provisions of chapter 120 which require
75 a statement of estimated regulatory cost and legislative
76 ratification do not apply to such rulemaking and the department
77 is not required to submit such rules to the Environmental
78 Regulation Commission for approval. Notwithstanding the
79 limitations of s. 403.087(6)(a), permit fee caps for solid waste
80 management facilities shall be prorated to reflect the extended
81 permit term authorized by this subsection.
82 Section 2. Subsection (5) is added to section 403.709,
83 Florida Statutes, to read:
84 403.709 Solid Waste Management Trust Fund; use of waste
85 tire fees.—There is created the Solid Waste Management Trust
86 Fund, to be administered by the department.
87 (5) A solid waste landfill closure account is created

88 within the Solid Waste Management Trust Fund to provide funding
89 for the closing and long-term care of solid waste management
90 facilities, if:
91 (a) The facility had or has a department permit to operate
92 the facility;
93 (b) The permittee provided proof of financial assurance for
94 closure in the form of an insurance certificate;
95 (c) The facility has been deemed to be abandoned or has
96 been ordered to close by the department; and
97 (d) Closure will be accomplished in substantial accordance
98 with a closure plan approved by the department.
99
100 The department has a reasonable expectation that the insurance
101 company issuing the closure insurance policy will provide or
102 reimburse most or all of the funds required to complete closing
103 and long-term care of the facility. If the insurance company
104 reimburses the department for the costs of closing or long-term
105 care of the facility, the department shall deposit the funds
106 into the solid waste landfill closure account.
107 Section 3. Section 403.7125, Florida Statutes, is amended
108 to read:
109 403.7125 Financial assurance ~~for closure~~.—
110 (1) Every owner or operator of a landfill is jointly and
111 severally liable for the improper operation and closure of the
112 landfill, as provided by law. As used in this section, the term
113 "owner or operator" means any owner of record of any interest in
114 land wherein a landfill is or has been located and any person or
115 corporation that owns a majority interest in any other
116 corporation that is the owner or operator of a landfill.

117 (2) The owner or operator of a landfill owned or operated
118 by a local or state government or the Federal Government shall
119 establish a fee, or a surcharge on existing fees or other
120 appropriate revenue-producing mechanism, to ensure the
121 availability of financial resources for the proper closure of
122 the landfill. However, the disposal of solid waste by persons on
123 their own property, as described in s. 403.707(2), is exempt
124 from this section.
125 (a) The revenue-producing mechanism must produce revenue at
126 a rate sufficient to generate funds to meet state and federal
127 landfill closure requirements.
128 (b) The revenue shall be deposited in an interest-bearing
129 escrow account to be held and administered by the owner or
130 operator. The owner or operator shall file with the department
131 an annual audit of the account. The audit shall be conducted by
132 an independent certified public accountant. Failure to collect
133 or report such revenue, except as allowed in subsection (3), is
134 a noncriminal violation punishable by a fine of not more than
135 $5,000 for each offense. The owner or operator may make
136 expenditures from the account and its accumulated interest only
137 for the purpose of landfill closure and, if such expenditures do
138 not deplete the fund to the detriment of eventual closure, for
139 planning and construction of resource recovery or landfill
140 facilities. Any moneys remaining in the account after paying for
141 proper and complete closure, as determined by the department,
142 shall, if the owner or operator does not operate a landfill, be
143 deposited by the owner or operator into the general fund or the
144 appropriate solid waste fund of the local government of
145 jurisdiction.

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

146 (c) The revenue generated under this subsection and any
147 accumulated interest thereon may be applied to the payment of,
148 or pledged as security for, the payment of revenue bonds issued
149 in whole or in part for the purpose of complying with state and
150 federal landfill closure requirements. Such application or
151 pledge may be made directly in the proceedings authorizing such
152 bonds or in an agreement with an insurer of bonds to assure such
153 insurer of additional security therefor.
154 (d) The provisions of s. 212.055 which relate to raising of
155 revenues for landfill closure or long-term maintenance do not
156 relieve a landfill owner or operator from the obligations of
157 this section.
158 (e) The owner or operator of any landfill that had
159 established an escrow account in accordance with this section
160 and the conditions of its permit prior to January 1, 2007, may
161 continue to use that escrow account to provide financial
162 assurance for closure of that landfill, even if that landfill is
163 not owned or operated by a local or state government or the
164 Federal Government.
165 (3) An owner or operator of a landfill owned or operated by
166 a local or state government or by the Federal Government may
167 provide financial assurance to the department in lieu of the
168 requirements of subsection (2). An owner or operator of any
169 other landfill, or any other solid waste management facility
170 designated by department rule, shall provide financial assurance
171 to the department for the closure of the facility. Such
172 financial assurance may include surety bonds, certificates of
173 deposit, securities, letters of credit, or other documents
174 showing that the owner or operator has sufficient financial

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175 resources to cover, at a minimum, the costs of complying with
176 applicable closure requirements. The owner or operator shall
177 estimate such costs to the satisfaction of the department.
178 (4) This section does not repeal, limit, or abrogate any
179 other law authorizing local governments to fix, levy, or charge
180 rates, fees, or charges for the purpose of complying with state
181 and federal landfill closure requirements.
182 (5) The department shall by rule require that the owner or
183 operator of a solid waste management facility that receives
184 waste after October 9, 1993, and that is required by department
185 rule to undertake corrective actions for violations of water
186 quality standards provide financial assurance for the cost of
187 completing such corrective actions. The same financial assurance
188 mechanisms that are available for closure costs shall be
189 available for costs associated with undertaking corrective
190 actions.
191 (6) ~~(5)~~ The department shall adopt rules to implement this
192 section.
193 Section 4. This act shall take effect July 1, 2012.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/28/12
Meeting Date

Topic: Solid Waste

Bill Number: 738 *(if applicable)*

Name: Jon Steverson

Amendment Barcode: _____ *(if applicable)*

Job Title: Special Counsel on Policy and Legislative Affairs

Address: 3900 Commonwealth Blvd
Street

Tallahassee, FL 32399
City *State* *Zip*

Phone: (850) 245-2140

E-mail: _____

Speaking: ☐ For ☐ Against ☑ Information

Representing: DEP

Appearing at request of Chair: ☑ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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Regulated Industries

SENATOR THAD ALTMAN
24th District

January 30, 2012

The Honorable Alan Hays, Chair
Senate Budget Subcommittee on
General Government Appropriations
324 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Hays:

I respectfully request that SB 738, related to *Solid Waste Management Facilities,* be placed on the subcommittee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

Thad Altman

Thad Altman
TA/vc

CC: Jamie DeLoach, Staff Director, 201 The Capitol

REPLY TO:
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MIKE HARIDOPOLOS
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President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/SB 762

INTRODUCER: Budget Subcommittee on General Government Appropriations; Criminal Justice Committee and Senator Hays

SUBJECT: Practice of Professions Regulated by Department of Business and Professional Regulation

DATE: February 28, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Favorable**
2.	Clodfelter	Cannon	CJ	**Fav/CS**
3.	Howard	DeLoach	BGA	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill revises references to the professional standards with which registered, licensed, and certified appraisers are required to comply. It requires the Florida Real Estate Appraisal Board to adopt rules that establish standards of professional practice that meet or exceed nationally recognized standards of appraisal practice, including standards adopted by the Appraisal Standards Board of the Appraisal Foundation. It requires these standards to be used in the purchase of lands for the Lake Apopka Improvement program.

The bill also reduces the continuing education hours required to reactivate an inactive license to only one renewal cycle of hours, instead of the hours required for each year the license was inactive, for the following professions: community association managers, home inspectors, providers of mold-related services, cosmetologists, architects, landscape architects, construction contractors, and electrical and alarm system contractors. The bill exempts certified public accountants licensed under ch. 473, F.S., and real estate brokers, sales associates, real estate schools, and appraisers licensed under ch. 474, F.S. These professionals would continue to be required to complete the continuing education required for each two-year period of licensure in

order to reactivate an inactive license. The bill also clarifies that the Board of Architecture and Interior Design may only approve continuing education for an interior designer that builds upon the basic knowledge of interior design.

The bill repeals provisions that provide criminal penalties for violations of agency rules and the chapters of the Florida Statutes that govern the specified professions. Under the bill the following professions would not be subject to criminal penalties for such violations: auctioneers, real estate professionals, barbers, and cosmetologists. However, the bill limits the application of criminal penalties for specified violations by auctioneers that relate to financial dishonesty or malfeasance.

The bill revises the provisions related to the regulation of appraisal management company's banks, credit unions, or other lending institutions that own and operate an internal appraisal office, business unit, or department. This is consistent with the federal Dodd Frank Act, which exempts from state regulation, financial institutions that own or operate an internal appraiser office, business, unit, or department and appraisal management companies that are owned and controlled by a subsidiary of a financial institution.

In addition, the bill:

- Waives the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for military veterans who apply to the department for a license within 24 months of being honorably discharged from service;
- Provide that a limited service veterinary medical practice operates under rules set by the Board of Veterinary Medicine in place of the provision that the practice operates for a limited time;
- Authorizes filing of a lien for collection services expenses that are reasonably related to the collection of a delinquent account rendered by a community association manager or management firm on behalf of a community association;
- Permits applicants for a real estate appraiser's certification to use the results of national examinations required for the license that were obtained more than 24 months after the date of the examination;
- Permits real estate continuing education instructors to complete their continuing education through distance learning and permits real estate schools to offer any course through distance learning;
- Allows greater reciprocity of architect licensees and modifies the internship requirements to make Florida consistent with other states to improve licensing mobility for architects;
- Conforms with exemptions for other utilities by removing a requirement for persons repairing, maintaining, removing, or disposing of asbestos-containing pipe or conduit used for gas service to be licensed as an asbestos consultant or contractor; and
- Expands exemptions regarding mold-related services to include landscape architects if they are not holding themselves out for hire to the public using names implying that they perform mold assessment services or stating or implying licensure under Part XVI.
- The bill modifies definitions used in part I of ch. 499, F.S., the Florida Drug and Cosmetic Act (act), and organizes various exceptions to the permit requirements into a single subsection. It eases existing restrictions on the limited distribution of active pharmaceutical

ingredients to Florida permitted prescription drug manufacturers and restrictions on prescription drug distributions to permitted prescription drug manufacturers and researchers. The bill provides an exemption from the prescription drug re-packager permit requirement and the product registration requirements for a restricted prescription drug distributor permitholder that is a health care entity that re-packages prescription drugs in this state for its own use or distributes prescription drugs to a hospital or other health care entity in the state for its own use if it meets certain conditions.

The bill provides an effective date of July 1, 2012.

This bill substantially amends the following sections of the Florida Statutes: 373.461, 455.213, 455.271, 468.391, 468.4338, 468.439, 468.8317, 468.841, 468.8417, 469.002, 474.202, 475.25, 475.42, 475.451, 475.611, 475.615, 475.617, 475.6171, 475.6175, 475.6235, 475.624, 475.6245, 475.626, 475.628, 476.194, 477.0212, 477.0265, 481.217, 481.209, 481.211, 481.213, 481.315, 489.116, 489.519, 499.003, and 499.01.

II. Present Situation:

Department of Business and Professional Regulation
The Department of Business and Professional Regulation (department) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.[1] The department is created in s. 20.165, F.S. Section 20.165(2), F.S., creates the following eleven divisions within the department:

- Division of Administration.
- Division of Alcoholic Beverages and Tobacco.
- Division of Certified Public Accounting.
- Division of Florida Condominiums, Timeshares, and Mobile Homes.
- Division of Hotels and Restaurants.
- Division of Pari-mutuel Wagering.
- Division of Professions.
- Division of Real Estate.
- Division of Regulation.
- Division of Technology.
- Division of Service Operations.

Professional Boards
Section 20.165(4)(a), F.S., establishes the following boards and professions within the Division of Professions:

- Board of Architecture and Interior Design, created under part I of ch. 481, F.S.
- Florida Board of Auctioneers, created under part VI of ch. 468, F.S.
- Barbers' Board, created under ch. 476, F.S.

[1] Chapter 93-220, L.O.F.

- Florida Building Code Administrators and Inspectors Board, created under part XII of ch. 468, F.S.
- Construction Industry Licensing Board, created under part I of ch. 489, F.S.
- Board of Cosmetology, created under ch. 477, F.S.
- Electrical Contractors' Licensing Board, created under part II of ch. 489, F.S.
- Board of Employee Leasing Companies, created under part XI of ch. 468, F.S.
- Board of Landscape Architecture, created under part II of ch. 481, F.S.
- Board of Pilot Commissioners, created under ch. 310, F.S.
- Board of Professional Engineers, created under ch. 471, F.S.
- Board of Professional Geologists, created under ch. 492, F.S.
- Board of Veterinary Medicine, created under ch. 474, F.S.
- Home Inspection Services Licensing Program, created under part XV of ch. 468, F.S.
- Mold-Related Services Licensing Program, created under part XVI of ch. 468, F.S.

The Pilot Rate Review Committee is established under the Board of Pilot Commissioners.[2] Section 20.165(4)(b), F.S., establishes the following board and commission within the Division of Real Estate:

- Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S.
- Florida Real Estate Commission, created under part I of ch. 475, F.S.

Section 20.165(4)(c), F.S., establishes the Board of Accountancy, created under ch. 473, F.S., within the Division of Certified Public Accounting.

The Florida State Boxing Commission[3] and the Regulatory Council of Community Managers[4] are also housed within the department. The department also has regulatory oversight responsibilities over the following professions:

- Child labor under part I of ch. 450, F.S.
- Farm labor contractors under part III of ch. 450, F.S.
- Talent agencies under part VII of ch. 468, F.S.

In addition to administering the professional boards, the department processes applications for licensure and license renewal. The department also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative frame-work for all of the professional boards housed under the department, the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

[2] Section 310.151, F.S.
[3] Section 548.003, F.S.
[4] Section 468.4315, F.S

Continuing Education
Section 455.271(4), F.S., provides that an inactive licensee may change his or her status to active provided the licensee meets all requirements for active status, pays the appropriate fees, and meets all continuing education requirements.

Community Association Managers
Section 468.4338, F.S., requires the Regulatory Council of Community Association Managers to prescribe by rule continuing education requirements for reactivating a license. The continuing education requirements for reactivating a license may not exceed 10 classroom hours for each year the license was inactive.

Home Inspectors
Section 468.8317(2), F.S., provides that the department may prescribe rules that require continuing education requirements as a condition to reactivate an inactive license. The continuing education requirements for reactivating a license may not exceed 14 hours for each year the license was inactive.

Mold-Related Services
Section 468.8417(2), F.S., provides that the department may prescribe rules that require continuing education requirements as a condition to reactivate an inactive license. The continuing education requirements for reactivating a license may not exceed 14 hours for each year the license was inactive. Section 468.841, F.S., provides exemptions from Part XVI of ch. 468, F.S., which concerns mold-related services.

Cosmetology
Section 477.019(7)(a), F.S., requires the Board of Cosmetology to prescribe by rule continuing education requirements, not to exceed 16 hours biennially,[5] as a condition for renewal of a license or registration. Section 477.0212, F.S., provides that a cosmetologist's license that has become inactive may be reactivated upon application to the department, which would require the inactive licensee to complete 16 hours of continuing education coursework for each cycle he or she was inactive.

Architecture and Interior Design
Section 481.215, F.S., provides that the continuing education requirements for renewal of architect and interior designer licenses shall be no less than 20 hours per license cycle. Section 481.217(1), F.S., provides that the continuing education requirement for reactivating an architect's license may not exceed 12 hours for each year the license was inactive. The statute provides that the minimum continuing education requirement for reactivating an interior designer's license shall be the number of hours required for the most recent license cycle plus half of the requirements for each year or part in which the license was inactive.

Landscape Architecture
Section 481.315(1), F.S., provides that continuing education requirements for renewing an inactive landscape architect's license may not exceed 12 hours for each year the license was inactive.

[5] Licenses are renewed on a two-year cycle.

Construction
Section 489.115, F.S., provides that the continuing education requirement for renewal of a construction contractor's license shall be at least 14 hours per license cycle. Section 489.116(6), F.S., provides that an inactive licensee shall comply with the same continuing education requirements that are imposed on an active licensee.

Electrical or Alarm Contracting
Section 489.517(3), F.S., provides that the continuing education requirement for renewal of an electrical or alarm contractor's license shall be at least 14 hours per license cycle.
Section 489.519(1), F.S., provides that the continuing education requirements for reactivating a license may not exceed 12 classroom hours for each year the certificate or registration was inactive.

Community Association Managers
Section 468.432, F.S., requires licensing of community association managers and community association management firms. "Community association" is defined in s. 468.431(1), F.S., as a:

> " . . . residential homeowners' association in which membership is a condition of ownership of a unit in a planned unit development, or of a lot for a home or a mobile home, or of a townhouse, villa, condominium, cooperative, or other residential unit which is part of a residential development scheme and which is authorized to impose a fee which may become a lien on the parcel."

Exemptions from Requirements Concerning Mold-Related Services
Section 468.841(d), F.S., exempts certain licensed persons or businesses from complying with requirements in Part XVI of ch. 468, F.S., relating to mold assessment. The exemption applies if the licensed person or business is not holding itself out for hire to the public using names implying that they perform mold assessment services or stating or implying licensure under Part XVI.

Real Estate Schools-Distance Learning
Section 475.17(2)(a)2., F.S., authorizes the Florida Real Estate Commission to approve distance learning courses as an option to classroom hours as satisfactory completion of continuing education requirements. Real estate schools have the option of providing classroom courses, distance learning courses, or both. A satisfactory completion of a distance learning course must require the satisfactory completion of a timed distance learning course examination. Such examination does not need to be monitored or given at a centralized location.

Appraisal Management Companies
Individual real estate appraisers are regulated under part II of ch. 475, F.S., by the Florida Real Estate Appraisal Board within the department. Section 475.6235, F.S., requires the registration of Appraisal Management Companies.

"Appraisal management company," is defined in s. 475.611(1)(c), F.S., to mean a person[6] who performs appraisal management services.

The term "appraisal management services" is defined in s. 475.611(1)(d), F.S., to mean the coordination or management of appraisal services for compensation by:

1. Employing, contracting with, or otherwise retaining one or more appraisers to perform appraisal services for a client; or
2. Acting as a broker or intermediary between a client and one or more appraisers to facilitate the client's employing, contracting with, or otherwise retaining the appraisers.

Section 475.6235(1), F.S., provides that a person may not engage in appraisal services for compensation or advertise themselves as an appraisal management company or use the titles "appraisal management company," "appraiser cooperative," "appraiser portal," or "mortgage technology company," or any abbreviation or words to that effect, unless the person is registered with the department as an appraisal management. A person may not engage in appraisal management services for compensation in this state, advertise or represent herself or himself as an appraisal management company, or company under this section.

Employees of the appraisal management company are not required to obtain a separate registration.

The "Dodd-Frank Wall Street Reform and Consumer Protection Act (Frank-Dodd Act)"[7] permits states to regulate appraisal management companies. However, an appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a federal financial institution regulatory agency is not required to register with a state.[8]

Criminalization of Rule Violations

The practice acts for several professions provide criminal penalties for violations of agency rules and the chapters of the Florida Statutes that govern the specified professions. The following professions are subject to criminal penalties for such violations:

- Auctioneers in s. 468.391, F.S.;
- Real estate professionals in s. 475.42(1)(e), F.S.;
- Barbers in s. 476.194(1)(b), F.S.; and
- Cosmetologists in s. 477.0265(1)(c), F.S.

For each of these professions, a violation of an agency rule of the governing chapter would be punishable as a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. If the violation is by a corporation licensed by the Florida Real Estate Commission, the corporation may be subject to a misdemeanor of the second degree, punishable as provided in s. 775.083, F.S.

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[6] Section 1.01(3), F.S., defines the word "person" to include "individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations."
[7] "Dodd-Frank Wall Street Reform and Consumer Protection Act" Pub. L. 111-203 (2010).
[8] *Id.* at s. 1473.

Section 775.082, F.S., provides that a second degree misdemeanor is punishable by incarceration for not longer than 60 days in jail.[9] Section 775.083, F.S., provides that a second degree misdemeanor can also be punishable by a fine of not more than $500.[10]

Florida Drug and Cosmetic Act

One purpose of the act is to safeguard the public health and promote the public welfare by protecting the public from injury by product use and by merchandising deceit involving drugs, devices, and cosmetics. Another purpose of the act is to promote uniformity between state and federal laws and their administration and enforcement, throughout the United States.

In 2003, the Legislature enacted the Prescription Drug Protection Act,[11]which put in place additional safeguards for the distribution of prescription drugs within, into, and from this state. This legislation was predicated on the findings and recommendations of the report of the Seventeenth Statewide Grand Jury in its First Interim Report to the Legislature.[12] That grand jury was called to examine, among other matters, the safety of prescription drugs in Florida. In particular, they examined the situation concerning the sale and re-sale of prescription drugs in the wholesale market.

Section 499.003, F.S., defines terms that are used in the act. The bill amends the following terms in s. 499.003, F.S.: "distribute" or "distribution," "drug," "establishment," "prescription drug," and "wholesale distribution."

Section 499.01, F.S., requires a variety of manufacturers, distributors, and other business entities involved in the preparation, manufacture, repackaging, or distribution of drugs, devices, and cosmetics to obtain a permit prior to operating. Permits that are addressed in the bill include:

- *Nonresident prescription drug manufacturer permit*, which is required for any person that is a manufacturer of prescription drugs, unless permitted as a third party logistics provider, located outside of this state or outside the United States and that engages in the wholesale distribution in this state of such prescription drugs;
- *Out-of-state prescription drug wholesale distributor permit*, which is required for a wholesale distributor located outside this state which engages in the wholesale distribution of prescription drugs into this state; and
- *Health care clinic establishment permit*, which is required for the purchase of a prescription drug by a place of business at one general physical location that provides health care or veterinary services, which is owned and operated by a business entity that has been issued a federal employer tax identification number.

Section 499.012(8), F.S., sets forth the application requirements for an out-of-state prescription drug wholesale distributor. Generally, the applicant must identify the business (name and trade names, address, and telephone number); and provide information about the ownership,

[9] *See* s. 775.082(4)(b), F.S.
[10] *See* s. 775.083(1)(e), F.S.
[11] *See* ch. 2003-155, L.O.F.
[12] The report is available at: <http://myfloridalegal.com/pages.nsf/Main/09558F82389E020785256CDA006DB01A> (Last visited on February 6, 2012).

operations and affiliated groups,[13] including the name and address of each shareholder of a corporation that owns 5 percent or more of the corporation; a background statement and fingerprint card for affiliated persons;[14] the estimated or actual annual dollar volume of certain activities pertaining to prescription drugs by the applicant; a copy of the deed or lease for the business property; a list of all licenses and permits issued to the applicant by any other state which authorize the applicant to purchase or posses prescription drugs; and documentation of the credentialing policies and procedures for customers if the applicant intends to sell Schedule II or Schedule III controlled substances to physicians in Florida.[15]

Effective October 1, 2011, all of the statutory powers, duties, and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds for the administration of ch. 499, F.S., relating to drugs, devices, cosmetics, and household products were transferred from the Department of Health to the Department of Business and Professional Regulation (DBPR).[16]

Limited Service Veterinary Medical Practice

Section 474.202(6), F.S., defines the term "limited-service veterinary medical practice" to mean:

> offering or providing veterinary services at a location that has a primary purpose other than that of providing veterinary medical services at a permanent or mobile establishment permitted by the Board of Veterinary Medicine; provides veterinary medical services for privately owned animals that do not reside at that location; operates for a limited time; and provides limited types of veterinary medical services.

Section 474.202(9), F.S., defines the term "practice of veterinary medicine" to mean:

> diagnosing the medical condition of animals and prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease thereof; performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of animals; or representing oneself by the use of titles or words, or undertaking, offering, or holding oneself out, as performing any of these functions. The term includes the determination of the health, fitness, or soundness of an animal.

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[13] "Affiliated group" is defined in s. 499.003(2), F.S., to mean an affiliated group as defined by s. 1504 of the Internal Revenue Code of 1986, as amended, which is composed of chain drug entities, including at least 50 retail pharmacies, warehouses, or repackagers, which are members of the same affiliated group. The affiliated group must disclose the names of all its members to the department.

[14] "Affiliated party" is defined in s. 499.003(3), F.S. In summary, it means a director, officer, trustee, partner, or committee member or a subsidiary or service corporation of the permittee or applicant; a person who, directly or indirectly, manages, controls, or oversees the operation of a permittee or applicant; and the five largest natural shareholders that own at least five percent of the permittee or applicant.

[15] The specific application requirement is for documentation of the credentialing policies and procedures requirements by s. 499.0121(14), F.S., However, that subsection addresses reporting requirements. Subsection (15) addresses credentialing requirements for physician-customers for certain controlled substances.

[16] *See* s. 27, ch. 2010-161, L.O.F.

Section 474.215(7), F.S., requires the board to establish by rule minimum standards for limited-service veterinary medical practices. The rules cannot restrict limited service veterinary medical practices and must be consistent with the type of limited veterinary medical service provided. The board has defined by rule minimum standards to include vaccinations, immunizations and preventative procedures for parasitic control[17] on multiple animals at a temporary location and for a limited time.[18] The rule defines the term "limited time" as no more than once every two weeks and no more than four hours in any one day for any single location where a clinic is held.[19]

According to the department, anyone, such as a retailer, may obtain a permit for limited service veterinary medical permit, but a licensed veterinarian must perform the services. These limited service clinics are inspected on a random basis. There has been an issue with these clinics not notifying the department before the clinic is conducted.

According to the department, it has not received any substantiated complaints about the care administered at limited service clinics. The complaints it has received about the clinics have been limited to paperwork violations, such as failure to properly register the clinics.

Mobile veterinarian clinics are licensed, must have a premises permit for the mobile unit, and must be inspected prior to providing veterinarian services. A "mobile veterinary establishment" and "mobile clinic" is:

> a mobile unit which contains the same treatment facilities as are required of a permanent veterinary establishment or which has entered into a written agreement with another veterinary establishment to provide any required facilities not available in the mobile unit. The terms do not refer to the use of a car, truck, or other motor vehicle by a veterinarian making a house call.[20]

III. Effect of Proposed Changes:

Military Veterans-Fee Waiver
The bill creates s. 455.213(12), F.S., to waive the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for a military veteran who applies to the department for a license within 24 months of being honorably discharged.

Lien for Collection Service Expenses of Community Associations
The bill creates s. 468.439, F.S., in Part VIII (Community Association Management) of ch. 468, F.S. This new section authorizes the filing of a lien for collection services expenses that are reasonably related to the collection of a delinquent account rendered by a community association manager or a community association management firm on behalf of a community association. The collection expenses may be secured by filing a claim of lien if the collection services

[17] According to the department, preventive services for parasitic control may require a prescription and testing to determine the health status of an animal.
[18] Rule 61G18-15.007, F.A.C.
[19] Rule 61G18-15.007(1), F.A.C.
[20] Section 474.202(7), F.S.

expense is: (1) specified by amount in a written agreement with the community association manager or management firm; and (2) payable to the community association manager or management firm as a liquidated sum.

The new section applies to collection expenses for delinquent accounts owed to community associations governed by chs. 718 (condominiums), 719 (cooperatives), and 720 (homeowner's associations).

It is not clear whether a separate lien would have to be filed for collection expenses which the community association manager or management firm has incurred on behalf of the association. For example, there are currently liens created in s. 718.116(5)(a), F.S.,[21] on condominium parcels, in s. 719.108(4), F.S.,[22] on cooperative parcels, and s. 720.3085(1), F.S., on parcels in homeowners' associations.

This provision does not specify whether the lien is subject to the lien requirements and restrictions in chs. 718, 719, and 720, F.S. To the extent that this lien is not subject to those requirements and restrictions, as further discussed below, this provision may conflict with the lien provisions in chs. 718, 719, and 720, F.S.

For example, it is not clear whether such lien is subject to the conditions provided for existing liens as noted above. Homeowners' associations have a lien on each parcel to secure the payment of assessments and other amounts if the lien is authorized by the governing documents of the association.[23] The bill may conflict with this provision to the extent that it permits a lien that is not authorized by the governing documents of the homeowners' association.

It is unclear whether the lien created by the bill effective for one year unless an enforcement action is commenced within that period or an automatic stay is issued by the filing of a bankruptcy petition as provided in s. 718.116(5)(b), F.S.[24] It is uncertain whether the unit owner required to comply with the notice provisions in s. 718.116(5)(c), F.S., for contesting a claim of lien.[25] Furthermore, it is not provided whether the association is required to file an action to enforce the lien within 90 days after the unit owner files the notice to contest the lien as required by s. 718.116(5)(c), F.S.[26]

It is not clear whether the lien created by this section is subject to the provisions which require that the homeowner must be given an opportunity to satisfy the debt. A condominium owner must be given an opportunity to pay the debt before a judgment of foreclosure may be entered.[27] A lien on a cooperative parcel cannot be filed unless the parcel owner is given at least 30-days

[21] Section 718.116(5)(a), F.S., creates a lien on each condominium parcel on behalf of condominium associations to secure payment of assessments.
[22] Section 719.108(4), F.S., creates a lien on cooperative parcels to secure unpaid rents, assessments and interest, authorized late fees, and attorney's fees incurred by the association to incident to the collection of rents and assessments or to enforce the lien.
[23] Section 720.3085(1).
[24] Section 719.108(4), F.S., provides a similar requirement for cooperatives.
[25] Section 720.3085(1)(b), F.S., provides a similar requirement for homeowners' associations.
[26] *Id.*
[27] Section 718.116(6)(b), F.S.

notice of the intent to file the lien.[28] A lien on a parcel in a homeowners' association may not be recorded unless the homeowner is given at least 45 days to pay all amounts due, including attorney's fees and the actual costs associated with the preparation of the written demand for payment of the unpaid amount.

The bill requires that the collection services expenses must be payable to the community association manager or management firm as a liquidated sum. This may conflict with provisions that direct how community associations are to distribute payments that they receive. Section 718.116(3), F.S., requires that any payment received by the association must be applied first to the interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment.[29]

The bill provides that the claim of lien may be filed if the collection services expense is payable to the community association manager or management firm as a liquidated sum. It is not clear whether this provision is a condition precedent to the filing of the claim of lien, i.e., whether the association's written agreement with the community association manager of management firm must provide that the collection service expense is payable to them as a liquidated sum. Alternatively, this provision may require that the community association manager or management firm is entitled to the funds collected through enforcement of the lien before the association is entitled to such funds.

The provision does not define the term "delinquent amount", e.g., whether the term includes amounts due as a result of fines in addition to unpaid regular or special assessments.

Exemption from Licensing As Asbestos Consultant or Contractor
Section 469.002, F.S., is amended to remove a requirement that persons repairing, maintaining, removing, or disposing of asbestos-containing pipe or conduit used for gas service must be licensed as an asbestos consultant or contractor. This removes duplication of regulation where natural gas utilities are subject to federal and state regulations. The statute already includes such an exemption for pipe or conduit that is used for electrical, electronic, communications, sewer, or water service.

Limited Service Veterinary Medical Practice
The bill amends s. 474.202(6), F.S., to provide that the limited service veterinary medical practice operates under rules set by the Board of Veterinary Medicine. It deletes the provision that the practice operates for a limited time.

Professional Practice Standards for Appraisers
The bill amends s. 373.461(5)(c), F.S., to replace references to the Uniform Standards of Professional Appraisal Practice with the Standards of professional practice established by rule of the Florida Real Estate Appraisal Board, including standards for the development or

[28] Section 719.108(4), F.S.
[29] A similar provision for the allocation of payments is provided in s. 719.108(3), F.S., for cooperatives, and in s. 720.3085(3)(b), F.S.

communication of a real estate appraisal as it relates to Lake Apopka improvement and management and the purchase of agricultural lands.

The bill amends s. 475.25(1), F.S., which provides the disciplinary provisions for real estate brokers, sales associates, and real estate schools to replace references to the Uniform Standards of Professional Appraisal Practice with the standards of professional practice adopted by rule of the Florida Real Estate Appraisal Board.

The bill amends s. 475.611, F.S., as follows:

- Section 475.611(1)(c), F.S., is amended to revise the definition of "appraisal management company" by incorporating the provision from s. 475.6235(1), F.S., which prohibits the use of the titles "appraisal management company," "appraiser cooperative," "appraiser portal," or "mortgage technology company," or other terms unless the person is registered with the department as an appraisal management company.
- Section 475.611(1)(d), F.S., is amended to reference "licensed or certified appraisers" instead of "appraisers."
- Section 475.611(1)(t), F.S, is created to define the term "subsidiary" to mean an organization that is controlled by a financial institution that is regulated by a federal agency. (Section 31).

The bill amends s. 475.615, F.S., to replace references to the Uniform Standards of Professional Appraisal Practice with the standards of professional practice, including standards for the development or communication of real estate appraisal, adopted by rule of the Florida Real Estate Appraisal Board with which an applicant must pledge that he or she will comply.

The bill amends ss. 475.617 and 475.6175(1), F.S., which provides the pre-licensure and post-licensure education requirements for registered trainee appraisers, respectively, to include rules of the Florida Real Estate Appraisal Board that are equivalent to the Uniform Standards of Professional Appraisal Practice.

The bill amends s. 475.6171(4), F.S., to repeal the provision that no certifications as an appraiser shall be issued based upon the results of national examinations that are obtained more than 24 months after the date of the examination.

The bill amends s. 475.6235(1), F.S., to delete the prohibition against the use of the titles "appraisal management company," "appraiser cooperative," "appraiser portal," or "mortgage technology company," or other terms unless the person is registered with the department as an appraisal management company. This prohibition is added by the bill to the definition of the term "appraisal management company" in s. 475.611(1)(c), F.S.

The bill amends s. 475.6235(4), F.S., which relates to the registration of appraisal management companies, to reference standards of professional practice adopted by rule of the Florida Real Estate Appraisal Board, including standards for the development or communication of real estate appraisal, instead of referencing the Uniform Standards of Professional Appraisal Practices with which the officers, managers, or owners must pledge they will comply.

The bill also creates s. 475.6235(9), F.S., to exempt a financial institution, as defined in s. 655.005, F.S., from the provisions of this section if the financial institution owns or operates an internal appraiser office, business, unit, or department, or an appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a Federal agency. This would conform the provision to the exemption from state regulation provided for bank-owned appraisal management companies as provided by the Dodd Frank Act.[30]

The bill amends s. 475.624(14), F.S., which provides the disciplinary provisions for appraisers, to reference standards of professional practice adopted by rule of the Florida Real Estate Appraisal Board.

The bill amends s. 475.6245(1), F.S., which provides the disciplinary provisions for appraisal management companies, to reference standards of professional practice adopted by rule of the Florida Real Estate Appraisal Board.

The bill amends s. 475.628, F.S., which specifies the professional standards with which registered, licensed, and certified appraisers are required to comply, to require the Florida Real Estate Appraisal Board to adopt rules that establish standards of professional practice that meet or exceed nationally recognized standards of appraisal practice, including standards adopted by the Appraisal Standards Board of the Appraisal Foundation.[31] It also references the standards of professional practice adopted by rule of the Florida Real Estate Appraisal Board.

Real Estate Schools-Distance Learning

The bill amends s. 475.451, F.S., to permit continuing education instructors to complete their continuing education through either classroom or distance learning. It also provides that real estate schools may offer any continuing education course through distance learning if the course complies with s. 475.17, F.S., which authorizes the Florida Real Estate Commission to approve distance learning courses.

Architects

The bill amends s. 481.209, F.S., to allow greater reciprocity of licensees' requirements to make Florida consistent with other states to improve licensing mobility for architects. It also amends ss. 481.211 and 481.213, F.S., to modify the internship requirements to make Florida consistent with other states to improve licensing mobility for architects.

Continuing Education for Inactive and Delinquent Licenses

The bill amends s. 455.271(10), F.S., to require only one renewal cycle of continuing education to reactivate a license for the professions regulated by a board of the department, or by the department if there is no board. It reduces the continuing education requirements for renewal of an inactive license to only one renewal cycle of hours, instead of the hours required for each year or two-year period that the license was inactive. The bill exempts certified public accountants

[30] *Supra* at n. 6.

[31] Established in 1986, the Appraisal Foundation is composed of professional appraisal organizations in the United States and Canada. Its mission is to establish generally accepted standards of professional practice, i.e., the Uniform Standards of Professional Appraisal Practice (USPAP). The Appraisal Standards Board sets forth the rules for developing and reporting its results. It also promotes the use, understanding and enforcement of the USPAP. Information about the Appraisal Foundation is available at: http://www.appraisalfoundation.org/ (Last visited February 6, 2012).

licensed under ch. 473, F.S., and real estate brokers, sales associates, real estate schools, and appraisers licensed under ch. 474, F.S. These professionals would have to complete the continuing education required for each two-year period of licensure.

The bill also reduces the continuing education hours required to reactivate an inactive license to only one renewal cycle of hours, instead of the hours required for each year the license was inactive, for the following professions:

- Community association managers in s. 468.4338, F.S.**;**
- Home inspectors in s. 468.8317, F.S.;
- Mold-related services in s. 468.8417, F.S.;
- Cosmetology in s. 477.0212(2), F.S.;
- Architecture and interior design in s. 481.217(1), F.S.;
- Landscape architecture in s. 481.315(1), F.S.;
- Construction contracting in s. 489.116(6), F.S.; and
- Electrical and alarm system contracting in s. 489.519(1), F.S.

The bill also amends s. 481.217(1), F.S., to clarify that the Board of Architecture and Interior Design may only approve continuing education that builds upon the basic knowledge of interior design.

Repeal of Criminal Penalties

The bill amends s. 468.391, F.S., to limit the application of criminal penalties relating to auctioneering. The criminal penalties would not apply to violations of rules of the Florida Board of Auctioneers or violations of part VI of ch. 468, F.S. The bill limits the application of criminal penalties to the violations related to the following paragraphs in s. 468.389(1), F.S.:

> (c) Failure to account for or to pay or return, within a reasonable time not to exceed 30 days, money or property belonging to another which has come into the control of an auctioneer or auction business through an auction.
> (e) Any conduct in connection with a sales transaction which demonstrates bad faith or dishonesty.
> (f) Using or permitting the use of false bidders, cappers, or shills.
> (h) Commingling money or property of another person with his or her own. Every auctioneer and auction business shall maintain a separate trust or escrow account in an insured bank or savings and loan association located in this state in which shall be deposited all proceeds received for another person through an auction sale.
> (i) Refusal or neglect of any auctioneer or other receiver of public moneys to pay the moneys so received into the State Treasury at the times and under the regulations prescribed by law.

The bill also repeals the following provisions that provide criminal penalties for violations of agency rules and the chapters of the Florida Statutes that govern the specified professions:

- Section 475.42(1)(e), F.S., relating to violations of rules of the Florida Real Estate Commission and violations of ch. 475, F.S.;
- Section 476.194(1)(b), F.S., relating to violations of rules of the Barbers' Board, and violations of ch. 476, F.S.; and
- Section 477.0265(1)(c), F.S., relating to violations of the Board of Cosmetology and ch. 477, F.S.

Exemptions from Requirements Concerning Mold-Related Services
The bill amends s. 468.841(d), F.S., to exempt persons and businesses licensed as Landscape Architects under Part 2 of ch. 481., F.S., from complying with requirements in Part XVI of ch. 468, F.S., relating to mold assessment if they are not holding themselves out for hire to the public using names that imply that they perform mold assessment services, or stating or implying that they are licensed under Part XVI. The statute's current exemptions include persons and businesses licensed as architects or interior designers under Part I of ch. 481, F.S.

Repeal of Redundant Penalties
The bill repeals paragraphs (b) and (c) of s. 475.626(1), F.S., which provide violations and penalties for real estate appraisers. These provisions are redundant of other provisions in this section. Section 475.626(1)(b), F.S., which prohibits violating any lawful order or rule of the board which is binding on him or her, is addressed in s. 475.624(4), F.S. Section 475.626(1)(c), F.S., which provides that a trainee appraiser or a licensed or certified appraiser may not commit any conduct set forth in s. 475.624, F.S., is addressed by s. 475.624, F.S., which contains prohibitions that apply to trainee appraisers, and licensed or certified appraisers.

Florida Drug and Cosmetic Act
The bill amends s. 499.003, F.S., which provides definitions for the Florida Drug and Cosmetic Act.

The bill amends the definition of "distribute" or "distribution" to specify that the term does not include the billing and invoicing activities that commonly follow a wholesale distribution transaction. Under s. 499.003(54), F.S., "wholesale distribution" is defined as "distribution of prescription drugs to persons other than a consumer or patient," with certain specified exceptions. References in the law that require wholesale distributions to be backed-up using documents that show each transaction from the manufacture of the drug through each distribution may conflict with the change in the definition of "distribution."

Specifically, s 499.0121(6), F.S., requires wholesale distributors to establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs. These records must provide a complete audit trail from receipt to sale or other disposition. One component of the required records is any financial documentation supporting the transaction.[32] The change in the definition of "distribution" appears to have the effect of no longer requiring wholesale distributors to comply with the requirement to keep financial documentation available for inspection by the department.

[32] *See* s. 499.0121(6)(a)5., F.S.

Section 499.01212, F.S., requires each person engaged in the wholesale distribution of a prescription drug to provide a pedigree paper to the person receiving the drug prior to or simultaneous with the distribution. The wholesale distributor must also maintain and make available to the department, upon request, the invoice numbers from the manufacturer. Pedigrees have to be authenticated in accordance with rule 64F-12.013(5)(d), F.A.C., using invoices and shipping documents. If a wholesale distribution does not include billing and invoicing activities, the pedigrees, which have to be authenticated using shipping documents and invoices, cannot be authenticated.

The bill amends the definition of "drug" to specifically include active pharmaceutical ingredient as a component of a drug. The bill defines "active pharmaceutical ingredient," for purposes of the definition of "drug," to include any substance or mixture of substances intended, represented, or labeled for use in drug manufacturing that furnishes or is intended to furnish, in a finished dosage form, any pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, or to affect the structure or any function of the body of humans or other animals.

The definition of "establishment" is amended to modify the meaning of "one physical location," at which the place of business is located, to clarify that the location may extend to one or more contiguous suites, units, floors, or buildings operated and controlled exclusively by entities under common operation and control. Where multiple buildings are under common exclusive ownership, operation, and control, an intervening thoroughfare does not affect the contiguous nature of the buildings. For purposes of permitting, each suite, unit, floor, or building must be identified in the most recent permit application.

The bill amends the definition of "prescription drug" to specify that an active *pharmaceutical* ingredient is a prescription drug only if substantially all finished dosage forms in which it may be lawfully dispensed or administered in Florida are also prescription drugs. The U.S. Food and Drug Administration determines the classification of drugs, whether prescription or not, and this definition may not be consistent with the federal classification.

The bill deletes s. 499.01(2)(c)3., F.S., the exemption from obtaining a nonresident prescription drug manufacturer permit for a manufacturer to distribute a prescription drug active pharmaceutical ingredient that it manufactures to a prescription drug manufacturer that is permitted in this state if it is in limited quantities intended for research and development and not for resale, or human use other than authorized clinical trials and biostudies authorized and regulated by federal law.

The bill also deletes the exemption from obtaining an out-of-state prescription drug wholesale distributor permit for an intracompany sale or transfer of a prescription drug from an out-of-state establishment that is licensed as a prescription drug wholesale distributor in its state of residence to a licensed prescription drug wholesale distributor in Florida, if both wholesale distributors conduct wholesale distributions of prescription drugs under the same business name.

The bill creates a new subsection (3) to provide exemptions from required permits. A permit is not required:

- To distribute prescription drug active pharmaceutical ingredient from an establishment located in the United States to an establishment that is located in Florida and permitted as a prescription drug manufacturer under the following conditions:
    - The active pharmaceutical ingredient is for use by the prescription drug manufacturer in preparing, deriving, processing, producing, or fabricating a prescription drug finished dosage form at the establishment in Florida where the product is received.
    - The manufacturing must be under an approved and otherwise valid New Drug Approval, Abbreviated New Drug Approval, New Animal Drug Approval, or Therapeutic Biologic Application.
    - The application, active pharmaceutical ingredient, or finished dosage form must not have been withdrawn or removed from the U.S. market for public health reasons.
    - The distributor claiming an exemption must maintain a license, permit or registration to engage in the wholesale distribution of prescription drugs under the laws of the state from which the product is distributed.
    - The distributor claiming an exemption and the prescription drug manufacturer purchasing and receiving the active pharmaceutical ingredient must comply with recordkeeping requirements, but not the pedigree paper requirements.

- To distribute limited quantities of a prescription drug that has not been repackaged from an establishment located in the United States to an establishment located in this state that is permitted as a prescription drug manufacturer for research and development or to a holder of a letter of exemption issued by the department for research, teaching, or testing.
    - The department must define "limited quantities" by rule, and may include the allowable number of transactions within a given period of time and the amounts of prescription drugs distributed into the state for purposes of this exemption.
    - The distributor claiming an exemption must maintain a license, permit or registration to engage in the wholesale distribution of prescription drugs under the laws of the state from which the product is distributed.
    - All purchasers and recipients of any prescription drugs under this exemption must ensure that the products are not resold or used, directly or indirectly, on humans except in lawful clinical trials and biostudies authorized and regulated by federal law.
    - The distributor claiming an exemption and the prescription drug manufacturer purchasing and receiving the active pharmaceutical ingredient must comply with recordkeeping requirements, but not the pedigree paper requirements.
    - The immediate package or container of any active pharmaceutical ingredient distributed into the state intended for teaching, testing, research, and development must bear a label prominently displaying the statement "Caution: Research, Teaching, or Testing Only – Not for Manufacturing, Compounding, or Resale."

- For an intracompany sale or transfer of a prescription drug from an out-of-state establishment that is licensed as a prescription drug wholesale distributor in its state of residence to a licensed prescription drug wholesale distributor in Florida.
    - Both wholesale distributors must conduct wholesale distributions of prescription drugs under the same business name.

- The recordkeeping requirements and the pedigree paper requirements must be followed for such transactions.

The bill requires persons who receive prescription drugs from a source claimed to be exempt from permitting to maintain on file the following information for all distributors and establishments from whom they purchase or receive prescription drugs under an exemption:

- A record of the FDA establishment registration number, if any;
- The resident state prescription drug wholesale distribution license, permit, or registration number; and
- A copy of the most recent resident state or FDA inspection report.

All persons claiming an exemption from the permitting requirements of the act who engage in the distribution of prescription drugs in or into Florida are subject to the act. They must make available, within 48 hours, to the department on request all records related to any prescription drugs distributed under an exemption, regardless of the location where the records are stored.

The bill requires a person who purchases or receives a prescription drug from a person claimed to be exempt from the permitting requirements to report to the department in writing within 14 days after receiving any product that is misbranded or adulterated or that fails to meet minimum standards set forth in the official compendium or state or federal good manufacturing practices for identity, purity, potency, or sterility, regardless of whether the product is thereafter rehabilitated, quarantined, returned, or destroyed.

The bill authorizes the department to adopt rules to administer the exemption provisions in the bill. The bill declares that the failure to comply with the requirements of the exemption provisions, or rules adopted by the department to administer these provisions is a violation of:

- Section 499.005(14), F.S., which makes the purchase or receipt of a prescription drug from a person that is not authorized under this chapter to distribute prescription drugs to that purchaser or recipient an unlawful act; and
- For knowing failure, s. 499.0051(4), F.S., which states that a person who knowingly purchases or receives a prescription drug in a wholesale distribution transaction from a person not authorized to distribute prescription drugs commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.[33]

The exemption provisions in the bill do not relieve any persons from any requirement prescribed by law with respect to controlled substances.

Effective Date
The bill provides an effective date of July 1, 2012.

[33] Section 775.082, F.S., provides that a felony of the second degree is punishable by a term of imprisonment not exceeding 15 years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not exceeding $10,000. Section 775.084, F.S., provides increased penalties for habitual offenders.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The reduction in the number of continuing education hours required to reactivate an inactive license would reduce costs for the following professionals with inactive licenses: community association managers, home inspectors, providers of mold-related services, cosmetologists, architects, landscape architects, construction contractors, and electrical and alarm system contractors. The bill may reduce the amount paid by the licensees to private continuing education providers.

Authorization of the filing of a lien to secure collections services expenses for condominium associations would result in increased collection of the expenses if liens are satisfied.

Because the bill decriminalizes violations of rules that are currently second degree misdemeanors, it would have an impact on private citizens who may otherwise have been assessed a fine or required to serve a jail sentence.

Regarding the exemptions from the permitting requirements in ch. 499, F.S., the Department of Business and Professional Regulation (department) advises that an unknown, but probably small, number of specialty distributors providing a narrow category of products to Florida customers would be exempt from permitting fees.

C. Government Sector Impact:

There would be no increase or decrease in revenue. The costs of continuing education courses are paid by the licensees directly to the private sector course provider and not to the department; therefore, the reduction in the number of continuing education hours required to reactivate an inactive license would not affect the department.

In addition, loss of revenue related to granting initial licensing fee waivers to recently discharged military veterans would be insignificant.

Regarding the exemptions from the permitting requirements in ch. 499, F.S., the department estimates that the potential reduction in license fees as a result of the exemptions in the bill would be minimal, if any. The bill may require changes to the inspection application and the associated violation codes, but this can be done with existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Budget Subcommittee on General Government Appropriations on February 28, 2012:

The committee substitute for committee substitute (CS/CS) organizes the sections of the bill into statutory numerical order. The CS/CS also:

- Does not amend s. 468.525, F.S., relating to the initial license requirements for employee leasing companies;
- The bill amends s. 475.451, F.S., to provide that real estate schools may offer any continuing education course through distance learning if the course complies with s. 475.17, F.S., instead of with subsection (2) of s. 475.17, F.S.;
- Amends s. 499.003, F.S., of the Florida Drug and Cosmetic Act, to revise definitions;
- Amends s. 499.01, F.S., to provide exemptions from the permitting requirements of the Florida Drug and Cosmetic Act in ch. 499, F.S.; and
- Amends s. 474.202(6), F.S., to provide that a limited service veterinary medical practice operates under rules set by the Board of Veterinary Medicine, and deletes the provision that the practice operates for a limited time.

CS by Criminal Justice on February 9, 2012:

- Waives the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for military veterans who apply to the department for a license within 24 months of being honorably discharged from service.
- Authorizes filing of a lien for collection services expenses that are reasonably related to the collection of a delinquent account rendered by a community association manager or management firm on behalf of a community association.
- Clarifies the confidentiality of certain financial documents for employee leasing companies.

- Conforms with exemptions for other utilities by removing a requirement for persons repairing, maintaining, removing, or disposing of asbestos-containing pipe or conduit used for gas service to be licensed as an asbestos consultant or contractor.
- Allows greater reciprocity of architect licensees and modifies the internship requirements to make Florida consistent with other states to improve licensing mobility for architects.
- Expands exemptions regarding mold-related services to include landscape architects.
- Revises provisions related to the regulation of appraisal management companies, banks, credit unions, or other lending institutions that own and operate an internal appraisal office, business unit, or department.
- Permits applicants for a real estate appraiser's certification to use the results of national examinations required for the license that were obtained more than 24 months after the date of the examination.
- Permits real estate continuing education instructors to complete their continuing education through distance learning and permits real estate schools to offer any course through distance learning.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
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	.	

The Committee on Budget Subcommittee on General Government Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (c) of subsection (5) of section 373.461, Florida Statutes, is amended to read:

373.461 Lake Apopka improvement and management.—

(5) PURCHASE OF AGRICULTURAL LANDS.—

(c) The district shall explore the availability of funding from all sources, including any federal, state, regional, and local land acquisition funding programs, to purchase the agricultural lands described in paragraph (a). It is the

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13 Legislature's intent that, if such funding sources can be
14 identified, acquisition of the lands described in paragraph (a)
15 may be undertaken by the district to purchase these properties
16 from willing sellers. However, the purchase price paid for
17 acquisition of such lands that were in active cultivation during
18 1996 may ~~shall~~ not exceed the highest appraisal obtained by the
19 district for these lands from a state-certified general
20 appraiser following the standards of professional practice
21 established by rule of the Florida Real Estate Appraisal Board,
22 including standards for the development or communication of a
23 real estate appraisal ~~Uniform Standards of Professional~~
24 ~~Appraisal Practice~~. This maximum purchase price limitation may
25 ~~shall~~ not include, nor be applicable to, that portion of the
26 purchase price attributable to consideration of income described
27 in paragraph (b), or that portion attributable to related
28 facilities, or closing costs.
29 Section 2. Subsection (12) is added to section 455.213,
30 Florida Statutes, to read:
31 455.213 General licensing provisions.—
32 (12) The department shall waive the initial licensing fee,
33 the initial application fee, and the initial unlicensed activity
34 fee for a military veteran who applies to the department for a
35 license, in a format prescribed by the department, within 24
36 months after discharge from any branch of the United States
37 Armed Forces. To qualify for this waiver, the veteran must have
38 been honorably discharged.
39 Section 3. Subsection (10) of section 455.271, Florida
40 Statutes, is amended to read:
41 455.271 Inactive and delinquent status.—

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42 (10) The board, or the department if there is no board, may
43 not require ~~Before reactivation,~~ an inactive or delinquent
44 licensee, except for a licensee under chapter 473 or chapter
45 475, to complete more than one renewal cycle of ~~shall meet the~~
46 ~~same~~ continuing education to reactivate a license ~~requirements,~~
47 ~~if any, imposed on an active status licensee for all biennial~~
48 ~~licensure periods in which the licensee was inactive or~~
49 ~~delinquent~~. ~~This subsection does not apply to persons regulated~~
50 ~~under chapter 473.~~
51 Section 4. Section 468.391, Florida Statutes, is amended to
52 read:
53 468.391 Penalty.—Any auctioneer, apprentice, or auction
54 business or any owner or manager thereof, or, in the case of
55 corporate ownership, any substantial stockholder of the
56 corporation owning the auction business, who operates without an
57 active license or violates paragraph ~~any provision of the~~
58 ~~prohibited acts listed under~~ s. 468.389(1)(c), (e), (f), (h), or
59 (i) commits a felony of the third degree, punishable as provided
60 in s. 775.082 or s. 775.083.
61 Section 5. Section 468.4338, Florida Statutes, is amended
62 to read:
63 468.4338 Reactivation; continuing education.—The council
64 shall prescribe by rule continuing education requirements for
65 reactivating a license. The continuing education requirements
66 for reactivating a license may not exceed one renewal cycle of
67 continuing education ~~10 classroom hours for each year the~~
68 ~~license was inactive~~.
69 Section 6. Subsection (2) of section 468.8317, Florida
70 Statutes, is amended to read:

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71 468.8317 Inactive license.—
72 (2) A license that becomes ~~has become~~ inactive may be
73 reactivated upon application to the department. The department
74 may prescribe by rule continuing education requirements as a
75 condition of reactivating a license. The rules may not require
76 more than one renewal cycle of continuing education to
77 reactivate ~~requirements for reactivating~~ a license ~~may not~~
78 ~~exceed 14 hours for each year the license was inactive~~.
79 Section 7. Paragraph (d) of subsection (1) of section
80 468.841, Florida Statutes, is amended to read:
81 468.841 Exemptions.—
82 (1) The following persons are not required to comply with
83 any provisions of this part relating to mold assessment:
84 (d) Persons or business organizations acting within the
85 scope of the respective licenses required under part XV of this
86 chapter, chapter 471, part I or part II of chapter 481, chapter
87 482, or chapter 489 are acting on behalf of an insurer under
88 part VI of chapter 626, or are persons in the manufactured
89 housing industry who are licensed under chapter 320, except when
90 any such persons or business organizations hold themselves out
91 for hire to the public as a "certified mold assessor,"
92 "registered mold assessor," "licensed mold assessor," "mold
93 assessor," "professional mold assessor," or any combination
94 thereof stating or implying licensure under this part.
95 Section 8. Subsection (2) of section 468.8417, Florida
96 Statutes, is amended to read:
97 468.8417 Inactive license.—
98 (2) A license that becomes ~~has become~~ inactive may be
99 reactivated upon application to the department. The department

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100 may prescribe by rule continuing education requirements as a
101 condition of reactivating a license. The rules may not require
102 more than one renewal cycle of continuing education to
103 reactivate ~~requirements for reactivating~~ a license ~~may not~~
104 ~~exceed 14 hours for each year the license was inactive~~.
105 Section 9. Subsection (4) of section 469.002, Florida
106 Statutes, is amended to read:
107 469.002 Exemptions.—
108 (4) Licensure as an asbestos consultant or contractor is
109 not required for the repair, maintenance, removal, or disposal
110 of asbestos-containing pipe or conduit, if:
111 (a) The pipe or conduit is used for electrical, electronic,
112 communications, gas, sewer, or water service;
113 (b) The pipe or conduit is not located in a building;
114 (c) The pipe or conduit is made of Category I or Category
115 II nonfriable material as defined in NESHAP; and
116 (d) All such activities are performed according to all
117 applicable regulations, including work practices and training,
118 of the United States Occupational Safety and Health
119 Administration under 29 C.F.R. part 1926.
120 Section 10. Paragraph (t) of subsection (1) of section
121 475.25, Florida Statutes, is amended to read:
122 475.25 Discipline.—
123 (1) The commission may deny an application for licensure,
124 registration, or permit, or renewal thereof; may place a
125 licensee, registrant, or permittee on probation; may suspend a
126 license, registration, or permit for a period not exceeding 10
127 years; may revoke a license, registration, or permit; may impose
128 an administrative fine not to exceed $5,000 for each count or

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129 separate offense; and may issue a reprimand, and any or all of
130 the foregoing, if it finds that the licensee, registrant,
131 permittee, or applicant:
132 (t) Has violated any standard of professional practice
133 adopted by rule of the Florida Real Estate Appraisal Board,
134 including standards for the development or communication of a
135 real estate appraisal ~~or other provision of the Uniform~~
136 ~~Standards of Professional Appraisal Practice, as defined in s.~~
137 ~~475.611~~, as approved and adopted by the Appraisal Standards
138 Board of the Appraisal Foundation, as defined in s. 475.611.
139 This paragraph does not apply to a real estate broker or sales
140 associate who, in the ordinary course of business, performs a
141 comparative market analysis, gives a broker price opinion, or
142 gives an opinion of value of real estate. However, in no event
143 may this comparative market analysis, broker price opinion, or
144 opinion of value of real estate be referred to as an appraisal,
145 as defined in s. 475.611.
146 Section 11. Paragraph (e) of subsection (1) of section
147 475.42, Florida Statutes, is repealed.
148 Section 12. Paragraph (c) of subsection (2) of section
149 475.451, Florida Statutes, is amended, and subsection (9) is
150 added to that section, to read:
151 475.451 Schools teaching real estate practice.—
152 (2) An applicant for a permit to operate a proprietary real
153 estate school, to be a chief administrator of a proprietary real
154 estate school or a state institution, or to be an instructor for
155 a proprietary real estate school or a state institution must
156 meet the qualifications for practice set forth in s. 475.17(1)
157 and the following minimal requirements:

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158 (c) “School instructor” means an individual who instructs
159 persons in the classroom in noncredit college courses in a
160 college, university, or community college or courses in a career
161 center or proprietary real estate school.
162 1. Before commencing to provide such instruction, the
163 applicant must certify the applicant’s competency and obtain an
164 instructor permit by meeting one of the following requirements:
165 a. Hold a bachelor’s degree in a business-related subject,
166 such as real estate, finance, accounting, business
167 administration, or its equivalent and hold a valid broker’s
168 license in this state.
169 b. Hold a bachelor’s degree, have extensive real estate
170 experience, as defined by rule, and hold a valid broker’s
171 license in this state.
172 c. Pass an instructor’s examination approved by the
173 commission.
174 2. Any requirement by the commission for a teaching
175 demonstration or practical examination must apply to all school
176 instructor applicants.
177 3. The department shall renew an instructor permit upon
178 receipt of a renewal application and fee. The renewal
179 application shall include proof that the permitholder has, since
180 the issuance or renewal of the current permit, successfully
181 completed a minimum of 7 classroom or distance learning hours of
182 instruction in real estate subjects or instructional techniques,
183 as prescribed by the commission. The commission shall adopt
184 rules providing for the renewal of instructor permits at least
185 every 2 years. A ~~Any~~ permit that ~~which~~ is not renewed at the end
186 of the permit period established by the department ~~shall~~

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187 automatically reverts ~~revert~~ to involuntarily inactive status.
188
189 The department may require an applicant to submit names of
190 persons having knowledge concerning the applicant and the
191 enterprise; may propound interrogatories to such persons and to
192 the applicant concerning the character of the applicant,
193 including the taking of fingerprints for processing through the
194 Federal Bureau of Investigation; and shall make such
195 investigation of the applicant or the school or institution as
196 it may deem necessary to the granting of the permit. If an
197 objection is filed, it shall be considered in the same manner as
198 objections or administrative complaints against other applicants
199 for licensure by the department.
200 (9) A real estate school may offer any course through
201 distance learning if the course complies with s. 475.17.
202 Section 13. Paragraphs (c) and (d) of subsection (1) of
203 section 475.611, Florida Statutes, are amended, present
204 paragraphs (t) through (x) of subsection (1) are redesignated as
205 paragraphs (u) through (y), respectively, and a new paragraph
206 (t) is added to that subsection, to read:
207 475.611 Definitions.—
208 (1) As used in this part, the term:
209 (c) “Appraisal management company” means a person who
210 performs appraisal management services regardless of the use of
211 the term “appraisal management company,” “appraiser
212 cooperative,” “appraiser portal,” “mortgage technology company,”
213 or other term.
214 (d) “Appraisal management services” means the coordination
215 or management of appraisal services for compensation by:

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216 1. Employing, contracting with, or otherwise retaining one
217 or more licensed or certified appraisers to perform appraisal
218 services for a client; or
219 2. Acting as a broker or intermediary between a client and
220 one or more licensed or certified appraisers to facilitate the
221 client's employing, contracting with, or otherwise retaining the
222 appraisers.
223 (t) "Subsidiary" means an organization that is owned and
224 controlled by a financial institution that is regulated by a
225 federal financial institution regulatory agency.
226 Section 14. Subsection (5) of section 475.615, Florida
227 Statutes, is amended to read:
228 475.615 Qualifications for registration or certification.—
229 (5) At the time of filing an application for registration
230 or certification, the applicant must sign a pledge indicating
231 that upon becoming registered or certified, she or he will
232 comply with the standards of professional practice established
233 by rule of the board, including standards for the development or
234 communication of a real estate appraisal, ~~to comply with the~~
235 ~~Uniform Standards of Professional Appraisal Practice upon~~
236 ~~registration or certification~~ and must indicate in writing that
237 she or he understands the types of misconduct for which
238 disciplinary proceedings may be initiated. The application
239 expires ~~shall expire~~ 1 year after the date received by the
240 department.
241 Section 15. Subsections (1), (2), and (3) of section
242 475.617, Florida Statutes, are amended to read:
243 475.617 Education and experience requirements.—
244 (1) To be registered as a trainee appraiser, an applicant

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245 must present evidence satisfactory to the board that she or he
246 has successfully completed at least 100 hours of approved
247 academic courses in subjects related to real estate appraisal,
248 which must ~~shall~~ include coverage of the Uniform Standards of
249 Professional Appraisal Practice, or its equivalent, as
250 established by rule of the board, from a nationally recognized
251 or state-recognized appraisal organization, career center,
252 accredited community college, college, or university, state or
253 federal agency or commission, or proprietary real estate school
254 that holds a permit pursuant to s. 475.451. The board may
255 increase the required number of hours to not more than 125
256 hours. A classroom hour is defined as 50 minutes out of each 60-
257 minute segment. Past courses may be approved on an hour-for-hour
258 basis.
259 (2) To be certified as a residential appraiser, an
260 applicant must present satisfactory evidence to the board that
261 she or he has met the minimum education and experience
262 requirements prescribed by rule of the board. The board shall
263 prescribe by rule education and experience requirements that
264 meet or exceed the following real property appraiser
265 qualification criteria adopted on February 20, 2004, by the
266 Appraisal Qualifications Board of the Appraisal Foundation:
267 (a) Has at least 2,500 hours of experience obtained over a
268 24-month period in real property appraisal as defined by rule.
269 (b) Has successfully completed at least 200 classroom
270 hours, inclusive of examination, of approved academic courses in
271 subjects related to real estate appraisal, which must ~~shall~~
272 include a 15-hour National Uniform Standards of Professional
273 Appraisal Practice course, or its equivalent, as established by

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274 rule of the board, from a nationally recognized or state-
275 recognized appraisal organization, career center, accredited
276 community college, college, or university, state or federal
277 agency or commission, or proprietary real estate school that
278 holds a permit pursuant to s. 475.451. A classroom hour is
279 defined as 50 minutes out of each 60-minute segment. Past
280 courses may be approved by the board and substituted on an hour-
281 for-hour basis.
282 (3) To be certified as a general appraiser, an applicant
283 must present evidence satisfactory to the board that she or he
284 has met the minimum education and experience requirements
285 prescribed by rule of the board. The board shall prescribe
286 education and experience requirements that meet or exceed the
287 following real property appraiser qualification criteria adopted
288 on February 20, 2004, by the Appraisal Qualifications Board of
289 the Appraisal Foundation:
290 (a) Has at least 3,000 hours of experience obtained over a
291 30-month period in real property appraisal as defined by rule.
292 (b) Has successfully completed at least 300 classroom
293 hours, inclusive of examination, of approved academic courses in
294 subjects related to real estate appraisal, which must ~~shall~~
295 include a 15-hour National Uniform Standards of Professional
296 Appraisal Practice course, or its equivalent, as established by
297 rule of the board, from a nationally recognized or state-
298 recognized appraisal organization, career center, accredited
299 community college, college, or university, state or federal
300 agency or commission, or proprietary real estate school that
301 holds a permit pursuant to s. 475.451. A classroom hour is
302 defined as 50 minutes out of each 60-minute segment. Past

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303 courses may be approved by the board and substituted on an hour-
304 for-hour basis.
305 Section 16. Subsection (4) of section 475.6171, Florida
306 Statutes, is amended to read:
307 475.6171 Issuance of registration or certification.—The
308 registration or certification of an applicant may be issued upon
309 receipt by the board of the following:
310 (4) If required, proof of passing a written examination as
311 specified in s. 475.616. ~~No certification shall be issued based~~
312 ~~upon any examination results obtained more than 24 months after~~
313 ~~the date of examination.~~
314 Section 17. Subsection (1) of section 475.6175, Florida
315 Statutes, is amended to read:
316 475.6175 Registered trainee appraiser; postlicensure
317 education required.—
318 (1) The board shall prescribe postlicensure educational
319 requirements in order for a person to maintain a valid
320 registration as a registered trainee appraiser. If prescribed,
321 the postlicensure educational requirements consist of one or
322 more courses which total no more than the total educational
323 hours required to qualify as a state certified residential
324 appraiser. Such courses must be in subjects related to real
325 estate appraisal and must ~~shall~~ include coverage of the Uniform
326 Standards of Professional Appraisal Practice, or its equivalent,
327 as established by rule of the board. Such courses are provided
328 by a nationally or state-recognized appraisal organization,
329 career center, accredited community college, college, or
330 university, state or federal agency or commission, or
331 proprietary real estate school that holds a permit pursuant to

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332 s. 475.451.
333 Section 18. Section 475.6235, Florida Statutes, is amended
334 to read:
335 475.6235 Registration of appraisal management companies
336 required; exemptions.—
337 (1) A person may not engage, or offer to engage, in
338 appraisal management services for compensation in this state,
339 advertise or represent herself or himself as an appraisal
340 management company, ~~or use the titles "appraisal management~~
341 ~~company," "appraiser cooperative," "appraiser portal," or~~
342 ~~"mortgage technology company," or any abbreviation or words to~~
343 ~~that effect,~~ unless the person is registered with the department
344 as an appraisal management company under this section. However,
345 an employee of an appraisal management company is not required
346 to obtain a separate registration.
347 (2) An application for registration must be submitted to
348 the department in the format prescribed by the department and
349 must include, at a minimum, the following:
350 (a) The firm or business name under which the appraisal
351 management company conducts business in this state. The
352 appraisal management company must notify the department of any
353 change in the firm or business name, on a form provided by the
354 department, within 10 days after such change.
355 (b) The mailing address, street address, and telephone
356 number of the appraisal management company's principal business
357 location. The appraisal management company must notify the
358 department of any change in the mailing or street address, on a
359 form provided by the department, within 10 days after such
360 change.

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361 (c) The appraisal management company's federal employer
362 identification number.
363 (d) The appraisal management company's type of business
364 organization, such as a corporation, partnership, limited
365 liability company, or sole proprietorship.
366 (e) A statement as to whether the appraisal management
367 company, if incorporated, is a domestic or foreign corporation,
368 the company's date of incorporation, the state in which the
369 company was incorporated, its charter number, and, if it is a
370 foreign corporation, the date that the company first registered
371 with the Department of State to conduct business in this state.
372 (f) The full name, street address, telephone number,
373 corporate title, and social security number or federal employer
374 identification number of any person who possesses the authority,
375 directly or indirectly, to direct the management or policies of
376 the appraisal management company, whether through ownership, by
377 contract, or otherwise, including, but not limited to:
378 1. Each officer and director if the appraisal management
379 company is a corporation.
380 2. Each general partner if the appraisal management company
381 is a partnership.
382 3. Each manager or managing member if the appraisal
383 management company is a limited liability company.
384 4. The owner if the appraisal management company is a sole
385 proprietorship.
386 5. Each other person who, directly or indirectly, owns or
387 controls 10 percent or more of an ownership interest in the
388 appraisal management company.
389 (g) The firm or business name under which any person listed

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390 in paragraph (f) conducted business as an appraisal management
391 company within the 5 years preceding the date of the
392 application.
393 (h) The appraisal management company's registered agent for
394 service of process in this state.
395 (3) Appropriate fees, as set forth in the rules of the
396 board pursuant to s. 475.6147, and a complete set of
397 fingerprints for each person listed in paragraph (2)(f) must
398 accompany all applications for registration. The fingerprints
399 shall be forwarded to the Division of Criminal Justice
400 Information Systems within the Department of Law Enforcement for
401 purposes of processing the fingerprints to determine whether the
402 person has a criminal history record. The fingerprints shall
403 also be forwarded to the Federal Bureau of Investigation for
404 purposes of processing the fingerprints to determine whether the
405 person has a criminal history record. The information obtained
406 by the processing of fingerprints by the Department of Law
407 Enforcement and the Federal Bureau of Investigation shall be
408 sent to the department for the purpose of determining whether
409 the appraisal management company is statutorily qualified for
410 registration.
411 (4) At the time of filing an application for registration
412 of an appraisal management company, each person listed in
413 paragraph (2)(f) must sign a pledge to comply with applicable
414 standards of professional practice established by rule of the
415 board, including standards for the development or communication
416 of a real estate appraisal, ~~the Uniform Standards of~~
417 ~~Professional Appraisal Practice upon registration~~ and must
418 indicate in writing that she or he understands the types of

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419 misconduct for which disciplinary proceedings may be initiated.
420 The application expires ~~shall expire~~ 1 year after the date
421 received.
422 (5) Each person listed in paragraph (2)(f) must be
423 competent and qualified to engage in appraisal management
424 services with safety to the general public and those with whom
425 the person may undertake a relationship of trust and confidence.
426 If any person listed in paragraph (2)(f) has been denied
427 registration, licensure, or certification as an appraiser or has
428 been disbarred, or if the person's registration, license, or
429 certificate to practice or conduct any regulated profession,
430 business, or vocation has been revoked or suspended by this or
431 any other state, any nation, any possession or district of the
432 United States, or any court or lawful agency thereof because of
433 any conduct or practices that would have warranted a like result
434 under this part, or if the person has been guilty of conduct or
435 practices in this state or elsewhere that would have been
436 grounds for disciplining her or his registration, license, or
437 certification under this part had the person then been a
438 registered trainee appraiser or a licensed or certified
439 appraiser, the person shall be deemed not to be qualified
440 unless, because of lapse of time and subsequent good conduct and
441 reputation, or other reason deemed sufficient, it appears to the
442 board that the interest of the public is not likely to be
443 endangered by the granting of registration.
444 (6) An applicant seeking to become registered under this
445 part as an appraisal management company may not be rejected
446 solely by virtue of membership or lack of membership of any
447 person listed in paragraph (2)(f) or any employee of the company

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448 in any particular appraisal organization.
449 (7) An applicant for registration who is not a resident of
450 the state shall file an irrevocable consent that suits and
451 actions may be commenced against the appraisal management
452 company in any county of the state in which a plaintiff having a
453 cause of action or suit against the company resides and that
454 service of any process or pleading in suits or actions against
455 the company may be made by delivering the process or pleading to
456 the director of the Division of Real Estate by certified mail,
457 return receipt requested, and also to the appraisal management
458 company by registered mail addressed to the company's designated
459 principal business location or, if its principal business
460 location is located in this state, to the company's registered
461 agent. Service, when so made, must be taken and held in all
462 courts to be as valid and binding upon the appraisal management
463 company as if made upon the company in this state within the
464 jurisdiction of the court in which the suit or action is filed.
465 The irrevocable consent must be in a form prescribed by the
466 department and be acknowledged before a notary public.
467 (8) The department shall renew the registration of an
468 appraisal management company upon receipt of the renewal
469 application and the proper fee. The department shall adopt rules
470 establishing a procedure for renewal of the registration of an
471 appraisal management company at least every 4 years.
472 (9) This section does not apply to:
473 (a) A financial institution, as defined in s. 655.005,
474 which owns and operates an internal appraisal office, business
475 unit, or department; or
476 (b) An appraisal management company that is a subsidiary

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477 owned and controlled by a financial institution, as defined in
478 s. 655.005, regulated by a federal financial institution
479 regulatory agency.
480 Section 19. Subsection (14) of section 475.624, Florida
481 Statutes, is amended to read:
482 475.624 Discipline of appraisers.—The board may deny an
483 application for registration or certification of an appraiser;
484 may investigate the actions of any appraiser registered,
485 licensed, or certified under this part; may reprimand or impose
486 an administrative fine not to exceed $5,000 for each count or
487 separate offense against any such appraiser; and may revoke or
488 suspend, for a period not to exceed 10 years, the registration,
489 license, or certification of any such appraiser, or place any
490 such appraiser on probation, if the board finds that the
491 registered trainee, licensee, or certificateholder:
492 (14) Has violated any standard of professional practice
493 established by rule of the board, including standards for the
494 development or communication of a real estate appraisal ~~or other~~
495 ~~provision of the Uniform Standards of Professional Appraisal~~
496 ~~Practice~~.
497 Section 20. Paragraph (n) of subsection (1) of section
498 475.6245, Florida Statutes, is amended to read:
499 475.6245 Discipline of appraisal management companies.—
500 (1) The board may deny an application for registration of
501 an appraisal management company; may investigate the actions of
502 any appraisal management company registered under this part; may
503 reprimand or impose an administrative fine not to exceed $5,000
504 for each count or separate offense against any such appraisal
505 management company; and may revoke or suspend, for a period not

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506 to exceed 10 years, the registration of any such appraisal
507 management company, or place any such appraisal management
508 company on probation, if the board finds that the appraisal
509 management company or any person listed in s. 475.6235(2)(f):
510 (n) Has instructed an appraiser to violate any standard of
511 professional practice established by rule of the board,
512 including standards for the development or communication of a
513 real estate appraisal or other provision of the Uniform
514 Standards of Professional Appraisal Practice.
515 Section 21. Paragraphs (b) and (c) of subsection (1) of
516 section 475.626, Florida Statutes, are repealed.
517 Section 22. Section 475.628, Florida Statutes, is amended
518 to read:
519 475.628 Professional standards for appraisers registered,
520 licensed, or certified under this part.— The board shall adopt
521 rules establishing standards of professional practice which meet
522 or exceed nationally recognized standards of appraisal practice,
523 including standards adopted by the Appraisal Standards Board of
524 the Appraisal Foundation. Each appraiser registered, licensed,
525 or certified under this part must ~~shall~~ comply with the rules
526 ~~Uniform Standards of Professional Appraisal Practice~~. Statements
527 on appraisal standards which may be issued for the purpose of
528 clarification, interpretation, explanation, or elaboration
529 through the Appraisal Foundation are ~~shall also be~~ binding on
530 any appraiser registered, licensed, or certified under this
531 part, upon adoption by rule of the board.
532 Section 23. Paragraph (b) of subsection (1) of section
533 476.194, Florida Statutes, is repealed.
534 Section 24. Subsection (2) of section 477.0212, Florida

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535 Statutes, is amended to read:
536 477.0212 Inactive status.—
537 (2) The board shall adopt ~~promulgate~~ rules relating to
538 licenses that ~~which have~~ become inactive and for the renewal of
539 inactive licenses. The rules may not require more than one
540 renewal cycle of continuing education to reactivate a license.
541 The board shall prescribe by rule a fee not to exceed $50 for
542 the reactivation of an inactive license and a fee not to exceed
543 $50 for the renewal of an inactive license.
544 Section 25. Paragraph (c) of subsection (1) of section
545 477.0265, Florida Statutes, is repealed.
546 Section 26. Subsection (1) of section 481.209, Florida
547 Statutes, is amended to read:
548 481.209 Examinations.—
549 (1) A person desiring to be licensed as a registered
550 architect by initial examination shall apply to the department,
551 complete ~~to take the licensure examination. The department shall~~
552 ~~administer the licensure examination for architects to each~~
553 ~~applicant who the board certifies:~~
554 ~~(a) Has completed~~ the application form, and remit ~~remitted~~
555 a nonrefundable application fee. The department shall license
556 any applicant who the board certifies: ~~and an examination fee~~
557 ~~which is refundable if the applicant is found to be ineligible~~
558 ~~to take the examination;~~
559 (a) Has passed the licensure examination prescribed by
560 board rule; and
561 (b)~~1.~~ Is a graduate of a school or college of architecture
562 with a program accredited by the National Architectural
563 Accreditation Board.~~; or~~

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564 ~~2. Is a graduate of an approved architectural curriculum,~~
565 ~~evidenced by a degree from an unaccredited school or college of~~
566 ~~architecture approved by the board. The board shall adopt rules~~
567 ~~providing for the review and approval of unaccredited schools~~
568 ~~and colleges of architecture and courses of architectural study~~
569 ~~based on a review and inspection by the board of the curriculum~~
570 ~~of accredited schools and colleges of architecture in the United~~
571 ~~States; and~~
572 ~~(c) Has completed, prior to examination, 1 year of the~~
573 ~~internship experience required by s. 481.211(1).~~
574 Section 27. Section 481.211, Florida Statutes, is amended
575 to read:
576 481.211 Architecture internship required.—
577 ~~(1)~~ An applicant for licensure as a registered architect
578 shall complete, before ~~prior to~~ licensure, an internship of
579 diversified architectural experience approved by the board,
580 which meets the requirements set forth by rule ~~in the design and~~
581 ~~construction of structures which have as their principal purpose~~
582 ~~human habitation or use~~. ~~The internship shall be for a period~~
583 ~~of:~~
584 ~~(a) Three years for an applicant holding the degree of~~
585 ~~Bachelor of Architecture; or~~
586 ~~(b) Two years for an applicant holding the professional~~
587 ~~degree of Master of Architecture.~~
588 ~~(2) Each applicant for licensure shall complete 1 year of~~
589 ~~the internship experience required by this section subsequent to~~
590 ~~graduation from a school or college of architecture as defined~~
591 ~~in s. 481.209(1).~~
592 Section 28. Subsection (3) of section 481.213, Florida

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593 Statutes, is amended to read:
594 481.213 Licensure.—
595 (3) The board shall certify as qualified for a license by
596 endorsement as an architect or as an interior designer an
597 applicant who:
598 (a) Qualifies to take the prescribed licensure examination,
599 and has passed the prescribed licensure examination or a
600 substantially equivalent examination in another jurisdiction, as
601 set forth in s. 481.209 for architects or interior designers, as
602 applicable, and has satisfied the internship requirements set
603 forth in s. 481.211 for architects;
604 (b) Holds a valid license to practice architecture or
605 interior design issued by another jurisdiction of the United
606 States, if the criteria for issuance of such license were
607 substantially equivalent to the licensure criteria that existed
608 in this state at the time the license was issued; provided,
609 however, that an applicant who has been licensed for use of the
610 title "interior design" rather than licensed to practice
611 interior design shall not qualify hereunder; or
612 (c) Has passed the prescribed licensure examination and
613 holds a valid certificate issued by the National Council of
614 Architectural Registration Boards, and holds a valid license to
615 practice architecture issued by another state or jurisdiction of
616 the United States. For the purposes of this paragraph, any
617 applicant licensed in another state or jurisdiction after June
618 30, 2000 ~~1984~~, must also hold a degree in architecture ~~and such~~
619 ~~degree must be~~ equivalent to that required in s. 481.209(1)(b)
620 and~~. Also for the purposes of this paragraph, any applicant~~
621 ~~licensed in another state or jurisdiction after June 30, 1985,~~

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622 ~~must~~ have completed an internship equivalent to that required by
623 s. 481.211 and any rules adopted with respect thereto.
624 Section 29. Section 481.217, Florida Statutes, is amended
625 to read:
626 481.217 Inactive status.—
627 (1) The board may prescribe by rule continuing education
628 requirements as a condition of reactivating a license. The rules
629 may not require more than one renewal cycle of continuing
630 education to reactivate ~~requirements for reactivating~~ a license
631 for a registered architect or interior designer ~~may not exceed~~
632 ~~12 contact hours for each year the license was inactive~~. For
633 interior design, ~~The minimum continuing education requirement~~
634 ~~for reactivating a license for a registered interior designer~~
635 ~~shall be those of the most recent biennium plus one-half of the~~
636 ~~requirements in s. 481.215 for each year or part thereof during~~
637 ~~which the license was inactive.~~ the board may ~~shall only~~ approve
638 only continuing education that builds upon the basic knowledge
639 of interior design.
640 (2) The board shall adopt rules relating to application
641 procedures for inactive status and for the reactivation of
642 inactive licenses.
643 Section 30. Section 481.315, Florida Statutes, is amended
644 to read:
645 481.315 Inactive status.—
646 (1) A license that has become inactive or delinquent may be
647 reactivated under this section upon application to the
648 department and payment of any applicable biennial renewal or
649 delinquency fee, or both, and a reactivation fee. The board may
650 not require a licensee to complete more than one renewal cycle

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651 of continuing education requirements. ~~The board may prescribe by~~
652 ~~rule continuing education requirements as a condition of~~
653 ~~reactivating the license. The continuing education requirements~~
654 ~~for reactivating a license may not exceed 12 classroom hours for~~
655 ~~each year the license was inactive.~~
656 (2) The board shall adopt rules relating to application
657 procedures for inactive status and for the reactivation of
658 inactive licenses.
659 Section 31. Subsections (3) and (6) of section 489.116,
660 Florida Statutes, are amended to read:
661 489.116 Inactive and delinquent status; renewal and
662 cancellation notices.—
663 (3) An inactive status certificateholder or registrant may
664 change to active status at any time, if ~~provided~~ the
665 certificateholder or registrant meets all requirements for
666 active status, pays any additional licensure fees necessary to
667 equal those imposed on an active status certificateholder or
668 registrant, ~~and~~ pays any applicable late fees, and meets all
669 continuing education requirements prescribed by the board.
670 (6) The board may not require an inactive certificateholder
671 or registrant to complete more than one renewal cycle of ~~shall~~
672 ~~comply with the same~~ continuing education for reactivating a
673 certificate or registration ~~requirements, if any, that are~~
674 ~~imposed on an active status certificateholder or registrant~~.
675 Section 32. Subsection (1) of section 489.519, Florida
676 Statutes, is amended to read:
677 489.519 Inactive status.—
678 (1) A certificate or registration that becomes ~~has become~~
679 inactive may be reactivated under s. 489.517 upon application to

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680 the department. The board may not require a licensee to complete
681 more than one renewal cycle of ~~prescribe, by rule,~~ continuing
682 education to reactivate ~~requirements as a condition of~~
683 ~~reactivating~~ a certificate or registration. ~~The continuing~~
684 ~~education requirements for reactivating a certificate or~~
685 ~~registration may not exceed 12 classroom hours for each year the~~
686 ~~certificate or registration was inactive.~~
687 Section 33. This act shall take effect July 1, 2012.
688
689 ========== T I T L E A M E N D M E N T ==========
690 And the title is amended as follows:
691 Delete everything before the enacting clause
692 and insert:
693 A bill to be entitled
694 An act relating to reducing and streamlining
695 regulations; amending s. 373.461, F.S.; requiring
696 certain appraisers to follow specific standards of
697 professional practice in appraisals involving the
698 restoration of the Lake Apopka Basin; amending s.
699 455.213, F.S.; waiving initial licensing, application,
700 and unlicensed activity fees for certain military
701 veterans; amending ss. 455.271, 468.4338, 468.8317,
702 468.8417, 475.615, 475.617, 475.6175, 477.0212,
703 481.209, 481.211, 481.213, 481.217, 481.315, 489.116,
704 and 489.519, F.S.; revising certain licensure
705 requirements and continuing education requirements for
706 reactivating a license, certificate, or registration
707 to practice certain professions and occupations
708 regulated by the Department of Business and

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709 Professional Regulation or a board or council within
710 the department, including community association
711 management, employee leasing, home inspection, mold-
712 related services, real estate appraisal, cosmetology,
713 architecture and interior design, landscape
714 architecture, construction contracting, and electrical
715 and alarm system contracting; amending s. 469.002,
716 F.S.; providing an exemption from licensure as an
717 asbestos consultant or contractor for activities
718 involving pipe or conduit used for gas service;
719 repealing s. 475.42(1)(e), F.S., relating to
720 violations and penalties applicable to real estate
721 brokers and sales associates; amending ss. 468.391,
722 475.25, 475.624, and 475.6245, F.S., relating to
723 auctioneering and to real estate brokering and
724 appraisal; revising provisions with respect to certain
725 penalties; revising grounds for discipline to which
726 penalties apply; repealing s. 475.626(1)(b) and (c),
727 F.S., relating to violations and penalties applicable
728 to real property appraisers; amending s. 475.628,
729 F.S.; requiring the Florida Real Estate Appraisal
730 Board to adopt rules establishing professional
731 practice standards; amending s. 468.841, F.S.;
732 exempting landscape architects from complying with
733 provisions related to mold assessment; amending s.
734 475.611, F.S.; revising the definitions of the terms
735 “appraisal management company” and “appraisal
736 management services”; defining the term “subsidiary”;
737 amending s. 475.6171, F.S.; revising requirements for

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738 the issuance of registration or certification upon
739 receipt of proper documentation; amending s. 475.6235,
740 F.S.; prohibiting a person from offering to engage in
741 appraisal management services under certain
742 circumstances; revising provisions relating to the
743 application for registration of an appraisal
744 management company; providing exemptions from
745 registration requirements; repealing s. 476.194(1)(b),
746 F.S., relating to prohibited acts by persons engaged
747 in the practice of barbering; repealing s.
748 477.0265(1)(c), F.S., relating to prohibited acts by
749 persons engaged in the practice of cosmetology;
750 amending s. 475.451, F.S.; authorizing distance
751 learning courses as an acceptable alternative to
752 classroom instruction for renewal of a real estate
753 instructor permit; providing that distance learning
754 courses are under the discretion of the school
755 offering the real estate course; requiring distance
756 learning courses to adhere to certain requirements;
757 providing an effective date.

903244

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
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The Committee on Budget Subcommittee on General Government Appropriations (Hays) recommended the following:

Senate Amendment to Amendment (657172)

Delete lines 612 - 623
and insert:

(c) Has passed the prescribed licensure examination and holds a valid certificate issued by the National Council of Architectural Registration Boards, and holds a valid license to practice architecture issued by another state or jurisdiction of the United States. ~~For the purposes of this paragraph, any applicant licensed in another state or jurisdiction after June 30, 1984, must also hold a degree in architecture and such~~

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13 ~~degree must be equivalent to that required in s. 481.209(1)(b).~~
14 ~~Also for the purposes of this paragraph, any applicant licensed~~
15 ~~in another state or jurisdiction after June 30, 1985, must have~~
16 ~~completed an internship equivalent to that required by s.~~
17 ~~481.211 and any rules adopted with respect thereto.~~

626470

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
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The Committee on Budget Subcommittee on General Government Appropriations (Latvala) recommended the following:

Senate Amendment to Amendment (657172) (with title amendment)

Between lines 686 and 687
insert:
Section 33. Section 468.439, Florida Statutes, is created to read:
468.439 Collection services.—Collection services expenses that are reasonably related to the collection of a delinquent account rendered by a community association manager or management firm on behalf of a community association governed by chapters 718, 719 and 720 may be secured by the filing of a

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13 claim of lien on behalf of the community association, if the
14 collection services expense is specified by amount in a written
15 agreement with such community association manager or management
16 firm and payable to the community association manager or
17 management firm as a liquidated sum.
18
19 ========== T I T L E A M E N D M E N T ==========
20 And the title is amended as follows:
21 Delete line 757
22 and insert:
23 creating s. 468.439, F.S.; providing that a claim of
24 lien may be filed on behalf of a community association
25 to secure the expenses incurred in collecting a
26 delinquent account rendered by a community association
27 manager or management firm on behalf of a community
28 association; requiring that the expenses for the
29 collection services be reasonably related to the
30 collection activities; providing an effective date.

749074

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
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The Committee on Budget Subcommittee on General Government Appropriations (Latvala) recommended the following:

Senate Amendment to Amendment (657172) (with title amendment)

Delete line 687
and insert:
Section 33. Subsections (17), (19), (20), and (43) of section 499.003, Florida Statutes, are amended to read:
499.003 Definitions of terms used in this part.—As used in this part, the term:
(17) “Distribute” or “distribution” means to sell; offer to sell; give away; transfer, whether by passage of title, physical movement, or both; deliver; or offer to deliver. The term does

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13 not mean to administer or dispense and does not include the
14 billing and invoicing activities that commonly follow a
15 wholesale distribution transaction.
16 (19) “Drug” means an article that is:
17 (a) Recognized in the current edition of the United States
18 Pharmacopoeia and National Formulary, official Homeopathic
19 Pharmacopoeia of the United States, or any supplement to any of
20 those publications;
21 (b) Intended for use in the diagnosis, cure, mitigation,
22 treatment, therapy, or prevention of disease in humans or other
23 animals;
24 (c) Intended to affect the structure or any function of the
25 body of humans or other animals; or
26 (d) Intended for use as a component of any article
27 specified in paragraph (a), paragraph (b), or paragraph (c), and
28 includes active pharmaceutical ingredients, but does not include
29 devices or their components, parts, or accessories. For purposes
30 of this paragraph, an “active pharmaceutical ingredient”
31 includes any substance or mixture of substances intended,
32 represented, or labeled for use in drug manufacturing that
33 furnishes or is intended to furnish, in a finished dosage form,
34 any pharmacological activity or other direct effect in the
35 diagnosis, cure, mitigation, treatment, therapy, or prevention
36 of disease in humans or other animals, or to affect the
37 structure or any function of the body of humans or other
38 animals.
39 (20) “Establishment” means a place of business which is at
40 one general physical location and may extend to one or more
41 contiguous suites, units, floors, or buildings operated and

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42 controlled exclusively by entities under common operation and
43 control. Where multiple buildings are under common exclusive
44 ownership, operation, and control, an intervening thoroughfare
45 does not affect the contiguous nature of the buildings. For
46 purposes of permitting, each suite, unit, floor, or building
47 must be identified in the most recent permit application.
48 (43) "Prescription drug" means a prescription, medicinal,
49 or legend drug, including, but not limited to, finished dosage
50 forms or active pharmaceutical ingredients subject to, defined
51 by, or described by s. 503(b) of the Federal Food, Drug, and
52 Cosmetic Act or s. 465.003(8), s. 499.007(13), or subsection
53 (11), subsection (46), or subsection (53), except that an active
54 pharmaceutical ingredient is a prescription drug only if
55 substantially all finished dosage forms in which it may be
56 lawfully dispensed or administered in this state are also
57 prescription drugs.
58 Section 34. Paragraphs (c) and (e) of subsection (2) of
59 section 499.01, Florida Statutes, are amended, and subsection
60 (3) is added to that section, to read:
61 499.01 Permits.—
62 (2) The following permits are established:
63 (c) *Nonresident prescription drug manufacturer permit.*—A
64 nonresident prescription drug manufacturer permit is required
65 for any person that is a manufacturer of prescription drugs,
66 unless permitted as a third party logistics provider, located
67 outside of this state or outside the United States and that
68 engages in the wholesale distribution in this state of such
69 prescription drugs. Each such manufacturer must be permitted by
70 the department and comply with all of the provisions required of

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71 a wholesale distributor under this part, except s. 499.01212.
72 1. A person that distributes prescription drugs for which
73 the person is not the manufacturer must also obtain an out-of-
74 state prescription drug wholesale distributor permit or third
75 party logistics provider permit pursuant to this section to
76 engage in the wholesale distribution of such prescription drugs.
77 This subparagraph does not apply to a manufacturer as defined in
78 s. 499.003(31)(e).
79 2. Any such person must comply with the licensing or
80 permitting requirements of the jurisdiction in which the
81 establishment is located and the federal act, and any product
82 wholesaled into this state must comply with this part. If a
83 person intends to import prescription drugs from a foreign
84 country into this state, the nonresident prescription drug
85 manufacturer must provide to the department a list identifying
86 each prescription drug it intends to import and document
87 approval by the United States Food and Drug Administration for
88 such importation.
89 ~~3. A nonresident prescription drug manufacturer permit is~~
90 ~~not required for a manufacturer to distribute a prescription~~
91 ~~drug active pharmaceutical ingredient that it manufactures to a~~
92 ~~prescription drug manufacturer permitted in this state in~~
93 ~~limited quantities intended for research and development and not~~
94 ~~for resale, or human use other than lawful clinical trials and~~
95 ~~biostudies authorized and regulated by federal law. A~~
96 ~~manufacturer claiming to be exempt from the permit requirements~~
97 ~~of this subparagraph and the prescription drug manufacturer~~
98 ~~purchasing and receiving the active pharmaceutical ingredient~~
99 ~~shall comply with the recordkeeping requirements of s.~~

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100 ~~499.0121(6), but not the requirements of s. 499.01212. The~~
101 ~~prescription drug manufacturer purchasing and receiving the~~
102 ~~active pharmaceutical ingredient shall maintain on file a record~~
103 ~~of the FDA registration number; the out-of-state license,~~
104 ~~permit, or registration number; and, if available, a copy of the~~
105 ~~most current FDA inspection report, for all manufacturers from~~
106 ~~whom they purchase active pharmaceutical ingredients under this~~
107 ~~section. The department shall specify by rule the allowable~~
108 ~~number of transactions within a given period of time and the~~
109 ~~amount of active pharmaceutical ingredients that qualify as~~
110 ~~limited quantities for purposes of this exemption. The failure~~
111 ~~to comply with the requirements of this subparagraph, or rules~~
112 ~~adopted by the department to administer this subparagraph, for~~
113 ~~the purchase of prescription drug active pharmaceutical~~
114 ~~ingredients is a violation of s. 499.005(14).~~
115 (e) *Out-of-state prescription drug wholesale distributor*
116 *permit.*—An out-of-state prescription drug wholesale distributor
117 is a wholesale distributor located outside this state which
118 engages in the wholesale distribution of prescription drugs into
119 this state and which must be permitted by the department and
120 comply with all the provisions required of a wholesale
121 distributor under this part. An out-of-state prescription drug
122 wholesale distributor that applies to the department for a new
123 permit or the renewal of a permit must submit a bond of
124 $100,000, or other equivalent means of security acceptable to
125 the department, such as an irrevocable letter of credit or a
126 deposit in a trust account or financial institution, payable to
127 the Florida Drug, Device, and Cosmetic Trust Fund. The purpose
128 of the bond is to secure payment of any administrative penalties

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129 imposed by the department and any fees and costs incurred by the
130 department regarding that permit which are authorized under
131 state law and which the permittee fails to pay 30 days after the
132 fine or costs become final. The department may make a claim
133 against such bond or security until 1 year after the permittee's
134 license ceases to be valid or until 60 days after any
135 administrative or legal proceeding authorized in this part which
136 involves the permittee is concluded, including any appeal,
137 whichever occurs later.
138 ~~1.~~ The out-of-state prescription drug wholesale distributor
139 must maintain at all times a license or permit to engage in the
140 wholesale distribution of prescription drugs in compliance with
141 laws of the state in which it is a resident.
142 ~~2. An out-of-state prescription drug wholesale distributor~~
143 ~~permit is not required for an intracompany sale or transfer of a~~
144 ~~prescription drug from an out-of-state establishment that is~~
145 ~~duly licensed as a prescription drug wholesale distributor, in~~
146 ~~its state of residence, to a licensed prescription drug~~
147 ~~wholesale distributor in this state, if both wholesale~~
148 ~~distributors conduct wholesale distributions of prescription~~
149 ~~drugs under the same business name. The recordkeeping~~
150 ~~requirements of ss. 499.0121(6) and 499.01212 must be followed~~
151 ~~for this transaction.~~
152 (3)(a) A permit issued under this part is not required to
153 distribute a prescription drug active pharmaceutical ingredient
154 from an establishment located in the United States to an
155 establishment located in this state permitted as a prescription
156 drug manufacturer under this part for use by the recipient in
157 preparing, deriving, processing, producing, or fabricating a

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158 prescription drug finished dosage form at the establishment in
159 this state where the product is received under an approved and
160 otherwise valid New Drug Approval Application, Abbreviated New
161 Drug Application, New Animal Drug Application, or Therapeutic
162 Biologic Application, provided that the application, active
163 pharmaceutical ingredient, or finished dosage form has not been
164 withdrawn or removed from the market in this country for public
165 health reasons.
166 1. Any distributor claiming exemption from permitting
167 requirements pursuant to this paragraph shall maintain a
168 license, permit, or registration to engage in the wholesale
169 distribution of prescription drugs under the laws of the state
170 from which the product is distributed.
171 2. Any distributor claiming exemption from permitting
172 requirements pursuant to this paragraph and the prescription
173 drug manufacturer purchasing and receiving the active
174 pharmaceutical ingredient shall comply with the recordkeeping
175 requirements of s. 499.0121(6), but not the requirements of s.
176 499.01212.
177 (b) A permit issued under this part is not required to
178 distribute limited quantities of a prescription drug that has
179 not been repackaged from an establishment located in the United
180 States to an establishment located in this state permitted as a
181 prescription drug manufacturer under this part for research and
182 development or to a holder of a letter of exemption issued by
183 the department under s. 499.03(4) for research, teaching, or
184 testing. The department shall define “limited quantities” by
185 rule and may include the allowable number of transactions within
186 a given period of time and the amounts of prescription drugs

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187 distributed into the state for purposes of this exemption.
188 1. Any distributor claiming exemption from permitting
189 requirements pursuant to this paragraph shall maintain a
190 license, permit, or registration to engage in the wholesale
191 distribution of prescription drugs under the laws of the state
192 from which the product is distributed.
193 2. All purchasers and recipients of any prescription drugs
194 distributed pursuant to this paragraph shall ensure that the
195 products are not resold or used, directly or indirectly, on
196 humans except in lawful clinical trials and biostudies
197 authorized and regulated by federal law.
198 3. Any distributor claiming exemption from permitting
199 requirements pursuant to this paragraph, and the purchaser and
200 recipient of the prescription drug, shall comply with the
201 recordkeeping requirements of s. 499.0121(6), but not the
202 requirements of s. 499.01212.
203 4. The immediate package or container of any active
204 pharmaceutical ingredient distributed into the state that is
205 intended for teaching, testing, research, and development shall
206 bear a label prominently displaying the statement: "Caution:
207 Research, Teaching, or Testing Only - Not for Manufacturing,
208 Compounding, or Resale."
209 (c) An out-of-state prescription drug wholesale distributor
210 permit is not required for an intracompany sale or transfer of a
211 prescription drug from an out-of-state establishment that is
212 duly licensed as a prescription drug wholesale distributor in
213 its state of residence to a licensed prescription drug wholesale
214 distributor in this state, if both wholesale distributors
215 conduct wholesale distributions of prescription drugs under the

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216 same business name. The recordkeeping requirements of ss.
217 499.0121(6) and 499.01212 must be followed for such
218 transactions.
219 (d) Persons receiving prescription drugs from a source
220 claimed to be exempt from permitting requirements under this
221 subsection shall maintain on file:
222 1. A record of the FDA establishment registration number,
223 if any;
224 2. The resident state prescription drug wholesale
225 distribution license, permit, or registration number; and
226 3. A copy of the most recent resident state or FDA
227 inspection report, for all distributors and establishments whom
228 they purchase or receive prescription drugs under this
229 subsection.
230 (e) All persons claiming exemption from permitting
231 requirements pursuant to this subsection who engage in the
232 distribution of prescription drugs within or into the state are
233 subject to this part, including ss. 499.005 and 499.0051, and
234 shall make available, within 48 hours, to the department on
235 request all records related to any prescription drugs
236 distributed under this subsection, including those records
237 described in s. 499.051(4), regardless of the location where the
238 records are stored.
239 (f) A person purchasing and receiving a prescription drug
240 from a person claimed to be exempt from licensing requirements
241 pursuant to this subsection shall report to the department in
242 writing within 14 days after receiving any product that is
243 misbranded or adulterated or that fails to meet minimum
244 standards set forth in the official compendium or state or

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245 federal good manufacturing practices for identity, purity,
246 potency, or sterility, regardless of whether the product is
247 thereafter rehabilitated, quarantined, returned, or destroyed.
248 (g) The department may adopt rules to administer this
249 subsection which are necessary for the protection of the public
250 health, safety, and welfare. Failure to comply with the
251 requirements of this subsection, or rules adopted by the
252 department to administer this subsection, is a violation of s.
253 499.005(14), and a knowing failure is a violation of s.
254 499.0051(4).
255 (h) This subsection does not relieve any person from any
256 requirement prescribed by law with respect to controlled
257 substances as defined in the applicable federal and state laws.
258 Section 35. This act shall take effect July 1, 2012.
259
260 ========== T I T L E A M E N D M E N T ==========
261 And the title is amended as follows:
262
263 Delete line 757
264 and insert:
265
266 amending s. 499.003, F.S.; revising the definitions of
267 the terms “distribute” or “distribution,” “drug,”
268 “establishment,” and “prescription drug”; amending s.
269 499.01, F.S.; deleting provisions relating to an
270 exemption from nonresident prescription drug
271 manufacturer permit requirements; deleting provisions
272 relating to an exemption from out-of-state
273 prescription drug wholesale distributor permit

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274 requirements for intracompany sale or transfer of
275 prescription drugs; providing an exemption from permit
276 requirements for the distribution into this state of
277 prescription drug active pharmaceutical ingredients
278 for incorporation into prescription drugs in finished
279 dosage form; requiring a distributor claiming such
280 exemption to maintain a valid license, permit, or
281 registration in the state from which the prescription
282 drug was distributed; requiring compliance with
283 certain recordkeeping requirements; exempting
284 compliance with pedigree paper requirements; providing
285 an exemption from permit requirements for distribution
286 into this state of limited quantities of a
287 prescription drug that has not been repackaged, for
288 research and development or to a holder of a letter of
289 exemption issued by the Department of Business and
290 Professional Regulation for research, teaching, or
291 testing; granting the department authority to define
292 “limited quantities” by rule and limit therein the
293 number of transactions and amount of prescription
294 drugs distributed into the state; requiring a
295 distributor claiming such exemption to maintain a
296 valid license, permit, or registration in the state
297 from which the prescription drug was distributed;
298 requiring all purchasers and recipients of such
299 prescription drugs to ensure the products are not
300 resold or used on humans except in lawful clinical
301 trials and biostudies; requiring compliance with
302 certain recordkeeping requirements; exempting

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303 compliance from pedigree paper requirements; providing
304 labeling requirements for active pharmaceutical
305 ingredients distributed within the state for teaching,
306 testing, research, and development; exempting from
307 out-of-state prescription drug wholesale distributor
308 permit requirements intracompany transactions or the
309 sale of prescription drugs from an out-of-state
310 distributor to a distributor in this state if both
311 distributors conduct wholesale distributions under the
312 same business name; requiring compliance with
313 recordkeeping and pedigree paper requirements;
314 allowing distributors and recipients of prescription
315 drugs claiming exemption from certain permitting
316 requirements to maintain on file their FDA
317 registration number, resident state distributor
318 license or permit number, and most recent resident
319 state or FDA inspection report; providing that persons
320 claiming such exemptions are subject to part I of
321 chapter 499, F.S., the Florida Drug and Cosmetic Act;
322 requiring persons claiming such exemptions to make all
323 records regarding prescription drug distribution
324 available to the department, upon request, within 48
325 hours; requiring submission of a report of mishandled
326 or adulterated prescription drugs within 14 days after
327 receipt of such drugs; authorizing the department to
328 adopt rules; providing that failure to comply with
329 requirements or rules governing such exemptions
330 constitutes unlawful purchase or receipt of a
331 prescription drug from a person not authorized to

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332 distribute prescription drugs to that purchaser or
333 recipient; providing that knowing failure to comply
334 with such requirements constitutes unlawful sale,
335 distribution, purchase, trade, holding, or offering of
336 a drug; providing penalties; providing construction
337 with respect to federal and state laws relating to
338 controlled substances; providing an effective date.

280546

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
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The Committee on Budget Subcommittee on General Government Appropriations (Hays) recommended the following:

1 **Senate Amendment to Amendment (657172) (with title**
2 **amendment)**
3
4 Between lines 119 and 120
5 insert:
6 Section 10. Subsection (6) of section 474.202, Florida
7 Statutes, is amended to read:
8 474.202 Definitions.—As used in this chapter:
9 (6) “Limited-service veterinary medical practice” means
10 offering or providing veterinary services at any location that
11 has a primary purpose other than that of providing veterinary
12 medical service at a permanent or mobile establishment permitted

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13 by the board; provides veterinary medical services for privately
14 owned animals that do not reside at that location; operates not
15 more frequently than once every 2 weeks for 8 hours at a single
16 location where a vaccination clinic is held ~~for a limited time~~;
17 and provides limited types of veterinary medical services.
18
19 ========== T I T L E A M E N D M E N T ==========
20 And the title is amended as follows:
21 Between lines 718 and 719
22 insert:
23 amending s. 474.202, F.S.; revising the definition of
24 the term “limited-service veterinary medical
25 practice”;

699856

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
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The Committee on Budget Subcommittee on General Government Appropriations (Latvala) recommended the following:

1 **Senate Amendment to Amendment (657172) (with title**
2 **amendment)**
3
4 Between lines 119 and 120
5 insert:
6 Section 10. Subsection (6) of section 474.202, Florida
7 Statutes, is amended to read:
8 474.202 Definitions.—As used in this chapter:
9 (6) “Limited-service veterinary medical practice” means
10 offering or providing veterinary services at any location that
11 has a primary purpose other than that of providing veterinary
12 medical service at a permanent or mobile establishment permitted

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13 by the board; provides veterinary medical services for privately
14 owned animals that do not reside at that location; operates
15 under rules set by the Board of Veterinary Medicine ~~for a~~
16 ~~limited time~~; and provides limited types of veterinary medical
17 services.
18
19 ========== T I T L E A M E N D M E N T ==========
20 And the title is amended as follows:
21 Between lines 718 and 719
22 insert:
23 amending s. 474.202, F.S.; revising the definition of
24 the term “limited-service veterinary medical
25 practice”;

By the Committee on Criminal Justice; and Senator Hays

591-03229A-12 2012762c1

A bill to be entitled

An act relating to reducing and streamlining regulations; amending ss. 455.271, 468.4338, 468.525, 468.8317, 468.8417, 475.615, 475.617, 475.6175, 477.0212, 481.209, 481.211, 481.213, 481.217, 481.315, 489.116, and 489.519, F.S.; revising certain licensure requirements and continuing education requirements for reactivating a license, certificate, or registration to practice certain professions and occupations regulated by the Department of Business and Professional Regulation or a board or council within the department, including community association management, employee leasing, home inspection, mold-related services, real estate appraisal, cosmetology, architecture and interior design, landscape architecture, construction contracting, and electrical and alarm system contracting; creating s. 468.439, F.S.; providing conditions that collection service expenses that are reasonably related to the collection of a delinquent account rendered by a community association manager or management firm on behalf of certain community associations may be secured by the filing of a claim of lien; amending s. 469.002, F.S.; providing an exemption from licensure as an asbestos consultant or contractor for activities involving pipe or conduit used for gas service; amending s. 475.6235, F.S.; revising registration requirements for appraisal management companies; amending ss. 468.391, 475.25, 475.42, 475.624, 475.6245, 475.626, 476.194, and

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

591-03229A-12 2012762c1

477.0265, F.S., relating to auctioneering, real estate brokering and appraisal, barbering, and cosmetology; revising language with respect to certain penalties; revising grounds for discipline to which penalties apply; amending s. 475.628, F.S.; requiring the Florida Real Estate Appraisal Board to adopt rules establishing professional practice standards; amending s. 373.461, F.S.; requiring certain appraisers to follow specific standards of professional practice in appraisals involving the restoration of the Lake Apopka Basin; amending s. 468.841, F.S.; exempting landscape architects from complying with provisions related to mold assessment; amending s. 475.611, F.S.; revising the definition of the terms “appraisal management company” and “appraisal management services”; amending s. 475.6171, F.S.; revising requirements for the issuance of registration or certification upon receipt of proper documentation; amending s. 475.6235, F.S.; revising provisions relating to titles an appraisal management company must be registered to use; providing exemptions from registration requirements; amending s. 455.213, F.S.; waiving initial licensing, application, and unlicensed activity fees for certain military veterans; amending s. 475.451, F.S.; authorizing distance learning courses as an acceptable alternative to classroom instruction for renewal of a real estate instructor permit; providing that distance learning courses are under the discretion of the school offering the real

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

estate course; requiring distance learning courses to adhere to certain requirements; providing an effective date.

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

Section 1. Subsection (10) of section 455.271, Florida Statutes, is amended to read:

455.271 Inactive and delinquent status.—

(10) The board, or the department when there is no board, may not require ~~Before reactivation,~~ an inactive or delinquent licensee, except for a licensee under chapter 473 or chapter 475, to complete more than one renewal cycle of ~~shall meet the same~~ continuing education to reactivate a license. ~~requirements, if any, imposed on an active status licensee for all biennial licensure periods in which the licensee was inactive or delinquent. This subsection does not apply to persons regulated under chapter 473.~~

Section 2. Section 468.4338, Florida Statutes, is amended to read:

468.4338 Reactivation; continuing education.—The council shall prescribe by rule continuing education requirements for reactivating a license. The continuing education requirements for reactivating a license may not exceed more than one renewal cycle of continuing education ~~10 classroom hours for each year the license was inactive~~.

Section 3. Paragraph (h) is added to subsection (3) of section 468.525, Florida Statutes, to read:

468.525 License requirements.—

(3) Each employee leasing company licensed by the department shall have a registered agent for service of process in this state and at least one licensed controlling person. In addition, each licensed employee leasing company shall comply with the following requirements:

(h) Following initial licensure, each employee leasing company and each employee leasing company group shall be considered an applicant for renewal of its license and all of the financial information of such licensees submitted to the board pursuant to part XI of chapter 468 and the rules enacted thereunder shall be considered supplied in furtherance of the renewal application process.

Section 4. Subsection (2) of section 468.8317, Florida Statutes, is amended to read:

468.8317 Inactive license.—

(2) A license that becomes ~~has become~~ inactive may be reactivated upon application to the department. The department may prescribe by rule continuing education requirements as a condition of reactivating a license. The rules may not require more than one renewal cycle of continuing education to reactivate ~~requirements for reactivating~~ a license ~~may not exceed 14 hours for each year the license was inactive~~.

Section 5. Subsection (2) of section 468.8417, Florida Statutes, is amended to read:

468.8417 Inactive license.—

(2) A license that becomes ~~has become~~ inactive may be reactivated upon application to the department. The department may prescribe by rule continuing education requirements as a condition of reactivating a license. The rules may not require

more than one renewal cycle of continuing education to reactivate ~~requirements for reactivating~~ a license ~~may not exceed 14 hours for each year the license was inactive~~.

Section 6. Section 468.439, Florida Statutes, is created to read:

468.439 Collection services.—Collection service expenses that are reasonably related to the collection of a delinquent account rendered by a community association manager or management firm on behalf of a community association governed by chapter 617, chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723 may be secured by the filing of a claim of lien on behalf of the community association, if the collection services expense is specified by amount in a written agreement with the community association manager or management firm and payable to the community association manager or management firm as a liquidated sum.

Section 7. Subsection (4) of section 469.002, Florida Statutes, is amended to read:

469.002 Exemptions.—

(4) Licensure as an asbestos consultant or contractor is not required for the repair, maintenance, removal, or disposal of asbestos-containing pipe or conduit, if:

(a) The pipe or conduit is used for electrical, electronic, communications, sewer, gas, or water service;

(b) The pipe or conduit is not located in a building;

(c) The pipe or conduit is made of Category I or Category II nonfriable material as defined in NESHAP; and

(d) All such activities are performed according to all applicable regulations, including work practices and training,

of the United States Occupational Safety and Health Administration under 29 C.F.R. part 1926.

Section 8. Subsection (5) of section 475.615, Florida Statutes, is amended to read:

475.615 Qualifications for registration or certification.—

(5) At the time of filing an application for registration or certification, the applicant must sign a pledge indicating that upon becoming registered or certified, she or he will comply with the standards of professional practice established by rule of the board, including standards for the development or communication of a real estate appraisal, ~~to comply with the Uniform Standards of Professional Appraisal Practice upon registration or certification~~ and must indicate in writing that she or he understands the types of misconduct for which disciplinary proceedings may be initiated. The application shall expire 1 year after the date received by the department.

Section 9. Subsection (1), paragraph (b) of subsection (2), and paragraph (b) of subsection (3) of section 475.617, Florida Statutes, are amended to read:

475.617 Education and experience requirements.—

(1) To be registered as a trainee appraiser, an applicant must present evidence satisfactory to the board that she or he has successfully completed at least 100 hours of approved academic courses in subjects related to real estate appraisal, which shall include coverage of the Uniform Standards of Professional Appraisal Practice, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or

175 federal agency or commission, or proprietary real estate school
176 that holds a permit pursuant to s. 475.451. The board may
177 increase the required number of hours to not more than 125
178 hours. A classroom hour is defined as 50 minutes out of each 60-
179 minute segment. Past courses may be approved on an hour-for-hour
180 basis.
181 (2) To be certified as a residential appraiser, an
182 applicant must present satisfactory evidence to the board that
183 she or he has met the minimum education and experience
184 requirements prescribed by rule of the board. The board shall
185 prescribe by rule education and experience requirements that
186 meet or exceed the following real property appraiser
187 qualification criteria adopted on February 20, 2004, by the
188 Appraisal Qualifications Board of the Appraisal Foundation:
189 (b) Has successfully completed at least 200 classroom
190 hours, inclusive of examination, of approved academic courses in
191 subjects related to real estate appraisal, which shall include a
192 15-hour National Uniform Standards of Professional Appraisal
193 Practice course, or its equivalent, as established by rule of
194 the board, from a nationally recognized or state-recognized
195 appraisal organization, career center, accredited community
196 college, college, or university, state or federal agency or
197 commission, or proprietary real estate school that holds a
198 permit pursuant to s. 475.451. A classroom hour is defined as 50
199 minutes out of each 60-minute segment. Past courses may be
200 approved by the board and substituted on an hour-for-hour basis.
201 (3) To be certified as a general appraiser, an applicant
202 must present evidence satisfactory to the board that she or he
203 has met the minimum education and experience requirements

204 prescribed by rule of the board. The board shall prescribe
205 education and experience requirements that meet or exceed the
206 following real property appraiser qualification criteria adopted
207 on February 20, 2004, by the Appraisal Qualifications Board of
208 the Appraisal Foundation:
209 (b) Has successfully completed at least 300 classroom
210 hours, inclusive of examination, of approved academic courses in
211 subjects related to real estate appraisal, which shall include a
212 15-hour National Uniform Standards of Professional Appraisal
213 Practice course, or its equivalent, as established by rule of
214 the board, from a nationally recognized or state-recognized
215 appraisal organization, career center, accredited community
216 college, college, or university, state or federal agency or
217 commission, or proprietary real estate school that holds a
218 permit pursuant to s. 475.451. A classroom hour is defined as 50
219 minutes out of each 60-minute segment. Past courses may be
220 approved by the board and substituted on an hour-for-hour basis.
221 Section 10. Subsection (1) of section 475.6175, Florida
222 Statutes, is amended to read:
223 475.6175 Registered trainee appraiser; postlicensure
224 education required.—
225 (1) The board shall prescribe postlicensure educational
226 requirements in order for a person to maintain a valid
227 registration as a registered trainee appraiser. If prescribed,
228 the postlicensure educational requirements consist of one or
229 more courses which total no more than the total educational
230 hours required to qualify as a state certified residential
231 appraiser. Such courses must be in subjects related to real
232 estate appraisal and shall include coverage of the Uniform

233 Standards of Professional Appraisal Practice or its equivalent,
234 as established by rule of the board. Such courses are provided
235 by a nationally or state-recognized appraisal organization,
236 career center, accredited community college, college, or
237 university, state or federal agency or commission, or
238 proprietary real estate school that holds a permit pursuant to
239 s. 475.451.
240 Section 11. Subsection (2) of section 477.0212, Florida
241 Statutes, is amended to read:
242 477.0212 Inactive status.—
243 (2) The board shall adopt ~~promulgate~~ rules relating to
244 licenses that ~~which have~~ become inactive and for the renewal of
245 inactive licenses. The rules may not require more than one
246 renewal cycle of continuing education to reactivate a license.
247 The board shall prescribe by rule a fee not to exceed $50 for
248 the reactivation of an inactive license and a fee not to exceed
249 $50 for the renewal of an inactive license.
250 Section 12. Subsection (1) of section 481.209, Florida
251 Statutes, is amended to read:
252 481.209 Examinations.—
253 (1) A person desiring to be licensed as a registered
254 architect by initial examination shall apply to the department,
255 complete ~~to take the licensure examination. The department shall~~
256 ~~administer the licensure examination for architects to each~~
257 ~~applicant who the board certifies:~~
258 ~~(a) Has completed~~ the application form, and remit ~~remitted~~
259 a nonrefundable application fee. The department shall license
260 any applicant who the board certifies: ~~and an examination fee~~
261 ~~which is refundable if the applicant is found to be ineligible~~

262 ~~to take the examination;~~
263 (a) Has passed the licensure examination prescribed by
264 board rule; and
265 (b)~~1.~~ Is a graduate of a school or college of architecture
266 with a program accredited by the National Architectural
267 Accreditation Board.~~; or~~
268 ~~2. Is a graduate of an approved architectural curriculum,~~
269 ~~evidenced by a degree from an unaccredited school or college of~~
270 ~~architecture approved by the board. The board shall adopt rules~~
271 ~~providing for the review and approval of unaccredited schools~~
272 ~~and colleges of architecture and courses of architectural study~~
273 ~~based on a review and inspection by the board of the curriculum~~
274 ~~of accredited schools and colleges of architecture in the United~~
275 ~~States; and~~
276 ~~(c) Has completed, prior to examination, 1 year of the~~
277 ~~internship experience required by s. 481.211(1).~~
278 Section 13. Section 481.211, Florida Statutes, is amended
279 to read:
280 481.211 Architecture internship required.—
281 ~~(1)~~ An applicant for licensure as a registered architect
282 shall complete, prior to licensure, an internship of diversified
283 architectural experience approved by the board, meeting
284 requirements set forth by rule. ~~in the design and construction~~
285 ~~of structures which have as their principal purpose human~~
286 ~~habitation or use. The internship shall be for a period of:~~
287 ~~(a) Three years for an applicant holding the degree of~~
288 ~~Bachelor of Architecture; or~~
289 ~~(b) Two years for an applicant holding the professional~~
290 ~~degree of Master of Architecture.~~

291 ~~(2) Each applicant for licensure shall complete 1 year of~~
292 ~~the internship experience required by this section subsequent to~~
293 ~~graduation from a school or college of architecture as defined~~
294 ~~in s. 481.209(1).~~
295 Section 14. Paragraph (c) of subsection (3) of section
296 481.213, Florida Statutes, is amended to read:
297 481.213 Licensure.—
298 (3) The board shall certify as qualified for a license by
299 endorsement as an architect or as an interior designer an
300 applicant who:
301 (c) Has passed the prescribed licensure examination and
302 holds a valid certificate issued by the National Council of
303 Architectural Registration Boards, and holds a valid license to
304 practice architecture issued by another state or jurisdiction of
305 the United States. ~~For the purposes of this paragraph, any~~
306 ~~applicant licensed in another state or jurisdiction after June~~
307 ~~30, 1984, must also hold a degree in architecture and such~~
308 ~~degree must be equivalent to that required in s. 481.209(1)(b).~~
309 ~~Also for the purposes of this paragraph, any applicant licensed~~
310 ~~in another state or jurisdiction after June 30, 1985, must have~~
311 ~~completed an internship equivalent to that required by s.~~
312 ~~481.211 and any rules adopted with respect thereto.~~
313 Section 15. Subsection (1) of section 481.217, Florida
314 Statutes, is amended to read:
315 481.217 Inactive status.—
316 (1) The board may prescribe by rule continuing education
317 requirements as a condition of reactivating a license. The rules
318 may not require more than one renewal cycle of continuing
319 education to reactivate ~~requirements for reactivating~~ a license

320 for a registered architect or interior designer ~~may not exceed~~
321 ~~12 contact hours for each year the license was inactive. The~~
322 ~~minimum continuing education requirement for reactivating a~~
323 ~~license for a registered interior designer shall be those of the~~
324 ~~most recent biennium plus one-half of the requirements in s.~~
325 ~~481.215 for each year or part thereof during which the license~~
326 ~~was inactive~~. The board may ~~shall~~ only approve continuing
327 education for an interior designer which ~~that~~ builds upon the
328 basic knowledge of interior design.
329 Section 16. Subsection (1) of section 481.315, Florida
330 Statutes, is amended to read:
331 481.315 Inactive status.—
332 (1) A license that has become inactive or delinquent may be
333 reactivated under this section upon application to the
334 department and payment of any applicable biennial renewal or
335 delinquency fee, or both, and a reactivation fee. The board may
336 not require a licensee to complete more than one renewal cycle
337 of continuing education requirements. ~~The board may prescribe by~~
338 ~~rule continuing education requirements as a condition of~~
339 ~~reactivating the license. The continuing education requirements~~
340 ~~for reactivating a license may not exceed 12 classroom hours for~~
341 ~~each year the license was inactive.~~
342 Section 17. Subsections (3) and (6) of section 489.116,
343 Florida Statutes, are amended to read:
344 489.116 Inactive and delinquent status; renewal and
345 cancellation notices.—
346 (3) An inactive status certificateholder or registrant may
347 change to active status at any time, if ~~provided~~ the
348 certificateholder or registrant meets all requirements for

active status, pays any additional licensure fees necessary to equal those imposed on an active status certificateholder or registrant, ~~and~~ pays any applicable late fees, and meets all continuing education requirements prescribed by the board.

(6) The board may not require an inactive certificateholder or registrant to complete more than one renewal cycle of ~~shall comply with the same~~ continuing education for reactivating a certificate or registration ~~requirements, if any, that are imposed on an active status certificateholder or registrant~~.

Section 18. Subsection (1) of section 489.519, Florida Statutes, is amended to read:

489.519 Inactive status.—

(1) A certificate or registration that becomes ~~has become~~ inactive may be reactivated under s. 489.517 upon application to the department. The board may not require a licensee to complete more than one renewal cycle of ~~prescribe, by rule,~~ continuing education to reactivate ~~requirements as a condition of reactivating~~ a certificate or registration. ~~The continuing education requirements for reactivating a certificate or registration may not exceed 12 classroom hours for each year the certificate or registration was inactive.~~

Section 19. Subsection (4) of section 475.6235, Florida Statutes, is amended to read:

475.6235 Registration of appraisal management companies required.—

(4) At the time of filing an application for registration of an appraisal management company, each person listed in paragraph (2)(f) must sign a pledge to comply with the applicable standards of professional practice established by

rule of the board, including standards for the development or communication of a real estate appraisal, ~~Uniform Standards of Professional Appraisal Practice upon registration~~ and must indicate in writing that she or he understands the types of misconduct for which disciplinary proceedings may be initiated. The application shall expire 1 year after the date received by the department.

Section 20. Section 468.391, Florida Statutes, is amended to read:

468.391 Penalty.—Any auctioneer, apprentice, or auction business or any owner or manager thereof, or, in the case of corporate ownership, any substantial stockholder of the corporation owning the auction business, who operates without an active license or violates any of the provisions ~~provision~~ of the prohibited acts listed under s. 468.389(1)(c), (e), (f), (h), and (i) commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 21. Paragraph (t) of subsection (1) of section 475.25, Florida Statutes, is amended to read:

475.25 Discipline.—

(1) The commission may deny an application for licensure, registration, or permit, or renewal thereof; may place a licensee, registrant, or permittee on probation; may suspend a license, registration, or permit for a period not exceeding 10 years; may revoke a license, registration, or permit; may impose an administrative fine not to exceed $5,000 for each count or separate offense; and may issue a reprimand, and any or all of the foregoing, if it finds that the licensee, registrant, permittee, or applicant:

407 (t) Has violated any standard of professional practice
408 established by rule of the Florida Real Estate Appraisal Board,
409 including standards for the development or communication of a
410 real estate appraisal ~~or other provision of the Uniform~~
411 ~~Standards of Professional Appraisal Practice, as defined in s.~~
412 ~~475.611~~, as approved and adopted by the Appraisal Standards
413 Board of the Appraisal Foundation, as defined in s. 475.611.
414 This paragraph does not apply to a real estate broker or sales
415 associate who, in the ordinary course of business, performs a
416 comparative market analysis, gives a broker price opinion, or
417 gives an opinion of value of real estate. However, in no event
418 may this comparative market analysis, broker price opinion, or
419 opinion of value of real estate be referred to as an appraisal,
420 as defined in s. 475.611.
421 Section 22. Paragraphs (f) through (o) of subsection (1) of
422 section 475.42, Florida Statutes, are redesignated as paragraphs
423 (e) through (n), respectively, and present paragraph (e) of that
424 subsection is amended to read:
425 475.42 Violations and penalties.—
426 (1) VIOLATIONS.—
427 ~~(e) A person may not violate any lawful order or rule of~~
428 ~~the commission which is binding upon her or him.~~
429 Section 23. Subsection (14) of section 475.624, Florida
430 Statutes, is amended to read:
431 475.624 Discipline of appraisers.—
432 The board may deny an application for registration or
433 certification of an appraiser; may investigate the actions of
434 any appraiser registered, licensed, or certified under this
435 part; may reprimand or impose an administrative fine not to

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436 exceed $5,000 for each count or separate offense against any
437 such appraiser; and may revoke or suspend, for a period not to
438 exceed 10 years, the registration, license, or certification of
439 any such appraiser, or place any such appraiser on probation, if
440 the board finds that the registered trainee, licensee, or
441 certificateholder:
442 (14) Has violated any standard of professional practice,
443 including standards for the development or communication of a
444 real estate appraisal, as established by rule of the board ~~or~~
445 ~~other provision of the Uniform Standards of Professional~~
446 ~~Appraisal Practice~~.
447 Section 24. Paragraph (n) of subsection (1) of section
448 475.6245, Florida Statutes, is amended to read:
449 475.6245 Discipline of appraisal management companies.—
450 (1) The board may deny an application for registration of
451 an appraisal management company; may investigate the actions of
452 any appraisal management company registered under this part; may
453 reprimand or impose an administrative fine not to exceed $5,000
454 for each count or separate offense against any such appraisal
455 management company; and may revoke or suspend, for a period not
456 to exceed 10 years, the registration of any such appraisal
457 management company, or place any such appraisal management
458 company on probation, if the board finds that the appraisal
459 management company or any person listed in s. 475.6235(2)(f):
460 (n) Has instructed an appraiser to violate any standard of
461 professional practice established by rule of the board,
462 including standards for the development or communication of a
463 real estate appraisal or other provision of the Uniform
464 Standards of Professional Appraisal Practice.

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465 Section 25. Paragraphs (d) through (h) of subsection (1) of
466 section 475.626, Florida Statutes, are redesignated as
467 paragraphs (b) through (f), respectively, and present paragraphs
468 (b) and (c) of that subsection are amended to read:
469 475.626 Violations and penalties.—
470 (1) A person may not:
471 ~~(b) Violate any lawful order or rule of the board which is~~
472 ~~binding upon her or him.~~
473 ~~(c) If a registered trainee appraiser or a licensed or~~
474 ~~certified appraiser, commit any conduct or practice set forth in~~
475 ~~s. 475.624.~~
476 Section 26. Paragraphs (c) through (f) of subsection (1) of
477 section 476.194, Florida Statutes, are redesignated as
478 paragraphs (b) through (e), respectively, and present paragraph
479 (b) of that subsection is amended to read:
480 476.194 Prohibited acts.—
481 (1) It is unlawful for any person to:
482 ~~(b) Engage in willful or repeated violations of this act or~~
483 ~~of any of the rules adopted by the board.~~
484 Section 27. Paragraphs (d) through (h) of subsection (1) of
485 section 477.0265, Florida Statutes, are redesignated as
486 paragraphs (c) through (g), respectively, and present paragraph
487 (c) of that subsection is amended to read:
488 477.0265 Prohibited acts.—
489 (1) It is unlawful for any person to:
490 ~~(c) Engage in willful or repeated violations of this~~
491 ~~chapter or of any rule adopted by the board.~~
492 Section 28. Section 475.628, Florida Statutes, is amended
493 to read:

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494 475.628 Professional standards for appraisers registered,
495 licensed, or certified under this part.—The board shall adopt
496 rules establishing standards of professional practice which meet
497 or exceed nationally recognized standards of appraisal practice,
498 including standards adopted by the Appraisal Standards Board of
499 the Appraisal Foundation. Each appraiser registered, licensed,
500 or certified under this part must ~~shall~~ comply with the rules
501 ~~Uniform Standards of Professional Appraisal Practice~~. Statements
502 on appraisal standards which may be issued for the purpose of
503 clarification, interpretation, explanation, or elaboration
504 through the Appraisal Foundation shall also be binding on any
505 appraiser registered, licensed, or certified under this part,
506 upon adoption by rule of the board.
507 Section 29. Paragraph (c) of subsection (5) of section
508 373.461, Florida Statutes, is amended to read:
509 373.461 Lake Apopka improvement and management.—
510 (5) PURCHASE OF AGRICULTURAL LANDS.—
511 (c) The district shall explore the availability of funding
512 from all sources, including any federal, state, regional, and
513 local land acquisition funding programs, to purchase the
514 agricultural lands described in paragraph (a). It is the
515 Legislature's intent that, if such funding sources can be
516 identified, acquisition of the lands described in paragraph (a)
517 may be undertaken by the district to purchase these properties
518 from willing sellers. However, the purchase price paid for
519 acquisition of such lands that were in active cultivation during
520 1996 may ~~shall~~ not exceed the highest appraisal obtained by the
521 district for these lands from a state-certified general
522 appraiser following the standards of professional practice

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523 established by rule of the Florida Real Estate Appraisal Board,
524 including standards for the development or communication of a
525 real estate appraisal ~~Uniform Standards of Professional~~
526 ~~Appraisal Practice~~. This maximum purchase price limitation may
527 ~~shall~~ not include, nor be applicable to, that portion of the
528 purchase price attributable to consideration of income described
529 in paragraph (b), or that portion attributable to related
530 facilities, or closing costs.
531 Section 30. Paragraph (d) of subsection (1) of section
532 468.841, Florida Statutes, is amended to read:
533 468.841 Exemptions.—
534 (1) The following persons are not required to comply with
535 any provisions of this part relating to mold assessment:
536 (d) Persons or business organizations acting within the
537 scope of the respective licenses required under part XV of this
538 chapter, chapter 471, part I or part II of chapter 481, chapter
539 482, or chapter 489 are acting on behalf of an insurer under
540 part VI of chapter 626, or are persons in the manufactured
541 housing industry who are licensed under chapter 320, except when
542 any such persons or business organizations hold themselves out
543 for hire to the public as a "certified mold assessor,"
544 "registered mold assessor," "licensed mold assessor," "mold
545 assessor," "professional mold assessor," or any combination
546 thereof stating or implying licensure under this part.
547 Section 31. Paragraphs (c) and (d) of subsection (1) of
548 section 475.611, Florida Statutes, are amended, paragraphs (t)
549 through (x) are redesignated as paragraphs (u) through (y),
550 respectively, and a new paragraph (t) is added to that
551 subsection, to read:

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552 475.611 Definitions.—
553 (1) As used in this part, the term:
554 (c) "Appraisal management company" means a person who
555 performs appraisal management services regardless of the use of
556 the term "appraisal management company," "appraiser
557 cooperative," "appraiser portal," "mortgage technology company,"
558 or other term.
559 (d) "Appraisal management services" means the coordination
560 or management of appraisal services for compensation by:
561 1. Employing, contracting with, or otherwise retaining one
562 or more licensed or certified appraisers to perform appraisal
563 services for a client; or
564 2. Acting as a broker or intermediary between a client and
565 one or more licensed or certified appraisers to facilitate the
566 client's employing, contracting with, or otherwise retaining the
567 appraisers.
568 (t) "Subsidiary" means an organization that is owned and
569 controlled by a financial institution that is regulated by a
570 federal financial institution regulatory agency.
571 Section 32. Subsection (4) of section 475.6171, Florida
572 Statutes, is amended to read:
573 475.6171 Issuance of registration or certification.—The
574 registration or certification of an applicant may be issued upon
575 receipt by the board of the following:
576 (4) If required, proof of passing a written examination as
577 specified in s. 475.616. ~~No certification shall be issued based~~
578 ~~upon any examination results obtained more than 24 months after~~
579 ~~the date of examination.~~
580 Section 33. Subsection (1) of section 475.6235, Florida

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581 Statutes, is amended, and subsection (9) is added to that
582 section, to read:
583 475.6235 Registration of appraisal management companies
584 required; exemptions.—
585 (1) A person may not engage, or offer to engage, in
586 appraisal management services for compensation in this state,
587 advertise or represent herself or himself as an appraisal
588 management company, ~~or use the titles "appraisal management~~
589 ~~company," "appraiser cooperative," "appraiser portal," or~~
590 ~~"mortgage technology company," or any abbreviation or words to~~
591 ~~that effect,~~ unless the person is registered with the department
592 as an appraisal management company under this section. However,
593 an employee of an appraisal management company is not required
594 to obtain a separate registration.
595 (9) This section does not apply to:
596 (a) A financial institution, as defined in s. 655.005,
597 which owns and operates an internal appraisal office, business
598 unit, or department; or
599 (b) An appraisal management company that is a subsidiary
600 owned and controlled by a financial institution, as defined in
601 s. 655.005, which is regulated by a federal financial
602 institution regulatory agency.
603 Section 34. Subsection (12) is added to section 455.213,
604 Florida Statutes, to read:
605 455.213 General licensing provisions.—
606 (12) The department shall waive the initial licensing fee,
607 the initial application fee, and the initial unlicensed activity
608 fee for a military veteran who applies to the department for a
609 license, in a format prescribed by the department, within 24

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610 months after discharge from any branch of the United States
611 Armed Forces. To qualify for this waiver, the veteran must have
612 been honorably discharged.
613 Section 35. Paragraph (c) of subsection (2) of section
614 475.451, Florida Statutes, is amended, present subsections (4)
615 through (8) are renumbered as subsections (5) through (9),
616 respectively, and a new subsection (4) is added to that section,
617 to read:
618 475.451 Schools teaching real estate practice.—
619 (2) An applicant for a permit to operate a proprietary real
620 estate school, to be a chief administrator of a proprietary real
621 estate school or a state institution, or to be an instructor for
622 a proprietary real estate school or a state institution must
623 meet the qualifications for practice set forth in s. 475.17(1)
624 and the following minimal requirements:
625 (c) "School instructor" means an individual who instructs
626 persons in the classroom in noncredit college courses in a
627 college, university, or community college or courses in a career
628 center or proprietary real estate school.
629 1. Before commencing to provide such instruction, the
630 applicant must certify the applicant's competency and obtain an
631 instructor permit by meeting one of the following requirements:
632 a. Hold a bachelor's degree in a business-related subject,
633 such as real estate, finance, accounting, business
634 administration, or its equivalent and hold a valid broker's
635 license in this state.
636 b. Hold a bachelor's degree, have extensive real estate
637 experience, as defined by rule, and hold a valid broker's
638 license in this state.

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639 c. Pass an instructor's examination approved by the
640 commission.
641 2. Any requirement by the commission for a teaching
642 demonstration or practical examination must apply to all school
643 instructor applicants.
644 3. The department shall renew an instructor permit upon
645 receipt of a renewal application and fee. The renewal
646 application shall include proof that the permitholder has, since
647 the issuance or renewal of the current permit, successfully
648 completed a minimum of 7 classroom or distance learning hours of
649 instruction in real estate subjects or instructional techniques,
650 as prescribed by the commission. The commission shall adopt
651 rules providing for the renewal of instructor permits at least
652 every 2 years. Any permit that ~~which~~ is not renewed at the end
653 of the permit period established by the department ~~shall~~
654 automatically reverts ~~revert~~ to involuntarily inactive status.
655
656 The department may require an applicant to submit names of
657 persons having knowledge concerning the applicant and the
658 enterprise; may propound interrogatories to such persons and to
659 the applicant concerning the character of the applicant,
660 including the taking of fingerprints for processing through the
661 Federal Bureau of Investigation; and shall make such
662 investigation of the applicant or the school or institution as
663 it may deem necessary to the granting of the permit. If an
664 objection is filed, it shall be considered in the same manner as
665 objections or administrative complaints against other applicants
666 for licensure by the department.
667 (4) A real estate school may offer any course through

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668 distance learning if the course complies with s. 475.17(2).
669 Section 36. This act shall take effect July 1, 2012.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-28-2012
Meeting Date

Topic: Professions

Bill Number: 762 *(if applicable)*

Name: TRAVIS Moore

Amendment Barcode: 626470 *(if applicable)*

Job Title:

Address: P.O. Box 781
Street

Largo, FL 33779
City, State, Zip

Phone: 727.421-6902

E-mail: moorete@tampabay.rr.com

Speaking: [x] For [ ] Against [x] Information

Representing: ~~[illegible]~~ Community Association Leadership Lobby & Community Associations Institute

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/28/12
Date

SB 762
Bill Number

626470
Barcode

Name Tim Nungesser

Phone (850) 487.4827

Address 1940 N. Monroe St.
Street

E-mail Tim.Nungesser@dbpr.state.fl.us

Tall., FL 32399-2210
City State Zip

Job Title Director, Legis. Affairs

Speaking: ☐ For ☑ Against ☐ Information

Appearing at request of ~~Chair~~ ☐ Sponsor ✓

Subject Collection services amendment

Representing DBPR

Lobbyist registered with Legislature: ☑ Yes ☐ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/28/12
Meeting Date

Topic (Strike All) Latvala Amendment to Amend. 762

Bill Number 562

Name Mark Anderson

Amendment Barcode 626470 (if applicable)

Job Title

Address 121 N. Monroe St.
Street

Tallahassee, FL 32301
City State Zip

Phone 813-205-0658

E-mail

Speaking: [X] For [ ] Against [ ] Information

Representing Chief Executive Officers of Management Companies

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/28/12
Meeting Date

Topic: Professions

Bill Number: SB 762 (if applicable)

Name: Anthony A. Kalliche

Amendment Barcode: 626470 (if applicable)

Job Title: Executive VP/General Counsel, The Continental Group, Inc.

Address: 2950 N. 28th Terrace
Street

Hollywood, FL 33020
City State Zip

Phone: 954 378 2289

E-mail: tkalliche@tcgmgt.com

Speaking: [x] For [ ] Against [x] Information

Representing: Continental Group

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

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S-001 (10/20/11)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/28/12
Date

762
Bill Number

280546
Barcode

Name Susan Mixon

Phone 222-2591

Address 119 E Park Av
Street

E-mail

Tallahassee FL 01
City State Zip

Job Title Consultant

Speaking: ☐ For ☒ Against ☐ Information

Appearing at request of Chair ☐

Subject Limited Service Clinics

Representing Fla Vet Med. Assoc

Lobbyist registered with Legislature: ☒ Yes ☐ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/28/12
Meeting Date

Topic: Reducing and Streamlining Regulations

Bill Number: 762 - Bill *(if applicable)*

Name: Tim Nungesser

Amendment Barcode: *(if applicable)*

Job Title: Director, Office of Legislative Affairs

Address: 1940 N. Monroe St.
Street

Tall., FL 32303
City *State* *Zip*

Phone: (850) 487.4827

E-mail: Tim.Nungesser@dbpr.state.fl.us

Speaking: [X] For [ ] Against [ ] Information

Representing: DBPR

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/SB 802

INTRODUCER: Budget Subcommittee on General Government Appropriations; Judiciary Committee and Environmental Preservation and Conservation Committee

SUBJECT: Premises Liability

DATE: February 28, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	**Favorable**
2.	Munroe	Cibula	JU	**Fav/CS**
3.	Pigott	DeLoach	BGA	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill allows private property owners who provide outdoor recreational opportunities on their property to enter into written agreements with the state, as opposed to a formal lease, and still receive the benefit of the limitation of liability.

The bill also provides limitation of liability protection to private property owners who make their land available to specific persons, as opposed to only "the public," for the purpose of hunting, fishing or wildlife viewing. To limit liability, the landowner must provide notice of the liability limits to the person or persons using the land and must not derive revenue from patronage of the property for outdoor recreational purposes.

This bill substantially amends section 375.251, Florida Statutes.

II. Present Situation:

Legal Duties for Landowners Towards Persons on Their Land

In a negligence action, to be entitled to certain remedies, a plaintiff must prove:

- a lawful duty exists;
- the duty was breached; and
- damages were suffered as a result of the breach.

Current tort law in Florida related to landowners' duty to persons on their land is governed by the status of the person and the duty of care owed by the landowner to the person.[1] There are two basic categories of persons on land, invitees and trespassers.

Generally, an invitee is a person who was invited to enter the land.[2] Section 768.075(3)(a)1., F.S., defines "invitation" to mean, "the visitor entering the premises has an objectively reasonable belief that he or she has been invited or is otherwise welcome on that portion of the real property where injury occurs." Landowners owe certain duties to invitees and can be sued in tort if an injury is caused by a breach of a duty. The duties owed to invitees are:

- to use reasonable care to keep and maintain property in reasonably safe condition; and
- to warn of concealed dangers that are known or should be known to the landowner and that the invitee cannot discover through the exercise of due care.[3]

A trespasser [4]can either be a "discovered trespasser" or an "undiscovered trespasser." A discovered trespasser is a person who did not have an express or implied invitation and whose actual presence was discovered in the preceding 24 hours before an injury occurred.[5] An undiscovered trespasser is a person whose actual presence was not discovered in the preceding 24 hours before an injury occurred.[6] "An owner cannot, however, be held liable for a negligent condition as to an undiscovered trespasser who chooses to come upon his property without his knowledge."[7] To avoid liability to an undiscovered trespasser, a property owner must not engage in intentional misconduct that causes the injury.[8] The duty owed to a discovered trespasser is broader and includes:

- refraining from gross negligence or intentional misconduct that causes the injury; and
- warning the trespasser of hidden dangerous conditions.[9]

---

[1] Thomas D. Sawaya, 6 Fla. Prac., Personal Injury & Wrongful Death Actions § 10:6 Invitees (2011-2012 ed.).
[2] *Id.* (citing *Wood v. Camp*, 284 So. 2d 691 (Fla. 1973) which expand[s] the definition of invitee to include social guests which the court referred to as 'licensees by invitation.' After *Wood*, invitees are defined as those persons who come on the property at the invitation of the landowner.").
[3] Thomas D. Sawaya, 6 Fla. Prac., Personal Injury & Wrongful Death Actions § 10:6 Invitees (2011-2012 ed.).
[4] "A trespasser is one who enters the owners (sic) property for his own convenience without right or authority." Thomas D. Sawaya, 6 Fla. Prac., Personal Injury & Wrongful Death Actions § 10:4 Trespassers (2011-12 ed.).
[5] Section 768.075 (3)(a)2., F.S.
[6] Section 768.075(3)(a)3., F.S.
[7] Sections 768.075(3)(a) and (b), F.S., *See also Wood*, 284 So. 2d at 693-694.
[8] *Id.*
[9] *Id. See also, Florida East Coast Ry. Co. v. Gonsiorowski*, 418 So. 2d 382, 384 (Fla. 4th DCA 1982).

Current Law for Private Landowners or Lessees who Allow the Public on Their Land

Section 375.251, F.S., provides limited liability protection to private landowners who enter into "lease" agreements with the state to provide outdoor recreational activities on their land or who otherwise provide recreational opportunities to the public. To take advantage of the limited liability protection afforded by statute, the property owner:

- cannot charge for entry to the property or conduct commercial or other activity where profit is derived from public patronage on any part of the property;[10] or
- may lease[11] the property to the state for outdoor recreational purposes.[12]

"Outdoor recreational purposes" include, but are not limited to, "hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, motorcycling, and visiting historical, archaeological, scenic or scientific sites."[13]

Limitation of Liability for Private Landowners Who Enter Into Leases with the State

If private landowners enter into leases with the state to provide recreational opportunities on their land, they are provided with limited liability protection. If, however, the written agreements are anything other than a lease, the law is silent. For example, the Florida Fish and Wildlife Conservation Commission (FWC) may enter into leases with private landowners for the purpose of facilitating scheduled hunts. The only purpose of the lessor/lessee relationship is to avail the private party of the liability protection provided by s. 375.251, F.S. This arrangement may create legal obligations and rights that exceed what is necessary to accomplish the specific goal of offering hunts to the public.

The FWC wants to provide outdoor recreational activities on privately owned lands that would not require the degree of legal control and complexity of a lease. In some instances use or management agreements, contracts for services or easements may be more appropriate arrangements between private landowners and the state.[14] When a landowner enters into a lease with the state, the landowner gives the state a possessory interest in the property. Other contractual arrangements may transfer fewer rights to the state and do not give the state a possessory interest in the land. For instance, if a landowner grants the state an easement to a property, the state has a limited right to use the property for a specific purpose.

> An easement is an incorporeal, nonpossessory interest in land which concerns the use of the land of another. An easement is not an estate in land and does not convey title to land or dispossess the owner of the land

[10] Section 375.251(2), F.S.
[11] "Lease" means "a contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, usu. rent. • The lease term can be for life, for a fixed period, or for a period terminable at will." BLACK'S LAW DICTIONARY (9th ed. 2009).
[12] Section 375.251(3), F.S.
[13] Section 375.251(5), F.S.
[14] An easement is "[a]n interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose."BLACK'S LAW DICTIONARY (9th ed. 2009).

> subject to the easement. Instead, an easement only grants the right to use the property for some particular purpose or purposes.[15]

The state would only exercise as much control over the property as is necessary to use the easement for the intended purpose. This is a more limited *nonpossessory* interest in the land. The FWC indicates the state may also benefit from alternative types of written arrangements because the parties will not be subject to landlord/tenant law, which creates certain obligations on both the landowner and the state.[16]

Private Landowners Who Allow the Public to Use Their Land for Recreational Activities

Under current law, private landowners who make their land available to the public for outdoor recreational activities are also afforded limited liability protection. This protection does not apply for individuals or groups of individuals.[17] For example, if landowners allow troops of Boy Scouts on their land but do not want anyone else in the general public to have the same access, they are not afforded any limitation on liability protection.

According to the FWC, Georgia, Alabama, Louisiana and South Carolina all provide landowner liability protection to landowners who allow people other than the general public to use their land for recreational purposes.[18]

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless the immunity is expressly waived.

Article X, s. 13 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the right to waive such immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state will not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.[19]

Instead, the state steps in as the party litigant and defends against the claim. Section 768.28(5), F.S., limits the recovery of any one person to $200,000 for one incident and limits all recovery

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[15] *Sears, Roebuck and Co. v. Franchise Finance Corp. of America*, 711 So.2d 1189, 1191 (2d DCA 1998).
[16] Florida Fish and Wildlife Conservation Commission, 2012 Session Legislative Proposal, (Dec. 13, 2011) (on file with the Senate Committee on Judiciary).
[17] Section 375.251(2), F.S.
[18] Florida Fish and Wildlife Conservation Commission, 2012 Session Legislative Proposal, (Dec. 13, 2011) (on file with the Senate Committee on Judiciary).
[19] Section 768.28(9)(a), F.S.

related to one incident to a total of $300,000.[20] Parties may pursue a claim bill with the Legislature for any excess judgment or equitable claim that is not recovered from a state agency or other entity covered by the waiver of sovereign immunity.[21]

III. Effect of Proposed Changes:

This bill specifies ways a private property owner may limit his or her liability to persons allowed onto the property for outdoor recreational purposes.

Hunting, Fishing, Wildlife Viewing

Under the bill, a property owner may limit his or her liability to a person allowed on the property for hunting, fishing, or wildlife viewing if the property owner:

- notifies (via written notice or conspicuously posts a notice on the area) the person upon entry to the land that the property owner's liability is limited under state law; and
- does not impose a charge or derive revenue from patronage of the property for outdoor recreational purposes.

This provision does not require a property owner to provide access to the property to the general public in order to receive the benefit of the limitation on liability.

Outdoor Recreational Purposes/Agreements with the State

Under the bill, a property owner may limit his or her liability to a person allowed on the property for outdoor recreational purposes if the property owner enters into a written agreement with the state concerning the property for the benefit of the public. The agreement must recognize that the state is responsible for personal injury, loss, or damage resulting in whole or in part from the state's use of the area under the terms of the agreement subject to the limitations and conditions specified in s. 768.28, F.S.

The bill provides legislative intent that such agreements between the owner of the area and the state compensate the owner only for reasonable costs and expenses as provided in the agreement. However, an owner of the area and the state are not subject to liability if the compensation identified in the agreement exceeds the costs and expenses.

Existing law requires the property owner to enter a lease with the state to receive the benefit of the liability limitation. This change will enable the state to execute a written agreement with a private property owner to expand outdoor recreational activities without taking a leasehold interest in the property where the activities are conducted. This may simplify the legal arrangement and provide better protection for a private property owner should a lawsuit arise.

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[20] Section 1, ch. 2010-26, Laws of Florida, amended s. 768.28(5), F.S., to increase the limits to $200,000 for one person for one incident and $300,000 for all recovery related to one incident, to apply to claims arising on or after the law's effective date of October 1, 2011.

[21] Section 768.28(5), F.S. (provides that any portion of a judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature).

Effective Date

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues

Article 1, section 21 of the Florida Constitution addresses access to the courts. It states, "[t]he courts shall be open to every person for redress of any injury." Tort limitations may implicate judicial review under this section of the Florida Constitution; however, the Florida Supreme Court has held that the current statute does not deny access to courts.[22]

The Florida Supreme Court in "*Kluger v. White* announced a test that the Legislature must meet when it abolishes a common law or statutory right of redress. But [the Supreme Court] also noted the distinction between abolishing a cause of action and merely changing a standard of care."[23]

In *Iglesia v. Floran*[24] the Court held that although a 1978 amendment to a workers' compensation statute[25] precluded liability for simple negligence, the statute did not implicate the access to courts provision in the State Constitution.[26]

The Florida Supreme Court has repeatedly held that a statute that merely alters the standard of care owed by one party to another or increases the degree of negligence

---

[22] *See Abdin v. Fischer*, 374 So. 2d 1379 (1979) (holding that s. 375.251, F.S., limiting liability of owners and lessees who provide the public with a park area for outdoor recreational purposes, is a reasonable exercise of legislative power and does not violate Art. 1, s. 21, FLA. CONST., regarding access to courts).

[23] *Id.* at 1380-1381 (citing *Kluger v. White*, 281 So. 2d 1 (Fla. 1973)).

[24] *Iglesia v. Floran*, 394 So. 2d 994 (Fla. 1981).

[25] Section 440.11(1), F.S., as amended by s. 2 of ch. 78-300, Laws of Florida, "grants immunity from tort liability to co-employees who, while in the course of their employment, negligently injure other employees of the same employer, unless the employees act with willful and wanton disregard or unprovoked physical aggression or with gross negligence." (cited in *Iglesia*, 394 So. 2d at 995).

[26] *Iglesia*, 394 So. 2d at 995-96 (citing *McMillan v. Nelson*, 5 So. 2d 867 (Fla. 1942)). The Court described its rationale that "[s]ection 440.11[(1), F.S., as amended] still provides a cause of action for gross negligence just as the court-sustained 'guest statute' did. The Florida Legislature has broad powers in enacting legislation. The acts that it passes are to be sustained unless they run afoul of a limitation placed upon them by the Florida Constitution or violate a provision of the United States Constitution."

necessary to maintain a successful tort action does not abolish a preexisting right of access and does not, therefore, implicate Article I, Section 21 of the State Constitution. In *Abdin v. Fischer*, the Court upheld a statute that exempted property owners from liability for injuries occurring on private property set aside for public recreation, unless the owner inflicted "deliberate, willful, or malicious injury to persons or property."[27]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There is the potential for a positive fiscal impact on private sector landowners in the form of reduced litigation and liability. Conversely, the bill will limit legal remedies available to a person who is injured on private land.

C. Government Sector Impact:

According to the FWC, this bill does not have a fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Budget Subcommittee on General Government Appropriations on February 28, 2012:
The committee substitute provides a technical adjustment to conform to language in HB 313.

CS by Judiciary on February 9, 2012:
The committee substitute outlines the manner in which a property owner must notify persons that the owner's liability is limited under state law. The committee substitute requires the state to assume liability for personal injuries resulting from the state's use of an area as a concurrent condition to limiting the landowner's liability.

[27] *Abdin v. Fischer*, 374 So. 2d 1379, 1380-81 (Fla. 1979) (holding that to the extent the "statute alters the standard of care owed to plaintiff by defendants, this type of modification by the legislature is not prohibited by the constitution." The Florida Supreme Court noted in *Kluger* that there is a "distinction between abolishing a cause of action and merely changing a standard of care.").

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

878806

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Jones) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 97 - 102
4 and insert:
5 (c) It is the intent of this subsection that an agreement
6 entered into pursuant to this subsection should not result in
7 compensation to the owner of the area above reimbursement of
8 reasonable costs or expenses associated with the agreement. An
9 agreement that provides for such does not subject the owner or
10 the state to liability even if the compensation exceeds those
11 costs or

By the Committees on Judiciary; and Environmental Preservation and Conservation

590-03227-12 2012802c1

A bill to be entitled

An act relating to premises liability; amending s. 375.251, F.S.; providing that an owner or lessee who makes an area available to another person for hunting, fishing, or wildlife viewing is entitled to certain limitations on liability if notice is provided to a person upon entry to the area or is posted conspicuously on the area; providing that an owner of an area who enters into a written agreement with the state for the area to be used for outdoor recreational purposes is entitled to certain limitations on liability; deleting a requirement that the area be leased to the state in order for the limitations on liability to apply; defining the term "area"; making technical and grammatical changes; providing an effective date.

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

Section 1. Section 375.251, Florida Statutes, is amended to read:

375.251 Limitation on liability of persons making available to public certain areas for recreational purposes without charge.—

(1) The purpose of this section ~~act~~ is to encourage persons to make land, water areas, and park areas available to the public ~~land, water areas and park areas~~ for outdoor recreational purposes by limiting their liability to persons using these areas ~~going thereon~~ and to third persons who may be damaged by

590-03227-12 2012802c1

the acts or omissions of persons using these areas ~~going thereon~~.

(2)(a) An owner or lessee who provides the public with an ~~a park~~ area ~~or other land~~ for outdoor recreational purposes owes no duty of care to keep that ~~park~~ area ~~or land~~ safe for entry or use by others, or to give warning to persons entering or going on that ~~park~~ area ~~or land~~ of any hazardous conditions, structures, or activities on the area ~~thereon~~. An owner or lessee who provides the public with an ~~a park~~ area ~~or other land~~ for outdoor recreational purposes ~~shall not by providing that park area or land~~:

1. Is not ~~be~~ presumed to extend any assurance that the ~~such park~~ area ~~or land~~ is safe for any purpose;~~,~~

2. Does not incur any duty of care toward a person who goes on ~~that park~~ area ~~or land~~;~~,~~ or

3. Is not ~~Become~~ liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on that ~~park~~ area ~~or land~~.

(b) Notwithstanding the inclusion of the term "public" in this subsection and subsection (1), an owner or lessee who makes available to any person an area primarily for the purposes of hunting, fishing, or wildlife viewing is entitled to the limitation on liability provided in this subsection so long as the owner or lessee provides written notice of the limitation on liability to the person before or at the time of the person's entry on the area or posts notice of the limitation of liability conspicuously on the area.

(c) ~~(b)~~ The Legislature recognizes that an area offered for outdoor recreational purposes may be subject to multiple uses.

59 The limitation of liability extended to an owner or lessee under
60 this subsection applies only if no charge is made for entry to
61 or use of the area for outdoor recreational purposes and no
62 other revenue is derived from patronage of the area for outdoor
63 recreational purposes. ~~This section shall not apply if there is~~
64 ~~any charge made or usually made for entering or using such park~~
65 ~~area or land, or any part thereof, or if any commercial or other~~
66 ~~activity , whereby profit is derived from the patronage of the~~
67 ~~general public, is conducted on such park area or land, or any~~
68 ~~part thereof.~~
69 (3)(a) An owner of an ~~land or water~~ area who enters into a
70 written agreement concerning the area with ~~leased to~~ the state
71 for outdoor recreational purposes where such agreement
72 recognizes that the state is responsible for personal injury,
73 loss, or damage resulting in whole or in part from the state's
74 use of the area under the terms of the agreement subject to the
75 limitations and conditions specified in s. 768.28 owes no duty
76 of care to keep that ~~land or water~~ area safe for entry or use by
77 others, or to give warning to persons entering or going on that
78 area ~~land or water~~ of any hazardous conditions, structures, or
79 activities thereon. An owner who enters into such a written
80 agreement concerning the area with ~~leases land or water area to~~
81 the state for outdoor recreational purposes ~~shall not by giving~~
82 ~~such lease~~:
83 1. Is not ~~be~~ presumed to extend any assurance that the ~~such~~
84 ~~land or water~~ area is safe for any purpose;~~,~~
85 2. Does not incur any duty of care toward a person who goes
86 on the ~~leased land or water~~ area that is subject to the
87 agreement;~~,~~ or

88 3. Is not ~~become~~ liable or responsible for any injury to
89 persons or property caused by the act or omission of a person
90 who goes on the ~~leased land or water~~ area that is subject to the
91 agreement.
92 (b) This subsection applies to all persons going on the
93 area that is subject to the agreement, including invitees,
94 licensees, and trespassers. ~~The foregoing applies whether the~~
95 ~~person going on the leased land or water area is an invitee,~~
96 ~~licensee, trespasser, or otherwise.~~
97 (c) It is the intent of the Legislature that agreements
98 pursuant to this subsection between the owner of the area and
99 the state compensate the owner only for reasonable costs and
100 expenses as provided in the agreement. However, an owner of the
101 area and the state are not subject to liability if the
102 compensation identified in the agreement exceeds the costs and
103 expenses. This paragraph applies only to agreements executed on
104 or after July 1, 2012.
105 (4) This section ~~act~~ does not relieve any person of
106 liability that ~~which~~ would otherwise exist for deliberate,
107 willful, or malicious injury to persons or property. This
108 section does not ~~The provisions hereof shall not be deemed to~~
109 create or increase the liability of any person.
110 (5) As used in this section, the term:
111 (a) "Area" includes land, water, and park areas.
112 (b) "Outdoor recreational purposes" includes ~~as used in~~
113 ~~this act shall include~~, but is not ~~necessarily be~~ limited to,
114 hunting, fishing, wildlife viewing, swimming, boating, camping,
115 picnicking, hiking, pleasure driving, nature study, water
116 skiing, motorcycling, and visiting historical, archaeological,

117 scenic, or scientific sites.

118 Section 2. This act shall take effect July 1, 2012.

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

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

Date: _____

Bill Number: 802

Barcode: _____

Name: Jay Liles

Phone: 850-656-7113

Address: PO Box 6870
Street

Tallahassee, FL 32314
City, State, Zip

E-mail: jliles@fwfonline.org

Job Title: _____

Speaking: [✓] For [ ] Against [ ] Information

Appearing at request of Chair [ ]

Subject: Landowner liability

Representing: Florida Wildlife Federation

Lobbyist registered with Legislature: [X] Yes [ ] No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

Feb. 28, 2012
Date

802
Bill Number

Barcode

Name Jackie Faulks

Phone 487-3795

Address 620 S. Meridian
Street

E-mail jackie.faulks@myfwc.com

Tallahassee
City *State* *Zip*

Job Title Leg Affairs Dir.

Speaking: [x] For [ ] Against [ ] Information

Appearing at request of Chair [ ]

Subject Premises Liability

Representing FWC

Lobbyist registered with Legislature: [x] Yes [ ] No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and Conservation, *Chair*
Criminal Justice, *Vice Chair*
Budget - Subcommittee on Transportation, Tourism, and Economic Development Appropriations
Governmental Oversight and Accountability
Reapportionment
Regulated Industries

SENATOR CHARLES S. DEAN, SR.
3rd District

February 21, 2012

The Honorable Alan Hays
324 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Hays:

I respectfully request you place Senate Bill 802, relating to Premises Liability, on your Budget Subommittee on General Government Appropriations agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean
State Senator District 3

cc: Jamie DeLoach, Staff Director

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MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/CS/SB 956

INTRODUCER: Budget Subcommittee on General Government Appropriations; Health Regulation Committee; Regulated Industries Committee; and Senator Hays

SUBJECT: Disposition of Human Remains

DATE: February 28, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Davlantes	Stovall	HR	**Fav/CS**
3.	Betta	DeLoach	BGA	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill relates to the disposition of human remains. The disposition of human remains in Florida is regulated pursuant to part II, of ch. 406, F.S. The bill:

- Defines several terms to have the same meaning as provided in ch. 497, F.S., which relates to the regulation of funeral, cemetery, and consumer services by the Department of Financial Services (DFS);
- Directs any person or entity that has possession, charge, or control of unclaimed human remains that will be buried or cremated at the public expense, to notify the Anatomical Board at the University of Florida Health Science Center (board);
- Authorizes the board to embalm the human remains that it receives;
- Specifies the situations in which notification of the board is not required, including when the unclaimed remains are decomposed or mutilated by wounds, an autopsy is performed on the remains, the remains contain a contagious disease, a legally authorized person objects to the use of the remains for medical education or research, or the deceased person was eligible for burial in a national cemetery;

- Permits funeral directors licensed under ch. 497, F.S., to act as a legally authorized person for the unclaimed remains when no family exists or is available, and it releases a funeral director from liability for damages when exercising that authority;
- Provides that, when the identity of the unclaimed remains cannot be ascertained, the remains may not be cremated, donated as an anatomical gift, buried at sea, or removed from the state;
- Authorizes counties to dispose of unclaimed remains by burial or cremation pursuant to an ordinance or resolution if the remains are not claimed by the board;
- Clarifies that competing claims for unclaimed remains are prioritized according to the priority of legally authorized persons provided in s. 497.005, F.S.;
- Permits the board to loan remains to accredited colleges of mortuary science for education or research purposes;
- Authorizes the board to pay or reimburse the reasonable expenses, as determined by the board, for the transportation, removal, or storage of unclaimed remains by licensed funeral establishments or removal services;
- Requires the anatomical board, not the DFS, to keep record of related financial transactions and authorizes the University of Florida to audit these records at least once every three years and provide a copy to the DFS;
- Limits the conveyance of human remains in or out of the state for medical research purposes to nontransplant anatomical donation organizations that are accredited by the American Association of Tissue Banks (AATB) or are accredited medical or dental schools;
- Requires that the original burial-transit permit must accompany human remains received by the anatomical board or a nontransplant anatomical donation organization;
- Prohibits the dissection, segmentation, or disarticulation of the remains until the district medical examiner of the county in which the death occurred has granted approval;
- Prohibits the giving of any monetary inducement or other valuable consideration to the donor's estate, or other third party, but permits the payment or reimbursement of the reasonable costs associated with the removal, storage, and transportation of human remains, including payment or reimbursement to a funeral establishment or removal service, or the reasonable costs after use, including the disposition of human remains; and
- Redefines "final disposition" as it relates to vital statistics and the Florida Funeral, Cemetery, and Consumer Services Act, to include provisions relating to anatomical donation.

This bill substantially amends the following sections of the Florida Statutes: 406.50, 406.51, 406.52, 406.53, 406.55, 406.56, 406.57, 406.58, 406.59, 406.60, 406.61, 765.513, 382.002, and 497.005. The bill creates s. 406.49, Florida Statutes, and repeals section 406.54, Florida Statutes.

II. Present Situation:

Regulation of the Conveyance of Anatomical Remains

Part II of ch. 406, F.S., regulates the disposition of dead human bodies in the state of Florida. This chapter provides for the transfer of unclaimed bodies to the board,[1] and from the board to Florida medical and dental schools, teaching hospitals, medical institutions and health-related teaching programs that require the use of anatomical material for study.[2] The board is authorized

[1] Section 406.50, F.S.

[2] The board is also given the discretionary authority to provide cadavers to recognized associations of licensed embalmers or funeral directors, or the examining boards of medical and dental schools. Section 406.57, F.S.

to collect fees to defray expenses, can receive additional public or private moneys for expenses, and can reimburse any person who delivers anatomical remains to the board.[3] Additionally, the board is permitted to contract, and is annually audited by the DFS.[4]

The board is located at the University of Florida College of Medicine Health Science Center,[5] and comprised of representatives from the medical schools in the state.[6] The board's purpose is to provide cadavers, and parts thereof, to teaching and research programs in Florida. The board must hold a body for at least 48 hours before it can be used for medical science.[7]

Section 406.56, F.S., provides the board with the authority to accept a body that has been donated through a will, to be given to a Florida medical or dental school. Such an anatomical gift is provided for in part V, of ch. 765, F.S. These provisions of law outline the specific process for donation, and require that persons who wish to donate their body for transplant or anatomical study memorialize their intent by signing an organ donor card, registering with the online donor database, or completing an advance directive or other document.[8]

The bartering, selling and trading of human remains is prohibited in the state of Florida, punishable by a misdemeanor of the first degree.[9] Additionally, the transmission or conveyance of such anatomical remains outside the state is a first degree misdemeanor.[10] However, a statutory exception exists for recognized Florida medical or dental schools, which allows these institutions to transfer or convey human remains outside the state for research or other specific purposes.

Human remains may be conveyed into and out of the state, for medical education or research purposes, by a person, institution, or organization that has received prior approval from the board.[11] There is an exception for an entity accredited by the American Association of Museums (AAM) to convey, in specific circumstances, plastinated anatomical remains into and out of the state for exhibition purposes.[12] This exception sunsets on January 1, 2012.[13]

Nontransplant Anatomical Donation Organizations

An organization that stores human remains for the purposes of research, rather than transplant, is known in the industry as a nontransplant anatomical donation organization. In medical research and education, the donation of human remains is critical to the advancement of new techniques, and nontransplant anatomical donation organizations are a key component of this market.[14]

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[3] Section 406.58, F.S.
[4] *Id.*
[5] Section 406.50, F.S. The anatomical board was created by the Legislature at the University of Florida in 1996, by ch. 96-251, L.O.F. Prior to 1996, the Division of Universities of the Department of Education was responsible for these functions.
[6] www.med.ufl.edu/anatbd/, site last visited December 12, 2011.
[7] Section 406.52, F.S.
[8] Section 765.514, F.S.
[9] Section 406.61(1), F.S,
[10] *Id.*
[11] *Id.*
[12] Section 406.61(2), F.S.
[13] Section 406.61(3), F.S.
[14] *See e.g.*, www.nih.gov/news/health/oct2010/nhgri-07.htm, site last accessed December 20, 2011, regarding a federal grant awarded to understand how genetic variation interacts with disease; www.iiam.org/researcherArticles.php, site last accessed

The American Association of Tissue Banks
The American Association of Tissue Banks (AATB) is an organization that promulgates industry standards and accredits tissue banks in both the United States and Canada.[15] Membership is voluntary, and the initial accreditation fee is $3,000, with an annual fee that is determined by revenue the bank receives and ranges from $1,500— $75,000.[16] Reaccreditation takes place every three years, and onsite inspections are a required component of the process; announced or unannounced inspections may also be conducted more frequently, however.[17] The AATB also has accreditation standards for nontransplant anatomical donation organizations which were developed in January 2012.[18]

III. Effect of Proposed Changes:

Section 1 creates s. 406.49, F.S., to define the terms "cremated remains," "final disposition," "human remains," and "legally authorized person" to have the same meaning as provided in ch. 497, F.S., which relates to the regulation of funeral, cemetery, and consumer services by the DFS. The bill transfers the definition of the "anatomical board" from s. 406.50, F.S., to this section. It also transfers the definition of "indigent person" from s. 406.53, F.S., to this section. It defines the term "unclaimed remains" to mean human remains that are not claimed by a legally authorized person, other than a medical examiner or the board of county commissioners, for final disposition at the person's expense.

Throughout part II of ch. 406, F.S., the bill changes the term "disposition" to "final disposition."

Section 2 amends s. 406.50, F.S., to direct any person or entity that has possession, charge, or control of unclaimed human remains that will be buried or cremated at the public expense, to notify the board. The bill replaces the more specific terms "all public officers, agents, or employees of every county, city, village, town or municipality and every person in charge of any prison, morgue, hospital, funeral parlor, or mortuary and all other persons" with the general reference to "a person or entity" in relation to the duty imposed by this section. The bill provides that notification of the board is not required when:

- The unclaimed remains are decomposed or mutilated by wounds;
- An autopsy is performed on the remains;
- The remains contain a contagious disease, as provided in current law;
- A legally authorized person objects to the use of the remains for medical education or research; or

December 20, 2011, the published research page for the International Institute for the Advancement of Medicine, using donated tissue for research.

[15] Founded in 1976, the AATB has produced best practice standards for the operation of tissue banks since 1984. The association also provides an educational network for member organizations to encourage the dissemination of new practices. www.aatb.org/About-AATB, site last visited December 12, 2011.

[16] AATB currently accredits 119 tissue banks in the U.S. and Canada. Email from AATB, on file with Senate Health Regulation Committee. There are currently 13 organizations in Florida that are accredited by the AATB. www.aatb.org/index.asp?bid=15 , site last visited December 12, 2011.

[17] Email from AATB, on file with the Senate Health Regulation Committee.

[18] *Id*. Currently, four nontransplant anatomical donation organizations have been certified by the AATB, none of which are in Florida.

- The deceased person was a veteran, or the spouse or dependent child of a veteran of the Uniformed Services of the United States or National Guard, and eligible for burial in a national cemetery.

The bill has removed the notification exception for death by crushing.

In current law, s. 406.50(2), F.S., requires the person or entity in charge of the remains to make reasonable efforts to identify the person, contact his or her relatives, and determine if the deceased person is eligible for burial in a national cemetery. The bill defines the term "reasonable effort" to included contacting the National Cemetery Scheduling Office in addition to contacting the county veterans' service office, or the regional office of the United States Department of Veterans Affairs.

The bill clarifies s. 406.50(2)(b), F.S., which requires that the person in control or charge of the remains determine a veteran's eligibility for delivery of the remains or cremated remains to national cemetery, by referencing 38 C.F.R. s. 38.620, which relates to the eligibility for burial in national cemeteries. Current law only references 38 C.F.R.

Section 406.50(3), F.S., provides that a funeral director licensed under ch. 497, F.S., may assume the responsibility of a legally authorized person for unclaimed remains when no family exists or is available. After 24 hours from the time of death, the funeral director may authorize arterial embalming for the purpose of storage and delivery of the unclaimed remains to the board. The bill releases a funeral director from liability for damages when acting in accordance with this subsection.

Section 406.50(4), F.S. provides that, if the identity of the unclaimed remains cannot be ascertained, the person or entity in control of them may not:
- Cremate the remains;
- Donate the remains as an anatomical gift;
- Have the remains buried at sea; or
- Remove the remains from the state.

Section 406.50(5), F.S., provides that, if the board does not accept unclaimed remains, the county commission, or its designated department, for the county in which the remains are discovered or where the death occurred, is authorized to dispose of the entire remains.

The bill also authorizes county boards of commissioners to, by ordinance or resolution, develop policies and procedures for the final disposition of unclaimed remains.

The bill repeals the current s. 406.50(4), F.S., which provides that competing claims for unclaimed remains by legally authorized persons for the direct disposition of remains shall be prioritized in accordance with s. 497.005, F.S. However, s. 406.61(2), F.S., provides for the disposition of such competing claims pursuant to s. 765.512, F.S.[19]

[19] Section 765.512, F.S., provides the priority of persons who are legally authorized to make an anatomical gift; the deceased spouse is first in priority, and a court-appointed representative ad litem is ninth in priority for authorizing such a donation.

Section 3 amends s. 406.51, F.S., to replace the term "disposal" with the term "final disposition." It also cross references 38 C.F.R., s. 38.620 instead of 38 C.F.R.

Section 4 substantially rewords s. 406.52, F.S., which relates to the retention of human remains and the process for reclaiming remains from the board. The bill provides the following changes to current law:

- Subsection (1) authorizes the board to embalm human remains that are received and to reject indigent remains; and
- Subsection (2) provides that, at any point prior to the transfer to a medical education or research facility, a legally authorized person may reclaim the remains from the board, after payment of the board's expenses incurred for transporting, embalming and storing the remains.

The bill deletes the provisions in s. 406.52, F.S., which:

- Deem county commissioners to be legally authorized persons for the purpose of retention of human remains of indigent persons; and
- Requires the county to take reasonable efforts to accommodate the requests of relatives.

Section 5 substantially rewords s. 406.53, F.S., which specifies the circumstances in which a county is not required to notify the anatomical board. The bill amends the requirement that counties must notify the board upon the death of an indigent to remove the following exceptions:

- The death was caused by crushing injuries;
- The deceased had a contagious disease; and
- The remains were claimed for final disposition at the expense of a friend or representative of a charitable organization or religious entity that the indigent person was a member.

The bill provides a notification exemption for remains that are mutilated by wounds and for notifications of the board already made and certified by funeral directors. The bill also deletes the provision that directs the Department of Health (DOH) to assess burial fees when the DOH collects the remains of a client.[20]

Section 6 amends s. 406.55, F.S., to replace the term "body" with "human remains" and "person's remains."

Section 7 amends s. 406.56, F.S., to replace the term "bodies" with the term "human remains" and "person's remains." It also replaces the term "medical science" with the term "medical education and research."

Section 8 amends s. 406.57, F.S., to permit the board to loan remains to accredited colleges of mortuary science for education or research purposes. The bill deletes the board's authority to loan remains to recognized associations of licensed embalmers or funeral directors. It also deletes the board's discretion to make such loans and requires that such loans must be made.

[20] The Department of Health retains the capacity to assess fees for services pursuant s. 402.33, F.S.

Section 9 amends s. 406.58, F.S., to delete the reference to associations in regards to sources from which fees may be collected by the board. It retains the authority of the board to collect fees from institutions. The bill also specifies that the board may pay or reimburse the reasonable expenses, as determined by the board, for the removal, storage, or transportation of unclaimed remains by licensed funeral establishments or removal services. The bill requires the anatomical board, not the DFS, to keep records of related financial transactions and authorizes the University of Florida to audit these records at least once every three years and provide a copy to the DFS.

Section 10 amends s. 406.59, F.S., to delete the reference to associations as one of the types of entities which may receive human remains from the board.

Section 11 amends s. 406.60, F.S., to provide that the board or a cinerator facility licensed under ch. 497, F.S., may dispose of human remains when such remains are deemed no longer of value to medical or dental education or research.

Section 12 amends s. 406.61, F.S., to replace the terms bodies or parts of bodies with the term "human remains or any part thereof."

It allows any nontransplant anatomical organization accredited by the American Association of Tissue Banks to convey human remain into or out of Florida for research purposes without notifying the anatomical board.

Section 406.61(2), F.S., requires that the original burial-transit permit issued pursuant to s. 382.007, F.S, must accompany human remains received by the anatomical board or a nontransplant anatomical donation organization. It also prohibits the dissection, segmentation, or disarticulation of the remains until the district medical examiner of the county in which the death occurred has granted approval pursuant to s. 406.11, F.S.

Section 406.61(3), F.S., provides that monetary inducement or other valuable consideration, including goods or services, may not be offered to a donor, legally authorized person, the donor's estate, or other third party in exchange for human remains. The bill clarifies that the term "valuable consideration" does not include or prohibit the payment or reimbursement of the reasonable costs associated with the removal, storage, and transportation of human remains, including the payment or reimbursement to a funeral establishment or removal service licensed under chapter 497, F.S., or the reasonable costs after use, including the disposition of human remains, pursuant to s. 406.60, F.S.

The bill also deletes s. 406.61(3), F.S., which exempted from specified documentation requirements plastinated remains that were displayed before July 1, 2009 by entities accredited by the American Association of Museums. As provided in this subsection, this provision expired on January 1, 2012.

Section 13 repeals s. 406.54, F.S., which permits human remains to be claimed from the board by members of fraternal or religious entities of which the deceased was a member.

Section 14 amends s. 765.513, F.S., which specifies the persons and entities that can make anatomical gifts, to include the board for the purpose of medical or dental education or research.

Section 15 amends s. 382.002, F.S., to redefine "final disposition" as it relates to vital statistics to include provisions relating to anatomical donation. In the case of anatomical donation, such donation is considered final deposition.

Section 16 amends s. 497.005, F.S. to redefine "final disposition" as it relates to Florida Funeral, Cemetery, and Consumer Services Act to include provisions relating to anatomical donation. Any medical institution or entity receiving an anatomical donation assumes responsibility for its disposition after use.

Section 17 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this CS have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the CS have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this CS have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Nontransplant anatomical donation organizations will be required to be accredited by the American Association of Tissue Banks to convey human remains outside and into the state. This will cost each facility required to be accredited. The estimated cost of accreditation is $3,000 initially, and then between $1,500 and $75,000 annually.[21]

C. Government Sector Impact:

None.

[21] Email from AATB, on file with Senate Health Regulation Committee.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Budget Subcommittee on General Government Appropriations on February 28, 2012:
The committee substitute for committee substitute for committee substitute (CS/CS/CS) does not amend s. 406.61(1), F.S., to limit the conveyance of human remains in or out of the state for medical research purposes to nontransplant anatomical donation organizations that are accredited by the American Association of Tissue Banks or accredited medical or dental schools. It also does not amend this section to provide that these organizations need not be accredited until July 1, 2013.

The CS/CS/CS amends s. 406.61, F.S., to replace the terms bodies or parts of bodies with the term "human remains or any part thereof." It allows any nontransplant anatomical organization accredited by the American Association of Tissue Banks to convey human remains into or out of Florida for research purposes without notifying the anatomical board.

The CS/CS/CS amends s. 406.61(2), F.S., to require that the original burial-transit permit issued pursuant to s. 382.007, F.S, must accompany human remains received by the anatomical board or a nontransplant anatomical donation organization. It also prohibits the dissection, segmentation, or disarticulation of the remains until the district medical examiner of the county in which the death occurred has granted approval pursuant to s. 406.11, F.S.

The CS/CS/CS amends s. 406.61(3), F.S., to provide that monetary inducement or other valuable consideration, including goods or services, may not be offered in exchange for human remains to a donor, legally authorized person, the donor's estate, or other third party. It also clarifies that the term "valuable consideration" does not include or prohibit the payment or reimbursement of the reasonable costs associated with the removal, storage, and transportation of human remains, including payment or reimbursement to a funeral establishment or removal service licensed under chapter 497, F.S., or the reasonable costs after use, including the disposition of human remains, pursuant to s. 406.60,F.S.

CS/CS by Health Regulation on February 16, 2012:
The CS/CS redefines "final disposition" as it relates to vital statistics and the Florida Funeral, Cemetery, and Consumer Services Act, to include provisions relating to

anatomical donation. It allows the anatomical board to pay or reimburse the reasonable expenses, as determined by the board, incurred by a licensed funeral establishment or removal service for the removal, storage, and transportation of unclaimed human remains. It also requires the anatomical board, not the DFS, to keep record of related financial transactions and authorizes the University of Florida to audit these records at least once every three years and provide a copy to the DFS. The CS/CS removes the provision that bartering bodies or conveying bodies within the state are misdemeanors of the first degree and the requirement to submit certain information to the anatomical board before remains may be transferred.

CS by Regulated Industries on February 7, 2012:
The CS amends s. 406.52(1), F.S., to authorize the board to embalm the human remains that it receives.

The CS amends s. 406.61(2), F.S., to provide that nontransplant anatomical donation organizations need not be accredited by the American Association of Tissue Banks until July 1, 2013. It requires that the anatomical board must be notified at least three days before conveying any human remains instead of at least 72 hours. It provides that, if the third day falls on a weekend or legal holiday, the next business day will be deemed the third business day.

The CS does not create s. 406.61(2)(a), F.S., to authorize the board to establish criteria for granting requests to convey remains. Instead, the CS creates ss. 406.61(2)(a)-(f), F.S., to specify the information that must be provided to the board before a nontransplant anatomical donation organization may convey remains or specimens within the state. Although the required documentation from the legally authorized person was in the bill, s. 406.61(2)(d), F.S., of the CS provides an exception for the required documentation. The exception applies to specimens shipped into the state if an affidavit is submitted by an accredited nontransplant anatomical donation organization stating that the donation organization had donation and consent forms on file for the remains that that specifically authorize segmentation or disarticulation of the remains. The affidavit must also state that no specimen that is being shipped into the state was received from a third party.

The CS provides that the board must approve or deny the request to convey the remains within three days of its receipt of the request. If the request is not approved or denied within three days of receipt, it is deemed approved. The CS provides that, if the third day falls on a weekend or legal holiday, the next business day will be deemed the third business day. If the board denies a request, it must provide a written statement of the reasons for the denial.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
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	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 325 - 378
and insert:
Section 12. Section 406.61, Florida Statutes, is amended to read:
406.61 Selling, buying, or conveying human remains ~~bodies~~ outside state prohibited; exceptions;~~,~~ penalty.—
(1) Any person who sells or buys human remains, or any part thereof, ~~body or parts of bodies as described in this chapter~~ or any person except a recognized Florida medical or dental school who transmits or conveys or causes to be transmitted or conveyed

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13 such remains ~~body~~ or part thereof ~~parts of bodies~~ to any place
14 outside this state, commits a misdemeanor of the first degree,
15 punishable as provided in s. ~~ss.~~ 775.082 or s. ~~and~~ 775.083.
16 However, this chapter does not prohibit the anatomical board
17 from transporting human remains ~~specimens~~ outside the state for
18 educational or scientific purposes or prohibit the transport of
19 human remains, any part of such remains ~~bodies, parts of bodies~~,
20 or tissue specimens for purposes ~~in furtherance~~ of lawful
21 examination, investigation, or autopsy conducted pursuant to s.
22 406.11. Any person, institution, or organization that conveys
23 human remains ~~bodies~~ or any part thereof ~~parts of bodies~~ into or
24 out of the state for medical or dental education or research
25 purposes shall notify the anatomical board of such intent and
26 receive approval from the board; however, the requirement in
27 this subsection to notify or receive approval from the
28 anatomical board is waived and does not apply with respect to
29 any nontransplant anatomical organization accredited by the
30 American Association of Tissue Banks.
31 (2) Human remains received in this state by the anatomical
32 board, or a nontransplant anatomical donation organization, must
33 be accompanied by the original burial-transit permit issued
34 pursuant to s. 382.007. The remains may not be dissected,
35 segmented, or disarticulated until the district medical examiner
36 of the county in which the death occurred has granted approval
37 pursuant to s. 406.11.
38 (3) Monetary inducement or other valuable consideration,
39 including goods or services, may not be offered in exchange for
40 human remains to a donor, legally authorized person, the donor's
41 estate, or other third party. As used in this section, the term

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42 "valuable consideration" does not include, and nothing in this
43 section prohibits, the payment or reimbursement of the
44 reasonable costs associated with the removal, storage, and
45 transportation of human remains, including payment or
46 reimbursement to a funeral establishment or removal service
47 licensed under chapter 497, or the reasonable costs after use,
48 including the disposition of human remains, pursuant to s.
49 406.60.
50 (4) ~~(2)~~ Any entity accredited by the American Association of
51 Museums may convey plastinated human remains ~~bodies~~ or any part
52 thereof within, ~~parts of bodies~~ into, or out of the state for
53 exhibition and public educational purposes without the consent
54 of the anatomical board if the accredited entity:
55 (a) Notifies the anatomical board of the conveyance and the
56 duration and location of the exhibition at least 30 days before
57 the intended conveyance.
58 (b) Submits to the anatomical board a description of the
59 remains ~~bodies~~ or any part thereof ~~parts of bodies~~ and the name
60 and address of the company providing the remains ~~bodies~~ or any
61 part thereof ~~parts of bodies~~.
62 (c) Submits to the anatomical board documentation that the
63 remains or each part thereof ~~body~~ was donated by the decedent or
64 his or her next of kin for purposes of plastination and public
65 exhibition, or, in lieu of such documentation, an affidavit
66 stating that the remains or each part thereof ~~body~~ was donated
67 directly by the decedent or his or her next of kin for such
68 purposes to the company providing the remains ~~body~~ and that such
69 company has a donation form on file for the remains ~~body~~.
70 ~~(3) Notwithstanding paragraph (2)(c) and in lieu of the~~

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71 ~~documentation or affidavit required under paragraph (2)(c), for~~
72 ~~a plastinated body that, before July 1, 2009, was exhibited in~~
73 ~~this state by any entity accredited by the American Association~~
74 ~~of Museums, such an accredited entity may submit an affidavit to~~
75 ~~the board stating that the body was legally acquired and that~~
76 ~~the company providing the body has acquisition documentation on~~
77 ~~file for the body. This subsection expires January 1, 2012.~~
78
79 ========== T I T L E A M E N D M E N T ==========
80 And the title is amended as follows:
81 Delete lines 41 - 46
82 and insert:
83 406.61, F.S.; revising provisions prohibiting the
84 selling or buying of human remains or the transmitting
85 or conveying of such remains outside the state;
86 providing penalties; allowing certain accredited
87 schools and organizations to convey human remains in
88 or out of state for medical or research purposes under
89 certain conditions; requiring documentation prior to
90 use of human remains received in the state; defining
91 the term “valuable consideration” and providing
92 exemptions for certain costs; deleting an expired
93 provision relating to procedures for the conveyance of
94 a plastinated human body that was exhibited by an
95 entity accredited by the American Association of
96 Museums; conforming

By the Committees on Health Regulation; and Regulated Industries; and Senator Hays

A bill to be entitled

An act relating to disposition of human remains; creating s. 406.49, F.S.; providing definitions; amending s. 406.50, F.S.; revising procedures for the reporting and disposition of unclaimed remains; prohibiting certain uses or dispositions of the remains of deceased persons whose identities are not known; amending s. 406.51, F.S.; requiring that local governmental contracts for the final disposition of unclaimed remains comply with certain federal regulations; conforming provisions to changes in terminology; conforming a cross-reference; amending s. 406.52, F.S.; revising procedures for the anatomical board's retention of human remains before their use; providing for claims by, and the release of human remains to, legally authorized persons after payment of certain expenses; authorizing county ordinances or resolutions for the final disposition of the unclaimed remains of indigent persons; limiting the liability of certain licensed persons for cremating or burying human remains under certain circumstances; amending s. 406.53, F.S.; revising exceptions from requirements for notice to the anatomical board of the death of indigent persons; deleting a requirement that the Department of Health assess fees for the burial of certain bodies; amending s. 406.58, F.S.; conforming provisions to changes made by the act; requiring that the anatomical board keep a complete record of all fees and other financial transactions; requiring that

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the University of Florida audit the anatomical board and provide a copy of the audit to the Department of Financial Services within a specified time; authorizing the university to contract with a certified public accounting firm for the audit; authorizing the anatomical board to pay for the audit with the fees that the board collects; amending ss. 406.55, 406.56, 406.57, and 406.59, F.S.; conforming provisions to changes made by the act; amending s. 406.60, F.S.; authorizing certain facilities to dispose of human remains by cremation; amending s. 406.61, F.S.; authorizing certain accredited schools and organizations to convey human remains in or out of the state for medical or research purposes; deleting provisions relating to procedures for the conveyance of plastinated human remains into or out of the state pursuant to their scheduled expiration; conforming terminology; repealing s. 406.54, F.S., relating to claims of bodies after delivery to the anatomical board; amending s. 765.513, F.S.; revising the list of donees who may accept anatomical gifts and the purposes for which such a gift may be used; amending ss. 382.002 and 497.005, F.S.; redefining the term "final disposition" as it relates to vital statistics and the Florida Funeral, Cemetery, and Consumer Services Act; providing an effective date.

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

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Section 1. Section 406.49, Florida Statutes, is created to read:

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

(1) "Anatomical board" means the anatomical board of the state headquartered at the University of Florida Health Science Center.

(2) "Cremated remains" has the same meaning as in s. 497.005.

(3) "Final disposition" has the same meaning as in s. 497.005.

(4) "Human remains" or "remains" has the same meaning as in s. 497.005.

(5) "Indigent person" means a person whose family income does not exceed 100 percent of the current federal poverty guidelines prescribed for the family's household size by the United States Department of Health and Human Services.

(6) "Legally authorized person" has the same meaning as in s. 497.005.

(7) "Unclaimed remains" means human remains that are not claimed by a legally authorized person, other than a medical examiner or the board of county commissioners, for final disposition at the person's expense.

Section 2. Section 406.50, Florida Statutes, is amended to read:

406.50 Unclaimed ~~dead bodies or human~~ remains; disposition, procedure.—

(1) A person or entity that comes ~~All public officers, agents, or employees of every county, city, village, town, or municipality and every person in charge of any prison, morgue,~~

~~hospital, funeral parlor, or mortuary and all other persons coming~~ into possession, charge, or control of unclaimed ~~any dead human body or~~ remains that ~~which are unclaimed or which~~ are required to be buried or cremated at public expense shall ~~are hereby required to notify,~~ immediately notify~~,~~ the anatomical board, unless:

(a) The unclaimed remains are decomposed or mutilated by wounds;

(b) An autopsy is performed on the remains;

(c) The remains contain ~~whenever any such body, bodies, or remains come into its possession, charge, or control. Notification of the anatomical board is not required if the death was caused by crushing injury, the deceased had~~ a contagious disease;

(d) A legally authorized person~~, an autopsy was required to determine cause of death, the body was in a state of severe decomposition, or a family member~~ objects to use of the remains ~~body~~ for medical education or ~~and~~ research; or

(e) The deceased person was a veteran of the United States Armed Forces, United States Reserve Forces, or National Guard and is eligible for burial in a national cemetery or was the spouse or dependent child of a veteran eligible for burial in a national cemetery.

(2) ~~(1)~~ Before the final disposition of unclaimed remains, the person or entity in charge or control of the ~~dead body or human~~ remains shall make a reasonable effort to ~~determine~~:

(a) Determine the identity of the deceased person and ~~shall further make a reasonable effort to~~ contact any relatives of the ~~such~~ deceased person.

(b) Determine whether ~~or not~~ the deceased person is eligible under 38 C.F.R. s. 38.620 for ~~entitled to~~ burial in a national cemetery as a veteran of the armed forces and, if eligible ~~so~~, to cause the deceased person's remains or cremated remains to be delivered to a national cemetery ~~shall make arrangements for such burial services in accordance with the provisions of 38 C.F.R.~~

For purposes of this subsection, "a reasonable effort" includes contacting the National Cemetery Scheduling Office, the county veterans service office, or the regional office of the United States Department of Veterans Affairs.

(3) ~~(2)~~ Unclaimed remains ~~Such dead human bodies as described in this chapter~~ shall be delivered to the anatomical board as soon as possible after death. When no family exists or is available, a funeral director licensed under chapter 497 may assume the responsibility of a legally authorized person and may, after 24 hours have elapsed from the time of death, authorize arterial embalming for the purposes of storage and delivery of unclaimed remains to the anatomical board. A funeral director licensed under chapter 497 is not liable for damages under this subsection.

(4) The remains of a deceased person whose identity is not known may not be cremated, donated as an anatomical gift, buried at sea, or removed from the state.

(5) If the anatomical board does not accept the unclaimed remains, the county commission, or its designated county department, of the county in which the remains are found or the death occurred may authorize and arrange for the burial or

cremation of the entire remains. A board of county commissioners may, in accordance with applicable laws and rules, prescribe policies and procedures for final disposition of unclaimed remains by resolution or ordinance.

(6) ~~(3)~~ This part does not ~~Nothing herein shall~~ affect the right of a medical examiner to hold human ~~such dead body or~~ remains for the purpose of investigating the cause of death or~~,~~ ~~nor shall this chapter affect~~ the right of any court of competent jurisdiction to enter an order affecting the disposition of such ~~body or~~ remains.

~~(4) In the event more than one legally authorized person claims a body for interment, the requests shall be prioritized in accordance with s. 732.103.~~

~~For purposes of this chapter, the term "anatomical board" means the anatomical board of this state located at the University of Florida Health Science Center, and the term "unclaimed" means a dead body or human remains that is not claimed by a legally authorized person, as defined in s. 497.005, for interment at that person's expense.~~

Section 3. Section 406.51, Florida Statutes, is amended to read:

406.51 Final disposition of unclaimed deceased veterans; contract requirements.—Any contract by a local governmental entity for the final disposition ~~disposal~~ of unclaimed ~~human~~ remains must provide for compliance with s. 406.50(2) ~~(1)~~ and require that the procedures in 38 C.F.R. s. 38.620, relating to disposition of unclaimed deceased veterans, are ~~be~~ followed.

Section 4. Section 406.52, Florida Statutes, is amended to

175 read:
176 (Substantial rewording of section. See
177 s. 406.52, F.S., for present text.)
178 406.52 Retention of human remains before use; claim after
179 delivery to anatomical board; procedures for unclaimed remains
180 of indigent persons.—
181 (1) The anatomical board shall keep in storage all human
182 remains that it receives for at least 48 hours before allowing
183 their use for medical education or research. Human remains may
184 be embalmed when received. The anatomical board may, for any
185 reason, refuse to accept unclaimed remains or the remains of an
186 indigent person.
187 (2) At any time before their use for medical education or
188 research, human remains delivered to the anatomical board may be
189 claimed by a legally authorized person. The anatomical board
190 shall release the remains to the legally authorized person after
191 payment of the anatomical board's expenses incurred for
192 transporting, embalming, and storing the remains.
193 (3)(a) A board of county commissioners may, in accordance
194 with applicable laws and rules, prescribe policies and
195 procedures for the burial or cremation of the entire unclaimed
196 remains of an indigent person whose remains are found, or whose
197 death occurred in the county, by resolution or ordinance.
198 (b) A person licensed under chapter 497 is not liable for
199 any damages resulting from cremating or burying such human
200 remains at the written direction of the board of county
201 commissioners or its designee.
202 Section 5. Section 406.53, Florida Statutes, is amended to
203 read:

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204 (Substantial rewording of section. See
205 s. 406.53, F.S., for present text.)
206 406.53 Unclaimed remains of indigent person; exemption from
207 notice to the anatomical board.—A county commission or
208 designated county department that receives a report of the
209 unclaimed remains of an indigent person, notwithstanding s.
210 406.50(1), is not required to notify the anatomical board of the
211 remains if:
212 (1) The indigent person's remains are decomposed or
213 mutilated by wounds or if an autopsy is performed on the
214 remains;
215 (2) A legally authorized person or a relative by blood or
216 marriage claims the remains for final disposition at his or her
217 expense or, if such relative or legally authorized person is
218 also an indigent person, in a manner consistent with the
219 policies and procedures of the board of county commissioners of
220 the county in which the remains are found or the death occurred;
221 (3) The deceased person was a veteran of the United States
222 Armed Forces, United States Reserve Forces, or National Guard
223 and is eligible for burial in a national cemetery or was the
224 spouse or dependent child of a veteran eligible for burial in a
225 national cemetery; or
226 (4) A funeral director licensed under chapter 497 certifies
227 that the anatomical board has been notified and either accepted
228 or declined the remains.
229 Section 6. Section 406.55, Florida Statutes, is amended to
230 read:
231 406.55 Contracts for delivery of human remains ~~body~~ after
232 death prohibited.—The anatomical board may not enter ~~is~~

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~~specifically prohibited from entering~~ into any contract, oral or written, that provides for ~~whereby~~ any sum of money to ~~shall~~ be paid to any living person in exchange for ~~which~~ the delivery of that person's remains ~~body of said person shall be delivered~~ to the anatomical board when the ~~such living~~ person dies.

Section 7. Section 406.56, Florida Statutes, is amended to read:

406.56 Acceptance of human remains ~~bodies~~ under will.—If any person ~~being~~ of sound mind executes ~~shall execute~~ a will leaving his or her remains ~~body~~ to the anatomical board for ~~the advancement of~~ medical education or research ~~science~~ and the ~~such~~ person dies within the geographical limits of the state, the anatomical board may ~~is hereby empowered to~~ accept and receive the person's remains ~~such body~~.

Section 8. Section 406.57, Florida Statutes, is amended to read:

406.57 Distribution of human remains ~~dead bodies~~.—The anatomical board or its duly authorized agent shall take and receive human remains ~~the bodies~~ delivered to it as provided in ~~under the provisions of~~ this chapter and shall:

(1) Distribute the remains ~~them~~ equitably ~~to and~~ among the medical and dental schools, teaching hospitals, medical institutions, and health-related teaching programs that require cadaveric material for study; or

(2) Loan the remains ~~same may be loaned for examination or study purposes~~ to accredited colleges of mortuary science ~~recognized associations of licensed embalmers or funeral directors,~~ or medical or dental examining boards for educational or research purposes ~~at the discretion of the anatomical board~~.

Section 9. Section 406.58, Florida Statutes, is amended to read:

406.58 Fees; authority to accept additional funds; annual audit.—

(1) The anatomical board may:

(a) Adopt ~~is empowered to prescribe~~ a schedule of fees to be collected from the institutions ~~institution or association~~ to which the human remains ~~bodies, as described in this chapter,~~ are distributed or loaned to defray the costs of obtaining and preparing the remains ~~such bodies~~.

(b) ~~(2) The anatomical board is hereby empowered to~~ Receive money from public or private sources, in addition to the fees collected from the institutions ~~institution or association~~ to which human remains ~~the bodies~~ are distributed, to be used to defray the costs of embalming, handling, shipping, storing, cremating, and otherwise ~~storage, cremation, and other costs relating to the~~ obtaining and using the remains. ~~use of such bodies as described in this chapter; the anatomical board is empowered to~~

(c) Pay or reimburse the reasonable expenses, as determined by the anatomical board, incurred by a funeral establishment or removal service licensed under chapter 497, for the removal, storage, and transportation of unclaimed human remains ~~any person delivering the bodies as described in this chapter~~ to the anatomical board. ~~and is further empowered to~~

(d) Enter into contracts and perform such other acts ~~as are~~ necessary for ~~to~~ the proper performance of its duties.~~;~~

(2) The anatomical board shall keep a complete record of all fees and other financial transactions ~~of said anatomical~~

291 ~~board shall be kept and audited annually by the Department of~~
292 ~~Financial Services, and a report of such audit shall be made~~
293 ~~annually to the University of Florida~~. The University of Florida
294 shall conduct an audit of the financial records of the
295 anatomical board at least once every 3 years, or more frequently
296 if the university deems it necessary. Within 90 days after
297 completing the audit, the university shall provide a copy of the
298 audit to the Department of Financial Services. The university
299 may contract with a certified public accounting firm to provide
300 for the audit, which may be paid from the fees collected by the
301 anatomical board.
302 Section 10. Section 406.59, Florida Statutes, is amended to
303 read:
304 406.59 Institutions receiving human remains ~~bodies~~.~~—~~A ~~No~~
305 university, school, college, teaching hospital, or institution
306 may not~~, or association shall be allowed or permitted to~~ receive
307 any human remains from the anatomical board ~~such body or bodies~~
308 ~~as described in this chapter~~ until its facilities are ~~have been~~
309 inspected and approved by the anatomical board. Human remains
310 ~~All such bodies~~ received by such university, school, college,
311 teaching hospital, or institution may not~~, or association shall~~
312 be used for any ~~no other~~ purpose other than ~~the promotion of~~
313 medical education or research ~~science~~.
314 Section 11. Section 406.60, Florida Statutes, is amended to
315 read:
316 406.60 Disposition of human remains ~~bodies~~ after use.~~ At~~
317 ~~any time~~ When human remains ~~any body or bodies or part or parts~~
318 ~~of any body or bodies, as described in this chapter, shall~~ have
319 been used for, and are not ~~deemed~~ of any ~~no~~ further value to,

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320 medical or dental education or research ~~science~~, ~~then~~ the
321 anatomical board or a cinerator facility licensed under chapter
322 497 ~~person or persons having charge of said body or parts of~~
323 ~~said body~~ may dispose of the remains or any part thereof by
324 cremation.
325 Section 12. Section 406.61, Florida Statutes, is amended to
326 read:
327 406.61 Selling, buying, or conveying bodies outside state
328 prohibited; exceptions, penalty.—
329 (1) Any person who sells or buys any body or parts of
330 bodies as described in this chapter or any person except a
331 recognized Florida medical or dental school who transmits or
332 conveys or causes to be transmitted or conveyed such body or
333 parts of bodies to any place outside this state commits a
334 misdemeanor of the first degree, punishable as provided in ss.
335 775.082 and 775.083. However, this chapter does not prohibit the
336 anatomical board from transporting human specimens outside the
337 state for educational or scientific purposes or prohibit the
338 transport of bodies, parts of bodies, or tissue specimens in
339 furtherance of lawful examination, investigation, or autopsy
340 conducted pursuant to s. 406.11.
341 (2) Any nontransplant anatomical donation organization
342 accredited by the American Association of Tissue Banks or an
343 accredited medical or dental college or university may convey
344 human remains ~~person, institution, or organization that conveys~~
345 ~~bodies~~ or any part thereof within, ~~parts of bodies~~ into, or out
346 of the state for medical or dental education or research
347 purposes. A nontransplant anatomical donation organization need
348 not be accredited as required by this section until July 1, 2013

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349 ~~shall notify the anatomical board of such intent and receive~~
350 ~~approval from the board~~.
351 (3) ~~(2)~~ Any entity accredited by the American Association of
352 Museums may convey plastinated human remains ~~bodies~~ or any part
353 thereof within, ~~parts of bodies~~ into, or out of the state for
354 exhibition and public educational purposes without the consent
355 of the anatomical board if the accredited entity:
356 (a) Notifies the anatomical board of the conveyance and the
357 duration and location of the exhibition at least 30 days before
358 the intended conveyance.
359 (b) Submits to the anatomical board a description of the
360 remains ~~bodies~~ or any part thereof ~~parts of bodies~~ and the name
361 and address of the company providing the remains ~~bodies~~ or any
362 part thereof ~~parts of bodies~~.
363 (c) Submits to the anatomical board documentation that the
364 remains or each part thereof ~~body~~ was donated by the decedent or
365 his or her next of kin for purposes of plastination and public
366 exhibition, or, in lieu of such documentation, an affidavit
367 stating that the remains or each part thereof ~~body~~ was donated
368 directly by the decedent or his or her next of kin for such
369 purposes to the company providing the remains ~~body~~ and that such
370 company has a donation form on file for the remains ~~body~~.
371 ~~(3) Notwithstanding paragraph (2)(c) and in lieu of the~~
372 ~~documentation or affidavit required under paragraph (2)(c), for~~
373 ~~a plastinated body that, before July 1, 2009, was exhibited in~~
374 ~~this state by any entity accredited by the American Association~~
375 ~~of Museums, such an accredited entity may submit an affidavit to~~
376 ~~the board stating that the body was legally acquired and that~~
377 ~~the company providing the body has acquisition documentation on~~

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378 ~~file for the body. This subsection expires January 1, 2012.~~
379 Section 13. Section 406.54, Florida Statutes, is repealed.
380 Section 14. Subsection (1) of section 765.513, Florida
381 Statutes, is amended to read:
382 765.513 Donees; purposes for which anatomical gifts may be
383 made.—
384 (1) The following persons or entities may become donees of
385 anatomical gifts of bodies or parts of them for the purposes
386 stated:
387 (a) Any procurement organization or accredited medical or
388 dental school, college, or university for education, research,
389 therapy, or transplantation.
390 (b) Any individual specified by name for therapy or
391 transplantation needed by him or her.
392 (c) The anatomical board as defined in s. 406.49(1) for
393 donation of the whole body for medical or dental education or
394 research.
395 Section 15. Subsection (7) of section 382.002, Florida
396 Statutes, is amended to read:
397 382.002 Definitions.—As used in this chapter, the term:
398 (7) "Final disposition" means the burial, interment,
399 cremation, removal from the state, donation, or other authorized
400 disposition of a dead body or a fetus as described in subsection
401 (6). In the case of cremation, dispersion of ashes or cremation
402 residue is considered to occur after final disposition; the
403 cremation itself is considered final disposition. In the case of
404 anatomical donation of a dead body, the donation itself is
405 considered final disposition.
406 Section 16. Subsection (32) of section 497.005, Florida

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407 Statutes, is amended to read:
408 497.005 Definitions.—As used in this chapter, the term:
409 (32) "Final disposition" means the final disposal of a dead
410 human body by earth interment, aboveground interment, cremation,
411 burial at sea, anatomical donation, or delivery to a medical
412 institution for lawful dissection if the medical institution or
413 entity receiving the anatomical donation assumes responsibility
414 for disposition after use pursuant to s. 406.60 ~~disposal~~. "Final
415 disposition" does not include the disposal or distribution of
416 cremated remains and residue of cremated remains.
417 Section 17. This act shall take effect July 1, 2012.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/SB 1042

INTRODUCER: Community Affairs Committee and Senator Bennett

SUBJECT: Emergency 911 Service

DATE: February 27, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	**Fav/CS**
2.	Wiehle	Carter	CU	**Fav/CS**
3.	Howard	DeLoach	BGA	**Favorable**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This CS amends certain provisions of the Emergency Communications Number E911 Act to:

- allow a 911 public safety telecommunicator to contact owners of automated external defibrillators to facilitate a coronary emergency call;
- modify membership numbers and composition of the E911 Board;
- clarify the application of the E911 fee to a customer using digital transmission link and service;
- clarify the indemnification and liability provisions related to provision of 911 or E911 service with respect to non-voice communications; and
- reflect the recent dissolution of the Florida Telecommunications Industry Association.

This CS substantially amends sections 365.171, 365.172, 401.2915, and 427.706 of the Florida Statutes.

II. Present Situation:

Automated External Defibrillators

It is the intent of the Legislature that an automated external defibrillator (AED) may be used by any person for the purpose of saving the life of another person in cardiac arrest.[1] In order to achieve that goal, the Legislature encourages training in lifesaving first aid and sets standards for and encourages the use of AEDs.[2]

Any person or entity in possession of an AED is encouraged to notify the local emergency medical services medical director of the location of the automated external defibrillator.[3] Public schools, members of the Florida High School Athletic Association, state parks and multiservice senior centers are required to register their AED locations with a local emergency medical services director.[4]

The Cardiac Arrest Survival Act in s. 768.1325, F.S., addresses civil liability and AEDs.

> Notwithstanding any other provision of law to the contrary, . . . any person who uses or attempts to use an automated external defibrillator device on a victim of a perceived medical emergency, without objection of the victim of the perceived medical emergency, is immune from civil liability for any harm resulting from the use or attempted use of such device.[5]

According to the Department of Health's Guidelines for AEDs in State Owned or Leased Facilities, the optimal response time for use of an AED is three minutes or less. This interval begins from the moment a person is identified as needing emergency care to when the AED is at the side of the victim. Survival rates decrease by 7 to 10 percent for every minute that defibrillation is delayed.[6]

E911 Confidentiality of Records

Section 365.171(12), F.S. on E911 confidentiality of records states that:

> Any record, recording, or information, or portions thereof, obtained by a public agency or a public safety agency for the purpose of providing services in an emergency and which reveals the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications E911 system is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State

[1] Section 401.2915, F.S.
[2] *Id.*
[3] Section 401.2915(b), F.S.
[4] Sections 1006.165, 258.0165, and 430.902, F.S.
[5] Section 768.1325(3), F.S.
[6] *See* Rule 64J-1.023, F.A.C.

Constitution, except that such record or information may be disclosed to a public safety agency.[7]

Emergency Communications Number E911 Act

The Emergency Communications Number E911 Act (Act)[8] establishes a statewide E911 system to provide users of voice communications rapid, direct access to public safety agencies by accessing the telephone number "911." In addition, the Act is intended to:

- provide funds to counties to pay certain costs associated with their E911 or 911 systems and to reimburse wireless telephone service providers for costs incurred to provide 911 or E911 services;
- levy a reasonable fee on voice communications services to accomplish these purposes;
- provide for an E911 board to administer the fee; and
- ensure that the fee is used exclusively for recovery by wireless providers and by counties for costs associated with developing and maintaining E911 systems.[9]

Funding the E911 System

To fund the E911 system, the Act imposes a fee, capped at $.50, on voice communications services. This fee funds costs incurred by local governments to install and operate 911 systems and reimburses providers for costs incurred to provide 911 or E911 services. As of March 31, 2008, all 67 counties reported capability to receive a call back number and location information provided for the cellular caller from the service provider.[10]

Florida law requires voice communications services providers to collect the E911 fee from the subscribers of voice communications services on a service identifier basis, up to a maximum of 25 access lines per account bill.[11] "Service identifier" is defined as the service number, access line, or other unique identifier assigned to a customer for purposes of routing calls to the E911 system.[12] Consistent with the statutory definition for "voice communications services provider,"[13] the fee is imposed upon local exchange service, wireless service, and other services that have access to E911 service, such as Voice-over-Internet Protocol[14] ("VoIP").

For customers who receive service through a digital transmission link that can be channelized and split into 23 or 24 voice or data grade channels for communications (such as primary rate

[7] Section 119.07, F.S., and s. 24(a), Art. I of the State Constitution, address inspection and copying of public records and access to public records and meetings respectively.
[8] Section 365.172, F.S. Originally cited as the "Wireless Emergency Communications Act," Chapter 99-367, L.O.F., codified in s. 365.172, F.S.
[9] Section 365.172(1)(a)-(e), F.S.
[10] Florida Department of Management Services, *Florida E911*, http://dms.myflorida.com/suncom/public_safety_bureau/florida_e911 (last visited Jan. 17, 2012).
[11] Section 365.172(8), F.S.
[12] Section 365.172(3)(z), F.S.
[13] Section 365.172(3)(bb) and (cc), F.S.
[14] Voice-over-Internet Protocol, or VoIP, is the method commonly used by traditional cable television service providers to provide voice communications service. In addition, companies referred to as "over-the-top" providers, like Vonage, use VoIP.

interface service or Digital Signal 1 level service), local exchange carriers are required by rule[15] to bill the E911 fee on the basis of five access lines for each digital transmission link up to a maximum of 25 access lines per account bill. A customer using one digital transmission link for service is able to use that link for 23 or 24 voice or data channels. The rule assumes that five of those channels, on average, are used as voice lines with access to the E911 system, and the customer is billed the E911 fee for five lines.

The E911 subscriber fee is not assessed on any pay telephone in the state. Except in the case of prepaid wireless service, each wireless provider bills the E911 fee to a subscriber on a per-service-identifier basis for service identifiers whose primary place of use is within Florida. E911 subscriber fees may not be assessed on or collected from the sale of prepaid wireless service prior to July 1, 2013.[16]

E911 Board

The E911 Board, formerly the Wireless 911 Board, helps implement and oversee the E911 system and administers the funds derived from the E911 fee. The primary function of the E911 Board (Board) is to make disbursements from the E911 Trust Fund to county governments and wireless providers in accordance with s. 365.173, F.S. The Board consists of nine members including the E911 system director (the secretary of the Department of Management Services or his or her designee) who serves as chair of the board. The remaining eight members are appointed by the Governor and must be composed of:

- four county 911 coordinators;
- two local exchange carrier representatives; and
- two wireless telecommunications industry representatives recommended by the Florida Telecommunications Industry Association (FTIA) in consultation with the wireless industry.[17]

According to the Florida Department of Management Services (DMS), the E911 Board industry representation currently includes AT&T (the local exchange carrier with the greatest number of access lines), CenturyLink (a local exchange carrier), Verizon (a wireless carrier) and TracFone Wireless (a wireless provider). FTIA's termination was filed June 2011, and is no longer available to make recommendations for replacement candidates.[18]

E911 Indemnification and Limitation of Liability

Section 365.172(11), F.S., protects voice communications services providers from liability for damages resulting from or in connection with 911 or E911 service. Providers also receive

[15] Rule 60FF1-5.007, Florida Administrative Code.
[16] *See* s. 365.172(8), F.S. "Prepaid wireless service" means the right to access telecommunications services that must be paid for in advance and is sold in predetermined units or dollars enabling the originator to make calls such that the number of units or dollars declines with use in a known amount.
[17] Section 365.172(5)(b), F.S.
[18] Florida Department of Management Services, *HB 801/SB 1042 Bill Analysis* (Jan. 17, 2012) (on file with the Senate Committee on Community Affairs).

liability protection for identification of the telephone number, address, or name associated with any person accessing 911 or E911 service.[19]

Further, the law authorizes local governments to indemnify local exchange carriers against liability in accordance with the carrier's lawfully filed tariffs. Since 2009, however, local exchange carriers have not been required to file tariffs (i.e., rate schedules) with the Public Service Commission ("PSC"). Instead, these carriers are required to publish their rate schedules through electronic or physical media and to inform customers where the schedules can be viewed.

Next Generation 911

The nation's current 911 system is designed around telephone technology and cannot handle the text, data, images, and video that are both increasingly common in personal communications and critical to future transportation safety and mobility advances. Development of next generation 911 technology is designed to create a system that is capable of voice, data, and video transmission from different types of communication devices into public safety answering points and on to emergency responder networks.[20]

Telecommunications Access System

Chapter 427, F.S., establishes the Telecommunications Access System Act of 1991 (TASA). Pursuant to TASA, the PSC is responsible for establishing, implementing, promoting, and overseeing the administration of a statewide system to provide access to telecommunications relay services by people who are deaf, hard of hearing, or speech impaired and those who communicate with them.[21] TASA establishes an advisory committee to assist the PSC. The advisory committee provides the expertise, experience, and perspective of people who are hearing impaired or speech impaired to the PSC regarding the operation of the telecommunications access system. The advisory committee consists of 10 members:

- two deaf persons;
- one hearing-impaired person;
- one deaf and blind person;
- one speech-impaired person;
- two representatives of telecommunications companies recommended by the Florida Telephone Association;
- one person with experience in providing relay services;
- one person recommended by the Advocacy Center for Persons with Disabilities; and
- one person recommended by the Florida League of Seniors.[22]

---

[19] Absent any malicious purpose or wanton and willful disregard of the rights, safety, or property of the person when providing services.

[20] United States Department of Transportation, Research and Innovative Technology Administration, *Intelligent Transportation Systems Joint Program Office Website*, *available at* http://www.its.dot.gov/ng911/ (last visited Jan. 17, 2012). "Answering point" is defined in s. 365.172(3)(a), F.S., as the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to the calls.

[21] Section 427.704, F.S.

[22] Section 427.706, F.S.

According to the Florida Department of State, Division of Corporation's website, the Florida Telephone Association was renamed FTIA in May 1996. As mentioned previously, FTIA's termination was filed June 2011.

III. Effect of Proposed Changes:

Section 1 amends s. 365.171 (12), F.S., to allow a 911 public safety telecommunicator to contact a private owner of an automated external defibrillator who has notified the local emergency medical services director or a public safety answering point, if a confirmed coronary emergency call is taking place a reasonable distance from the defibrillator. The telecommunicator may then provide the location of the emergency to the defibrillator owner.

Section 2 amends s. 365.172(5), F.S., to change the composition of the E911 board membership. The CS increases the total number of board members from nine to eleven. The number of county 911 coordinator representatives is increased from four to five. The number of board members representing local exchange carriers increases from two to three. One of these representatives must be a representative of a certified competitive local exchange telecommunications company (e.g., a traditional landline competitive company or a cable voice service provider.). The CS removes a provision requiring the now-dissolved FTIA to recommend a wireless industry member.

This section also amends s. 365.172(8)(a), F.S., to clarify and modernize application of the E911 fee. The CS amends subparagraph 1. to provide that all voice communications services providers other than wireless providers must bill the E911 fee to each subscriber based on the number of access lines with access to the E911 system, on a service-identifier basis. Based on the applicable definition of "voice communications services provider," this provision should encompass every voice communications technology that is required by the Federal Communications Commission (FCC) to provide E911 service, other than wireless service.

The CS creates a new subparagraph 2. to establish how voice communications services providers other than wireless providers will bill the E911 fee to customers that use a digital transmission link that can be channelized and split into 23 or 24 voice or data grade channels for communications. Consistent with the existing rule of the E911 Board and FCC practice, these customers will be billed the fee for five service-identified access lines for each digital transmission link, up to a maximum of 25 access lines per account bill. The CS provides that a "digital transmission link" includes primary rate interface service or equivalent Digital Signal 1 level service. This is a codification of Rule 60FF1-5.007, F.A.C., which was adopted December 3, 2010.

The CS retains the existing provisions in s. 365.172(8)(a), F.S., that specify how wireless providers must bill the E911 fee to their customers.

Section 2 also amends s. 365.172(11), F.S., related to indemnification and limitation of liability to clarify application of the existing liability provisions to include services that are capable of providing access to the E911 system for nonvoice communications (e.g., text, data, images and video). These "Next Generation 911" systems are currently being developed.

Further, this section of the CS reflects that local exchange carriers are no longer required to file tariffs with the PSC. To do this, the CS provides that local governments may indemnify a local exchange carrier against liability in accordance with the carrier's lawfully published rate schedules, rather than its filed tariffs.

Section 3 amends s. 401.2915(2)(b), F.S., to encourage automated external defibrillator owners to notify a public safety answering point of the location of their devices.

Section 4 amends s. 427.706, F.S., to remove specifications related to the telecommunication company representation on the advisory committee charged with providing access to telecommunications relay services by people who are deaf, hard of hearing, or speech impaired and those who communicate with them. An obsolete reference to the role of the Florida Telephone Association in the advisory committee selection process is removed as well. The CS also provides that the uncompensated advisory committee members are entitled to reimbursement for per diem and travel expenses.

Section 5 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the DMS, no immediate effects are anticipated as a result of the CS's modifications of the E911 Board industry representation. Due to the flexibility and inclusiveness of the categories used, no major changes are expected in the composition of the E911 Board industry representatives.[23]

[23] Florida Department of Management Services, *HB 801/SB 1042 Bill Analysis* (Jan. 17, 2012) (on file with the Senate Committee on Community Affairs).

C. Government Sector Impact:

The dissolution of the Florida Telecommunications Industry Association will affect how the Governor appoints E911 board members and how the PSC appoints Telecommunications Access System advisory committee members.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Communications, Energy, and Public Utilities on January 30, 2012:
Makes a technical change.

CS by Community Affairs on January 23, 2012:
- Allows a 911 public safety telecommunicator to contact private owners of automated external defibrillators to facilitate a coronary emergency call.
- Changes the membership number and composition requirements of the E911 Board.
- Removes specifications related to the telecommunication company representation on the advisory committee charged with providing access to telecommunications relay services by people who are deaf, hard of hearing, or speech impaired and those who communicate with them.
- Makes technical and clarifying changes.

B. Amendments:

None.

By the Committees on Communications, Energy, and Public Utilities; and Community Affairs; and Senator Bennett

579-02579-12 20121042c2

A bill to be entitled

An act relating to emergency 911 service; amending s. 365.171, F.S.; providing an exception to certain confidentiality provisions for a 911 public safety telecommunicator when a confirmed coronary emergency call is taking place; amending s. 365.172, F.S.; increasing the membership of the E911 Board and revising the qualifications required for the members; requiring that a voice communications service provider, other than a wireless service provider, impose a fee based on the number of access lines to the E911 system and on the basis of certain access lines for each digital transmission link, up to a specified number of access lines per account bill rendered; revising the criteria that a local government may use in order to indemnify a local carrier; expanding the types of providers that may be indemnified and that are not liable for certain damages; revising cross-references; defining the term "911 or E911 service"; amending s. 401.2915, F.S.; providing for a person or entity in possession of an automated external defibrillator to notify the local public safety answering point regarding the location of the defibrillator; amending s. 427.706, F.S.; removing the requirement that the Florida Telephone Association recommend certain representatives to an advisory committee to the Public Service Commission; providing an effective date.

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

579-02579-12 20121042c2

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

Section 1. Subsection (12) of section 365.171, Florida Statutes, is amended to read:

365.171 Emergency communications number E911 state plan.—

(12) CONFIDENTIALITY OF RECORDS.—

(a) Any record, recording, or information, or portions thereof, obtained by a public agency or a public safety agency for the purpose of providing services in an emergency and which reveals the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications E911 system is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that such record or information may be disclosed to a public safety agency. The exemption applies only to the name, address, telephone number or personal information about, or information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services. A telecommunications company or commercial mobile radio service provider shall not be liable for damages to any person resulting from or in connection with such telephone company's or commercial mobile radio service provider's provision of any lawful assistance to any investigative or law enforcement officer of the State of Florida or political subdivisions thereof, of the United States, or of any other state or political subdivision thereof, in connection with any

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59 lawful investigation or other law enforcement activity by such
60 law enforcement officer unless the telecommunications company or
61 commercial mobile radio service provider acted in a wanton and
62 willful manner.
63 (b) Notwithstanding paragraph (a), a 911 public safety
64 telecommunicator, as defined in s. 401.465, may contact any
65 private person or entity that owns an automated external
66 defibrillator who has notified the local emergency medical
67 services medical director or public safety answering point of
68 such ownership if a confirmed coronary emergency call is taking
69 place and the location of the coronary emergency is within a
70 reasonable distance from the location of the defibrillator, and
71 may provide the location of the coronary emergency to that
72 person or entity.
73 Section 2. Paragraphs (a) and (b) of subsection (5),
74 paragraphs (a) and (e) of subsection (8), and subsection (11) of
75 section 365.172, Florida Statutes, are amended to read:
76 365.172 Emergency communications number "E911."—
77 (5) THE E911 BOARD.—
78 (a) The E911 Board is established to administer, with
79 oversight by the office, the fee imposed under subsection (8),
80 including receiving revenues derived from the fee; distributing
81 portions of the revenues to wireless providers, counties, and
82 the office; accounting for receipts, distributions, and income
83 derived by the funds maintained in the fund; and providing
84 annual reports to the Governor and the Legislature for
85 submission by the office on amounts collected and expended, the
86 purposes for which expenditures have been made, and the status
87 of E911 service in this state. In order to advise and assist the

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88 office in implementing ~~carrying out~~ the purposes of this
89 section, the board, which has ~~shall have~~ the power of a body
90 corporate, has the powers enumerated in subsection (6).
91 (b) The board shall consist of eleven ~~nine~~ members, one of
92 whom must be the system director designated under s. 365.171(5),
93 or his or her designee, who shall serve as the chair of the
94 board. The remaining ten ~~eight~~ members of the board shall be
95 appointed by the Governor and must be composed of five ~~four~~
96 county 911 coordinators, consisting of a representative from a
97 rural county, a representative from a medium county, a
98 representative from a large county, and two ~~an~~ at-large
99 representatives ~~representative~~ recommended by the Florida
100 Association of Counties in consultation with the county 911
101 coordinators; three ~~two~~ local exchange carrier member
102 representatives ~~members~~, one of whom ~~which~~ must be a
103 representative of the local exchange carrier having the greatest
104 number of access lines in the state and one of whom must be a
105 representative of a certificated competitive local exchange
106 telecommunications company; and two member representatives
107 ~~members~~ from the wireless telecommunications industry, with
108 ~~recommended by the Florida Telecommunications Industry~~
109 ~~Association in consultation with the wireless telecommunications~~
110 ~~industry. In recommending members from the wireless~~
111 ~~telecommunications industry,~~ consideration ~~must be~~ given to
112 wireless providers that ~~who~~ are not affiliated with local
113 exchange carriers. Not more than one member may be appointed to
114 represent any single provider on the board.
115 (8) E911 FEE.—
116 (a) Each voice communications services provider shall

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117 collect the fee described in this subsection. Each provider, as
118 part of its monthly billing process, shall bill the fee as
119 follows. The fee shall not be assessed on any pay telephone in
120 the state.
121 1. Each voice communications service provider other than a
122 wireless provider ~~local exchange carrier~~ shall bill the fee to a
123 subscriber based on the number of access lines having access to
124 the E911 system, ~~the local exchange subscribers~~ on a service-
125 identifier basis, up to a maximum of 25 access lines per account
126 bill rendered.
127 2. Each voice communications service provider other than a
128 wireless provider shall bill the fee to a subscriber on a basis
129 of five service-identified access lines for each digital
130 transmission link, including primary rate interface service or
131 equivalent Digital-Signal-1-level service, which can be
132 channelized and split into 23 or 24 voice- or data-grade
133 channels for communications, up to a maximum of 25 access lines
134 per account bill rendered.
135 3.~~2.~~ Except in the case of prepaid wireless service, each
136 wireless provider shall bill the fee to a subscriber on a per-
137 service-identifier basis for service identifiers whose primary
138 place of use is within this state. Before July 1, 2013, the fee
139 shall not be assessed on or collected from a provider with
140 respect to an end user's service if that end user's service is a
141 prepaid calling arrangement that is subject to s. 212.05(1)(e).
142 a. An ~~No~~ E911 fee shall not be collected from the sale of
143 prepaid wireless service before ~~prior to~~ July 1, 2013.
144 b. For purposes of this section, the term:
145 (I) "Prepaid wireless service" means the right to access

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146 telecommunications services, which ~~that~~ must be paid for in
147 advance and ~~is~~ sold in predetermined units or dollars enabling
148 the originator to make calls such that the number of units or
149 dollars declines with use in a known amount.
150 (II) "Prepaid wireless service providers" includes those
151 persons who sell prepaid wireless service regardless of its
152 form, ~~either~~ as a retailer or reseller.
153 4.~~3.~~ The ~~All~~ voice communications services providers not
154 addressed under subparagraphs 1., 2., and 3. ~~2.~~ shall bill the
155 fee on a per-service-identifier basis for service identifiers
156 whose primary place of use is within the state up to a maximum
157 of 25 service identifiers for each account bill rendered.
158
159 The provider may list the fee as a separate entry on each bill,
160 in which case the fee must be identified as a fee for E911
161 services. A provider shall remit the fee to the board only if
162 the fee is paid by the subscriber. If a provider receives a
163 partial payment for a monthly bill from a subscriber, the amount
164 received shall first be applied to the payment due the provider
165 for providing voice communications service.
166 (e) Effective September 1, 2007, voice communications
167 services providers billing the fee to subscribers shall deliver
168 revenues from the fee to the board within 60 days after the end
169 of the month in which the fee was billed, together with a
170 monthly report of the number of service identifiers in each
171 county. Each wireless provider and other applicable provider
172 identified in subparagraph (a)4. ~~(a)3.~~ shall report the number
173 of service identifiers for subscribers whose place of primary
174 use is in each county. All provider subscriber information

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175 provided to the board is subject to s. 365.174. If a provider
176 chooses to remit any fee amounts to the board before they are
177 paid by the subscribers, a provider may apply to the board for a
178 refund of, or may take a credit for, any such fees remitted to
179 the board which are not collected by the provider within 6
180 months following the month in which the fees are charged off for
181 federal income tax purposes as bad debt.
182 (11) INDEMNIFICATION AND LIMITATION OF LIABILITY.—A local
183 government may ~~governments are authorized to undertake to~~
184 indemnify local exchange carriers against liability in
185 accordance with the published schedules ~~lawfully filed tariffs~~
186 of the company. Notwithstanding an indemnification agreement, a
187 local exchange carrier, voice communications services provider,
188 or other service provider that provides 911 or E911 service on a
189 retail or wholesale basis is not liable for damages resulting
190 from or in connection with 911 or E911 service, or for
191 identification of the telephone number, or address, or name
192 associated with any person accessing 911 or E911 service, unless
193 the carrier or ~~the voice communications services~~ provider acted
194 with malicious purpose or in a manner exhibiting wanton and
195 willful disregard of the rights, safety, or property of a person
196 when providing such services. A carrier or ~~voice communications~~
197 ~~services~~ provider is not liable for damages to any person
198 resulting from or in connection with the carrier's or provider's
199 provision of any lawful assistance to any investigative or law
200 enforcement officer of the United States, this state, or a
201 political subdivision thereof, or of any other state or
202 political subdivision thereof, in connection with any lawful
203 investigation or other law enforcement activity by such law

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204 enforcement officer. For purposes of this subsection, the term
205 "911 or E911 service" means a telecommunications service, voice
206 or nonvoice communications service, or other wireline or
207 wireless service, including, but not limited to, a service using
208 Internet protocol, which provides, in whole or in part, any of
209 the following functions: providing members of the public with
210 the ability to reach an answering point by using the digits 9-1-
211 1; directing 911 calls to answering points by selective routing;
212 providing for automatic number identification and automatic
213 location-identification features; or providing wireless E911
214 services as defined in the order.
215 Section 3. Paragraph (b) of subsection (2) of section
216 401.2915, Florida Statutes, is amended to read:
217 401.2915 Automated external defibrillators.—It is the
218 intent of the Legislature that an automated external
219 defibrillator may be used by any person for the purpose of
220 saving the life of another person in cardiac arrest. In order to
221 achieve that goal, the Legislature intends to encourage training
222 in lifesaving first aid and set standards for and encourage the
223 use of automated external defibrillators.
224 (2) In order to promote public health and safety:
225 (b) Any person or entity in possession of an automated
226 external defibrillator is encouraged to notify the local
227 emergency medical services medical director or the local public
228 safety answering point, as defined in s. 365.172(3), of the
229 location of the automated external defibrillator.
230 Section 4. Paragraph (e) of subsection (1) and subsection
231 (3) of section 427.706, Florida Statutes, are amended to read:
232 427.706 Advisory committee.—

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233 (1) The commission shall appoint an advisory committee to
234 assist the commission with the implementation of the provisions
235 of this part. The committee shall be composed of no more than 10
236 persons and shall include, to the extent practicable, the
237 following:
238 (e) Two representatives of telecommunications companies~~,~~
239 ~~one representing a local exchange telecommunications company and~~
240 ~~one representing an interexchange telecommunications company,~~
241 ~~recommended by the Florida Telephone Association~~.
242 (3) Members of the committee shall not be compensated for
243 their services but are ~~shall be~~ entitled to receive
244 reimbursement for per diem and travel expenses as provided in s.
245 112.061. The commission shall use funds from the Florida Public
246 Service Regulatory Trust Fund to cover the costs incurred by
247 members of the advisory committee.
248 Section 5. This act shall take effect July 1, 2012.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-28-12
Meeting Date

Topic: E911

Bill Number: 1042 *(if applicable)*

Name: Becki Edmonston

Amendment Barcode: *(if applicable)*

Job Title: Mgr-Gov. Aff.

Address: 106 E. College Ave.
Street

Tall FL 32301
City *State* *Zip*

Phone: 850/294-0234

E-mail: rebecca.edmonston@verizon.com

Speaking: [x] For [ ] Against [ ] Information

WAIVE IN SUPPORT

Representing: Verizon

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/28/12
Date

1042
Bill Number

Barcode

Name Paula Mateo

Phone 591-6002

Address 150 S. Monroe Street
Street

E-mail paula.mateo

Tallahassee FL
City State Zip

Job Title Area Manager

Speaking: [x] For [ ] Against [ ] Information

Appearing at request of Chair [ ]

Subject E 911

Representing AT&T

Lobbyist registered with Legislature: [x] Yes [ ] No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/28/12
Meeting Date

Topic: 911

Bill Number: SB 1042 *(if applicable)*

Name: Jim Smith

Amendment Barcode: *(if applicable)*

Job Title: Director Government Affairs

Address: 315 S Calhoun St
Street

Tallahassee
City *State* *Zip*

Phone: 2125901

E-mail: James.Smith@CenturyLink

Speaking: [x] For [ ] Against [x] Information

Representing: CenturyLink

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [x] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Banking and Insurance
Budget - Subcommittee on Criminal and Civil Justice Appropriations
Budget - Subcommittee on Transportation, Tourism, and Economic Development Appropriations
Criminal Justice
Military Affairs, Space, and Domestic Security

SENATOR MICHAEL S. "MIKE" BENNETT
President Pro Tempore
21st District

February 3, 2012

The Honorable Alan Hayes
Chair, General Government Apps Committee
201 The Capitol
404 S. Monroe St.
Tallahassee, Fl 32399

Dear Chairman Hayes:

I am requesting that you place S1042, relating to E911 communications, on your committee agenda as soon as possible.

If you have any questions, please let me know. Thank you for your consideration.

Sincerely,

Michael S. "Mike" Bennett
/cre
Cc:

- Jamie DeLoach, Staff Director
- Lisa Waddell, Administrative Assistant

REPLY TO:
☐ Wildewood Professional Park, Suite 90, 3653 Cortez Road West, Bradenton, Florida 34210 (941) 727-6349
☐ 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5078

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/SB 1086

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Garcia

SUBJECT: Reclaimed Water

DATE: February 27, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	**Fav/CS**
2.	Pigott	DeLoach	BGA	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill addresses the regulation and use of reclaimed water. Specifically, the bill:

- defines “reclaimed water” and “reclaimed water distribution system”;
- provides legislative findings related to the use of reclaimed water;
- provides that reclaimed water is an alternative water supply (AWS) and eligible for such funding;
- authorizes specified contract provisions for the development of reclaimed water as an alternative water supply;
- deletes a definition for the term “uncommitted”;
- provides for the determination of uncommitted reclaimed water capacity by certain utilities;
- prohibits water management districts from requiring permits for the use of reclaimed water;
- authorizes permit conditions for certain surface water and groundwater sources in relation to using reclaimed water;
- authorizes water management districts (WMD) to require the use of reclaimed water under certain conditions;
- prohibits water management districts from requiring or restricting services provided by reuse utilities;

- excludes reuse utilities from providing written reclaimed water feasibility evaluations;
- requires the Department of Environmental Protection (DEP) and each WMD to initiate rulemaking to adopt specified revisions to the water resource implementation rule;
- authorizes the DEP to regulate the use of surface water or groundwater to supplement a reclaimed water system;
- expands application of s. 373.250, F.S., to modification of existing consumptive use permits (CUPs); and
- clarifies limitations of the act.

This bill substantially amends ss. 373.019 and 373.250 of the Florida Statutes, and creates an unnumbered section of law.

II. Present Situation:

"Water" and "Waters in the State"

Under current Florida law, "waters in the state" are considered basic public resources benefiting the entire state.[1] The statutes define "water" or "waters in the state" as "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 coastal waters within the jurisdiction of the state."[2]

In the "Declaration of Policy" for ch. 373, F.S., the Legislature acknowledges that, in the past, Florida's water resources were not adequately conserved or otherwise realized for their full beneficial use. In response, the Legislature delegated authority to the DEP and the WMDs to sustainably manage water resources.[3] To that end, the DEP and the WMDs have the authority to allocate water resources throughout the state to meet all reasonable-beneficial uses.[4] The DEP and the WMDs regulate use of water resources through issuance of consumptive use permits (CUPs) based upon statutory authority contained in ch. 373, F.S., commonly known as the Florida Water Resources Act of 1972.

The DEP defines reclaimed water by rule as water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater (i.e., sewage) treatment facility.[5] An attempt by St. Johns River WMD in 2008 to adopt rules to regulate reclaimed water through the CUP process illustrates the unresolved question regarding the extent of the DEP's and the WMDs' regulatory authority over reclaimed water. The St. Johns River WMD proposed rulemaking that, if adopted, would have included reclaimed water among water regulated by the WMD by general permit for purposes of landscape and agricultural irrigation, by address, time of day, and day of the week.[6] The Florida League of Cities contested the St. Johns River WMD's delegated legislative authority to promulgate these rules, and, two months

[3] Section 373.016(2), F.S.
[3] Section 373.016(2), F.S.
[3] Section 373.016(2), F.S.
[4] Section 373.016(4)(a), F.S.
[5] Rule 62-610.200(48), F.A.C.
[6] *See* Letter from Suzanne G. Printy, Chief Staff Attorney, The Florida Legislature Joint Administrative Procedures Committee to Thomas M. Beason, General Counsel, Florida Department of Environmental Protection (Dec. 9, 2008).

after proposing the rulemaking, it decided not to pursue adoption of the regulations.[7] Nevertheless, the DEP asserts that, although they have not historically done so, the WMDs may require a CUP solely for the use of reclaimed water.[8]

Consumptive Use Permitting

Section 373.236(1), F.S., authorizes CUPs for the development of AWS projects. A WMD or the DEP may impose reasonable conditions as are necessary to assure that such use is consistent with the overall objectives of the issuing WMD or the DEP and is not harmful to the water resources of the area.[9]

A CUP establishes the duration and type of water use as well as the maximum amount that may be withdrawn. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the issuing WMD or the DEP and may not be harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as "the three-prong test." Specifically, the proposed water use must:

- be a "reasonable-beneficial use" as defined in s. 373.019(16), F.S.;
- not interfere with any presently existing legal use of water; and
- be consistent with the public interest.

The Three-Prong Test

"Reasonable-beneficial use" is defined as "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest."[10] The Legislature has declared water a public resource belonging to the public, therefore, wasteful uses of water are not allowed even if there are sufficient resources to meet all other users.

To that end, the DEP has promulgated the Water Resource Implementation Rule that incorporates interpretive criteria for implementing the reasonable-beneficial use standard based on common law and on water management needs.[11] These criteria include consideration of the quantity of water requested; the need, purpose, and value of the use; and the suitability of the source. The criteria also consider the extent and amount of harm caused, whether that harm extends to other lands, and the practicality of mitigating that harm by adjusting the quantity or method of use. Particular consideration is given to the use or reuse of lower quality water, and the long-term ability of the source to supply water without sustaining harm to the surrounding environment and natural resources.[12]

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[7] Letter from Rebecca A. O'Hara, Legislative Director, Florida League of Cities, Inc. to Suzanne Printy, Chief Staff Attorney, The Florida Legislature Joint Administrative Procedures Committee (Dec. 5, 2009).
[8] DEP, *House Bill 639 Draft Analysis* (Dec. 1, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation).
[9] *See* s. 373.219, F.S.
[10] Section 373.019(16), F.S.
[11] *See generally* Rule 62-40, F.A.C.
[12] *Southwest Florida Water Management District v. Charlotte County*, 774 So. 2d 903, 911 (Fla. 2d DCA 2001) (upholding the WMD's use of criteria for implementing the reasonable-beneficial use standard).

The second element of the three-prong test protects the rights of existing legal uses of water for the duration of their permits.[13] New CUPs cannot be issued if they would conflict with an existing legal use. This criterion is only protective of water users that actually withdraw water, not passive users of water resources.[14]

The final element of the three-prong test requires water use to be consistent with the "public interest." While the DEP's Water Resource Implementation Rule provides criteria for determining the "public interest," determination of a public interest is made on a case-by-case basis during the permitting process.[15] However, the WMDs and the DEP have broad authority to determine which uses best serve the public interest if there are not sufficient resources to fulfill all applicants' CUPs. In the event that two or more competing applications are deemed to be equally in the public interest, the WMDs or the DEP gives preference to renewal applications.[16]

Reclaimed Water

In an effort to conserve the state's potable surface and groundwater resources, the statutes authorize the WMDs to restrict water use to the lowest quality water source appropriate for the specific use and to adopt rules that identify preferred water supply sources for consumptive uses.[17] The WMD may consider all economically and technically feasible alternatives to the proposed water source, including alternative water sources – desalination, aquifer storage and recovery, and reuse of nonpotable reclaimed water.[18] Of these enumerated alternative water sources, the Legislature expressly encourages the use of reclaimed water as an alternative water source "whenever practicable."[19]

The DEP defines "reclaimed water" as water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.[20] In essence, water reuse involves taking domestic wastewater (i.e., sewage), giving it a high degree of treatment, and using the resulting high-quality reclaimed water for a new, beneficial purpose. Extensive treatment and disinfection during this process ensure that public health and environmental quality are protected.[21]

Reclaimed water is an important alternative water source in Florida in light of mounting pressures on the state's fresh water resources, principally surface water and groundwater. The use of reclaimed water saves water that would otherwise need to be withdrawn from surface water and groundwater sources to meet nonpotable supply needs such as agricultural or

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[13] Section 373.223(1)(b), F.S.
[14] *See Harloff v. City of Sarasota*, 575 So. 2d 1324 (Fla. 2d DCA 1991) (holding a municipal wellfield was an existing legal user and should be afforded protection). In contrast, *see West Coast Regional Water Supply Authority v. Southwest Florida Water Management District*, 89 ER F.A.L.R. 166 (Final Order, Aug. 30, 1989) (holding a farmer who passively relied on a higher water table to grow nonirrigated crops and standing surface water bodies to water cattle was not an existing legal user).
[15] *See generally* Rule 62-40, F.A.C.
[16] *See* s. 373.233, F.S.
[17] *See* s. 373.2234, F.S.
[18] Section 373.223(3)(c), F.S.
[19] Section 373.016(4)(a), F.S.
[20] Rule 62-610.200(48), F.A.C.
[21] DEP, *Water Reuse*, http://www.dep.state.fl.us/water/reuse/index.htm (last visited Feb. 3, 2012).

residential irrigation,[22] power generation, or recreation (e.g., golf courses or waterparks). Additionally, reclaiming waste water reduces reliance on traditional wastewater disposal methods such as surface water discharges, ocean outfalls, or deep well injection wells. The DEP asserts that, "Florida is leading the nation – reusing 660 million gallons of reclaimed water each day to conserve freshwater supplies and replenish our rivers, streams, lakes and the aquifer."[23]

Section 373.250(2)(c), F.S., authorizes a WMD to require the use of reclaimed water in lieu of surface water or groundwater when the use of uncommitted reclaimed water is available; is environmentally, economically, and technically feasible; and is of such quality and reliability as is necessary to the user. Reclaimed water is presumed to be available to a CUP applicant when a reclaimed water provider has "uncommitted" reclaimed water capacity and there are distribution facilities provided by the utility to the site of the proposed use. Uncommitted reclaimed water is defined as the average amount of reclaimed water produced during the lowest-flow months, less the amount of reclaimed water that a reclaimed water provider is contractually obligated to provide a customer or user. However, by its express terms, this provision does not authorize a WMD to require a provider of reclaimed water to redirect reclaimed water from one user to another or to provide uncommitted water to a specific user if such water is anticipated to be used by the provider, or a different user selected by the provider, within a reasonable amount of time.[24]

As required in statute and implemented in the DEP's Water Resource Implementation Rule,[25] the WMDs must designate water resource caution areas[26] within which CUP permit holders are required to use a "reasonable" amount of reclaimed water, unless using it is not "economically, environmentally or technically feasible." For example, the entire St. Johns River WMD has been designated a water resource conservation area, and WMD rules require reclaimed water to be used throughout the district if it is readily available and feasible.[27] In contrast, the Northwest Florida WMD has designated only two water resource caution areas – the coastal areas of Santa Rosa, Okaloosa, and Walton Counties and the Upper Telogia Creek Drainage Basin of Gadsden County. Applicants in those two areas who propose to withdraw water from the Floridan aquifer are required to use reclaimed water unless its use is not economically, environmentally, or technically feasible as determined by the WMD.[28]

Currently, WMD year-round irrigation restrictions do not apply to irrigation with reclaimed water. In recent years, discussions have been held in some WMDs regarding the possibility of imposing restrictions on the use of reclaimed water for irrigation purposes. However, reclaimed water utilities expressed concerns that such restrictions would create operational problems for the utilities, because wastewater flows do not vary according to weather conditions while the need for irrigation does vary. As a result, irrigation restrictions may cause a reuse utility to increase

[22] In central Florida, for instance, studies have shown that irrigation accounted for 64% of the residential use volume for all monitored homes. (Florida Section of the American Water Works Association, *Florida's Water Survival Handbook for the Future* 60 (2009) (citing Journal of Irrigation and Drainage Engineering, Vol. 133, Issue 5, pp. 427-94 (2007)).)
[23] *Supra* note 24.
[24] Section 373.250(2)(a)-(b), F.S.
[25] *See generally* Rule 62-40, F.A.C.
[26] Water resource caution areas are designated where water supply problems currently exist or are expected to exist within the next 20 years. Section 373.0363, F.S., and Rule 62-40.416, F.A.C.
[27] Rule 40C-23.001, F.A.C.
[28] Rule 40A-2.802, F.A.C.

discharges of reclaimed water to surface waters, possibly in violation of the utility's National Pollutant Discharge Elimination System (NPDES) permit, or require the construction of expensive storage capacity for the utility's reclaimed water supply.[29]

For areas outside of designated water resource caution areas, the DEP encourages local governments to implement programs for the use of reclaimed water. Specifically, the WMDs are encouraged to establish incentives, such as longer permit duration and cost-sharing, for local governments and other interested parties to implement programs for reclaimed water use.[30] With respect to Florida's "Home Rule Power,"[31] the provisions of the Water Resource Implementation Rule provide that the rule itself may not preempt any local water reuse programs.[32]

Additionally, mandatory reuse zones established by local government ordinance may require a person living within the area to connect when available with any alternative water supply system, including reclaimed water.[33] Mandatory reuse zones have been established in three WMDs – South Florida, Suwannee River and St. Johns River – mostly for irrigation. In the St. Johns River WMD, the conflict between the WMD's authority and the "Home Rule Power" of the local government was resolved by including language in local ordinances requiring reclaimed water use, unless the WMD required otherwise. This allowed the utility to use the most logical, lowest quality source, which sometimes may be another source, such as stormwater.[34]

Impact Offsets and Substitution Credits

The WMDs are already regulating water use in areas around the state that have experienced the harmful effects of overuse of both surface water and groundwater resources. They use a variety of planning and recovery strategies to manage healthy systems and restore impacted systems. The use of reclaimed water to supplement existing water resources is one tool that can help to sustain and recover water resources. Two concepts surrounding reclaimed water use are "impact offsets" and "substitution credits." Impact offsets are generally considered the use of reclaimed water as an alternative water supply that reduces or eliminates a harmful impact that has or will occur as the result of a surface water or groundwater withdrawal. Substitution credit is the use of reclaimed water that replaces all or part of an existing permitted use of surface water or groundwater within a resource-limited area. Substitution credits may be transferred to a different

[29] DEP, *House Bill 639 Draft Analysis* (Dec. 1, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation).
[30] Rule 62-40.416(2), F.A.C.
[31] In Florida, "Home Rule Power" language was proposed in the 1968 Constitutional revision and was adopted by the people. After several legal challenges, the Florida Legislature adopted the Home Rule Powers Act in 1973, which ended challenges related to city and county powers. The Florida Constitution states in Art. VIII, § 2(b) for municipalities: "Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise power for municipal purposes except as otherwise provided by law."
[32] Rule 62-40.416(2), F.A.C.
[33] Section 125.01(k)1., F.S., authorizes counties to: "[p]rovide and regulate waste and sewage collection and disposal, water and alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems, and conservation programs."; Section 180.02, F.S., provides that cities that may " create a zone or area by ordinance and to prescribe reasonable regulations requiring all persons or corporations living or doing business within said area to connect, when available, with any … alternative water supply system, including, … reclaimed water[.]"
[34] DEP, *Connecting Reuse and Water Use: A Report of the Reuse Stakeholders Meetings* (2009), available at http://www.dep.state.fl.us/water/reuse/docs/reuse-stake-rpt_0209.pdf (last visited Feb. 3, 2012).

user or use.[35] The South Florida and Southwest Florida WMDs have already adopted rules similar to impact offsets and substitution credits.

The working group that evaluated the use of impact offsets and substitution credits recommended seven key attributes:[36]

- The terms should have consistent definitions across WMDs.
- Substitution credits must be limited to particular geographic areas for which the water management districts have adopted rules that limit withdrawals from a specified water resource, and that address the applicability and use of substitution credits.
- The substitution credit or impact offset is part of a water use permit; therefore, to obtain and use the credit or offset, all water management district permitting requirements must be met. In addition, the duration of the credit or offset is limited to the duration of the water use permit in which it is incorporated.
- The entity providing the reclaimed water to substitute for an existing withdrawal will receive the substitution credit if it has a demonstrated need for the water.
- Substitution credits recognized in a water use permit cannot be "transferred" to other users, except in the same limited manner as the permit itself.
- There should be a consistent approach in determining the amount of the substitution credit.
- There should be a consistent approach in identifying acceptable impact offsets.

When taken together, these recommendations form the framework of how these additional regulatory tools may function to reduce impacts to surface water and groundwater resources.

Examples of resource-limited areas in which the concept of substitution credits has already been implemented are the Southern Water Use Caution Area in Southwest Florida WMD, the Lower East Coast Everglades and Northern Palm Beach/Loxahatchee River Watershed regions, and the Lake Okeechobee Service Area in South Florida WMD.[37] According to the DEP, these WMDs have "formalized mechanisms to allow reclaimed water to be provided as a substitution for groundwater withdrawals, thus allowing another entity to use new or additional groundwater without increasing the overall water withdrawals in a region."[38]

Alternative Water Supply Funding

Between fiscal years 2005-2006 and 2007-2008, the Legislature authorized the allocation of over $217 million among the five WMDs to develop alternative water supply projects. Reclaimed water development projects made up the bulk of project types that were funded over these four years, comprising 202 of the 324 funded projects. Over this period, the funding waned significantly. In fiscal year 2005-2006, $100 million was allocated among the five WMDs, but by fiscal year 2007-2008, that figure dropped to $5.54 million. The Legislature has not provided any alternative water supply funding at the state level since fiscal year 2008-09.[39]

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[35] DEP et al., *Purple Paper: Reclaimed Water, Credits, and Offsets* (undated) (on file with the Senate Committee on Environmental Preservation and Conservation).
[36] *Id*.
[37] *Id*., at 2.
[38] DEP, *House Bill 639 Draft Analysis* (Dec. 1, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation).
[39] DEP, *Water Project Funding in Florida*, http://www.dep.state.fl.us/water/waterprojectfunding/ (last visited Feb. 3, 2012).

Environmental Considerations

The adverse environmental impacts of consumptive water use are essential considerations in the permitting process. Indeed, the Legislature expressly provided that the policy of the State Water Resource Plan is "to preserve natural resources, fish, and wildlife."[40] This statute is consistent with Article II, Section 7(a) of the Florida Constitution, which states that "[i]t shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and excessive and unnecessary noise and for the conservation and protection of natural resources."

Water Needs of Natural Systems

Excessive use of surface water or groundwater may trigger a cascade of adverse environmental impacts including: salt water intrusion that can degrade water quality; changes in salinity levels in estuaries that can kill off oyster and grass beds; "drying out" of wetlands and lakes that can lead to habitat loss; and reduced spring and river flows that can diminish recreational values like fishing or ecotourism, which rely on a robust and biologically diverse ecology. To avoid adverse environmental impacts, the DEP and the WMDs are statutorily mandated to establish minimum flow levels (MFLs) for surface and groundwaters which set the threshold at which further withdrawals could significantly harm the water resources or ecology of the area.[41] To date, the five WMDs have collectively adopted over 300 MFLs for water bodies across the state.[42]

A WMD may deny a CUP because the desired uses are "undesirable because of the nature of the activity or the amount of water required."[43] For example, in *Osceola County v. St. Johns River Water Management District*,[44] the WMD denied a wellfield permit because of the potential adverse effects of a drawdown of the aquifer on wetlands. The hearing officer found that the predicted drawdown of 0.14 feet could significantly harm herbaceous wetlands, and the applicant was denied a permit because he failed to sufficiently assess those impacts or propose adequate mitigation efforts.[45]

Water Quality Standards

Water quality and pollution is primarily regulated through Florida's implementation of the federal Clean Water Act (CWA).[46] The CWA requires states or the U.S. Environmental Protection Agency (EPA) to establish water quality standards for surface waters and prohibits the discharge of any pollutant into navigable waters from a point source, such as a pipe, man-made ditch, or large animal feeding operation, without an NPDES permit. Non-point sources, such as fertilizer and pesticide runoff, are not required to obtain an NPDES permit and are not directly regulated under the CWA. The DEP sought and received authority from the EPA to implement

[40] Section 373.016(3)(g), F.S.
[41] Section 373.042(1)(a)-(b), F.S.
[42] Since 1992, the five WMDs have adopted 322 minimum flow levels or reservations.
[43] Section 373.036(4), F.S.
[44] *Osceola County v. St. Johns River Water Management District*, 92 ER F.A.L.R. 109 (Final Order, June 10, 1992).
[45] *See* Richard Hamman, *Consumptive Use Permitting Criteria*, Florida Environmental and Land Use Law. 14.2, 14.2-7 (August 2001).
[46] 33 U.S.C. s. 1251 et seq.

water quality programs in Florida under state laws. Therefore, the DEP now adopts water quality standards subject to EPA approval and administers the NPDES permit program.

Specifically, the CWA requires states to establish water quality standards and review those standards every three years. States must also identify impaired waters that are not meeting established water quality standards and establish total maximum daily loads (TMDL) of pollutants for those waters. A TMDL is a value of the maximum amount of a pollutant that a body of water can receive and still meet water quality standards. To enforce TMDLs, the DEP establishes water quality-based effluent limitations (WQBELs) and incorporates these limitations into NPDES permits.

TMDLs and WQBELs can be established for a broad range of pollutants. In Florida, particular attention is paid to nutrient levels, principally the levels of nitrogen and phosphorus. While nitrogen and phosphorus are essential for aquatic organisms to live and grow, excessive levels of these nutrients may result in harmful algal blooms, nuisance aquatic weed proliferation, or an imbalance in the natural community of flora and fauna. Unnatural sources of nitrogen and phosphorus include sewage disposal systems (treatment works or septic systems), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and runoff from urban and agricultural areas.

In 2008 environmental advocacy groups filed suit against the EPA alleging that excessive nutrient levels were impairing Florida's surface waterbodies and that EPA was failing to comply with the CWA by not requiring Florida to adopt more stringent numeric nutrient criteria in lieu of the state's current EPA-approved narrative criteria. Following a determination by the EPA that numeric nutrient criteria were necessary to protect waters in the state and entry of a court-approved settlement agreement, in November 2010, EPA issued a final rule adopting numeric nutrient criteria for Florida's lakes, springs, and inland flowing waters with the exception of south Florida canals (mostly south of Lake Okeechobee). These rules are scheduled to take effect in March 2012. In response to EPA's final rule, the DEP recently proposed a rule containing numeric nutrient criteria and is proceeding through the rule adoption process. If adopted by the DEP, ratified by the Legislature, and approved by the EPA, the DEP's adopted numeric nutrient criteria will replace the criteria in the EPA's final rule.

Unless reclaimed water is extensively treated, it invariably contains nutrients (i.e., nitrogen and phosphorus). When reclaimed water is used for irrigation or discharged into other surface waters, it may eventually flow or seep into an impaired surface waterbody. Therefore, the DEP's authority to regulate the effluent and nutrient levels in reclaimed water is an important component in maintaining chemical, physical, and biological integrity of surface waters. In light of this fact, wastewater treatment facilities that produce reclaimed water for land application must obtain wastewater permits and are subject to treatment standards (e.g., effluent limitations and pH standards), monitoring, and reporting requirements.[47] Specifically, the DEP may require additional levels of treatment depending on the ultimate use (beyond the minimum) to protect the potential receiving surface waters from exceeding their established TMDLs.[48]

[47] Rule 62-600.530, F.A.C.
[48] Rule 62-600.530(3)(b), F.A.C.

Reclaimed Water Working Group

The Reclaimed Water Working Group is a collective of several interested parties[49] that, over the past several years, has convened to discuss the role of reclaimed water in meeting Florida's projected water demands. The working group's express objective was "to optimize the use and continued development of reclaimed water as an alternative water supply to the extent environmentally, technically, and economically feasible in order to meet water supply demands." According to the DEP, portions of the bill reflect the recommendations of the working group.

III. Effect of Proposed Changes:

Section 1 amends s. 373.019, to define "reclaimed water" as "water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility." It is the same as the current DEP definition. However, included in this definition is a new prohibition against regulating reclaimed water under s. 373.175, F.S., or ch. 373, part II, F.S., until it has been discharged into "waters" as defined in s. 403.031(13), F.S. The bill also defines "reclaimed water distribution system" as "a network of pipes, pumping facilities, storage facilities, and appurtenances designed to convey and distribute reclaimed water from one or more domestic water treatment facilities to one or more users of reclaimed water."

Section 2 amends s. 373.250, F.S., to limit the DEP's and the WMDs' regulation and use of reclaimed water. The bill provides legislative recognition that the state must balance the use of reclaimed water to sustain water resources into the future with the need of reuse utilities to operate and maintain reclaimed water systems in accordance with a variety of circumstances. It clarifies that reclaimed water is an AWS and is eligible for AWS funding. If a reclaimed water project is contracted for by the state or a WMD, it may include any of the four conditions listed under 373.707(9), F.S.:

- metering of reclaimed water for certain uses;
- implementation of certain rate structures;
- implementation of educational programs on water use; and
- development of location data for key reuse facilities.

The bill deletes the definition for "uncommitted," which meant the excess water during the three lowest-flow months after all contractually obligated water was provided to users. Instead, the bill specifies that a reuse utility may determine when it has uncommitted reclaimed water capacity. The bill prohibits the WMDs from requiring a permit for use of reclaimed water. However, a CUP for surface water or groundwater may include conditions that govern the use of those sources in relation to the feasibility or use of reclaimed water.

The bill authorizes a WMD to require the use of reclaimed water to replace all or a portion of surface water or groundwater use when reclaimed water is available and meets other existing criteria. In addition, the bill prohibits a WMD from directing to whom a reuse utility must provide reclaimed water, or restricting the use of reclaimed water in a CUP, water shortage order, or water shortage emergency unless a reuse utility requests such action.

[49] The Reclaimed Water Working Group consisted of the DEP, the WMDs, Florida Water Environment Association- Utility Council, American Water Works Association, Florida League of Cities, Florida Association of Counties, and individual utilities.

The bill exempts reuse utilities from having to provide, as part of a reclaimed water use feasibility evaluation for nonpotable use, written documentation addressing the availability of reclaimed water.

The bill directs the DEP to initiate rulemaking to adopt revisions to the water resource implementation rule by October 1, 2012. Within 60 days after the DEP adopt revisions to the rule, the WMDs are directed to initiate rulemaking to incorporate those rule revisions by reference. The revisions must include:

- criteria for the use of a proposed impact offset derived from the use of reclaimed water when a WMD evaluates a CUP application; and
- criteria for the use of substitution credits where a WMD has limited surface water and groundwater withdrawals from a specified resource in a specific geographic area.

As used for the creation of criteria, "impact offset" means, "the use of reclaimed water to reduce or eliminate a harmful impact that has occurred or would otherwise occur as a result of other surface water or groundwater withdrawals." The bill also defines "substitution credit" as:

> the use of reclaimed water to all or a portion of an existing permitted use of resource-limited surface water or groundwater, allowing a different user or use to initiate a withdrawal or increase its withdrawal from the same resource-limited surface water or groundwater source provided that the withdrawal creates no net adverse impact on the limited water resource or creates a net positive impact if required by water management district rule as part of a strategy to protect or recover a water resource.

The bill specifies that s. 373.250, F.S., does not impair a WMD's ability to regulate the use of surface water or groundwater to supplement a reclaimed water system. Lastly, the bill expands application of this section to all modifications of CUPs. Currently, the section only applies to applications for new CUPs or renewals of existing CUPs.

Section 3 creates an unnumbered section of law that limits application of the act. Specifically, the bill clarifies that the act does not:

- Impair or limit the DEP's or the WMDs' authority to regulate water quality, including reclaimed water;
- Impair or limit the DEP's or the WMDs' authority to require a reuse feasibility study;
- Impair or limit the WMD's authority to conduct regional water supply planning;
- Affect any requirement that may be applicable to AWS funding;
- Affect or limit any applicable provisions related to setting of rates by public and private water utilities; or
- Affect or impair the powers of the Governor to take certain actions.

Sections 4, 5, 6 and 7 amend ss. 373.036, 373.421, 403.813 and 556.102, F.S., respectively, to conform cross-references to the added definitions contained in this bill.

Section 8 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires the DEP and the WMDs to initiate rulemaking to adopt rules. They have estimated they can meet any additional costs with existing staff and resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on February 6, 2012:

- deletes the definitional change to “water” and “waters in the state” that excluded reclaimed water;
- defines “reclaimed water” and “reclaimed water distribution system”;
- clarifies limitations of the act; and
- conforms cross-references.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Environmental Preservation and Conservation; and Senator Garcia

592-03010A-12 20121086c1

A bill to be entitled

An act relating to reclaimed water; amending s. 373.019, F.S.; defining the terms "reclaimed water" and "reclaimed water distribution system"; amending s. 373.250, F.S.; providing legislative findings relating to the use of reclaimed water; providing that reclaimed water is an alternative water supply and eligible for such funding; authorizing specified contract provisions for the development of reclaimed water as an alternative water supply; prohibiting the exclusion of reclaimed water use from regional water supply planning; deleting a definition for the term "uncommitted"; providing for the determination of uncommitted reclaimed water capacity by certain utilities; prohibiting water management districts from requiring permits for the use of reclaimed water; authorizing permit conditions for certain surface water and groundwater sources; authorizing water management districts to require the use of reclaimed water under certain conditions; prohibiting water management districts from requiring or restricting services provided by reuse utilities; providing an exception; clarifying which permit applicants are required to submit certain information; requiring the Department of Environmental Protection and each water management district to initiate rulemaking to adopt specified revisions to the water resource implementation rule; revising applicability; providing for construction of the act; amending ss. 373.036,

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592-03010A-12 20121086c1

373.421, 403.813, and 556.102, F.S.; conforming cross-references to changes made by the act; providing an effective date.

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

Section 1. Subsections (17) through (26) of section 373.019, Florida Statutes, are renumbered as subsections (19) through (28), respectively, and new subsections (17) and (18) are added to that section to read:

373.019 Definitions.—When appearing in this chapter or in any rule, regulation, or order adopted pursuant thereto, the term:

(17) "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. Reclaimed water is not subject to regulation pursuant to s. 373.175 or part II of this chapter until it has been discharged into waters as defined in s. 403.031(13).

(18) "Reclaimed water distribution system" means a network of pipes, pumping facilities, storage facilities, and appurtenances designed to convey and distribute reclaimed water from one or more domestic wastewater treatment facilities to one or more users of reclaimed water.

Section 2. Section 373.250, Florida Statutes, is amended to read:

373.250 Reuse of reclaimed water.—

(1)(a) The encouragement and promotion of water conservation and reuse of reclaimed water, as defined by the

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

59 department and used in this chapter, are state objectives and
60 considered to be in the public interest. The Legislature finds
61 that the use of reclaimed water provided by domestic wastewater
62 treatment plants permitted and operated under a reuse program
63 approved by the department is environmentally acceptable and not
64 a threat to public health and safety.
65 (b) The Legislature recognizes that the interest of the
66 state to sustain water resources for the future through the use
67 of reclaimed water must be balanced with the need of reuse
68 utilities to operate and manage reclaimed water systems in
69 accordance with a variety and range of circumstances, including
70 regulatory and financial considerations, which influence the
71 development and operation of reclaimed water systems across the
72 state.
73 (2) Reclaimed water is an alternative water supply as
74 defined in s. 373.019(1) and is eligible for alternative water
75 supply funding. A contract for state or district funding
76 assistance for the development of reclaimed water as an
77 alternative water supply may include provisions listed under s.
78 373.707(9). The use of reclaimed water may not be excluded from
79 regional water supply planning under s. 373.709.
80 (3) ~~(2)~~(a) ~~For purposes of this section, "uncommitted" means~~
81 ~~the average amount of reclaimed water produced during the three~~
82 ~~lowest-flow months minus the amount of reclaimed water that a~~
83 ~~reclaimed water provider is contractually obligated to provide~~
84 ~~to a customer or user~~.
85 ~~(b)~~ Reclaimed water may be presumed available to a
86 consumptive use permit applicant when a utility exists which
87 provides reclaimed water, which has determined that it has

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

88 uncommitted reclaimed water capacity, and which has distribution
89 facilities, which are initially provided by the utility at its
90 cost, to the site of the affected applicant's proposed use.
91 (b) A water management district may not require a permit
92 for the use of reclaimed water. However, when a use includes
93 surface water or groundwater, the permit for such sources may
94 include conditions that govern the use of the permitted sources
95 in relation to the feasibility or use of reclaimed water.
96 (c) A water management district may require the use of
97 reclaimed water in lieu of all or a portion of a proposed use of
98 surface water or groundwater by an applicant when the use of
99 ~~uncommitted~~ reclaimed water is available; is environmentally,
100 economically, and technically feasible; and is of such quality
101 and reliability as is necessary to the user. However, a water
102 management district may neither specify any user to whom the
103 reuse utility must provide reclaimed water nor restrict the use
104 of reclaimed water provided by a reuse utility to a customer in
105 a permit or, unless requested by the reuse utility, in a water
106 shortage order or water shortage emergency order ~~this paragraph~~
107 ~~does not authorize a water management district to require a~~
108 ~~provider of reclaimed water to redirect reclaimed water from one~~
109 ~~user to another or to provide uncommitted water to a specific~~
110 ~~user if such water is anticipated to be used by the provider, or~~
111 ~~a different user selected by the provider, within a reasonable~~
112 ~~amount of time~~.
113 (d) The South Florida Water Management District shall
114 require the use of reclaimed water made available by the
115 elimination of wastewater ocean outfall discharges as provided
116 for in s. 403.086(9) in lieu of surface water or groundwater

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when the use of ~~uncommitted~~ reclaimed water is available; is environmentally, economically, and technically feasible; and is of such quality and reliability as is necessary to the user. Such reclaimed water may also be required in lieu of other alternative sources. In determining whether ~~or not~~ to require such reclaimed water in lieu of other alternative sources, the water management district shall consider existing infrastructure investments in place or obligated to be constructed by an executed contract or similar binding agreement as of July 1, 2011, for the development of other alternative sources.

(4) ~~(3)~~ The water management district shall, in consultation with the department, adopt rules to implement this section. Such rules shall include, but not be limited to:

(a) Provisions to permit use of water from other sources in emergency situations or if reclaimed water becomes unavailable, for the duration of the emergency or the unavailability of reclaimed water. These provisions shall also specify the method for establishing the quantity of water to be set aside for use in emergencies or when reclaimed water becomes unavailable. The amount set aside is subject to periodic review and revision. The methodology shall take into account the risk that reclaimed water may not be available in the future, the risk that other sources may be fully allocated to other uses in the future, the nature of the uses served with reclaimed water, the extent to which the applicant intends to rely upon reclaimed water, and the extent of economic harm which may result if other sources are not available to replace the reclaimed water. It is the intent of this paragraph to ensure that users of reclaimed water have the same access to ground or surface water and will

otherwise be treated in the same manner as other users of the same class not relying on reclaimed water.

~~(b) A water management district shall not adopt any rule which gives preference to users within any class of use established under s. 373.246 who do not use reclaimed water over users within the same class who use reclaimed water.~~

(b) ~~(c)~~ Provisions to require permit applicants that are not reuse utilities to provide, as part of their reclaimed water feasibility evaluation for a nonpotable use, written documentation from a reuse utility addressing the availability of reclaimed water. This requirement shall apply when the applicant's proposed use is within an area that is or may be served with reclaimed water by a reuse utility within a 5-year horizon, as established by the reuse utility and provided to the district. If the applicable reuse utility fails to respond or does not provide the information required under paragraph (c) ~~(d)~~ within 30 days after receipt of the request, the applicant shall provide to the district a copy of the written request and a statement that the utility failed to provide the requested information. The district is not required to adopt, by rule, the area where written documentation from a reuse utility is required, but the district shall publish the area, and any updates thereto, on the district's website. This paragraph may not be construed to limit the ability of a district to require the use of reclaimed water or to limit a utility's ability to plan reclaimed water infrastructure.

(c) ~~(d)~~ Provisions specifying the content of the documentation required in paragraph (b) ~~(c)~~, including sufficient information regarding the availability and costs

175 associated with the connection to and the use of reclaimed
176 water, to facilitate the permit applicant's reclaimed water
177 feasibility evaluation.
178
179 A water management district may not adopt any rule that gives
180 preference to users within any class of use established under s.
181 373.246 who do not use reclaimed water over users within the
182 same class who use reclaimed water.
183 (5)(a) No later than October 1, 2012, the department shall
184 initiate rulemaking to adopt revisions to the water resource
185 implementation rule, as defined in s. 373.019(23), which shall
186 include:
187 1. Criteria for the use of a proposed impact offset derived
188 from the use of reclaimed water when a water management district
189 evaluates an application for a consumptive use permit. As used
190 in this subparagraph, the term "impact offset" means the use of
191 reclaimed water to reduce or eliminate a harmful impact that has
192 occurred or would otherwise occur as a result of other surface
193 water or groundwater withdrawals.
194 2. Criteria for the use of substitution credits where a
195 water management district has adopted rules establishing
196 withdrawal limits from a specified water resource within a
197 defined geographic area. As used in this subparagraph, the term
198 "substitution credit" means the use of reclaimed water to
199 replace all or a portion of an existing permitted use of
200 resource-limited surface water or groundwater, allowing a
201 different user or use to initiate a withdrawal or increase its
202 withdrawal from the same resource-limited surface water or
203 groundwater source provided that the withdrawal creates no net

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

204 adverse impact on the limited water resource or creates a net
205 positive impact if required by water management district rule as
206 part of a strategy to protect or recover a water resource.
207 (b) Within 60 days after the final adoption by the
208 department of the revisions to the water resource implementation
209 rule required under paragraph (a), each water management
210 district shall initiate rulemaking to incorporate those
211 revisions by reference into the rules of the district.
212 (6) ~~(4)~~ Reuse utilities and the applicable water management
213 district or districts are encouraged to periodically coordinate
214 and share information concerning the status of reclaimed water
215 distribution system construction, the availability of reclaimed
216 water supplies, and existing consumptive use permits in areas
217 served by the reuse utility.
218 (7) ~~(5)~~ ~~Nothing in~~ This section does not impair or limit the
219 authority of ~~shall impair~~ a water management district ~~district's~~
220 ~~authority~~ to plan for and regulate consumptive uses of water
221 under this chapter or regulate the use of surface water or
222 groundwater to supplement a reclaimed water system.
223 (8) ~~(6)~~ This section applies to applications for new
224 consumptive use permits and renewals and modifications of
225 existing consumptive use permits.
226 Section 3. This act does not:
227 (1) Impair or limit the authority of the Department of
228 Environmental Protection to regulate water quality, including
229 reclaimed water, pursuant to chapter 403, Florida Statutes, or
230 to require a reuse feasibility study pursuant to s. 403.064,
231 Florida Statutes.
232 (2) Impair or limit the authority of a water management

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

233 district to conduct regional water supply planning pursuant
234 chapter 373, Florida Statutes.
235 (3) Affect any requirement that may be applicable to
236 funding of alternative water supply development, including
237 reclaimed water, pursuant to s. 373.707, Florida Statutes.
238 (4) Affect or limit any applicable provisions regarding the
239 setting of rates by public and private water utilities pursuant
240 to chapter 153 or chapter 180, Florida Statutes, or s. 367.081,
241 Florida Statutes.
242 (5) Affect or impair the powers of the Governor under the
243 State Constitution; general law, including, but not limited to,
244 chapter 14, Florida Statutes; and police powers of the state to
245 adopt and enforce emergency rules, regulations, and orders.
246 Section 4. Paragraph (d) of subsection (1) of section
247 373.036, Florida Statutes, is amended to read:
248 373.036 Florida water plan; district water management
249 plans.—
250 (1) FLORIDA WATER PLAN.—In cooperation with the water
251 management districts, regional water supply authorities, and
252 others, the department shall develop the Florida water plan. The
253 Florida water plan shall include, but not be limited to:
254 (d) Goals, objectives, and guidance for the development and
255 review of programs, rules, and plans relating to water
256 resources, based on statutory policies and directives. The state
257 water policy rule, renamed the water resource implementation
258 rule pursuant to s. 373.019(25) ~~373.019(23)~~, shall serve as this
259 part of the plan. Amendments or additions to this part of the
260 Florida water plan shall be adopted by the department as part of
261 the water resource implementation rule. In accordance with s.

262 373.114, the department shall review rules of the water
263 management districts for consistency with this rule. Amendments
264 to the water resource implementation rule must be adopted by the
265 secretary of the department and be submitted to the President of
266 the Senate and the Speaker of the House of Representatives
267 within 7 days after publication in the Florida Administrative
268 Weekly. Amendments shall not become effective until the
269 conclusion of the next regular session of the Legislature
270 following their adoption.
271 Section 5. Subsection (1) of section 373.421, Florida
272 Statutes, is amended to read:
273 373.421 Delineation methods; formal determinations.—
274 (1) The Environmental Regulation Commission shall adopt a
275 unified statewide methodology for the delineation of the extent
276 of wetlands as defined in s. 373.019(27) ~~373.019(25)~~. This
277 methodology shall consider regional differences in the types of
278 soils and vegetation that may serve as indicators of the extent
279 of wetlands. This methodology shall also include provisions for
280 determining the extent of surface waters other than wetlands for
281 the purposes of regulation under s. 373.414. This methodology
282 shall not become effective until ratified by the Legislature.
283 Subsequent to legislative ratification, the wetland definition
284 in s. 373.019(27) ~~373.019(25)~~ and the adopted wetland
285 methodology shall be binding on the department, the water
286 management districts, local governments, and any other
287 governmental entities. Upon ratification of such wetland
288 methodology, the Legislature preempts the authority of any water
289 management district, state or regional agency, or local
290 government to define wetlands or develop a delineation

291 methodology to implement the definition and determines that the
292 exclusive definition and delineation methodology for wetlands
293 shall be that established pursuant to s. 373.019(27) ~~373.019(25)~~
294 and this section. Upon such legislative ratification, any
295 existing wetlands definition or wetland delineation methodology
296 shall be superseded by the wetland definition and delineation
297 methodology established pursuant to this chapter. Subsequent to
298 legislative ratification, a delineation of the extent of a
299 surface water or wetland by the department or a water management
300 district, pursuant to a formal determination under subsection
301 (2), or pursuant to a permit issued under this part in which the
302 delineation was field-verified by the permitting agency and
303 specifically approved in the permit, shall be binding on all
304 other governmental entities for the duration of the formal
305 determination or permit. All existing rules and methodologies of
306 the department, the water management districts, and local
307 governments, regarding surface water or wetland definition and
308 delineation shall remain in full force and effect until the
309 common methodology rule becomes effective. However, this shall
310 not be construed to limit any power of the department, the water
311 management districts, and local governments to amend or adopt a
312 surface water or wetland definition or delineation methodology
313 until the common methodology rule becomes effective.
314 Section 6. Paragraphs (r) and (u) of subsection (1) of
315 section 403.813, Florida Statutes, are amended to read:
316 403.813 Permits issued at district centers; exceptions.—
317 (1) A permit is not required under this chapter, chapter
318 373, chapter 61-691, Laws of Florida, or chapter 25214 or
319 chapter 25270, 1949, Laws of Florida, for activities associated

320 with the following types of projects; however, except as
321 otherwise provided in this subsection, nothing in this
322 subsection relieves an applicant from any requirement to obtain
323 permission to use or occupy lands owned by the Board of Trustees
324 of the Internal Improvement Trust Fund or any water management
325 district in its governmental or proprietary capacity or from
326 complying with applicable local pollution control programs
327 authorized under this chapter or other requirements of county
328 and municipal governments:
329 (r) The removal of aquatic plants, the removal of tussocks,
330 the associated replanting of indigenous aquatic plants, and the
331 associated removal from lakes of organic detrital material when
332 such planting or removal is performed and authorized by permit
333 or exemption granted under s. 369.20 or s. 369.25, provided
334 that:
335 1. Organic detrital material that exists on the surface of
336 natural mineral substrate shall be allowed to be removed to a
337 depth of 3 feet or to the natural mineral substrate, whichever
338 is less;
339 2. All material removed pursuant to this paragraph shall be
340 deposited in an upland site in a manner that will prevent the
341 reintroduction of the material into waters in the state except
342 when spoil material is permitted to be used to create wildlife
343 islands in freshwater bodies of the state when a governmental
344 entity is permitted pursuant to s. 369.20 to create such islands
345 as a part of a restoration or enhancement project;
346 3. All activities are performed in a manner consistent with
347 state water quality standards; and
348 4. No activities under this exemption are conducted in

349 wetland areas, as defined in ~~by~~ s. 373.019(27) ~~373.019(25)~~,
350 which are supported by a natural soil as shown in applicable
351 United States Department of Agriculture county soil surveys,
352 except when a governmental entity is permitted pursuant to s.
353 369.20 to conduct such activities as a part of a restoration or
354 enhancement project.
355
356 The department may not adopt implementing rules for this
357 paragraph, notwithstanding any other provision of law.
358 (u) Notwithstanding any provision to the contrary in this
359 subsection, a permit or other authorization under chapter 253,
360 chapter 369, chapter 373, or this chapter is not required for an
361 individual residential property owner for the removal of organic
362 detrital material from freshwater rivers or lakes that have a
363 natural sand or rocky substrate and that are not Aquatic
364 Preserves or for the associated removal and replanting of
365 aquatic vegetation for the purpose of environmental enhancement,
366 providing that:
367 1. No activities under this exemption are conducted in
368 wetland areas, as defined in ~~by~~ s. 373.019(27) ~~373.019(25)~~,
369 which are supported by a natural soil as shown in applicable
370 United States Department of Agriculture county soil surveys.
371 2. No filling or peat mining is allowed.
372 3. No removal of native wetland trees, including, but not
373 limited to, ash, bay, cypress, gum, maple, or tupelo, occurs.
374 4. When removing organic detrital material, no portion of
375 the underlying natural mineral substrate or rocky substrate is
376 removed.
377 5. Organic detrital material and plant material removed is

378 deposited in an upland site in a manner that will not cause
379 water quality violations.
380 6. All activities are conducted in such a manner, and with
381 appropriate turbidity controls, so as to prevent any water
382 quality violations outside the immediate work area.
383 7. Replanting with a variety of aquatic plants native to
384 the state shall occur in a minimum of 25 percent of the
385 preexisting vegetated areas where organic detrital material is
386 removed, except for areas where the material is removed to bare
387 rocky substrate; however, an area may be maintained clear of
388 vegetation as an access corridor. The access corridor width may
389 not exceed 50 percent of the property owner's frontage or 50
390 feet, whichever is less, and may be a sufficient length
391 waterward to create a corridor to allow access for a boat or
392 swimmer to reach open water. Replanting must be at a minimum
393 density of 2 feet on center and be completed within 90 days
394 after removal of existing aquatic vegetation, except that under
395 dewatered conditions replanting must be completed within 90 days
396 after reflooding. The area to be replanted must extend waterward
397 from the ordinary high water line to a point where normal water
398 depth would be 3 feet or the preexisting vegetation line,
399 whichever is less. Individuals are required to make a reasonable
400 effort to maintain planting density for a period of 6 months
401 after replanting is complete, and the plants, including
402 naturally recruited native aquatic plants, must be allowed to
403 expand and fill in the revegetation area. Native aquatic plants
404 to be used for revegetation must be salvaged from the
405 enhancement project site or obtained from an aquatic plant
406 nursery regulated by the Department of Agriculture and Consumer

407 Services. Plants that are not native to the state may not be
408 used for replanting.
409 8. No activity occurs any farther than 100 feet waterward
410 of the ordinary high water line, and all activities must be
411 designed and conducted in a manner that will not unreasonably
412 restrict or infringe upon the riparian rights of adjacent upland
413 riparian owners.
414 9. The person seeking this exemption notifies the
415 applicable department district office in writing at least 30
416 days before commencing work and allows the department to conduct
417 a preconstruction site inspection. Notice must include an
418 organic-detrital-material removal and disposal plan and, if
419 applicable, a vegetation-removal and revegetation plan.
420 10. The department is provided written certification of
421 compliance with the terms and conditions of this paragraph
422 within 30 days after completion of any activity occurring under
423 this exemption.
424 Section 7. Subsection (6) of section 556.102, Florida
425 Statutes, is amended to read:
426 556.102 Definitions.—As used in this act:
427 (6) "Excavate" or "excavation" means any manmade cut,
428 cavity, trench, or depression in the earth's surface, formed by
429 removal of earth, intended to change the grade or level of land,
430 or intended to penetrate or disturb the surface of the earth,
431 including land beneath the waters of the state, as defined in s.
432 373.019(22) ~~373.019(20)~~, and the term includes pipe bursting and
433 directional drilling or boring from one point to another point
434 beneath the surface of the earth, or other trenchless
435 technologies.

436 Section 8. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Regulation, *Chair*
Agriculture
Budget - Subcommittee on Health and Human Services
Appropriations
Governmental Oversight and Accountability
Reapportionment
Transportation

SENATOR RENE GARCIA
40th District

February 10, 2012

The Honorable Alan Hays
Chair, General Government Appropriations Subcommittee
201 Capitol Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Hays:

This letter should serve as a request to have my bill *SB 1086 Reclaimed Water* heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

State Senator René García
District 40

RG:dm

CC: Jamie DeLoach, Staff Director

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Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: SB 1094

INTRODUCER: Senator Hays

SUBJECT: Revising Workers' Compensation Penalties

DATE: February 27, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	**Favorable**
2.	Betta	DeLoach	BGA	**Pre-meeting**
3.				
4.				
5.				
6.				

I. Summary:

The Department of Financial Services (department) Division of Workers' Compensation enforces employers' compliance in procuring workers' compensation as required in ch. 440, F.S. The department may issue stop-work orders, injunctions, and penalties against non-complying employers. In addition, the department currently assesses a penalty equal to 1.5 times the amount the employer would have paid in premium within the preceding three years or $1,000, whichever is greater. Under the bill, the department would assess a penalty equal to two times the amount the employer would have paid in premium within the preceding year or $1,000, whichever is greater.

This bill substantially amends the following section of the Florida Statutes: 440.107.

II. Present Situation:

Employers within Florida are required to obtain workers' compensation coverage that meets the requirements of ch. 440, F.S., and the Florida Insurance Code. The department is responsible for investigating and enforcing compliance with workers' compensation coverage requirements and may assess stop-work orders, injunctions, and penalties against the non-complying employers. If an employer materially understates or conceals payroll, materially misrepresents or conceals employee duties so as to avoid proper classification for premium calculations, or materially misrepresents or conceals information pertinent to the computation and application of an experience rating modification factor the employer is deemed to have failed to secure payment for workers' compensation.[1] When the department determines that an employer has failed to

[1] Section 440.107(2), F.S.

secure the required payment of workers' compensation, a stop-work order is issued within 72 hours ceasing all business operations and remains in effect until a finding that the employer has come into compliance with coverage requirements and paid any penalties.[2] A conditional release from the stop-work order may be issued by the department to employers who have come into compliance with the workers' compensation coverage requirements and have agreed to pay any penalties through a payment agreement schedule with the department.

In addition to stop-work orders, injunctions, or penalties, the department is required to assess against employers who have failed to secure payment of workers' compensation a penalty equal to 1.5 times the amount the employer would have paid in premium within the preceding three year period or $1,000, whichever is greater.[3] In determining the amount of the penalty, the department multiplies 1.5 times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation within the preceding three year period.

III. Effect of Proposed Changes:

The bill would change the calculation of the required penalty the department must assess against employers who fail to secure payment of workers' compensation as required. The bill would increase the penalty multiplier to two times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation. The bill will also reduce the time to determine periods of non-compliance from the preceding three year period to a one year period. The department will either assess the calculated penalty or $1,000, whichever is greater.

Reducing the non-compliance period from three years to one year will streamline the department's penalty calculation process due to the decrease in the volume of business records that must be reviewed and analyzed.[4] The streamlined process will allow the department to provide employers a determination of their penalty amounts more quickly and enable employers to pay the penalties sooner.

The bill would take effect on July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[2] Section 440.107(7)(a), F.S.
[3] Section 440.107(7)(d)(1), F.S.
[4] Department of Financial Services Bill Analysis and Fiscal Impact Statement, December 1, 2011.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By reducing the non-compliance period to one year, the bill would decrease the business and payroll records retrieval and production duties currently imposed on employers. The streamlined penalty calculation and quicker penalty determination will enable employers to pay their penalties sooner and therefore return to work more quickly.[5]

C. Government Sector Impact:

The amount of penalties collected and deposited in the Workers' Compensation Administration Trust Fund (fund) are affected by the penalty amount, the employer's ability to pay the penalty, whether the employer elects to pay the penalty in full or enters into a periodic payment plan with the department, and the general economic environment.[6] Therefore the financial impact on the fund is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

[5] Department of Financial Services Bill Analysis and Fiscal Impact Statement, December 1, 2011.
[6] Department of Financial Services Bill Analysis and Fiscal Impact Statement, December 1, 2011.

232974

LEGISLATIVE ACTION

Senate	.	House
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	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Hays) recommended the following:

Senate Amendment

Delete lines 17 - 22
and insert:
this chapter a penalty equal to 1.5, 1.75, or 2 times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation required by this chapter within the preceding year ~~3-year period~~ or $1,000, whichever is greater, as follows:
a. For employers in violation of coverage requirements for less than 30 days in total, 1.5 times such amount.

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13 b. For employers in violation of coverage requirements for
14 at least 30 days but less than 1 year in total, 1.75 times such
15 amount.
16 c. For employers in violation of coverage requirements for
17 1 year in total, 2 times such amount.

711530

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Budget Subcommittee on General Government Appropriations (Hays) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Between lines 26 and 27
4 insert:
5 Section 2. Section 627.215, Florida Statutes, is amended to
6 read:
7 627.215 Excessive profits for ~~workers' compensation,~~
8 ~~employer's liability,~~ commercial property~~,~~ and commercial
9 casualty insurance prohibited.—
10 (1)(a) Each insurer group writing ~~workers' compensation and~~
11 ~~employer's liability insurance as defined in s. 624.605(1)(c),~~
12 commercial property insurance as defined in s. 627.0625,

711530

13 commercial umbrella liability insurance as defined in s.
14 627.0625, or commercial casualty insurance as defined in s.
15 627.0625 shall annually file with the office before ~~prior to~~
16 July 1 ~~of each year~~, on a form prescribed by the commission, the
17 following data for the component types of such insurance as
18 provided in the form:
19 1. Calendar-year earned premium.
20 2. Accident-year incurred losses and loss adjustment
21 expenses.
22 3. The administrative and selling expenses incurred in this
23 state or allocated to this state for the calendar year.
24 4. Policyholder dividends applicable to the calendar year.
25
26 This paragraph does not ~~Nothing herein is intended to~~ prohibit
27 an insurer from filing on a calendar-year basis.
28 (b) The data filed for the group shall be a consolidation
29 of the data of the individual insurers of the group. However, an
30 insurer may elect to ~~either~~ consolidate commercial umbrella
31 liability insurance data with commercial casualty insurance data
32 or to separately file data for commercial umbrella liability
33 insurance. Each insurer shall elect its method of filing
34 commercial umbrella liability insurance at the time of filing
35 data for accident year 1987 and shall thereafter continue filing
36 under the same method. In the case of commercial umbrella
37 liability insurance data reported separately, a separate
38 excessive profits test shall be applied and the test period
39 shall be 10 years. ~~In the case of workers' compensation and~~
40 ~~employer's liability insurance, the final report for the test~~
41 ~~period including accident years 1984, 1985, and 1986 must be~~

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42 ~~filed prior to July 1, 1988. In the case of commercial property~~
43 ~~and commercial casualty insurance, the final report for the test~~
44 ~~period including accident years 1987, 1988, and 1989 must be~~
45 ~~filed prior to July 1, 1991.~~
46 ~~(2) Each insurer group writing workers' compensation and~~
47 ~~employer's liability insurance shall also file a schedule of~~
48 ~~Florida loss and loss adjustment experience for each of the 3~~
49 ~~years previous to the most recent accident year. The incurred~~
50 ~~losses and loss adjustment expenses shall be valued as of~~
51 ~~December 31 of the first year following the latest accident year~~
52 ~~to be reported, developed to an ultimate basis, and at two 12-~~
53 ~~month intervals thereafter, each developed to an ultimate basis,~~
54 ~~so that a total of three evaluations will be provided for each~~
55 ~~accident year. The first year to be so reported shall be~~
56 ~~accident year 1984, so that the reporting of 3 accident years~~
57 ~~under this revised evaluation will not take place until accident~~
58 ~~years 1985 and 1986 have become available. For reporting~~
59 ~~purposes unrelated to determining excessive profits, the loss~~
60 ~~and loss adjustment experience of each accident year shall~~
61 ~~continue to be reported until each accident year has been~~
62 ~~reported at eight stages of development.~~
63 (2) ~~(3)~~ (a) Each insurer group writing commercial property
64 insurance or commercial casualty insurance shall also file a
65 schedule of Florida loss and loss adjustment experience for each
66 of the 3 years previous to the most recent accident year. The
67 incurred losses and loss adjustment expenses shall be valued as
68 of December 31 of the first year following the latest accident
69 year, developed to an ultimate basis, and at two 12-month
70 intervals thereafter, each developed to an ultimate basis, so

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71 that a total of three ~~3~~ evaluations are ~~will be~~ provided for
72 each accident year. ~~The first year to be so reported shall be~~
73 ~~accident year 1987, which shall first be reported on or before~~
74 ~~July 1, 1989, and the reporting of 3 accident years will not~~
75 ~~take place until accident years 1988 and 1989 have become~~
76 ~~available. For medical malpractice insurance, the first year to~~
77 ~~be so reported shall be accident year 1990, which shall first be~~
78 ~~reported on or before July 1, 1992, and the reporting of 3~~
79 ~~accident years for full inclusion of medical malpractice~~
80 ~~experience in commercial casualty insurance will not take place~~
81 ~~until accident years 1991 and 1992 become available.~~
82 ~~Accordingly, no medical malpractice insured shall be eligible~~
83 ~~for refunds or credits until the reporting period ending with~~
84 ~~calendar-accident year 1992.~~ For reporting purposes unrelated to
85 determining excess profits, the loss and loss adjustment
86 experience of each accident year shall continue to be reported
87 until each accident year has been reported at eight stages of
88 development.
89 (b) Each insurer group writing commercial umbrella
90 liability insurance which elects to file separate data for such
91 insurance shall also file a schedule of Florida loss and loss
92 adjustment experience for each of the 10 years previous to the
93 most recent accident year. The incurred losses and loss
94 adjustment expenses shall be valued as of December 31 of the
95 first year following the latest accident year, developed to an
96 ultimate basis, and at nine 12-month intervals thereafter, each
97 developed to an ultimate basis, so that a total of 10
98 evaluations will be provided for each accident year. ~~The first~~
99 ~~year to be so reported shall be accident year 1987, which shall~~

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100 ~~first be reported on or before October 1, 1989, and the~~
101 ~~reporting of 10 accident years will not take place until~~
102 ~~accident year 1996 data is reported.~~
103 (3) ~~(4)~~ Each insurer group's underwriting gain or loss for
104 each calendar-accident year shall be computed as follows: The
105 sum of the accident-year incurred losses and loss adjustment
106 expenses as of December 31 of the year, developed to an ultimate
107 basis, plus the administrative and selling expenses incurred in
108 the calendar year, plus policyholder dividends applicable to the
109 calendar year, shall be subtracted from the calendar-year earned
110 premium to determine the underwriting gain or loss.
111 (4) ~~(5)~~ For the 3 most recent calendar-accident years for
112 which data is to be filed under this section, the underwriting
113 gain or loss shall be compared to the anticipated underwriting
114 profit, except in the case of separately reported commercial
115 umbrella liability insurance for which such comparison shall be
116 made for the 10 most recent calendar-accident years.
117 ~~(6) For those insurer groups writing workers' compensation~~
118 ~~and employer's liability insurance during the years 1984, 1985,~~
119 ~~1986, 1987, and 1988, an excessive profit has been realized if~~
120 ~~underwriting gain is greater than the anticipated underwriting~~
121 ~~profit plus 5 percent of earned premiums for the 3 most recent~~
122 ~~calendar years for which data is to be filed under this section.~~
123 ~~Any excess profit of an insurance company offering workers'~~
124 ~~compensation or employer's liability insurance during this~~
125 ~~period of time, shall be returned to policyholders in the form~~
126 ~~of a cash refund or a credit toward future purchase of~~
127 ~~insurance. The excessive amount shall be refunded on a pro rata~~
128 ~~basis in relation to the final compilation year earned premiums~~

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129 ~~to the workers' compensation policyholders of record of the~~
130 ~~insurer group on December 31 of the final compilation year.~~
131 (5) ~~(7)~~(a) With respect to the ~~Beginning with the July 1,~~
132 ~~1991,~~ report for ~~workers' compensation insurance, employer's~~
133 ~~liability insurance,~~ commercial property insurance~~,~~ and
134 commercial casualty insurance, an excessive profit has been
135 realized if the combined net aggregate underwriting gain for ~~all~~
136 these lines ~~combined~~ is greater than the net aggregate
137 anticipated underwriting profit for these lines plus 5 percent
138 of earned premiums for the 3 most recent calendar years for
139 which data is to be filed under this section. For calculation
140 purposes commercial property insurance and commercial casualty
141 insurance shall be broken down into sublines in order to
142 ascertain the anticipated underwriting profit factor versus the
143 actual underwriting gain for the given subline.
144 (b) Beginning with the July 1, 1998, report for commercial
145 umbrella liability insurance, if an insurer has elected to file
146 data separately for such insurance, an excessive profit has been
147 realized if the underwriting gain for such insurance is greater
148 than the anticipated underwriting profit for such insurance plus
149 5 percent of earned premiums for the 10 most recent calendar
150 years for which data is to be filed under this section.
151 (6) ~~(8)~~ As used in this section with respect to any 3-year
152 period, or with respect to any 10-year period in the case of
153 commercial umbrella liability insurance, "anticipated
154 underwriting profit" means the sum of the dollar amounts
155 obtained by multiplying, for each rate filing of the insurer
156 group in effect during such period, the earned premiums
157 applicable to such rate filing during such period by the

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158 percentage factor included in such rate filing for profit and
159 contingencies, such percentage factor having been determined
160 with due recognition to investment income from funds generated
161 by Florida business, except that the anticipated underwriting
162 profit for the purposes of this section shall be calculated
163 using a profit and contingencies factor that is not less than
164 zero. Separate calculations need not be made for consecutive
165 rate filings containing the same percentage factor for profits
166 and contingencies.
167 (7) ~~(9)~~ If the insurer group has realized an excessive
168 profit, the office shall order a return of the excessive amounts
169 after affording the insurer group an opportunity for hearing and
170 otherwise complying with the requirements of chapter 120. Such
171 excessive amounts shall be refunded in all instances unless the
172 insurer group affirmatively demonstrates to the office that the
173 refund of the excessive amounts will render a member of the
174 insurer group financially impaired or will render it insolvent
175 under the ~~provisions of the~~ Florida Insurance Code.
176 (8) ~~(10)~~ Any excess profit of an insurance company ~~as~~
177 ~~determined on July 1, 1991, and thereafter~~ shall be returned to
178 policyholders in the form of a cash refund or a credit toward
179 the future purchase of insurance. The excessive amount shall be
180 refunded on a pro rata basis in relation to the final
181 compilation year earned premiums to the policyholders of record
182 of the insurer group on December 31 of the final compilation
183 year.
184 (9) ~~(11)~~(a) Cash refunds to policyholders may be rounded to
185 the nearest dollar.
186 (b) Data in required reports to the office may be rounded

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187 to the nearest dollar.
188 (c) Rounding, if elected by the insurer, must ~~shall~~ be
189 applied consistently.
190 (10) ~~(12)~~(a) Refunds shall be completed in one of the
191 following ways:
192 1. If the insurer group elects to make a cash refund, the
193 refund must ~~shall~~ be completed within 60 days after ~~of~~ entry of
194 a final order indicating that excessive profits have been
195 realized.
196 2. If the insurer group elects to make refunds in the form
197 of a credit to renewal policies, such credits must ~~shall~~ be
198 applied to policy renewal premium notices that ~~which~~ are
199 forwarded to insureds more than 60 calendar days after entry of
200 a final order indicating that excessive profits have been
201 realized. If an insurer group has made this election but an
202 insured thereafter cancels her or his policy or otherwise allows
203 the policy to terminate, the insurer group must ~~shall~~ make a
204 cash refund within ~~not later than~~ 60 days after termination of
205 such coverage.
206 (b) Upon completion of the renewal credits or refund
207 payments, the insurer group shall immediately certify to the
208 office that the refunds have been made.
209 (11) ~~(13)~~ Any refund or renewal credit made pursuant to this
210 section shall be treated as a policyholder dividend applicable
211 to the year immediately succeeding the compilation period giving
212 rise to the refund or credit, for purposes of reporting under
213 this section for subsequent years.
214 (12) ~~(14)~~ The application of this law to commercial property
215 and commercial casualty insurance, which includes commercial

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216 umbrella liability insurance, ceases on January 1, 1997.
217 Section 3. Subsection (4) of section 628.6017, Florida
218 Statutes, is amended to read:
219 628.6017 Converting assessable mutual insurer.—
220 (4) An assessable mutual insurer becoming a stock insurer
221 or a nonassessable mutual insurer is ~~shall~~ not ~~be~~ subject to s.
222 627.215 or s. 627.351(5) for 5 years following authorization of
223 the conversion by the office. However, the converted stock
224 insurer or nonassessable mutual insurer shall file all necessary
225 data required by s. 627.215. Such amounts otherwise subject to
226 s. 627.215(8) ~~627.215(10)~~ shall be maintained as surplus as to
227 policyholders and not be available for dividends for ~~a period of~~
228 5 years.
229
230 ========== T I T L E A M E N D M E N T ==========
231 And the title is amended as follows:
232 Delete line 5
233 and insert:
234 compensation as required; amending s. 627.215, F.S.;
235 deleting the prohibition against excessive profits for
236 workers' compensation and employer's liability
237 insurance; deleting obsolete provisions; amending s.
238 628.6017, F.S.; conforming a cross-reference;
239 providing an effective date.

By Senator Hays

20-01008-12 20121094__

A bill to be entitled

An act relating to workers' compensation; amending s. 440.107, F.S.; revising penalties applicable to employers who fail to secure the payment of workers' compensation as required; providing an effective date.

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

Section 1. Paragraph (d) of subsection (7) of section 440.107, Florida Statutes, is amended to read:

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

(7)

(d)1. In addition to any penalty, stop-work order, or injunction, the department shall assess against any employer who has failed to secure the payment of compensation as required by this chapter a penalty equal to 2 ~~1.5~~ times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation required by this chapter within the preceding 1-year ~~3-year~~ period or $1,000, whichever is greater.

2. Any subsequent violation within 5 years after the most recent violation shall, in addition to the penalties set forth in this subsection, be deemed a knowing act within the meaning of s. 440.105.

Section 2. This act shall take effect July 1, 2012.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/SB 1120

INTRODUCER: Budget Subcommittee on General Government Appropriations and Senator Jones

SUBJECT: Department of Business and Professional Regulation

DATE: February 28, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Favorable**
2.	Howard	DeLoach	BGA	**Fav/CS**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill repeals provisions related to the use of metering machines for placing tax stamps on cigarette packages to evidence payment of excise taxes. According to the Department of Business and Professional Regulation (department), such machines are no longer in use.

The bill repeals the following licensing requirements:

- The requirement that professional licensees of the department who change from inactive to active status during the renewal of their license must complete a licensure cycle on active status before they can return to inactive status;
- The license requirement for the chief administrators of real estate schools;
- The requirement that applicants for licensure as a nonresident real estate broker, sales associate, appraisal management company, and appraiser to file an irrevocable consent for service through which a plaintiffs may service process against the non-resident license by sending the process by certified mail with return receipt to the director of the agency as well as to the licensee's principal place of business. This bill would require plaintiffs to obtain service of process against a nonresident licensee with a process server;

- The requirement that an applicant for a real estate professional's license must apply with the department before taking a license examination; and
- The requirement that alcoholic beverages licenses be issued in duplicate.

The bill also repeals the prohibition against the processing of distilled spirits that are greater than 153 proof. The bill maintains the current prohibition against the sale or consumption of a distilled spirit that is greater than 153 proof. However, the bill permits distilled spirits that are greater than 153 proof to be distilled, bottled, packaged, or processed for export or sale outside of the state.

The bill would take effect upon becoming law.

This bill substantially amends the following sections of the Florida Statutes: 210.01, 210.05, 210.07, 210.11, 210.12, 210.15, 210.18, 455.271, 475.02, 475.180, 475.451, 475.6235, 475.631, 561.23, and 565.07. The bill repeals section 476.124, Florida Statutes.

II. Present Situation:

Department of Business and Professional Regulation
The Department of Business and Professional Regulation (department) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.[1] The department is created in s. 20.165, F.S. Section 20.165(2), F.S., creates the following eleven divisions within the department:

- Division of Administration.
- Division of Alcoholic Beverages and Tobacco.
- Division of Certified Public Accounting.
- Division of Florida Condominiums, Timeshares, and Mobile Homes.
- Division of Hotels and Restaurants.
- Division of Pari-mutuel Wagering.
- Division of Professions.
- Division of Real Estate.
- Division of Regulation.
- Division of Technology.
- Division of Service Operations.

Professional Boards
Section 20.165(4)(a), F.S., establishes the following boards and professions within the Division of Professions:

- Board of Architecture and Interior Design, created under part I of ch. 481, F.S.
- Florida Board of Auctioneers, created under part VI of ch. 468, F.S.
- Barbers' Board, created under ch. 476, F.S.

[1] Chapter 93-220, L.O.F.

- Florida Building Code Administrators and Inspectors Board, created under part XII of ch. 468, F.S.
- Construction Industry Licensing Board, created under part I of ch. 489, F.S.
- Board of Cosmetology, created under ch. 477, F.S.
- Electrical Contractors' Licensing Board, created under part II of ch. 489, F.S.
- Board of Employee Leasing Companies, created under part XI of ch. 468, F.S.
- Board of Landscape Architecture, created under part II of ch. 481, F.S.
- Board of Pilot Commissioners, created under ch. 310, F.S.
- Board of Professional Engineers, created under ch. 471, F.S.
- Board of Professional Geologists, created under ch. 492, F.S.
- Board of Veterinary Medicine, created under ch. 474, F.S.
- Home Inspection Services Licensing Program, created under part XV of ch. 468, F.S.
- Mold-Related Services Licensing Program, created under part XVI of ch. 468, F.S.

The Pilot Rate Review Committee is established under the Board of Pilot Commissioners.[2] Section 20.165(4)(b), F.S., establishes the following board and commission within the Division of Real Estate:

- Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S.
- Florida Real Estate Commission, created under part I of ch. 475, F.S.

Section 20.165(4)(c), F.S., establishes the Board of Accountancy, created under ch. 473, F.S., within the Division of Certified Public Accounting.

The Florida State Boxing Commission[3] and the Regulatory Council of Community Managers[4] are also housed within the department. The department also has regulatory oversight responsibilities over the following professions:

- Child labor under part I of ch. 450, F.S.
- Farm labor contractors under part III of ch. 450, F.S.
- Talent agencies under part VII of ch. 468, F.S.

In addition to administering the professional boards, the department processes applications for licensure and license renewal. The department also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative frame-work for all of the professional boards housed under the department, the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

Cigarette Regulation in Florida

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (department) oversees the collection of excise taxes from the sale of

[2] Section 310.151, F.S.
[3] Section 548.003, F.S.
[4] Section 468.4315, F.S

cigarettes and other tobacco products. Part I, ch. 210, F.S., consisting of ss. 210.01-210.22, F.S., provides for the taxation of cigarettes. Part II, ch. 210, F.S., consisting of ss. 210.25-210.75, F.S., provides for the taxation of tobacco products other than cigarettes and cigars.

The sale and delivery of tobacco is governed by the division under the provisions of ch. 569, F.S. The division and the department, along with the Department of Health, are involved in the enforcement of the Florida Clean Indoor Air Act.[5] The division consults with the State Fire Marshall, the Division of Hotels and Restaurants with the department, and the Department of Health on rulemaking for the Florida Clean Indoor Air Act.[6]

Cigarette Metering Machines

Section 210.011, F.S., levies a cigarette surcharge that varies based on the weight and length of the cigarettes or the quantity of cigarettes in a package. For example, packages containing 10 cigarettes or fewer require a surcharge of 50 cents and packages containing more than 10 but not more than 20 cigarettes require a surcharge of $4.[7] Section 210.02, F.S., imposes an excise tax on the sale of cigarettes.

The excise tax also varies based on the weight and length of the cigarettes or the quantity of cigarettes in a packaged. For example, when cigarettes are packaged, packages containing 10 cigarettes or less are assessed a 33.9-cent tax and packages containing more than 10 but not more than 20 cigarettes are assessed a 135.6-cent tax.

Section 210.05(1), F.S., requires that the taxes imposed under part II of ch. 210, F.S., must be paid by affixing stamps in the manner prescribed in this section or affixing stamp insignia through the use metering machines. Cigarette wholesale dealers who are approved as stamping agents under s. 210.05(3)(a), F.S., are required to place adhesive stamps on packages of cigarettes. These stamps are evidence of payment of the applicable excise tax and surcharge prior to selling the cigarettes in Florida. According to the department, metering machines have not been used to place tax indicia on the cigarette packages for many years because the company that supplies the machines no longer makes them.

Inactive and Delinquent Status

Section 455.271(2), F.S., permits licensees of each board, or the department when there is no board, to choose an active or inactive status at the time of license renewal. A licensee who changes from inactive to active status during renewal of his/her license is ineligible to return to inactive status until the licensee completes a licensure cycle on active status.

Chief Administrator Permits

In the context of schools that teach real estate practice, s. 475.451(2)(b), F.S., defines the term "chief administrative person" to mean:

> the individual who is responsible for the administration of the overall policies and practices of the institution or proprietary real estate school. A chief administrative

[5] Part II, ch. 386, F.S.
[6] *See* s. 386.207, F.S.
[7] *See* s. 210.011, F.S.,

person must also meet the requirements of a school instructor if actively engaged in teaching.

To be licensed, a chief administrator must remit to the department a $20 application fee, an $80 license fee,[8] and the $5 unlicensed activity fee required by s. 455.2281, F.S.

The department characterizes the current licensing requirements for chief administrators as very minimal. The department does not approve any courses that they take, and the school is not required to have a chief administrator as a condition to operate. According to the department, there are currently 51 licensed chief administrators.

Nonresident Real Estate Licenses-Irrevocable Consent
Sections 475.180(1), F.S., relating to real estate professionals under part I of ch. 475, F.S., and s. 475.631(1), F.S., relating to real estate appraisers under part II of ch. 475, F.S., permit nonresidents to be licensed as real estate professionals or appraiser, in this state without having to meet the pre-licensure and post licensure educational requirements if the Real Estate Commission or the Florida Real Estate Appraisal Board, as applicable, have entered into written agreements with similar licensing authorities of other states, territories, or jurisdictions of the United States or foreign national jurisdictions. These agreements must ensure that Florida-licensees receive licensure opportunities in those jurisdictions that are comparable to those afforded to nonresidents in this state.

Section 475.180(2)(a), F.S., requires applicants for licensure as a nonresident real estate professional to file an irrevocable consent that plaintiffs may serve any process or pleading in suits or actions against her or him by delivering the process or pleading to the director of the Division of Real Estate by certified mail, return receipt requested, and also to the licensee by registered mail addressed to the licensee at her or his designated principal place of business.

The bill repeals a similar requirement for an irrevocable consent for service of process for appraisal management companies in s. 475.6235(7), F.S., and for nonresident appraisers in s. 475.631(2), F.S.,

The procedure for serving process on a nonresident license defers from that required in other civil actions. The rules of civil procedure require that pleadings be served by a process server.[9] According to the department, it is not clear what the Division of Real Estate should do with a pleading once they are served as provided in ss. 475.180(1), 475.6235, or 475.631, F.S. The department states that the requirement that nonresident licensees sign irrevocable consent form has created more deficiencies with applications due to not being completed or not being completed correctly. This extends the time to process applications.

Barbering-Application for Examination
Section 476.124, F.S., requires that an applicant for examination as a barber to submit an application at least 30 days prior to examination on department forms, provide two signed

[8] Rule 61J2-1.011, F.A.C., specifies the applicable fees.
[9] *See* rule 1.070, Fla.R.Civ.Pro.

photographs with their application, and pay the required fee to the department. The examination fee is $150.[10]

Duplicate Alcoholic Beverage Licenses
Section 561.23, F.S., requires alcoholic beverages licenses to be issued in duplicate. The original license must be delivered to the licensee and one copy must be retained by the division. The original license must be displayed in conspicuous places on the licensed premises. The department states that it delivers the original license to the licensee through the US Postal Service and that that it previously kept a hard copy of the original license on file within the Division of Alcoholic Beverage and Tobacco. In June of 2009, the Division of Alcoholic Beverage and Tobacco implemented a document management system through which the division retains an electronic copy of the original license.

Distilled Spirits
Section 565.07, F.S., prohibits the processing, sale or consumption of distilled spirits that are greater than 153 proof.

III. Effect of Proposed Changes:

Cigarette Metering Machines
The bill repeals the provisions relating to the use of metering machines in ss. 210.07(1) and (2), F.S.

To conform to the repeal of the metering machine provision in ss. 210.07(1) and (2), F.S., the bill amends the following provisions:

- The definition of the term "agent" in s. 210.01(9), F.S., to delete the reference to affixing tax stamps by meter;
- Section 210.05(1), F.S., to delete the reference to affixing stamp insignia through the device of metering machines authorized in part 1 of ch. 210, F.S.;
- Section 210.11, F.S., to delete references to the payment of taxes by metering machine;
- Section 210.12(1), F.S., to delete the reference to the meter impression of the stamp in the context of the requirement that cigarettes packages must be displayed and arranged so the that the tax stamp is clearly visible;
- Section 210.15(2), F.S., to delete the reference to the division's authority to approve the use of meter machines to evidence the payment of taxes; and
- Section 210.18(3), F.S., to delete the prohibition against falsely or fraudulently making, forging, altering, or counterfeiting any impression die used in meter machines and against jamming, tampering, or altering a meter machine with the intent to evade taxes.

Inactive and Delinquent Licenses
The bill amends s. 455.271, F.S., to remove the provision that requires licensees who change from inactive to active status during the renewal of their license to complete a licensure cycle on active status before they can return to inactive status.

[10] Rule 61G3-20.002(1), F.A.C.

Real Estate Professionals-Chief Administrators
The bill repeals the requirement for a license by the chief administrators of real estate schools by deleting the definition for the term "chief administrative person" in s. 475.451(2)(b), F.S.

To conform to the repeal of the chief administrator definition in s. 475.451(2)(b), F.S., the bill amends s. 475.02(3), F.S., to delete the reference the chief administrator permit.

Real Estate Nonresident Licenses-Irrevocable Consent
The bill amends s. 475.180(2), F.S., to repeal the requirement that applicants for licensure as a nonresident real estate professional must file an irrevocable consent for process of service.

The bill also amends s. 475.6235,(7), F.S., to repeal the requirement that applicants for registration as real estate appraisal management company must file an irrevocable consent for process of service.

The bill also amends s. 475.631,(2), F.S., to repeal the requirement that applicants for licensure as a nonresident real estate appraiser must file an irrevocable consent for process of service.

This bill would require plaintiffs to obtain service of process with a process server instead of by serving the Division of Real Estate by certified mail, return receipt requested, and also to the licensee by registered mail addressed to the licensee at her or his designated principal place of business.

Barbering-Application for Examination
The bill repeals Section 476.124, Florida Statutes, which requires that an applicant submit an application at least 30 days prior to examination on department forms, provide two signed photographs with their application, and pay the required fee to the department.

Duplicate Alcoholic Beverage Licenses
The bill amends s. 561.23(1), F.S., to delete the requirement that alcoholic beverages licenses be issued in duplicate.

Distilled Spirits
The bill amends s. 565.07, F.S., to repeal the prohibition against the processing of distilled spirits that are greater than 153 proof. The bill maintains the current prohibition against the sale or consumption of a distilled spirit that is greater than 153 proof. However, the bill permits distilled spirits that are greater than 153 proof to be distilled, bottled, packaged, or processed for export or sale outside of the state.

Effective Date
The bill would take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The chief administrators of real estate schools would save the cost of being licensed, which includes a $20 application fee, the $80 license fee, and a $5 unlicensed activity fee.

C. Government Sector Impact:

The department anticipates a minimal fiscal impact due to the repeal of the license requirement for the chief administrators of real estate schools. There are currently 51 licensed chief administrator licensees. The department averages five applications for chief administrator annually. Due to the elimination of the $20 application fee, the $80 license fee, and the $5 unlicensed activity fee, the department estimates initial license application fees, license fees, and unlicensed activity fees for this profession total approximately $483 in FY 2012-2013 and $4,393 in FY 2013-2014. In determining its fiscal impact, the department's analysis does not consider the potential saving associated with the elimination its regulatory duties.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Budget Subcommittee on General Government Appropriations on February 28, 2012:
The committee substitute amends s. 565.07, F.S., to repeal the prohibition against the processing of distilled spirits that are greater than 153 proof. It permits distilled spirits

that are greater than 153 proof to be distilled, bottled, packaged, or processed for export or sale outside of the state.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

313210

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Jones) recommended the following:

Senate Amendment (with title amendment)

Between lines 335 and 336
insert:

Section 16. Section 565.07, Florida Statutes, is amended to read:

565.07 Sale or consumption of certain distilled spirits prohibited.—A ~~No~~ distilled spirit greater than 153 proof may not ~~shall~~ be sold~~, processed,~~ or consumed in the state. However, a distilled spirit greater than 153 proof may be distilled, bottled, packaged, or processed for export or sale outside the state.

313210

13

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

15 And the title is amended as follows:

16 Delete line 57

17 and insert:

18 in duplicate; amending s. 565.07, F.S.; allowing

19 certain high-proof distilled spirits to be distilled,

20 bottled, packaged, or processed for export or sale

21 outside this state; providing an effective date.

976012

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Between lines 335 and 336
insert:

Section 16. Section 565.07, Florida Statutes, is amended to read:

565.07 Sale or consumption of certain distilled spirits prohibited.—A ~~No~~ distilled spirit greater than 153 proof may not ~~shall~~ be sold~~, processed,~~ or consumed in the state. However, a distilled spirit greater than 153 proof may be distilled, bottled, packaged, or processed for export or sale outside the state.

976012

13

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

15 And the title is amended as follows:

16 Delete line 57

17 and insert:

18 in duplicate; amending s. 565.07, F.S.; allowing

19 certain high-proof distilled spirits to be distilled,

20 bottled, packaged, or processed for export or sale

21 outside this state; providing an effective date.

By Senator Jones

13-00697B-12 20121120__

A bill to be entitled

An act relating to the Department of Business and Professional Regulation; amending s. 210.01, F.S.; redefining the term "agent" as it relates to the cigarette tax, to conform to changes made by the act; amending s. 210.05, F.S.; deleting a provision that allows the cigarette tax to be paid by affixing a stamp insignia through a metering machine; amending s. 210.07, F.S.; deleting provisions authorizing the use of metering machines; requiring retail dealers of cigarettes, rather than wholesale dealers, to affix to each such machine, in a conspicuous place, an identification sticker furnished by the Division of Alcoholic Beverages and Tobacco within the Department of Business and Professional Regulation; amending ss. 210.11 and 210.12, F.S.; conforming provisions to changes made by the act; amending s. 210.15, F.S.; deleting a provision that prohibited the division from approving the use of meter machines to evidence the payment of the taxes on cigarettes except to qualified wholesale dealers; amending s. 210.18, F.S.; conforming provisions regarding penalties relating to the use of metering machines; amending s. 455.271, F.S.; deleting a provision that provides that a licensee of the department who changes from inactive to active status is not eligible to return to inactive status until the licensee thereafter completes a licensure cycle on active status; amending s. 475.02, F.S.; conforming a provision to changes made by the

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13-00697B-12 20121120__

act; amending s. 475.180, F.S.; deleting a provision that requires an applicant for a real estate license who is not a resident of this state to file an irrevocable consent regarding lawsuits and actions commenced against the applicant; deleting provisions prescribing the method of service of process; amending s. 475.451, F.S.; deleting the requirement that an applicant to be chief administrator of a proprietary real estate school or state institution meet certain qualifications for licensure as a broker associate or sales associate and other minimal requirements; deleting the definition of the term "chief administrative person" as it relates to schools teaching real estate practice; repealing s. 475.6235(7), F.S., relating to a nonresidential applicant's requirement to file an irrevocable consent regarding lawsuits and actions against an appraisal management company; amending s. 475.631, F.S.; deleting the provision that requires an applicant for licensure as an appraiser who is not a resident of this state to file an irrevocable consent regarding lawsuits and actions commenced against the applicant; deleting the method of service of process; repealing s. 476.124, F.S., relating to certain application requirements for licensing examinations in barbering; amending s. 561.23, F.S.; deleting the requirement that licenses issued under the Beverage Law be issued in duplicate; providing an effective date.

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

Section 1. Subsection (9) of section 210.01, Florida Statutes, is amended to read:

210.01 Definitions.—When used in this part the following words shall have the meaning herein indicated:

(9) "Agent" means any person authorized by the Division of Alcoholic Beverages and Tobacco to purchase and affix adhesive ~~or meter~~ stamps under this part.

Section 2. Subsection (1) of section 210.05, Florida Statutes, is amended to read:

210.05 Preparation and sale of stamps; discount.—

(1) The tax imposed by this part shall be paid by affixing stamps in the manner herein set forth ~~or by affixing stamp insignia through the device of metering machines authorized in this part~~.

Section 3. Section 210.07, Florida Statutes, is amended to read:

210.07 ~~Metering~~ Machines.—

~~(1)(a) The tax may also be paid through the use of cigarette tax stamp insignia to be applied by the use of metering machines. The division shall prescribe and promulgate appropriate rules and regulations governing the use of metering machines, the procedure for the payment of such cigarette taxes through the use thereof, requiring adequate surety bonds of the users thereof to assure the proper use of such machines and payment of all cigarette taxes that might come due by the users thereof, and all other rules and regulations necessary and proper to govern the use of same.~~

~~(b) The provisions of s. 210.05(3)(a) and (b) shall be applicable to cigarette taxes paid through the use of metering machines.~~

~~(2) All provisions of this part governing the use of cigarette tax stamps, the compiling of records, the making of reports, permits and revocation of permits, seizures and forfeitures, penalties, and all other provisions pertaining to the payment of cigarette taxes through the use of stamps, shall likewise be applicable to the payment of said taxes through the use of metering machines.~~

(1) ~~(3) Wholesale or~~ Retail dealers of cigarettes owning, leasing, furnishing, or operating cigarette vending machines shall affix to each such machine, in a conspicuous place, an identification sticker furnished by the division. Every sticker shall show the vending machine serial number and the name and address of the cigarette ~~wholesale or~~ retail dealer owning, leasing, furnishing, or operating the ~~said~~ vending machine.

(2) ~~(4)~~ A person may not operate a ~~No~~ vending machine ~~shall be allowed to operate~~ in the state unless ~~that does not have affixed thereto~~ the identification sticker required by this section is affixed to the vending machine. A person may not operate a ~~nor shall any~~ vending machine ~~be allowed to operate~~ in the state which ~~that~~ does not display at all times at least one package of each brand of the packages located therein so the same are clearly visible and arranged in such a manner that the cigarette tax stamps ~~or meter impressions of stamps~~ affixed thereto are clearly visible. A ~~It shall be the duty of any~~ person, firm, or corporation operating a cigarette vending machine in this state must ~~to~~ furnish to the division the

117 location of the vending machine and ~~to~~ report within 30 days to
118 the division any change of location of the vending machine.
119 Section 4. Section 210.11, Florida Statutes, is amended to
120 read:
121 210.11 Refunds; sales of stamps and payment of tax.—
122 Whenever any cigarettes upon which stamps have been placed, ~~or~~
123 ~~upon which the tax has been paid by metering machine,~~ have been
124 sold and shipped into another state for sale or use therein, or
125 have become unfit for use and consumption or unsalable, or have
126 been destroyed, the dealer involved shall be entitled to a
127 refund or credit of the actual amount of the tax paid with
128 respect to such cigarettes less any discount allowed by the
129 division in the sale of the stamps ~~or payment of the tax by~~
130 ~~metering machine~~, upon receipt of satisfactory evidence of the
131 dealer's right to receive such refund or credit, provided
132 application for refund or credit is made within 9 months after
133 ~~of~~ the date the cigarettes were shipped out of the state, became
134 unfit, or were destroyed. Only the division shall sell, or offer
135 for sale, any stamp or stamps issued under this part. The
136 division may redeem unused stamps lawfully in the possession of
137 any person. The division may prescribe necessary rules ~~and~~
138 ~~regulations~~ concerning refunds, credits, sales of stamps, and
139 redemptions under the provisions of this part. Appropriation is
140 hereby made out of revenues collected under this part for
141 payment of such allowances.
142 Section 5. Subsection (1) of section 210.12, Florida
143 Statutes, is amended to read:
144 210.12 Seizures; forfeiture proceedings.—
145 (1) The state, acting by and through the division, may

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146 ~~shall be authorized and empowered to~~ seize, confiscate, and
147 forfeit any cigarettes upon which taxes payable hereunder may be
148 unpaid or which ~~that~~ are otherwise held in violation of the
149 requirements of this chapter, and also any vending machine or
150 receptacle in which cigarettes upon which taxes have not been
151 paid are held for sale, or any vending machine that does not
152 have affixed thereto the identification sticker required by ~~the~~
153 ~~provisions of~~ s. 210.07, or that ~~which~~ does not display at all
154 times at least one package of each brand of cigarettes located
155 therein so the same is clearly visible and arranged in such a
156 manner that the cigarette tax stamp ~~or meter impression of the~~
157 ~~stamp~~ affixed thereto is clearly visible. Such seizure may be
158 made by the division, its duly authorized representative, any
159 sheriff or deputy sheriff, or any police officer.
160 Section 6. Subsection (2) of section 210.15, Florida
161 Statutes, is amended to read:
162 210.15 Permits.—
163 (2) The division may not furnish stamps ~~or approve the use~~
164 ~~of meter machines~~ to evidence the payment of the taxes on
165 cigarettes except to qualified wholesale dealers.
166 Section 7. Subsection (3) of section 210.18, Florida
167 Statutes, is amended to read:
168 210.18 Penalties for tax evasion; reports by sheriffs.—
169 (3) Any person who falsely or fraudulently makes, forges,
170 alters, or counterfeits any stamp ~~or impression die used in~~
171 ~~meter machines~~ prescribed by the division under the provisions
172 of this part; ~~or, with intent to evade taxes, jams, tampers~~
173 ~~with, or alters such a machine;~~ or causes or procures to be
174 falsely or fraudulently made, forged, altered, or counterfeited

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any such stamp ~~or die~~; or knowingly and willfully utters, purchases, passes or tenders as true any such false, altered, or counterfeited stamp ~~or die impression~~; or, with the intent to defraud the state, fails to comply with any other requirement of this part commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 8. Subsection (2) of section 455.271, Florida Statutes, is amended to read:

455.271 Inactive and delinquent status.—

(2) Each board, or the department when there is no board, shall permit a licensee to choose, at the time of licensure renewal, an active or inactive status. ~~However, a licensee who changes from inactive to active status is not eligible to return to inactive status until the licensee thereafter completes a licensure cycle on active status.~~

Section 9. Subsection (3) of section 475.02, Florida Statutes, is amended to read:

475.02 Florida Real Estate Commission.—

(3) Notwithstanding s. 112.313, any member of the commission who is a licensed real estate broker or sales associate and who holds an active real estate school permit, ~~chief administrator permit,~~ school instructor permit, or any combination of such permits issued by the department, to the extent authorized pursuant to such permit, may offer, conduct, or teach any course prescribed or approved by the commission or the department.

Section 10. Subsection (2) of section 475.180, Florida Statutes, is amended to read:

475.180 Nonresident licenses.—

(2) ~~(a) Any applicant who is not a resident of this state shall file an irrevocable consent that suits and actions may be commenced against her or him in any county of this state in which a plaintiff having a cause of action or suit against her or him resides, and that service of any process or pleading in suits or actions against her or him may be made by delivering the process or pleading to the director of the Division of Real Estate by certified mail, return receipt requested, and also to the licensee by registered mail addressed to the licensee at her or his designated principal place of business. Service, when so made, must be taken and held in all courts to be as valid and binding upon the licensee as if made upon her or him in this state within the jurisdiction of the court in which the suit or action is filed. The irrevocable consent must be in a form prescribed by the department and be acknowledged before a notary public.~~

(a) ~~(b)~~ Any resident licensee who becomes a nonresident shall, within 60 days, notify the commission of the change in residency and comply with nonresident requirements. Failure to notify and comply is a violation of the license law, subject to the penalties in s. 475.25.

(b) ~~(c)~~ All nonresident applicants and licensees shall comply with all requirements of commission rules and this part. The commission may adopt rules necessary for the regulation of nonresident licensees.

Section 11. Subsection (2) of section 475.451, Florida Statutes, is amended to read:

475.451 Schools teaching real estate practice.—

(2) An applicant for a permit to operate a proprietary real

233 estate school~~, to be a chief administrator of a proprietary real~~
234 ~~estate school or a state institution,~~ or to be an instructor for
235 a proprietary real estate school or a state institution must
236 meet the qualifications for practice set forth in s. 475.17(1)
237 and the following minimal requirements:
238 (a) "School permitholder" means the individual who is
239 responsible for directing the overall operation of a proprietary
240 real estate school. A school permitholder must be the holder of
241 a license as a broker, either active or voluntarily inactive, or
242 must have passed an instructor's examination approved by the
243 commission. A school permitholder must also meet the
244 requirements of a school instructor if actively engaged in
245 teaching.
246 ~~(b) "Chief administrative person" means the individual who~~
247 ~~is responsible for the administration of the overall policies~~
248 ~~and practices of the institution or proprietary real estate~~
249 ~~school. A chief administrative person must also meet the~~
250 ~~requirements of a school instructor if actively engaged in~~
251 ~~teaching.~~
252 (b) ~~(c)~~ "School instructor" means an individual who
253 instructs persons in the classroom in noncredit college courses
254 in a college, university, or community college or courses in a
255 career center or proprietary real estate school.
256 1. Before commencing to provide such instruction, the
257 applicant must certify the applicant's competency and obtain an
258 instructor permit by meeting one of the following requirements:
259 a. Hold a bachelor's degree in a business-related subject,
260 such as real estate, finance, accounting, business
261 administration, or its equivalent and hold a valid broker's

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262 license in this state.
263 b. Hold a bachelor's degree, have extensive real estate
264 experience, as defined by rule, and hold a valid broker's
265 license in this state.
266 c. Pass an instructor's examination approved by the
267 commission.
268 2. Any requirement by the commission for a teaching
269 demonstration or practical examination must apply to all school
270 instructor applicants.
271 3. The department shall renew an instructor permit upon
272 receipt of a renewal application and fee. The renewal
273 application shall include proof that the permitholder has, since
274 the issuance or renewal of the current permit, successfully
275 completed a minimum of 7 classroom hours of instruction in real
276 estate subjects or instructional techniques, as prescribed by
277 the commission. The commission shall adopt rules providing for
278 the renewal of instructor permits at least every 2 years. Any
279 permit that ~~which~~ is not renewed at the end of the permit period
280 established by the department ~~shall~~ automatically reverts ~~revert~~
281 to involuntarily inactive status.
282
283 The department may require an applicant to submit names of
284 persons having knowledge concerning the applicant and the
285 enterprise; may propound interrogatories to such persons and to
286 the applicant concerning the character of the applicant,
287 including the taking of fingerprints for processing through the
288 Federal Bureau of Investigation; and shall make such
289 investigation of the applicant or the school or institution as
290 it may deem necessary to the granting of the permit. If an

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291 objection is filed, it shall be considered in the same manner as
292 objections or administrative complaints against other applicants
293 for licensure by the department.
294 Section 12. Subsection (7) of section 475.6235, Florida
295 Statutes, is repealed.
296 Section 13. Subsection (2) of section 475.631, Florida
297 Statutes, is amended to read:
298 475.631 Nonresident licenses and certifications.—
299 (2)~~(a) An applicant who is not a resident of this state~~
300 ~~shall file an irrevocable consent that suits and actions may be~~
301 ~~commenced against her or him in any county of this state in~~
302 ~~which a plaintiff having a cause of action or suit against her~~
303 ~~or him resides and that service of any process or pleading in~~
304 ~~suits or actions against her or him may be made by delivering~~
305 ~~the process or pleading to the director of the Division of Real~~
306 ~~Estate by certified mail, return receipt requested, and also to~~
307 ~~the certified appraiser or licensee by registered mail addressed~~
308 ~~to the certified appraiser or licensee at her or his designated~~
309 ~~principal place of business. Service, when so made, must be~~
310 ~~taken and held in all courts to be as valid and binding upon the~~
311 ~~certified appraiser or licensee as if made upon her or him in~~
312 ~~this state within the jurisdiction of the court in which the~~
313 ~~suit or action is filed. The irrevocable consent must be in a~~
314 ~~form prescribed by the department and be acknowledged before a~~
315 ~~notary public.~~
316 (a)~~(b)~~ Any resident state-certified appraiser who becomes a
317 nonresident shall, within 60 days, notify the board of the
318 change in residency and comply with nonresident requirements.
319 Failure to notify and comply is a violation of the license law,

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320 subject to the penalties in s. 475.624.
321 (b)~~(c)~~ All nonresident applicants, certified appraisers,
322 and licensees shall comply with all requirements of board rules
323 and this part. The board may adopt rules pursuant to ss.
324 120.536(1) and 120.54 necessary for the regulation of
325 nonresident certified appraisers and licensees.
326 Section 14. Section 476.124, Florida Statutes, is repealed.
327 Section 15. Section 561.23, Florida Statutes, is amended to
328 read:
329 561.23 License ~~issued in duplicate;~~ display.—
330 ~~(1) Licenses shall be issued in duplicate. The original~~
331 ~~license shall be delivered to the licensee; and one copy shall~~
332 ~~be retained by the division.~~
333 ~~(2)~~ All vendors licensed under the Beverage Law shall
334 display their licenses in conspicuous places on their licensed
335 premises.
336 Section 16. This act shall take effect upon becoming a law.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/28/12
Meeting Date

Topic: DBPR Bill

Bill Number: 1120 *(if applicable)*

Name: Tim Nungesser

Amendment Barcode: *(if applicable)*

Job Title: Director, Office of Legislative Affairs

Address: 1940 N. Monroe St.
Street

Tall. FL 32399-2210
City *State* *Zip*

Phone: (850) 487-4827

E-mail: Tim.Nungesser@dbprmstatefl.us

Speaking: [X] For [ ] Against [ ] Information

Representing: DBPR

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator D. Alan Hays, Chair
Committee on General Government Appropriations

Subject: Committee Agenda Request

Date: February 3, 2012

I respectfully request that **Senate Bill #1120**, relating to DBPR repealer bill, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Dennis L. Jones, D.C.
Florida Senate, District 13

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/SB 1146

INTRODUCER: Budget Subcommittee on General Government Appropriations; Judiciary Committee and Senator Simmons

SUBJECT: Effect of Dissolution or Annulment of Marriage on Certain Designations

DATE: February 28, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	**Fav/CS**
2.	Betta	DeLoach	BGA	**Fav/CS**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill generally nullifies upon divorce or annulment the designation of a spouse as a beneficiary of nonprobate assets such as life insurance policies, individual retirement accounts, and payable on death accounts. State-administered retirement plans are exempt from the bill. If the provisions of the bill apply, an asset will pass as if the former spouse predeceased the decedent.

The bill also specifies criteria for a payor of a nonprobate asset to use in identifying the appropriate beneficiary. The bill specifically provides that the payor is not liable in some circumstances for transferring an asset to the beneficiary identified through the bill's criteria.

This bill creates section 732.703, Florida Statutes.

II. Present Situation:

Disposition of Nonprobate Assets

Chapters 731 to 735, F.S., are known as the "Florida Probate Code."[1] Substantive rights regarding probate are covered in the probate code and procedural matters are governed by probate rules adopted by the Florida Supreme Court.

Chapter 732, F.S., governs substantive issues relating to wills. A provision of a will executed before the dissolution or annulment of a marriage which provides for a former spouse is void.[2] A court will interpret the will as if the former spouse "had died at the time of the dissolution, divorce, or annulment of the marriage, unless the will or the dissolution or divorce judgment expressly provides otherwise."[3] A similar provision exists for trusts. If a revocable trust is created by a husband or wife as settlor before the entry of a judgment for a divorce or annulment of a marriage, then any provision of the trust that affects the divorced spouse is void unless the trust provides otherwise.[4]

In contrast, nonprobate assets[5] typically are transferred by the designation of a beneficiary as provided in the contract.[6] If an individual designates his or her spouse as beneficiary on the individual's life insurance policy or other nonprobate asset, divorces the spouse, and fails to modify the beneficiary designated on the policy, the former spouse will receive the policy's proceeds upon the individual's death. Nonprobate assets are widely used as a tool for estate planning.[7]

Litigation has ensued to determine the disposition of nonprobate assets in instances where an individual who owns nonprobate assets, divorced, and later failed to remove the former spouse as beneficiary for the assets.[8] In that litigation, the Florida Supreme Court held that a former spouse as named beneficiary was entitled to term life insurance proceeds despite a general release in a marital settlement agreement.[9] The Court reasoned that the determination of who is entitled to the assets depends on the plain language in the insurance contract designating a beneficiary when a marital settlement agreement fails to specifically remove the former spouse.[10]

---

[1] Section 731.005, F.S.
[2] Section 732.507(2), F.S. *See also*, Henry P. Trawick, Jr., *Trawick's Redfearn Wills and Administration in Florida*, s. 3:10 (2009-2010 ed.).
[3] Section 732.507(2), F.S.
[4] Section 736.1105, F.S.
[5] "Nonprobate asset" means "[p]roperty that passes to a named beneficiary upon the owner's death according to the terms of some contract or arrangement other than a will. Such an asset is not a part of the probate estate and is not ordinarily subject to the probate court's jurisdiction (and fees), though it is part of the taxable estate. Examples include life-insurance contracts, joint property arrangements with right of survivorship, pay-on-death accounts, and inter vivos trusts." BLACK'S LAW DICTIONARY (9th ed. 2009).
[6] *Id.*
[7] *See* Suzanne Soliman, *A Fair Presumption: Why Florida Needs a Divorce Revocation Statute for Beneficiary-Designated Nonprobate Assets*, 36 STETSON L. REV. 397, 397 (Winter 2007).
[8] Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper on Effect of Dissolution or Invalidity of Marriage on Disposition of Certain Assets at Death* (on file with the Senate Committee on Judiciary).
[9] *Cooper v. Muccitelli*, 682 So. 2d 77, 79 (Fla. 1996).
[10] *Id.*

In a subsequent case, the Florida Supreme Court explained that:

> absent the marital settlement agreement providing who is or is not to receive the death benefits or specifying who is to be the beneficiary, courts should look no further than the named beneficiary in the separate document of the policy, plan, or account. General language in a marital settlement agreement, such as language stating who is to receive ownership, is not specific enough to override the plain language of the beneficiary designation in the separate document. The spouse, who owns the policy, plan, or account following the dissolution of marriage, is otherwise free to name any individual as the beneficiary; however, if the spouse does not change the beneficiary, the beneficiary designation in the separate document controls.[11]

III. Effect of Proposed Changes:

Section 1. (Effect of Dissolution or Annulment of Marriage on Designation of Beneficiary for Certain Nonprobate Assets)

The bill voids the designation of a former spouse as a beneficiary of an interest in an asset that will be transferred or paid upon the death of the decedent if:

- The decedent's marriage was judicially dissolved or declared invalid before the decedent's death; and
- The designation was made before the dissolution or order invalidating the marriage.

The decedent's interest in the asset must pass as if the decedent's former spouse predeceased the decedent. The nonprobate assets covered by the bill include:

- a life insurance policy, qualified annuity, or other similar tax-deferred contract held within an employee benefit plan;
- an employee benefit plan;
- an individual retirement account;
- a payable-on-death account;
- a security or other account registered in a transfer-on-death form; and
- a life insurance policy, annuity or other similar contract that is not held within an employee benefit plan or tax-qualified retirement account.

However, the bill does not void a beneficiary designation:

- to the extent federal law provides otherwise;
- if the governing instrument as defined in the bill[12] expressly provides that the interest will be payable to the designated former spouse after the order of dissolution or order declaring the

[11] *Crawford v. Barker*, 64 So. 3d 1246, 1248 (Fla. 2011).
[12] "Governing instrument" is defined in the bill to mean "any writing or contract governing the disposition of all or part of an asset upon the death of the decedent."

marriage invalid and the instrument expressly provides that benefits will be payable to the decedent's former spouse;
- to the extent the disposition of the assets are governed by a will or trust;
- if a court order required the decedent to acquire or maintain the asset for the benefit of the former spouse or children of the marriage;
- if under terms of the order of dissolution or order declaring the marriage invalid, the decedent did not have the ability to unilaterally terminate or change the beneficiary or pay-on-death designation;
- if the designation of the decedent's former spouse as beneficiary is irrevocable under applicable law;
- if the contract or agreement is governed by the laws of another state;
- to an asset held in two or more names as to which the death of one co-owner vests ownership of the asset in the surviving co-owner or co-owners; or
- if the decedent remarries the person whose interest would otherwise have been revoked as a former spouse under the bill and the decedent and that person are married to one another at the time of the decedent's death.
- for state-administered retirement plans under chapter 121, Florida Statutes.

Payment Procedures

The bill outlines procedures and requirements for entities making payment of the decedent's interest in the following nonprobate assets: a life insurance policy, qualified annuity, or other similar tax-deferred contract held within an employee benefit plan; an employee benefit plan; or an individual retirement account.

If the governing instrument does not explicitly specify the relationship between the beneficiary designated in the instrument and the decedent, or if the governing instrument explicitly provides that the beneficiary is not the decedent's spouse, the payor is not liable for making any payment or transferring any interest in the account to the beneficiary.

If the governing instrument specifies the ***primary beneficiary as the spouse of the decedent***, the payor must examine the death certificate. If the death certificate provides that the decedent was married to the named beneficiary at the time of death, the payor may pay out the benefits to the named beneficiary. If the death certificate states that the decedent was not married, or was married to another individual other than the person specified on the account as the spouse, the payor is not liable for paying or transferring the interest in the asset to the secondary beneficiary under the governing instrument.

If the death certificate is silent as to the marital status of the decedent, the bill provides for the use of two form affidavits. One affidavit may be executed by an individual alleging to be the surviving spouse of the decedent. If the alleged surviving spouse executes the affidavit, certifying that he or she is the surviving spouse of the decedent and that the decedent was married to him or her at the time of the decedent's death, the payor is not liable for paying the account to such individual. The second affidavit may be executed by a secondary beneficiary who must certify that the primary beneficiary was not married to the decedent at the time of the decedent's death. The payor may also pay out the interest to the secondary beneficiary upon receipt of a properly executed affidavit.

Payors' Liability Extinguished

The bill provides that in the case of pay-on-death accounts, securities or other accounts registered in transfer-on-death form, and life insurance policies, annuities or other similar contracts not held within an employee benefit plan or a tax-qualified retirement account, the payor is not liable for making any payment on account of, or transferring any interest in, such assets to any beneficiary.[13]

A payor's immunity for making a payment in accordance with the criteria in the bill applies notwithstanding the payor's knowledge that the person to whom the asset is transferred is different from the person who would own the interest due to the dissolution of the decedent's marriage or declaration of the marriage's validity before the decedent's death. As such, a secondary beneficiary will have a cause of action against the former spouse who receives the payment or transfer of the assets described in the bill if the beneficiary designations were made void upon divorce or annulment.[14]

The bill does not affect the ownership of an interest in an asset as between the former spouse and any other person entitled to such interest, the rights of any purchaser for value of any such interest, the rights of any creditor of the former spouse or any other person entitled to such interest, or the rights and duties of any insurance company, financial institution, trustee, administrator, or other third party.

The provisions of the bill, relating to beneficiary designations, apply to all designations made by or on behalf of decedents dying on or after July 1, 2012, regardless of when the designation was made.

Section 2. The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[13] This bill is not intended to impose any additional due diligence requirements, requirements to review death certificates, on the payors of the assets described in s. 732.703(6), F.S. Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper on Effect of Dissolution or Invalidity of Marriage on Disposition of Certain Assets at Death* (on file with the Senate Committee on Judiciary).

[14] "The primary purpose of [s. 732.703, F.S.,] is to create the basis for a cause of action for accounts that are paid out to former spouses as opposed to intended beneficiaries." Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper on Effect of Dissolution or Invalidity of Marriage on Disposition of Certain Assets at Death* (on file with the Senate Committee on Judiciary).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Companies that administer the nonprobate assets covered by the bill may incur additional costs to implement the bill. Such costs are difficult to estimate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Budget Subcommittee on General Government Appropriations on February 28, 2012:
The committee substitute exempts state-administered retirement plans under chapter 121, Florida Statutes.

CS by Judiciary on January 25, 2012:
The committee substitute deletes sections 2 and 3 of the original bill. Those sections would have terminated upon divorce or annulment the authority of a former spouse to serve as a health care surrogate or to serve as a surrogate for the purposes of a living will. Current law appears to address this circumstance in s. 765.104(2), F.S., which states, "Unless otherwise provided in the advance directive or in an order of dissolution or annulment of marriage, the dissolution or annulment of marriage of the principal revokes the designation of the principal's former spouse as a surrogate."

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

591122

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Jones) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 130 - 134
4 and insert:
5 surviving coowner or coowners;
6 (i) If the decedent remarries the person whose interest
7 would otherwise have been revoked under this section and the
8 decedent and that person are married to one another at the time
9 of the decedent's death; or
10 (j) To state-administered retirement plans under chapter
11 121.

845048

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Jones) recommended the following:

1 **Senate Amendment**
2
3 Delete line 43
4 and insert:
5 means an asset described in subsection (3), except as provided
6 in paragraph (4)(j).

By the Committee on Judiciary; and Senator Simmons

590-02330-12 20121146c1

A bill to be entitled

An act relating to effect of dissolution or annulment of marriage on certain designations; creating s. 732.703, F.S.; providing definitions; providing that a designation made by or on behalf of a decedent providing for the payment or transfer at death of an interest in an asset to or for the benefit of the decedent's former spouse shall become void if the decedent's marriage was judicially dissolved or declared invalid before the decedent's death, if the designation was made prior to the dissolution or order; providing for disposition of assets; providing for treatment of certain retirement plans; specifying assets subject to provisions; providing exceptions; providing that payors are not liable for payments or transfers to beneficiaries contrary to this provision in certain circumstances; specifying the form of an affidavit that may be used to relieve a payor of liability for a transfer if the death certificate is silent as to the decedent's marital status at the time of death; providing that the payor is not liable for making any payment on account of, or transferring any interest in, certain types of assets to a beneficiary; providing that certain provisions apply notwithstanding the payor's knowledge that the person to whom the asset is transferred is different from the person who would own the interest due to the dissolution of the decedent's marriage or declaration of the marriage's validity before the decedent's

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590-02330-12 20121146c1

death; providing that the provisions do not affect specified interests and rights; providing applicability; providing an effective date.

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

Section 1. Section 732.703, Florida Statutes, is created to read:

732.703 Effect of divorce, dissolution, or invalidity of marriage on disposition of certain assets at death.—

(1) As used in this section, unless the context requires otherwise, the term:

(a) "Asset," when not modified by other words or phrases, means an asset described in subsection (3).

(b) "Beneficiary" means any person designated in a governing instrument to receive an interest in an asset upon the death of the decedent.

(c) "Death certificate" means a certified copy of a death certificate issued by an official or agency for the place where the decedent's death occurred.

(d) "Employee benefit plan" means any funded or unfunded plan, program, or fund established by an employer to provide an employee's beneficiaries with benefits that may be payable on the employee's death.

(e) "Governing instrument" means any writing or contract governing the disposition of all or any part of an asset upon the death of the decedent.

(f) "Payor" means any person obligated to make payment of the decedent's interest in an asset upon the death of the

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59 decedent, and any other person who is in control or possession
60 of an asset.
61 (g) "Primary beneficiary" means a beneficiary designated
62 under the governing instrument to receive an interest in an
63 asset upon the death of the decedent who is not a secondary
64 beneficiary. A person who receives an interest in the asset upon
65 the death of the decedent due to the death of another
66 beneficiary prior to the decedent's death is also a primary
67 beneficiary.
68 (h) "Secondary beneficiary" means a beneficiary designated
69 under the governing instrument who will receive an interest in
70 an asset if the designation of the primary beneficiary is
71 revoked or otherwise cannot be given effect.
72 (2) A designation made by or on behalf of the decedent
73 providing for the payment or transfer at death of an interest in
74 an asset to or for the benefit of the decedent's former spouse
75 is void as of the time the decedent's marriage was judicially
76 dissolved or declared invalid by court order prior to the
77 decedent's death, if the designation was made prior to the
78 dissolution or court order. The decedent's interest in the asset
79 shall pass as if the decedent's former spouse predeceased the
80 decedent. An individual retirement account described in s. 408
81 or s. 408A of the Internal Revenue Code of 1986, or an employee
82 benefit plan, may not be treated as a trust for purposes of this
83 section.
84 (3) Subsection (2) applies to the following assets in which
85 a resident of this state has an interest at the time of the
86 resident's death:
87 (a) A life insurance policy, qualified annuity, or other

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88 similar tax-deferred contract held within an employee benefit
89 plan.
90 (b) An employee benefit plan.
91 (c) An individual retirement account described in s. 408 or
92 s. 408A of the Internal Revenue Code of 1986, including an
93 individual retirement annuity described in s. 408(b) of the
94 Internal Revenue Code of 1986.
95 (d) A payable-on-death account.
96 (e) A security or other account registered in a transfer-
97 on-death form.
98 (f) A life insurance policy, annuity, or other similar
99 contract that is not held within an employee benefit plan or a
100 tax-qualified retirement account.
101 (4) Subsection (2) does not apply:
102 (a) To the extent that controlling federal law provides
103 otherwise;
104 (b) If the governing instrument is signed by the decedent,
105 or on behalf of the decedent, after the order of dissolution or
106 order declaring the marriage invalid and such governing
107 instrument expressly provides that benefits will be payable to
108 the decedent's former spouse;
109 (c) To the extent a will or trust governs the disposition
110 of the assets and s. 732.507(2) or s. 736.1005 applies;
111 (d) If the order of dissolution or order declaring the
112 marriage invalid requires that the decedent acquire or maintain
113 the asset for the benefit of a former spouse or children of the
114 marriage, payable upon the death of the decedent either outright
115 or in trust, only if other assets of the decedent fulfilling
116 such a requirement for the benefit of the former spouse or

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117 children of the marriage do not exist upon the death of the
118 decedent;
119 (e) If, under the terms of the order of dissolution or
120 order declaring the marriage invalid, the decedent could not
121 have unilaterally terminated or modified the ownership of the
122 asset, or its disposition upon the death of the decedent;
123 (f) If the designation of the decedent's former spouse as a
124 beneficiary is irrevocable under applicable law;
125 (g) If the instrument directing the disposition of the
126 asset at death is governed by the laws of a state other than
127 this state;
128 (h) To an asset held in two or more names as to which the
129 death of one coowner vests ownership of the asset in the
130 surviving coowner or coowners; or
131 (i) If the decedent remarries the person whose interest
132 would otherwise have been revoked under this section and the
133 decedent and that person are married to one another at the time
134 of the decedent's death.
135 (5) In the case of an asset described in paragraph (3)(a),
136 paragraph (3)(b), or paragraph (3)(c), unless payment or
137 transfer would violate a court order directed to, and served as
138 required by law on, the payor:
139 (a) If the governing instrument does not explicitly specify
140 the relationship of the beneficiary to the decedent or if the
141 governing instrument explicitly provides that the beneficiary is
142 not the decedent's spouse, the payor is not liable for making
143 any payment on account of, or transferring any interest in, the
144 asset to the beneficiary.
145 (b) As to any portion of the asset required by the

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146 governing instrument to be paid after the decedent's death to a
147 primary beneficiary explicitly designated in the governing
148 instrument as the decedent's spouse:
149 1. If the death certificate states that the decedent was
150 married at the time of his or her death to that spouse, the
151 payor is not liable for making a payment on account of, or for
152 transferring an interest in, that portion of the asset to such
153 primary beneficiary.
154 2. If the death certificate states that the decedent was
155 not married at the time of his or her death, or if the death
156 certificate states that the decedent was married to a person
157 other than the spouse designated as the primary beneficiary at
158 the time of his or her death, the payor is not liable for making
159 a payment on account of, or for transferring an interest in,
160 that portion of the asset to a secondary beneficiary under the
161 governing instrument.
162 3. If the death certificate is silent as to the decedent's
163 marital status at the time of his or her death, the payor is not
164 liable for making a payment on account of, or for transferring
165 an interest in, that portion of the asset to the primary
166 beneficiary upon delivery to the payor of an affidavit validly
167 executed by the primary beneficiary in substantially the
168 following form:
169
170 STATE OF _____
171 COUNTY OF _____
172 Before me, the undersigned authority, personally
173 appeared ...(type or print affiant's name)...
174 ("Affiant"), who swore or affirmed that:

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175 1. ...(Type or print name of decedent)...
176 ("Decedent") died on ...(type or print the date of the
177 Decedent's death)....
178 2. Affiant is a "primary beneficiary" as that
179 term is defined in Section 732.703, Florida Statutes.
180 Affiant and Decedent were married on ...(type or print
181 the date of marriage)..., and were legally married to
182 one another on the date of the Decedent's death.
183
184 _____
185 ...(Affiant)...
186 Sworn to or affirmed before me by the affiant who
187 is personally known to me or who has produced
188 ...(state type of identification)... as identification
189 this .... day of ...(month)..., ...(year)....
190 ...(Signature of Officer)...
191 ...(Print, Type, or Stamp Commissioned name of Notary
192 Public)...
193
194 4. If the death certificate is silent as to the decedent's
195 marital status at the time of his or her death, the payor is not
196 liable for making a payment on account of, or for transferring
197 an interest in, that portion of the asset to the secondary
198 beneficiary upon delivery to the payor of an affidavit validly
199 executed by the secondary beneficiary affidavit in substantially
200 the following form:
201
202 STATE OF _____
203 COUNTY OF _____

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

204 Before me, the undersigned authority, personally
205 appeared ...(type or print affiant's name)...
206 ("Affiant"), who swore or affirmed that:
207 1. ...(Type or print name of decedent)...
208 ("Decedent") died on ...(type or print the date of the
209 Decedent's death)....
210 2. Affiant is a "secondary beneficiary" as that
211 term is defined in Section 732.703, Florida Statutes.
212 On the date of the Decedent's death, the Decedent was
213 not legally married to the spouse designated as the
214 "primary beneficiary" as that term is defined in
215 Section 732.703, Florida Statutes.
216 Sworn to or affirmed before me by the affiant who
217 is personally known to me or who has produced
218 ...(state type of identification)... as identification
219 this .... day of ...(month)..., ...(year)....
220 ...(Signature of Officer)...
221 ...(Print, Type, or Stamp Commissioned name of Notary
222 Public)...
223
224 (6) In the case of an asset described in paragraph (3)(d),
225 paragraph (3)(e), or paragraph (3)(f), the payor is not liable
226 for making any payment on account of, or transferring any
227 interest in, the asset to any beneficiary.
228 (7) Subsections (5) and (6) apply notwithstanding the
229 payor's knowledge that the person to whom the asset is
230 transferred is different from the person who would own the
231 interest pursuant to subsection (2).
232 (8) This section does not affect the ownership of an

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233 interest in an asset as between the former spouse and any other
234 person entitled to such interest by operation of this section,
235 the rights of any purchaser for value of any such interest, the
236 rights of any creditor of the former spouse or any other person
237 entitled to such interest, or the rights and duties of any
238 insurance company, financial institution, trustee,
239 administrator, or other third party.
240 (9) This section applies to all designations made by or on
241 behalf of decedents dying on or after July 1, 2012, regardless
242 of when the designation was made.
243 Section 2. This act shall take effect July 1, 2012.

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THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2-28-12
Date

1146
Bill Number

Barcode

Name Martha Edenfield

Phone 850-222 3533

Address PO Box 10095
Street

E-mail martha@penningtonlaw.com

Tallahassee FL 32302
City State Zip

Job Title Attorney

Speaking: ☐ For ☐ Against ☐ Information

Appearing at request of Chair ☐

Subject Support the bill

Representing The Real Property, Probate + Trust Law Section of the Florida Bar

Lobbyist registered with Legislature: ☑ Yes ☐ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Budget - Subcommittee on Education Pre-K - 12 Appropriations, *Chair*
Agriculture
Budget
Budget - Subcommittee on Higher Education Appropriations
Judiciary
Rules - Subcommittee on Ethics and Elections
Reapportionment

SENATOR DAVID SIMMONS
Majority Whip
22nd District

February 1, 2012

The Honorable Alan Hays
324 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Hays:

I would like to respectfully request that you place Senate Bill 1146, Effect of Dissolution or Annulment of Marriage on Certain Designations on the next agenda for the Budget Subcommittee on General Government Appropriations.

Please feel free to contact me if you have any questions regarding this bill.

Sincerely yours,

David Simmons

cc: Jamie DeLoach, Staff Director for Budget Subcommittee on General Government Appropriations

REPLY TO:
☐ 251 Maitland Avenue, Suite 304, Altamonte Springs, FL 32701 (407) 262-7578
☐ 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5050

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/CS/SB 1178

INTRODUCER: Budget Subcommittee on General Government Appropriations; Community Affairs Committee; Environmental Preservation and Conservation Committee; and Senator Hays

SUBJECT: Water Supply

DATE: February 28, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	**Fav/CS**
2.	Uchino	Yeatman	CA	**Fav/CS**
3.	Pigott	DeLoach	BGA	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The Committee Substitute (CS) requires the water management districts (WMDs) to submit to the Department of Environmental Protection (DEP) an annual priority list and schedule identifying any proposed reservations and listed water bodies that may be affected by activities in an adjacent WMD for which development of a reservation or a minimum flow or level (MFL) may be appropriate. It creates a process for the DEP to adopt a reservation, MFL, or a recovery or prevention strategy for application in a WMD, which may apply rules without having to adopt them. The CS authorizes the WMDs to enter into interagency agreements to share capital resources for resource management activities affecting multiple WMDs. It also clarifies that cooperative funding programs are not subject to the rulemaking requirements of ch. 120, F.S.

The CS specifies that alternative water supply (AWS) development projects are eligible for consumptive use permits (CUPs) of at least 30 years. The permits are subject to compliance reports and WMD water shortage orders. The CS provides AWS permits may be reduced to prevent unanticipated harm to water resources or existing legal uses. The CS also specifies a CUP may not be issued for nonbrackish groundwater supplies or nonalternative water supplies.

The CS clarifies entities have the option to apply for at least 20-year permits or at least 30-year permits.

The CS authorizes WMD governing boards to provide group insurance for employees of other WMDs and proscribes the manner in which it may be accomplished. It also clarifies that all WMDs shall jointly develop regional water supply plans with water supply entities in their respective districts. Lastly, the CS creates the Study Committee on Investor-Owned Water and Wastewater Utility Systems (committee) with enumerated membership and associated requirements.

This CS substantially amends ss. 373.042, 373.046, 373.171, 373.236, 373.605 and 373.709 of the Florida Statutes and creates an unnumbered section of law.

II. Present Situation:

Consumptive Use Permits

A CUP establishes the duration and type of water use as well as the maximum amount that may be withdrawn daily. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the issuing WMD or the DEP and may not be harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as "the three-prong test." Specifically, the proposed water use must:

- be a "reasonable-beneficial use" as defined in s. 373.019(16), F.S.;
- not interfere with any presently existing legal use of water; and
- be consistent with the public interest.

The Three-Prong Test

"Reasonable-beneficial use" is defined as "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest."[1] The Legislature has declared water a public resource belonging to the public, therefore, wasteful uses of water are not allowed even if there are sufficient resources to meet all other users.

To that end, the DEP has promulgated the Water Resource Implementation Rule that incorporates interpretive criteria for implementing the reasonable-beneficial use standard based on common law and on water management needs.[2] These criteria include consideration of the quantity of water requested; the need, purpose, and value of the use; and the suitability of the source. The criteria also consider the extent and amount of harm caused, whether that harm extends to other lands, and the practicality of mitigating that harm by adjusting the quantity or method of use. Particular consideration is given to the use or reuse of lower quality water, and

[1] Section 373.019(16), F.S.
[2] *See generally* Rule 62-40, F.A.C.

the long-term ability of the source to supply water without sustaining harm to the surrounding environment and natural resources.[3]

The second element of the three-prong test protects the rights of existing legal uses of water for the duration of their permits.[4] New CUPs cannot be issued if they would conflict with an existing legal use. This criterion is only protective of water users that actually withdraw water, not passive users of water resources.[5]

The final element of the three-prong test requires water use to be consistent with the "public interest." While the DEP's Water Resource Implementation Rule provides criteria for determining the "public interest," determination of a public interest is made on a case-by-case basis during the permitting process.[6] However, the WMDs and the DEP have broad authority to determine which uses best serve the public interest if there are not sufficient resources to fulfill all applicants' CUPs. In the event that two or more competing applications are deemed to be equally in the public interest, the WMDs or the DEP gives preference to renewal applications.[7]

Duration of Permits and Compliance Reviews

Pursuant to s. 373.236(1), F.S., CUPs must be granted for 20 years if requested by the applicant and there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. If either of these requirements is not met, a CUP with a shorter duration may be issued to reflect the period for which reasonable assurances can be provided. The WMDs and the DEP may determine the duration of permits based upon a reasonable system of classification according to the water source, the type of use, or both.

Pursuant to s. 373.236(4), F.S., when necessary to maintain "reasonable assurance" that initial conditions for issuance of a 20-year CUP can continue to be met, a WMD or the DEP may require a permittee to produce a compliance report every 10 years.[8] A compliance report must contain sufficient data to maintain reasonable assurance that the initial permit conditions are met, including original demand projections. After reviewing a compliance report, a WMD or the DEP may modify the permit, including reductions or changes in the initial allocations of water, to ensure the water use comports with initial conditions for issuance of the CUP. Permit modifications made by a WMD or the DEP during a compliance review cannot be subject to competing applications for water use if the permittee is not seeking additional water allocations or changes in water sources.

---

[3] *Southwest Florida Water Management District v. Charlotte County*, 774 So. 2d 903, 911 (Fla. 2d DCA 2001) (upholding the WMD's use of criteria for implementing the reasonable-beneficial use standard).
[4] Section 373.223(1)(b), F.S.
[5] *See Harloff v. City of Sarasota*, 575 So. 2d 1324 (Fla. 2d DCA 1991) (holding a municipal wellfield was an existing legal user and should be afforded protection). In contrast, *see West Coast Regional Water Supply Authority v. Southwest Florida Water Management District*, 89 ER F.A.L.R. 166 (Final Order, Aug. 30, 1989) (holding a farmer who passively relied on a higher water table to grow nonirrigated crops and standing surface water bodies to water cattle was not an existing legal user).
[6] *Supra* note 2.
[7] *See* s. 373.233, F.S.
[8] In limited instances, the statute authorizes more frequent "look backs". For example, the Suwannee River WMD may require a compliance report every five years through July 1, 2015, after which the "look-back" period returns to 10 years.

Consumptive Use Permits for the Development of Alternative Water Supplies

Section 373.019(1), F.S., defines "alternative water supplies" as:

> [S]alt water; brackish surface and groundwater; surface water captured predominately during wet-weather flows; sources made available through the addition of new storage capacity for surface or groundwater, water that has been reclaimed after one or more public supply, municipal, industrial, commercial, or agricultural uses; the downstream augmentation of water bodies with reclaimed water; stormwater; and any other water supply source that is designated as nontraditional for a water supply planning region in the applicable regional water supply plan.

CUPs issued pursuant to s. 373.236(5), F.S., for the development of AWS must be issued for at least 20 years. If the permittee issues bonds to finance construction of the AWS project, the permit must be extended to expire upon retirement of the bonds if the permittee requests an extension during the term of the permit and the issuing WMD's governing board determines the use will continue to meet the CUP's conditions. Compliance reports may also be required every 10 years for CUPs issued for AWS projects. WMDs generally issue CUPS with a maximum term of 20 years for the development of AWS, although some 30-year CUPs for AWS projects have been issued.

Water Resources and WMD Boundaries

The WMDs were established along surface hydrological boundaries. As Florida's population has grown and groundwater pumping increased, withdrawals along the boundary of one WMD can cause significant harm to the resources in an adjoining WMD. Such effects are becoming more common as technological advances have provided better data on groundwater resources. While a WMD has the authority to protect all water resources, including water bodies in an adjacent WMD, it cannot use the adopted reservation, MFL, and recovery and prevention strategies adopted by a neighboring WMD without separately going through its own rule making process. The current statutory authority may result in duplication of effort and rulemaking activity when a withdrawal affects water bodies in adjoining WMDs. It can also create inconsistent and inequitable treatment of water use permit applicants.

The goal of establishing MFLs is to ensure there is enough water to satisfy the consumptive use of the water resource without causing significant harm to the resource. By establishing MFLs for non-consumptive uses, the WMDs are able to determine how much water is available for consumptive use. This is useful when evaluating a new CUP application.

Section 373.042, F.S., requires the DEP or WMDs to establish MFLs for priority water bodies to prevent significant harm from water withdrawals. However, the WMDs have thus far been solely responsible for establishing MFLs. The WMDs submit annual MFL priority lists to the DEP for review and approval. MFLs are considered rules by the WMDs and are subject to chapter 120, F.S., challenges. MFLs are established using the best available data and are independently and scientifically peer reviewed. To date, 322 MFLs have been adopted and 200 are on the current priority lists from the WMDs.

Interagency Agreements

Subsection 373.046(6), F.S., currently allows the WMDs to enter into an interagency agreement designating one WMD with regulatory responsibilities for the geographic area of projects that affect multiple WMDs or a local government. However, the WMDs do not have the statutory authority to enter into similar agreements for non-regulatory resource management activities, studies, or projects. In addition, a WMD may not fund resource management activities in another WMD even if some benefits inure to it from the activities.

Cooperative Funding Programs

Senate Bill 2080, passed during the 2009 Regular Session, addressed cooperative funding programs.[9] However, its statutory placement in s. 373.0363, F.S., limits its application instead of applying generally to all cooperative funding programs, as was intended. Cooperative funding is not considered a regulatory program. It is a cost-share program for local governments for projects that develop sustainable water resources, provide flood protection, and enhance conservation efforts. Therefore, if a district needed to adopt rules for all of the procedures and policies in a cooperative funding program, it would be unable to adapt or modify the program as necessary.

Health Insurance Benefits for Employees of WMDs

Section 373.605, F.S., authorizes the WMDs to provide group insurance programs for their employees. However, no legislative authority exists for WMDs to pool their employees to negotiate better insurance rates. Each WMD provides its own insurance programs. WMDs with smaller workforces have difficulty providing plans with adequate coverage at competitive rates. In addition, the quality of health care plans provided currently varies widely among WMDs.

Regional Water Supply Planning

The WMDs are required to conduct water supply needs assessments. A WMD that determines existing resources will not be sufficient to meet reasonable-beneficial uses for the planning period must prepare a regional water supply plan.[10] The plans must contain:

- A water supply development component,
- A water resource development component,
- A recovery and prevention strategy,
- A funding strategy,
- The impacts on the public interest, costs, natural resources, etc.,
- Technical data and information,
- Any MFLs established for the planning area,
- The water resources for which future MFLs must be developed, and
- An analysis of where variances may be used to create water supply development or water resource development projects.[11]

[9] Chapter 2009-243, s. 1, L.O.F.
[10] *See* s. 373.709, F.S.

Currently, only the Southwest Florida WMD is required to develop jointly the water supply development component with a regional water supply authority.[12]

Investor-Owned Water and Wastewater Utilities

The specific regulatory entities that set rates and service in the state vary. For privately-owned utilities operating within a single county, the county has the option to regulate rates and service or allow the Public Service Commission (PSC) to regulate those utilities.[13] The PSC currently has jurisdiction over privately-owned water and wastewater utilities in 36 of the 67 counties in Florida. Regardless of whether the county has opted to regulate privately-owned utilities, the PSC has jurisdiction over all water or wastewater utility systems whose service transverses county boundaries, except for systems owned and regulated by intergovernmental authorities.[14] Systems owned, operated, managed, or controlled by governmental authorities are not subject to PSC regulation.[15]

For regulatory purposes, the PSC classifies utilities into one of three categories based on annual operating revenues:[16]

- Class A – Operating revenues greater than $1,000,000.
- Class B – Operating revenues greater than $200,000 but less than $1,000,000.
- Class C – Operating revenues less than $200,000.

Currently, there are 15 Class A utilities, 33 Class B utilities, and 96 Class C utilities under the PSC's jurisdiction. These utilities serve approximately 3 to 4 percent of Florida's population. The remaining population is served either by private utilities in non-jurisdictional counties, by statutorily exempt utilities (such as municipal utilities, cooperatives, and non-profits), or by wells and septic tanks. The 15 Class A utilities serve approximately 50 percent of the customers for all classes. In general, filing requirements, fees, penalties, and regulatory treatment are eased for Class B and C utilities.

In September 2011, the PSC conducted an informal staff workshop in Orlando to address challenges facing the water and wastewater industry. The PSC invited the industry stakeholders to this workshop and indicated that the workshop would provide an open forum to look at probable solutions to the challenges facing utilities.[17] The PSC invited input and discussion concerning currently available options as well as solutions that may require regulatory or statutory changes.

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[11] Section 373.709(2), F.S.
[12] Section 373.709(3), F.S.
[13] Section 367.171, F.S. If a county chooses to allow regulation by the PSC, it may rescind this choice only after 10 continuous years of PSC regulation.
[14] *Id.*
[15] Section 367.022(2), F.S.
[16] Rules 25-30.110(4) and 25-30.115, F.A.C. As noted in these rules, this classification system is used by the National Association of Regulatory Utility Commissioners for publishing its system of accounts.
[17] PSC, *Re: Staff Workshop on Challenges Facing the Water and Wastewater Industry*, *available at* http://www.psc.state.fl.us/common/controls/workshop09_29_11.pdf (last visited Feb. 7, 2012).

Following the informal staff workshop, the PSC conducted a formal agency workshop in Tallahassee on November 3, 2011, to discuss solutions to increase efficiencies in the water and wastewater industry to minimize the effects of rates on consumers.[18] The main purpose of the workshop was to hear and address ideas to help alleviate financial strains on small water and wastewater utilities.[19]

The PSC heard discussion on several potential mechanisms to address these issues, including the creation of a legislative commission comprised of legislators, regulators, industry representatives, local government representatives, and customer representatives.[20] This proposal, drafted by the PSC's staff, provided that the committee would be staffed by the PSC staff and have use of the PSC's facilities. The proposal required that the committee meet at least four times, with two of those meetings held in areas where utility customers had been impacted by recent rate increases. The proposal required that the committee submit a report, including specific findings and legislative recommendations, to the Governor and the Legislature by December 31, 2012. The committee would terminate on June 30, 2012.

III. Effect of Proposed Changes:

Section 1 amends s. 373.042, F.S., requiring each WMD to submit a priority list and schedule to the DEP identifying any reservations proposed by the WMD to be established and those listed water bodies that have the potential to be affected by withdrawals in an adjacent WMD for which DEP adoption of a reservation or a MFL may be appropriate.

The CS requires a WMD to provide the DEP with technical information and staff support for the development of a reservation, MFL, or recovery or prevention strategy to be adopted by rule by the DEP. A reservation, MFL, or recovery or prevention strategy adopted by rule by the DEP must be applied by the WMDs without adoption of such reservation, minimum flow or level, or recovery or prevention strategy by rule. This change in law will allow the WMDs to use DEP-adopted rules to consider significant harm to water resources outside of the issuing WMD's boundaries.

Section 2 amends s. 373.046, F.S., authorizing the WMDs to enter into interagency agreements to share funding and resource management responsibilities for activities, studies, or projects for resources that affect multiple WMDs in a geographic area. This section does not apply to shared regulatory responsibilities already provided for in subsection 373.046(6), F.S. In addition, this section allows a WMD to provide funding assistance to another WMD for resource management activities, studies, or projects if the funding WMD receives some or all of the benefits of the resource management activities. The bill also clarifies that it does not impair any interagency agreement in effect on July 1, 2012.

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[18] PSC, *Notice of Commission Workshop*, *available at* http://www.psc.state.fl.us/library/filings/11/07437-11/07437-11.pdf (last visited Feb. 7, 2012).
[19] PSC, *Workshop Transcript* (2-3), *available at* http://www.psc.state.fl.us/library/filings/11/08324-11/08324-11.pdf (last visited Feb. 7, 2012).
[20] PSC, *Workshop Materials*, *available at* http://www.psc.state.fl.us/agendas/workshops/Materials.11.03.2011.pdf (last visited Feb. 7, 2012).

Section 3 amends s. 373.171, F.S., clarifying that a WMD's cooperative funding programs are not subject to ch. 120, F.S., rulemaking requirements. However, parties may challenge programs pursuant to s. 120.569, F.S., if any part of the program affects their substantial interests.

Section 4 amends s. 373.236, F.S., clarifying that AWS permits issued for at least 20 years are subject to the reasonable assurance provisions currently required by the DEP and WMDs. It directs the DEP or the WMDs to issue permits for the development of AWS projects for at least 30 years for permits issued on or after July 1, 2012, if the proper reasonable assurance is provided. If the permittee issues bonds to finance the project, completes the project and requests an extension of the CUP duration, the CUP must be extended for a maximum of seven years. This will allow the entity that develops the AWS project to operate the AWS project for 30 years after construction in order to repay 30-year bonds. The seven-year extension may be retroactively applied to any 30-year AWS permit issued between June 1, 2011, and July 1, 2012.

CUPs issued pursuant to this CS are subject to compliance reports; however, the quantity of alternative water allocated under the permit cannot be reduced during the compliance review if bonds that financed the project are outstanding. This provision does not apply to adopted districtwide water shortage orders or when an AWS permit results in unanticipated harm to water resources or existing legal uses.

The CS clarifies that CUPs cannot be issued for AWS projects for nonbrackish groundwater supplies (i.e., fresh water) or nonalternative water supplies. It also clarifies that entities may apply for an AWS permit under either ss. 373.236(5)(a) or (b), F.S.

Section 5 amends s. 373.605, F.S., authorizing the governing board of a WMD to offer the employees of other WMDs group insurance in the same manner as other public employees pursuant to ss. 112.08-112.11 and 112.14, F.S. It also deletes an obsolete provision.

Section 6 amends 373.709, F.S., directing the WMDs to jointly develop the water supply development component of a regional water supply plan with a regional water supply authority. Currently, only the Southwest Florida WMD is required to do so.

Section 7 creates an unnumbered section of law that creates the Study Committee on Investor-Owned Water and Wastewater Utility Systems (committee). The committee will consist of 18 residents of Florida, 15 of who are voting members. The voting members consist of:

- One member of the Senate appointed by the President of the Senate;
- One member of the House of Representatives appointed by the Speaker of the House of Representatives;
- Two representatives of Class A investor-owned water or wastewater utilities appointed by the Governor;
- One representative of a Class B investor-owned water or wastewater utility appointed by the Governor;
- One representative of a Class C investor-owned water or wastewater utility appointed by the Governor;
- One customer of a Class A investor-owned water or wastewater utility appointed by the Governor;

- One customer of a Class B or C investor-owned water or wastewater utility appointed by the Governor;
- One representative of a WMD appointed by the Governor;
- One representative of the Florida Section of the American Water Works Association appointed by the Governor;
- One representative of the Florida Rural Water Association appointed by the Governor;
- One representative of a water or wastewater system owned or operated by a municipal or county government appointed by the Governor;
- One representative of a governmental authority created pursuant to ch. 163, F.S., appointed by the Governor;
- The chair of a county commission that regulates investor-owned water or wastewater utility systems appointed by the Governor; and
- One representative of a county health department appointed by the Governor.

The three nonvoting members are:
- The chair of the PSC, or a commissioner chosen by the chair, who will serve as the committee's chair;
- The Secretary of Environmental Protection, or his or her designee; and
- The Public Counsel, or his or her designee.

The CS requires members to serve until the committee work is complete and the committee is terminated. A member that no longer serves in the representative position required for the appointment will be replaced by the individual who serves in the position. The members will not be compensated but are entitled to reimbursement for reasonable expenses to carry out their duties. Additionally, the appointing authority may remove or suspend a member appointed by it for cause, including failure to attend two or more committee meetings.

The CS directs the PSC to provide staff, information, assistance and facilities for the committee, as necessary. The CS specifies that funding for the committee will come from the Florida Public Service Regulatory Trust Fund.

The CS specifies the committee must identify issues facing investor-owned water and wastewater utility systems, particularly small systems, and their customers, and research possible solutions. In addition, the CS requires the committee to consider:
- The ability of a small investor-owned water and wastewater utility to achieve economies of scale when purchasing equipment, commodities or services.
- The availability of low-interest loans to a small, privately-owned water or wastewater utility.
- Tax incentives or exemptions available to a small water or wastewater utility.
- The impact on customer rates if a utility purchases an existing water or wastewater utility system.
- The impact on customer rates of a utility providing service through a reseller.
- Other issues that the committee identifies during its investigation.

The CS does not specify where meetings must occur but requires the committee meet a minimum of four times; however, at least two meetings must be held in an area "centrally located to utility customers who have recently been affected by a significant increase in water or wastewater

utility rates." The CS directs that the public must be given the opportunity to speak at these meetings.

The CS requires the committee to prepare and submit a report to the Governor and Legislature by February 15, 2013. The report must detail the committee's findings and make specific legislative recommendations including proposed legislation. If the committee finds an issue that may be addressed by agency rulemaking, it must submit the report to the respective agency with proposed rules. The CS provides that this unnumbered section of law expires and the committee terminates on June 30, 2013.

Section 8 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Most bonds issued to fund the capital construction costs of an AWS project are 30-year bonds; however, most AWS CUPs are only issued for 20 years. This discrepancy may affect the interest rate the AWS developer has to pay to launch the bonds. The impact of this is indeterminate but may be significant if the uncertainty in renewing a 20-year CUP for a 30-year bond has significant weight in the rating agencies' models. For example, an A-rated $100 million bond may cost $7-10 million more over the life of the bond as compared to an AAA-rated bond. In addition, by allowing an up to seven-year extension under certain circumstances, AWS developers will be able to operate the AWS project without having to reapply for a CUP at the end of the initial 30-year duration. This will ensure operation of the AWS project for a full 30-year term.

C. Government Sector Impact:

The CS may have a negative but indeterminate impact on permit revenues for the DEP or the WMDs; however, any impacts are expected to be met by existing staff and resources.

The CS will result in a positive but indeterminate fiscal impact to the WMDs due to reductions in rulemaking expenses and group insurance premiums. It may also allow for streamlining of some administrative and non-regulatory functions.

The CS requires the PSC to provide staff, information, assistance and facilities to support the committee. In addition, expenses will be incurred by the committee for its operations and reimbursement for members' reasonable expenses. The fiscal for this CS will be addressed in the General Appropriations Act and contingent upon passage of the CS.

VI. Technical Deficiencies:

None.

VII. Related Issues:

By the Legislature's amending this section to explicitly require reasonable assurance for a variety of CUPs, a court may find that the Legislature implicitly excluded the necessity to provide reasonable assurance for a 50-year permit for certain public or government works. It would be the only permit category left out of reasonable assurance requirements of s. 373.236, F.S. Currently the WMDs require reasonable assurance for the up to 50-year permit.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Budget Subcommittee on General Government Appropriations on February 28, 2012:

- Requires a WMD to submit to the DEP an annual priority list and schedule identifying listed water bodies, any proposed reservations and listed water bodies that may be affected by activities in an adjacent WMD;
- Creates a process for the DEP to adopt a reservation, MFL, or a recovery or prevention strategy for application in a WMD, which may apply the rule without adopting it;
- Authorizes the WMDs to enter into interagency agreements to share capital resources for resource management activities affecting multiple WMDs;
- Clarifies cooperative funding programs are not subject to the rulemaking requirements of ch. 120, F.S.;
- Authorizes a WMD to provide group insurance for employees of another WMD;
- Requires joint development of regional water supply plans by all WMDs and the respective water supply entities within their districts; and
- Clarifies if the committee finds an issue that may be addressed by agency rulemaking, it must submit the report to the respective agency with proposed rules.

CS/CS by Community Affairs on February 6, 2012:

The CS creates the Study Commission on Investor-Owned Water and Wastewater Utility Systems with associated requirements.

CS by Environmental Preservation and Conservation on January 30, 2012:

- Clarifies reasonable assurance must be provided for the at least 20-year permit;
- Deletes the list of entities that may apply for an extended AWS permit;
- Applies the seven-year extension retroactively to AWS permits issued between June 1, 2011, and July 1, 2012; and
- Provides for necessary permit allotment reductions if the permit results in unanticipated harm to the resource or existing legal uses.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
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	.	

The Committee on Budget Subcommittee on General Government Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsections (4) and (5) of section 373.042, Florida Statutes, are redesignated as subsections (5) and (6), respectively, a new subsection (4) is added to that section, and subsection (2) of that section is amended, to read:

373.042 Minimum flows and levels.—

(2) By November 15, 1997, and annually thereafter, each water management district shall submit to the department for review and approval a priority list and schedule for the

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13 establishment of minimum flows and levels for surface
14 watercourses, aquifers, and surface waters within the district.
15 The priority list and schedule shall ~~also~~ identify those listed
16 water bodies for which the district will voluntarily undertake
17 independent scientific peer review, any reservations proposed by
18 the district to be established pursuant to s. 373.223(4), and
19 those listed water bodies that have the potential to be affected
20 by withdrawals in an adjacent district for which department
21 adoption of a reservation pursuant to s. 373.223(4) or a minimum
22 flow or level pursuant to subsection (1) may be appropriate. By
23 March 1, 2006, and annually thereafter, each water management
24 district shall include its approved priority list and schedule
25 in the consolidated annual report required by s. 373.036(7). The
26 priority list shall be based upon the importance of the waters
27 to the state or region and the existence of or potential for
28 significant harm to the water resources or ecology of the state
29 or region, and shall include those waters which are experiencing
30 or may reasonably be expected to experience adverse impacts.
31 Each water management district's priority list and schedule
32 shall include all first magnitude springs, and all second
33 magnitude springs within state or federally owned lands
34 purchased for conservation purposes. The specific schedule for
35 establishment of spring minimum flows and levels shall be
36 commensurate with the existing or potential threat to spring
37 flow from consumptive uses. Springs within the Suwannee River
38 Water Management District, or second magnitude springs in other
39 areas of the state, need not be included on the priority list if
40 the water management district submits a report to the Department
41 of Environmental Protection demonstrating that adverse impacts

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42 are not now occurring nor are reasonably expected to occur from
43 consumptive uses during the next 20 years. The priority list and
44 schedule shall not be subject to any proceeding pursuant to
45 chapter 120. Except as provided in subsection (3), the
46 development of a priority list and compliance with the schedule
47 for the establishment of minimum flows and levels pursuant to
48 this subsection shall satisfy the requirements of subsection
49 (1).
50 (4) A water management district shall provide the
51 department with technical information and staff support for the
52 development of a reservation, minimum flow or level, or recovery
53 or prevention strategy to be adopted by rule by the department.
54 A reservation, minimum flow or level, or recovery or prevention
55 strategy adopted by rule by the department shall be applied by
56 the water management districts without adoption of such
57 reservation, minimum flow or level, or recovery or prevention
58 strategy by rule.
59 Section 2. Subsection (7) is added to section 373.046,
60 Florida Statutes, to read:
61 373.046 Interagency agreements.—
62 (7) If the geographic area of a resource management
63 activity, study, or project crosses water management district
64 boundaries, the affected districts may designate a single
65 affected district to conduct all or part of the applicable
66 resource management responsibilities under this chapter, with
67 the exception of those regulatory responsibilities that are
68 subject to subsection (6). If funding assistance is provided to
69 a resource management activity, study, or project, the district
70 providing the funding must ensure that some or all of the

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71 benefits accrue to the funding district. This subsection does
72 not impair any interagency agreement in effect on July 1, 2012.
73 Section 3. Subsection (5) is added to section 373.171,
74 Florida Statutes, to read:
75 373.171 Rules.—
76 (5) Cooperative funding programs are not subject to the
77 rulemaking requirements of chapter 120. However, any portion of
78 an approved program which affects the substantial interests of a
79 party is subject to s. 120.569.
80 Section 4. Subsection (5) of section 373.236, Florida
81 Statutes, is amended to read:
82 373.236 Duration of permits; compliance reports.—
83 (5)(a) Permits approved for the development of alternative
84 water supplies shall be granted for a term of at least 20 years
85 if there is sufficient data to provide reasonable assurance that
86 the conditions for permit issuance will be met for the duration
87 of the permit. However, if the permittee issues bonds for the
88 construction of the project, upon request of the permittee
89 before ~~prior to~~ the expiration of the permit, the ~~that~~ permit
90 shall be extended for such additional time as is required for
91 the retirement of bonds, not including any refunding or
92 refinancing of such bonds, if ~~provided that~~ the governing board
93 determines that the use will continue to meet the conditions for
94 the issuance of the permit. Such a permit is subject to
95 compliance reports under subsection (4).
96 (b)1. Permits approved on or after July 1, 2012, for the
97 development of alternative water supplies shall be granted for a
98 term of at least 30 years if there is sufficient data to provide
99 reasonable assurance that the conditions for permit issuance

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100 will be met for the duration of the permit. If, within 7 years
101 after a permit is granted, the permittee issues bonds to finance
102 the project, completes construction of the project, and requests
103 an extension of the permit duration, the permit shall be
104 extended to expire upon the retirement of such bonds or 30 years
105 after the date construction of the project is complete,
106 whichever occurs later. However, a permit's duration may not be
107 extended by more than 7 years beyond the permit's original
108 expiration date. A 7-year permit extension, as described in this
109 subparagraph, shall be applicable to any 30-year permit for the
110 development of alternative water supplies granted between June
111 1, 2011, and July 1, 2012.
112 2. Permits issued under this paragraph are subject to
113 compliance reports under subsection (4). However, if the
114 permittee demonstrates that bonds issued to finance the project
115 are outstanding, the quantity of alternative water allocated in
116 the permit may not be reduced during a compliance report review
117 unless a reduction is needed to address unanticipated harm to
118 water resources or to existing legal uses present when the
119 permit was issued. A reduction required by an applicable water
120 shortage order shall apply to permits issued under this
121 paragraph.
122 3. Permits issued under this paragraph may not authorize
123 the use of nonbrackish groundwater supplies or nonalternative
124 water supplies.
125 (c) Entities that wish to develop alternative water
126 supplies may apply for a permit under paragraph (a) or paragraph
127 (b).
128 Section 5. Section 373.605, Florida Statutes, is amended to

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129 read:
130 373.605 Group insurance for water management districts.—
131 (1) The governing board of a ~~any~~ water management district
132 may ~~is hereby authorized and empowered to~~ provide group
133 insurance for its employees in the same manner and with the same
134 provisions and limitations authorized for other public employees
135 by ss. 112.08, 112.09, 112.10, 112.11, and 112.14.
136 (2) The governing board of a water management district may
137 provide group insurance for its employees and the employees of
138 another water management district in the same manner and with
139 the same provisions and limitations authorized for other public
140 employees by ss. 112.08, 112.09, 112.10, 112.11, and 112.14. ~~Any~~
141 ~~and all insurance agreements in effect as of October 1, 1974,~~
142 ~~which conform to the provisions of this section are hereby~~
143 ~~ratified.~~
144 Section 6. Subsection (3) of section 373.709, Florida
145 Statutes, is amended to read:
146 373.709 Regional water supply planning.—
147 (3) The water supply development component of a regional
148 water supply plan which deals with or affects public utilities
149 and public water supply for those areas served by a regional
150 water supply authority and its member governments ~~within the~~
151 ~~boundary of the Southwest Florida Water Management District~~
152 shall be developed jointly by the authority and the applicable
153 water management district. In areas not served by regional water
154 supply authorities, or other multijurisdictional water supply
155 entities, and where opportunities exist to meet water supply
156 needs more efficiently through multijurisdictional projects
157 identified pursuant to paragraph (2)(a), water management

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158 districts are directed to assist in developing
159 multijurisdictional approaches to water supply project
160 development jointly with affected water utilities, special
161 districts, and local governments.
162 Section 7. Study Committee on Investor-Owned Water and
163 Wastewater Utility Systems.—
164 (1) There is created a Study Committee on Investor-Owned
165 Water and Wastewater Utility Systems, which shall be composed of
166 18 residents of the state designated and appointed as follows:
167 (a) The chair of the Public Service Commission or a
168 commissioner designated by the chair, who shall serve as chair
169 of the committee and shall be a nonvoting member of the
170 committee.
171 (b) The Secretary of Environmental Protection or his or her
172 designee, who shall be a nonvoting member of the committee.
173 (c) The Public Counsel or his or her designee, who shall be
174 a nonvoting member of the committee.
175 (d) One member of the Senate appointed by the President of
176 the Senate.
177 (e) One member of the House of Representatives appointed by
178 the Speaker of the House of Representatives.
179 (f) Two representatives of Class A investor-owned water or
180 wastewater utilities appointed by the Governor.
181 (g) One representative of a Class B investor-owned water or
182 wastewater utility appointed by the Governor.
183 (h) One representative of a Class C investor-owned water or
184 wastewater utility appointed by the Governor.
185 (i) One customer of a Class A investor-owned water or
186 wastewater utility appointed by the Governor.

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187 (j) One customer of a Class B or Class C investor-owned
188 water or wastewater utility appointed by the Governor.
189 (k) One representative of a water management district
190 appointed by the Governor.
191 (l) One representative of the Florida Section of the
192 American Water Works Association appointed by the Governor.
193 (m) One representative of the Florida Rural Water
194 Association appointed by the Governor.
195 (n) One representative of a water or wastewater system
196 owned or operated by a municipal or county government appointed
197 by the Governor.
198 (o) One representative of a governmental authority that is
199 created pursuant to chapter 163, Florida Statutes, appointed by
200 the Governor.
201 (p) The chair of a county commission that regulates
202 investor-owned water or wastewater utility systems appointed by
203 the Governor.
204 (q) One representative of a county health department
205 appointed by the Governor.
206 (2) The members shall serve until the work of the committee
207 is complete and the committee is terminated, except that if a
208 member no longer serves in the position required for
209 appointment, the member shall be replaced by the individual who
210 serves in such position.
211 (3) Members of the committee shall serve without
212 compensation, but are entitled to reimbursement for all
213 reasonable and necessary expenses, including travel expenses, in
214 the performance of their duties as provided in s. 112.061,
215 Florida Statutes.

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216 (4) An appointing authority may remove or suspend a member
217 appointed by it for cause, including, but not limited to,
218 failure to attend two or more meetings of the committee.
219 (5) The Public Service Commission shall provide the staff,
220 information, assistance, and facilities as are deemed necessary
221 for the committee to carry out its duties under this section.
222 Funding for the committee shall be paid from the Florida Public
223 Service Regulatory Trust Fund.
224 (6) The committee shall identify issues of concern of
225 investor-owned water and wastewater utility systems,
226 particularly small systems, and their customers and research
227 possible solutions. In addition, the committee shall consider:
228 (a) The ability of a small investor-owned water or
229 wastewater utility to achieve economies of scale when purchasing
230 equipment, commodities, or services.
231 (b) The availability of low interest loans to a small,
232 privately owned water or wastewater utility.
233 (c) Any tax incentives or exemptions, temporary or
234 permanent, which are available to a small water or wastewater
235 utility.
236 (d) The impact on customer rates if a utility purchases an
237 existing water or wastewater utility system.
238 (e) The impact on customer rates of a utility providing
239 service through the use of a reseller.
240 (f) Other issues that the committee identifies during its
241 investigation.
242 (7) The committee shall meet at the time and location as
243 the chair determines, except that the committee shall meet a
244 minimum of four times. At least two meetings must be held in an

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245 area that is centrally located to utility customers who have
246 recently been affected by a significant increase in water or
247 wastewater utility rates. The public shall be given the
248 opportunity to speak at the meetings.
249 (8) By February 15, 2013, the committee shall prepare and
250 submit to the Governor, the President of the Senate, and the
251 Speaker of the House of Representatives a report detailing its
252 findings pursuant to subsection (6) and making specific
253 legislative recommendations, including proposed legislation
254 intended to implement its recommendations. If the committee, in
255 its report, finds that an issue may effectively be addressed
256 through agency rulemaking, the committee shall submit to the
257 appropriate agencies its report and recommendations, including
258 proposed rules.
259 (9) This section expires and the committee terminates June
260 30, 2013.
261 Section 8. This act shall take effect July 1, 2012.
262
263 ========== T I T L E A M E N D M E N T ==========
264 And the title is amended as follows:
265 Delete everything before the enacting clause
266 and insert:
267 A bill to be entitled
268 An act relating to water management; amending s.
269 373.042, F.S.; requiring water management districts to
270 include certain reservations and water bodies in
271 priority lists and schedules; providing for the
272 adoption of certain reservations and minimum flows and
273 levels by the Department of Environmental Protection;

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274 requiring water management districts to apply, without
275 adopting by rule, reservations, minimum flows and
276 levels, and recovery and prevention strategies adopted
277 by the department; amending s. 373.046, F.S.;
278 authorizing water management districts to enter into
279 interagency agreements for resource management
280 activities, studies, or projects under specified
281 conditions; requiring that the district providing the
282 funding for an activity, study, or project ensure that
283 some or all of the benefits accrue to the funding
284 district; providing applicability; amending s.
285 373.171, F.S.; exempting cooperative funding programs
286 from certain rulemaking requirements; amending s.
287 373.236, F.S.; specifying conditions for the issuance
288 of permits for the development of alternative water
289 supplies; requiring that certain permits be granted
290 for at least 30 years; requiring that such permits be
291 extended under specified conditions; providing for a
292 reduction in permitted water quantities during
293 compliance reviews under certain circumstances;
294 excluding from application of the act a permit for
295 nonbrackish groundwater or nonalternative water
296 supplies; providing an option for the duration of an
297 alternative water supply permit to a county, special
298 district, regional water supply authority,
299 multijurisdictional water supply entity, or publicly
300 or privately owned utility; amending s. 373.605, F.S.;
301 authorizing water management districts to provide
302 group insurance for employees of other water

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303 management districts; removing obsolete provisions;
304 amending s. 373.709, F.S., relating to regional water
305 supply planning; removing a reference to the Southwest
306 Florida Water Management District; requiring a
307 regional water supply authority and the applicable
308 water management district to jointly develop the water
309 supply component of the regional water supply plan;
310 creating the Study Committee on Investor-Owned Water
311 and Wastewater Utility Systems; providing for
312 membership and terms of service; prohibiting
313 compensation of the members; providing for
314 reimbursement of the members for certain expenses;
315 providing for removal or suspension of members by the
316 appointing authority; requiring the Public Service
317 Commission to provide staff, information, assistance,
318 and facilities that are deemed necessary for the
319 committee to perform its duties; providing for funding
320 from the Florida Public Service Regulatory Trust Fund;
321 providing duties of the committee; providing for
322 public meetings; requiring the committee to report its
323 findings to the Governor, the Legislature, and
324 appropriate agencies and make certain recommendations;
325 providing for future termination of the committee;
326 providing an effective date.

By the Committees on Community Affairs; and Environmental Preservation and Conservation; and Senator Hays

578-02961B-12 20121178c2

A bill to be entitled

An act relating to water supply; amending s. 373.236, F.S.; specifying conditions of issuance; requiring that certain permits approved for the development of alternative water supplies by certain entities be granted for at least 30 years; requiring that such permits be extended under specified conditions; providing for a reduction in permitted water quantities during compliance reviews under certain circumstances; excluding from application of the act a permit for nonbrackish groundwater or nonalternative water supplies; providing an option for the duration of an alternative water supply permit to a county, special district, regional water supply authority, multijurisdictional water supply entity, or publicly or privately owned utility; creating the Study Committee on Investor-Owned Water and Wastewater Utility Systems; providing for membership and terms of service; prohibiting compensation of the members; providing for reimbursement of the members for certain expenses; providing for removal or suspension of members by the appointing authority; requiring the Public Service Commission to provide staff, information, assistance, and facilities that are deemed necessary for the committee to perform its duties; providing for funding from the Florida Public Service Regulatory Trust Fund; providing duties for the committee; providing for public meetings; requiring the committee to report to the Governor and

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

578-02961B-12 20121178c2

Legislature its findings and make recommendations for legislative changes; providing for future termination of the committee; providing an effective date.

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

Section 1. Subsection (5) of section 373.236, Florida Statutes, is amended to read:

373.236 Duration of permits; compliance reports.—

(5)(a) Permits approved for the development of alternative water supplies shall be granted for a term of at least 20 years if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. However, if the permittee issues bonds for the construction of the project, upon request of the permittee before ~~prior to~~ the expiration of the permit, the ~~that~~ permit shall be extended for such additional time as is required for the retirement of bonds, not including any refunding or refinancing of such bonds, if ~~provided that~~ the governing board determines that the use will continue to meet the conditions for the issuance of the permit. Such a permit is subject to compliance reports under subsection (4).

(b)1. Permits approved on or after July 1, 2012, for the development of alternative water supplies shall be granted for a term of at least 30 years if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. If, within 7 years after a permit is granted, the permittee issues bonds to finance the project, completes construction of the project, and requests

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59 an extension of the permit duration, the permit shall be
60 extended to expire upon the retirement of such bonds or 30 years
61 after the date construction of the project is complete,
62 whichever occurs later. However, a permit's duration may not be
63 extended by more than 7 years beyond the permit's original
64 expiration date. A 7-year permit extension, as described in this
65 subparagraph, shall be applicable to any 30-year permit for the
66 development of alternative water supplies granted between June
67 1, 2011, and July 1, 2012.
68 2. Permits issued under this paragraph are subject to
69 compliance reports under subsection (4). However, if the
70 permittee demonstrates that bonds issued to finance the project
71 are outstanding, the quantity of alternative water allocated in
72 the permit may not be reduced during a compliance report review
73 unless a reduction is needed to address unanticipated harm to
74 water resources or to existing legal uses present when the
75 permit was issued. A reduction required by an applicable water
76 shortage order shall apply to permits issued under this
77 paragraph.
78 3. Permits issued under this paragraph may not authorize
79 the use of nonbrackish groundwater supplies or nonalternative
80 water supplies.
81 (c) Entities that wish to develop alternative water
82 supplies may apply for a permit under paragraph (a) or paragraph
83 (b).
84 Section 2. Study Committee on Investor-Owned Water and
85 Wastewater Utility Systems.—
86 (1) There is created a Study Committee on Investor-Owned
87 Water and Wastewater Utility Systems, which shall be composed of

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88 17 members designated and appointed as follows:
89 (a) Two Senators appointed by the President of the Senate,
90 one of whom shall be appointed as chair by the President of the
91 Senate.
92 (b) Two Representatives appointed by the Speaker of the
93 House of Representatives.
94 (c) The Secretary of Environmental Protection or his or her
95 designee, who shall be a nonvoting member of the committee.
96 (d) The chair of the Public Service Commission or his or
97 her designee, who shall be a nonvoting member of the committee.
98 (e) A representative of a water management district
99 appointed by the Governor.
100 (f) A representative of a water or wastewater system owned
101 or operated by a municipal government appointed by the Governor.
102 (g) A representative of a water or wastewater system owned
103 or operated by a county government appointed by the Governor.
104 (h) The chair of a county commission that regulates
105 investor-owned water or wastewater utility systems, who shall be
106 a nonvoting member of the committee.
107 (i) A representative of a county health department
108 appointed by the Governor, who shall be a nonvoting member of
109 the committee.
110 (j) A representative of the Florida Rural Water Association
111 appointed by the Governor.
112 (k) A representative of a small investor-owned water or
113 wastewater utility appointed by the Governor.
114 (l) A representative of a large investor-owned water or
115 wastewater utility appointed by the Governor.
116 (m) The Public Counsel or his or her designee.

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117 (n) A customer of a Class C water or wastewater utility
118 appointed by the Governor.
119 (o) A representative of a government authority that was
120 created pursuant to chapter 367, Florida Statutes, appointed by
121 the Governor.
122 (2) The members shall serve until the work of the committee
123 is complete and the committee is terminated, except that if a
124 member no longer serves in the position required for
125 appointment, the member shall be replaced by the individual who
126 serves in such position.
127 (3) Members of the committee shall serve without
128 compensation, but are entitled to reimbursement for all
129 reasonable and necessary expenses, including travel expenses, in
130 the performance of their duties as provided in s. 112.061,
131 Florida Statutes.
132 (4) The appointing authority may remove or suspend a member
133 appointed by it for cause, including, but not limited to,
134 failure to attend two or more meetings of the committee.
135 (5) The Public Service Commission shall provide the staff,
136 information, assistance, and facilities as are deemed necessary
137 for the committee to carry out its duties under this section.
138 Funding for the committee shall be paid from the Florida Public
139 Service Regulatory Trust Fund.
140 (6) The committee shall identify issues of concern of
141 investor-owned water and wastewater utility systems,
142 particularly small systems, and their customers and research
143 possible solutions. In addition, the committee shall consider:
144 (a) The ability of a small investor-owned water and
145 wastewater utility to achieve economies of scale when purchasing

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146 equipment, commodities, or services.
147 (b) The availability of low-interest loans to a small,
148 privately owned water or wastewater utility.
149 (c) Any tax incentives or exemptions, temporary or
150 permanent, which are available to a small water or wastewater
151 utility.
152 (d) The impact on customer rates if a utility purchases an
153 existing water or wastewater utility system.
154 (e) The impact on customer rates of a utility providing
155 service through the use of a reseller.
156 (f) Other issues that the committee identifies during its
157 investigation.
158 (7) The committee shall meet at the time and location as
159 the chair determines, except that the committee shall meet a
160 minimum of four times. At least two meetings must be held in an
161 area that is centrally located to utility customers who have
162 recently been affected by a significant increase in water or
163 wastewater utility rates. The public shall be given the
164 opportunity to speak at the meeting.
165 (8) By December 31, 2012, the committee shall prepare and
166 submit to the Governor, the President of the Senate, and the
167 Speaker of the House of Representatives a report detailing its
168 findings pursuant to subsection (6) and making specific
169 legislative recommendations.
170 (9) This section expires and the committee terminates June
171 30, 2013.
172 Section 3. This act shall take effect July 1, 2012.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

February 28, 2012
Meeting Date

Topic: Water Supply

Bill Number: 1178 *(if applicable)*

Name: Steven Minnis

Amendment Barcode: 977630 *(if applicable)*

Job Title: Director of Governmental Affairs

Address: 9225 County Road 49
Street

Live Oak — Florida — 32060
City — *State* — *Zip*

Phone: 386.362.1001

E-mail: sam@srwmd.org

Speaking: [✓] For [ ] Against [ ] Information

Representing: Suwannee River Water Management District

Appearing at request of Chair: [ ] Yes [✓] No

Lobbyist registered with Legislature: [✓] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

Waive in Support!

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2-28-12
Date

CS/CS/SB 1178
Bill Number

Barcode

Name Diane Salz

Phone 850.339.8550

Address 2529 Goose Pond Ct
Street

E-mail disalz@yahoo.com

Tallahassee, FL 32308
City State Zip

Job Title

Speaking: [✓] For [ ] Against [ ] Information

Appearing at request of Chair [ ]

Subject 30-yr permits/WMD consistency

Representing Peace River Manasota Regl Water Authority

Lobbyist registered with Legislature: [✓] Yes [ ] No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/28/12
Meeting Date

Topic: Water Supply

Bill Number: 1178 (if applicable)

Name: Suzanne Goss

Amendment Barcode: _____ (if applicable)

Job Title: Government Relations Specialist

Address: 21 W. Church St.
Street

Jacksonville FL 32202
City State Zip

Phone: 904 665-8331

E-mail: gossSE@jea.com

Speaking: [X] For [ ] Against [ ] Information

Representing: JEA (electric, water & sewer)

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-28-12
Meeting Date

Topic _____

Bill Number 513 1178 *(if applicable)*

Name Doug Mann

Amendment Barcode — *(if applicable)*

Job Title —

Address 310 West College Ave.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 222-7535

E-mail _____

Speaking: [✓] For [ ] Against [ ] Information

Representing Am. Water Works Ass.

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [✓] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/SB 1244

INTRODUCER: Environmental Preservation and Conservation Committee; Communications, Energy, and Public Utilities Committee; and Senator Hays and others

SUBJECT: Water and Wastewater Utilities

DATE: February 27, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	**Fav/CS**
2.	Hinton	Yeatman	EP	**Fav/CS**
3.	Howard	DeLoach	BGA	**Favorable**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill creates an 18 member Study Committee on Investor-Owned Water and Wastewater Utility Systems. Members are appointed by the President of the Senate, the Speaker of the House of Representatives, or the Governor, or are designated as members by the CS based on another position they hold, such as Secretary of Environmental Protection or the chair of the Public Service Commission. An appointing authority may remove or suspend a member appointed by it for cause, including failure to attend two or more committee meetings.

Study committee members are to serve until the work of the committee is complete and the committee is terminated, which is June 30, 2013. They serve without compensation, but are entitled to reimbursement for all reasonable and necessary expenses, including travel expenses.

The committee is to meet at times and locations determined by the chair, but must meet a minimum of four times. At least two meetings must be held in an area that is centrally located to utility customers who have recently been affected by a significant increase in water or wastewater utility rates. The public must be given the opportunity to speak at the meetings.

The Public Service Commission (PSC or commission) is to provide the staff, assistance, and facilities necessary for the committee to carry out its duties. Funding is to be paid from the Florida Public Service Regulatory Trust Fund.

The purpose of the study committee is to identify issues of concern of investor-owned water and wastewater utility systems, particularly small systems, and their customers and to research possible solutions, including specified concerns and considerations.

The committee must prepare and submit a report detailing its findings and making specific legislative recommendations, including proposed legislation intended to implement its recommendations, to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 15, 2013. If the committee, in its report, finds that an issue may effectively be addressed through agency rulemaking, it must submit to the appropriate agencies its report and recommendations, including proposed rules.

The CS takes effect upon becoming a law.

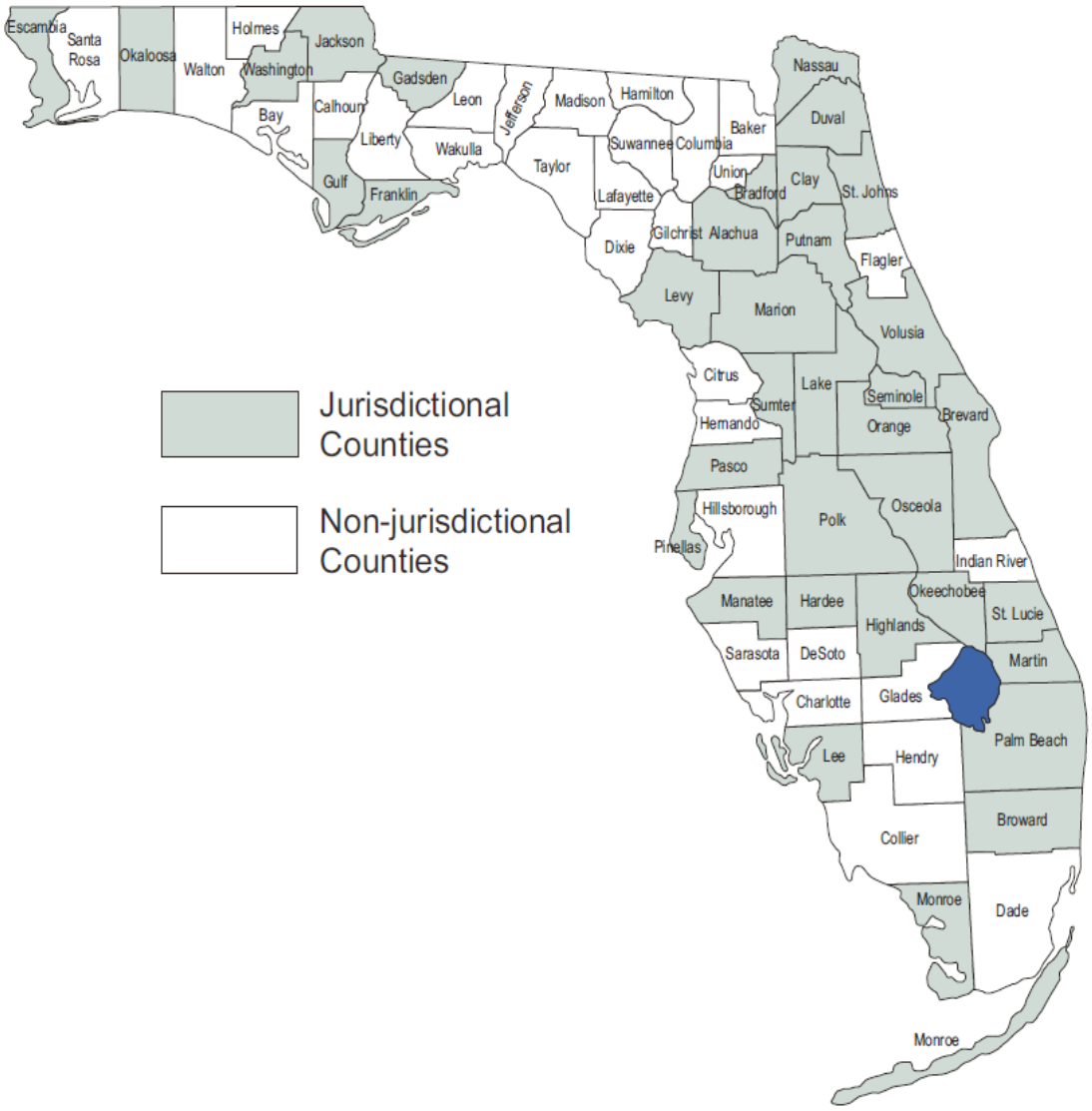
The CS creates an unnumbered section of law.

II. Present Situation:

In Florida, several entities are responsible for regulating water quality, water supply, and rates and service for water and wastewater utilities. The Department of Environmental Protection (DEP) has primary responsibility for regulating the quality and supply of water.[1] With respect to rates and service, the specific regulatory entities vary. For privately-owned utilities operating within a single county, the county has the option to regulate rates and service or allow the Public Service Commission (PSC or commission) to regulate those utilities.[2] The PSC currently has jurisdiction over privately-owned water and wastewater utilities in 36 of the 67 counties in Florida. Regardless of whether the county has opted to regulate privately-owned utilities, the PSC has jurisdiction over all water or wastewater utility systems whose service transverses county boundaries, except for systems owned and regulated by intergovernmental authorities.[3] Systems owned, operated, managed, or controlled by governmental authorities are not subject to PSC regulation.[4]

[1] Part VI, Chapter 403, F.S., and Parts I and II, Chapter 373, F.S.
[2] Section 367.171, F.S. If a county chooses to allow regulation by the PSC, it may rescind this choice only after 10 continuous years of PSC regulation.
[3] *Id.*
[4] Section 367.022(2), F.S.

The map below identifies those counties in which the PSC currently exercises jurisdiction.[5]



For regulatory purposes, the PSC classifies utilities into one of three categories based on annual operating revenues:[6]

- Class A – Operating revenues greater than $1,000,000
- Class B – Operating revenues greater than $200,000 but less than $1,000,000
- Class C – Operating revenues less than $200,000

Currently, there are 15 Class A utilities, 33 Class B utilities, and 96 Class C utilities under the PSC's jurisdiction. These utilities serve approximately three to four percent of Florida's population. The remaining population is served either by private utilities in non-jurisdictional

[5] This map can be found at http://www.psc.state.fl.us/utilities/waterwastewater/wawmap.pdf.
[6] Rules 25-30.110(4) and 25-30.115, F.A.C. As noted in these rules, this classification system is used by the National Association of Regulatory Utility Commissioners for publishing its system of accounts.

counties, by statutorily exempt utilities (such as municipal utilities, cooperatives, and non-profits), or by wells and septic tanks. The 15 Class A utilities serve approximately 50% of the customers for all classes. In general, filing requirements, fees, penalties, and regulatory treatment are eased for Class B and C utilities.

On September 29, 2011, the PSC conducted an informal staff workshop in Orlando to address challenges facing the water and wastewater industry. By letter dated September 13, 2011, to all PSC-regulated water and wastewater utilities, the PSC invited the industry stakeholders to this workshop.[7] The letter stated, in part:

> As you are well aware, many water and wastewater utilities, particularly the small systems, struggle to achieve economies of scale, financial stability, and technical proficiency. As a result, many utilities have difficulty operating effectively and efficiently, maintaining equipment and infrastructure, complying with federal and state regulations, and providing adequate customer service at reasonable rates. This situation is likely only to worsen as infrastructure replacement needs increase and as new regulatory requirements demand increased investment in water and wastewater systems.

The letter indicated that the workshop would "provide an open forum to look at probable solutions to the many financial and environmental challenges facing utilities" and invited input and discussion concerning currently available options as well as solutions that may require regulatory or statutory changes.

Following the informal staff workshop, the PSC conducted a formal agency workshop in Tallahassee on November 3, 2011, "to discuss ways to increase efficiencies in the water and wastewater industry in order to hold and/or lower rates."[8] In opening remarks at the workshop, PSC Chairman Art Graham indicated that the main purpose of the workshop was to hear and address ideas to help alleviate financial strains on small water and wastewater utilities.[9]

The PSC heard discussion on several potential mechanisms to address these issues, including, among others, the creation of a legislative study commission comprised of legislators, regulators, industry representatives, local government representatives, and customer representatives.[10] This proposal, drafted by the PSC's staff, provided that the study commission would be staffed by the PSC staff and have use of the PSC's facilities. The proposal required that the study commission meet at least four times, with two of those meetings held in areas where utility customers had been impacted by recent rate increases. The proposal required that the study commission submit a report, including specific findings and legislative recommendations, to the Governor and the Legislature by December 31, 2012. The study commission would terminate on June 30, 2012.

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[7] http://www.psc.state.fl.us/common/controls/workshop09_29_11.pdf .
[8] http://www.psc.state.fl.us/library/filings/11/07437-11/07437-11.pdf .
[9] Workshop Transcript, pp.2-3. http://www.psc.state.fl.us/library/filings/11/08324-11/08324-11.pdf .
[10] http://www.psc.state.fl.us/agendas/workshops/Materials.11.03.2011.pdf .

III. Effect of Proposed Changes:

Section 1 creates the Study Committee on Investor-Owned Water and Wastewater Utility Systems. The study committee is to be composed of 18 members designated and appointed as follows:

Voting Members

- A member of the Senate, appointed by the President of the Senate.
- A member of the House of Representatives, appointed by the Speaker of the House of Representatives.
- Two representatives of Class A investor-owned water or wastewater utilities appointed by the Governor.
- One representative of a Class B investor-owned water or wastewater utility appointed by the Governor.
- One representative of a Class C investor-owned water or wastewater utility appointed by the Governor.
- One customer of a Class A investor-owned water or wastewater utility appointed by the Governor.
- One customer of a Class B or Class C investor-owned water or wastewater utility appointed by the Governor.
- One representative of a water management district appointed by the Governor.
- One representative of the Florida Section of the American Water Works Association appointed by the Governor.
- One representative of the Florida Rural Water Association appointed by the Governor.
- One representative of a water or wastewater system owned or operated by a municipal or county government appointed by the Governor.
- One representative of a governmental authority that is created pursuant to chapter 163, Florida Statutes, appointed by the Governor.
- The chair of a county commission that regulates investor-owned water or wastewater utility systems appointed by the Governor.
- One representative of a county health department appointed by the Governor.

Non-Voting Members

- The chair of the PSC, or a commissioner designated by the chair, who shall serve as chair of the committee.
- The Secretary of Environmental Protection or his or her designee.
- The Public Counsel or his or her designee.

An appointing authority may remove or suspend a member appointed by it for cause, including, but not limited to, failure to attend two or more meetings of the committee.

Study committee members are to serve until the work of the committee is complete and the committee is terminated. The section is to expire and the committee to terminate on June 30, 2013. A member of the study committee who is a member because of a another position held by

election, appointment, or employment who no longer serves in that position will be replaced on the study committee by the person replacing him or her in the position.

Members of the committee serve without compensation, but are entitled to reimbursement for all reasonable and necessary expenses, including travel expenses, in the performance of their duties as provided in s. 112.061, F.S.

The committee is to meet at times and locations determined by the chair, but must meet a minimum of four times. At least two meetings must be held in an area that is centrally located to utility customers who have recently been affected by a significant increase in water or wastewater utility rates. The public must be given the opportunity to speak at the meetings.

The Public Service Commission is to provide the staff, information, assistance, and facilities as are deemed necessary for the committee to carry out its duties. Funding for the committee is to be paid from the Florida Public Service Regulatory Trust Fund.

The purpose of the study committee is to identify issues of concern of investor-owned water and wastewater utility systems, particularly small systems, and their customers and to research possible solutions. In addition, the committee must consider:

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

The committee must prepare and submit a report detailing its findings and making specific legislative recommendations, including proposed legislation intended to implement its recommendations, to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 15, 2013. If the committee, in its report, finds that an issue may effectively be addressed through agency rulemaking, it must submit to the appropriate agencies its report and recommendations, including proposed rules.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The bill requires the PSC to provide staff, assistance, and facilities to support the study committee. Funding for the committee members' travel and other reimbursable expenses, as well as rental meeting facilities is also needed.

The PSC estimates $302,281 in non-recurring Other Personal Services appropriation is needed to fund three economic analysts and one senior attorney. In addition, $72,000 in non-recurring Expense appropriation is needed to cover member reimbursable expenses, and meeting costs.

The need for additional resources will be reviewed during the budget process.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Environmental Preservation and Conservation on February 21, 2012:
Deletes the provisions of the CS and replaces them with a revised study committee composed of 18 members.

CS by Communications, Energy, and Public Utilities on February 13, 2012:
Deletes the provisions of the original bill and replaces them with a revised study committee.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committees on Environmental Preservation and Conservation; and Communications, Energy, and Public Utilities; and Senators Hays, Storms, and Fasano

592-03684-12 20121244c2

A bill to be entitled

An act relating to water and wastewater utilities; creating the Study Committee on Investor-Owned Water and Wastewater Utility Systems; providing for membership and terms of service; prohibiting compensation of the members; providing for reimbursement of the members for certain expenses; providing for removal or suspension of members by the appointing authority; requiring the Public Service Commission to provide staff, information, assistance, and facilities that are deemed necessary for the committee to perform its duties; providing for funding from the Florida Public Service Regulatory Trust Fund; providing duties of the committee; providing for public meetings; requiring the committee to report its findings to the Governor, the Legislature, and appropriate agencies and make certain recommendations; providing for future termination of the committee; providing an effective date.

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

Section 1. Study Committee on Investor-Owned Water and Wastewater Utility Systems.—

(1) There is created a Study Committee on Investor-Owned Water and Wastewater Utility Systems, which shall be composed of 18 residents of the state designated and appointed as follows:

(a) The chair of the Public Service Commission or a commissioner designated by the chair, who shall serve as chair

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

592-03684-12 20121244c2

of the committee and shall be a nonvoting member of the committee.

(b) The Secretary of Environmental Protection or his or her designee, who shall be a nonvoting member of the committee.

(c) The Public Counsel or his or her designee, who shall be a nonvoting member of the committee.

(d) One member of the Senate appointed by the President of the Senate.

(e) One member of the House of Representatives appointed by the Speaker of the House of Representatives.

(f) Two representatives of Class A investor-owned water or wastewater utilities appointed by the Governor.

(g) One representative of a Class B investor-owned water or wastewater utility appointed by the Governor.

(h) One representative of a Class C investor-owned water or wastewater utility appointed by the Governor.

(i) One customer of a Class A investor-owned water or wastewater utility appointed by the Governor.

(j) One customer of a Class B or Class C investor-owned water or wastewater utility appointed by the Governor.

(k) One representative of a water management district appointed by the Governor.

(l) One representative of the Florida Section of the American Water Works Association appointed by the Governor.

(m) One representative of the Florida Rural Water Association appointed by the Governor.

(n) One representative of a water or wastewater system owned or operated by a municipal or county government appointed by the Governor.

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

59 (o) One representative of a governmental authority that is
60 created pursuant to chapter 163, Florida Statutes, appointed by
61 the Governor.
62 (p) The chair of a county commission that regulates
63 investor-owned water or wastewater utility systems appointed by
64 the Governor.
65 (q) One representative of a county health department
66 appointed by the Governor.
67 (2) The members shall serve until the work of the committee
68 is complete and the committee is terminated, except that if a
69 member no longer serves in the position required for
70 appointment, the member shall be replaced by the individual who
71 serves in such position.
72 (3) Members of the committee shall serve without
73 compensation, but are entitled to reimbursement for all
74 reasonable and necessary expenses, including travel expenses, in
75 the performance of their duties as provided in s. 112.061,
76 Florida Statutes.
77 (4) An appointing authority may remove or suspend a member
78 appointed by it for cause, including, but not limited to,
79 failure to attend two or more meetings of the committee.
80 (5) The Public Service Commission shall provide the staff,
81 information, assistance, and facilities as are deemed necessary
82 for the committee to carry out its duties under this section.
83 Funding for the committee shall be paid from the Florida Public
84 Service Regulatory Trust Fund.
85 (6) The committee shall identify issues of concern of
86 investor-owned water and wastewater utility systems,
87 particularly small systems, and their customers and research

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

88 possible solutions. In addition, the committee shall consider:
89 (a) The ability of a small investor-owned water or
90 wastewater utility to achieve economies of scale when purchasing
91 equipment, commodities, or services.
92 (b) The availability of low interest loans to a small,
93 privately owned water or wastewater utility.
94 (c) Any tax incentives or exemptions, temporary or
95 permanent, which are available to a small water or wastewater
96 utility.
97 (d) The impact on customer rates if a utility purchases an
98 existing water or wastewater utility system.
99 (e) The impact on customer rates of a utility providing
100 service through the use of a reseller.
101 (f) Other issues that the committee identifies during its
102 investigation.
103 (7) The committee shall meet at the time and location as
104 the chair determines, except that the committee shall meet a
105 minimum of four times. At least two meetings must be held in an
106 area that is centrally located to utility customers who have
107 recently been affected by a significant increase in water or
108 wastewater utility rates. The public shall be given the
109 opportunity to speak at the meetings.
110 (8) By February 15, 2013, the committee shall prepare and
111 submit to the Governor, the President of the Senate, and the
112 Speaker of the House of Representatives a report detailing its
113 findings pursuant to subsection (6) and making specific
114 legislative recommendations, including proposed legislation
115 intended to implement its recommendations. If the committee, in
116 its report, finds that an issue may effectively be addressed

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

117 through agency rulemaking, the committee shall submit to the
118 appropriate agencies its report and recommendations, including
119 proposed rules.
120 (9) This section expires and the committee terminates June
121 30, 2013.
122 Section 2. This act shall take effect upon becoming a law.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/SB 1252

INTRODUCER: Budget Subcommittee on General Government Appropriations; Regulated Industries Committee, and Senator Jones

SUBJECT: Business and Professional Regulation

DATE: February 28, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Howard	DeLoach	BGA	**Fav/CS**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill relates to the Department of Business and Professional Regulation (department). The bill revises the following provisions related to the department's licensing processes and the requirements for the professions licensed by the department. The bill:

- Permit wholesale tobacco dealers to extend credit to retail dealers, and authorizes the Division of Alcoholic Beverage and Tobacco to suspend or deny the renewal of the tobacco permit of a retail dealer after the wholesale dealer submits proof to the division that the dealer has failed to satisfy a civil judgment for failure to pay for tobacco products purchased from a wholesale dealer. The permit would remain suspended until the retailer entered into to a payment plan or satisfied the civil judgment in full;
- Waives the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for military veterans who apply to the department for a license within 24 months of being honorably discharged from service;
- Authorizes the department to approve continuing education providers and courses without a review by the appropriate board if the provider or course application does not require expert review or denial;

- Authorizes the department, in lieu of a board, to approve applications for reinstatement of a void license if the department determines that the individual failed to comply due to illness or economic hardship;
- Permits continuing education instructors to complete their continuing education through distance learning;
- Revises the provisions related to the regulation of appraisal management companies banks, credit unions, or other lending institutions that own and operate an internal appraisal office, business unit, or department. This is consistent with the federal Dodd Frank Act, which exempts from state regulation financial institutions that own or operate an internal appraiser office, business, unit, or department and appraisal management companies that are owned and controlled by a subsidiary of a financial institution;
- Permits applicants for a real estate appraiser's certification to the results of national examinations required for the license that were obtained more than 24 month after the date of the examination;
- Prohibits appraisal management companies from requiring that appraisers agree to an indemnity agreement;
- Permits cosmetology applicants, if licensed in another state, to qualify for a license without having to submit proof of completing their required educational hours if the state's requirements include 1200 pre-licensure hours and passage of a written examination;
- Permits cosmetologists and specialists to perform cosmetology and specialty services at special events held outside of salons if they are employed by a licensed salon and appointments for such services are made through a licensed salon;
- Repeals the license requirement for glass and glazing contractors;
- Extends from November 1, 2005, to November 1, 2014, the period for registered contractors, who are limited to practicing within the county or counties in which they are registered, to qualify for state-wide certification; and
- Exempts amateur boxing, martial arts or kickboxing matches from the prohibition against blows to the head in such matches unless the match is sanctioned by an amateur sanctioning organization when the matches are conducted or sponsored by nonprofit schools or education programs, a company or detachment of the Florida National Guard or by the Fraternal Order of Police, and held in conjunction with a charitable event. This provision would take effect upon becoming law.

Except as otherwise provided as taking effect upon becoming law, this bill would take effect on October 1, 2012.

This bill substantially amends the following sections of the Florida Statutes: 210.16, 210.181, 455.213, 455.2179, 455.271, 455.273, 455.275, 475.451, 475.611, 475.6171, 475.6235, 475.6245, 477.019, 477.0263, 489.105, 489.107, 489.118, 489.141, and 548.007.

II. Present Situation:

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (department) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional

Regulation.[1] The department is created in s. 20.165, F.S. Section 20.165(2), F.S., creates the following eleven divisions within the department:

- Division of Administration.
- Division of Alcoholic Beverages and Tobacco.
- Division of Certified Public Accounting.
- Division of Florida Condominiums, Timeshares, and Mobile Homes.
- Division of Hotels and Restaurants.
- Division of Pari-mutuel Wagering.
- Division of Professions.
- Division of Real Estate.
- Division of Regulation.
- Division of Technology.
- Division of Service Operations.

Professional Boards
Section 20.165(4)(a), F.S., establishes the following boards and professions within the Division of Professions:

- Board of Architecture and Interior Design, created under part I of ch. 481, F.S.
- Florida Board of Auctioneers, created under part VI of ch. 468, F.S.
- Barbers' Board, created under ch. 476, F.S.
- Florida Building Code Administrators and Inspectors Board, created under part XII of ch. 468, F.S.
- Construction Industry Licensing Board, created under part I of ch. 489, F.S.
- Board of Cosmetology, created under ch. 477, F.S.
- Electrical Contractors' Licensing Board, created under part II of ch. 489, F.S.
- Board of Employee Leasing Companies, created under part XI of ch. 468, F.S.
- Board of Landscape Architecture, created under part II of ch. 481, F.S.
- Board of Pilot Commissioners, created under ch. 310, F.S.
- Board of Professional Engineers, created under ch. 471, F.S.
- Board of Professional Geologists, created under ch. 492, F.S.
- Board of Veterinary Medicine, created under ch. 474, F.S.
- Home Inspection Services Licensing Program, created under part XV of ch. 468, F.S.
- Mold-Related Services Licensing Program, created under part XVI of ch. 468, F.S.

The Pilot Rate Review Committee is established under the Board of Pilot Commissioners.[2]
Section 20.165(4)(b), F.S., establishes the following board and commission within the Division of Real Estate:

- Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S.
- Florida Real Estate Commission, created under part I of ch. 475, F.S.

[1] Chapter 93-220, L.O.F.
[2] Section 310.151, F.S.

Section 20.165(4)(c), F.S., establishes the Board of Accountancy, created under ch. 473, F.S., within the Division of Certified Public Accounting.

The Florida State Boxing Commission[3] and the Regulatory Council of Community Managers[4] are also housed within the department.

The department also has regulatory oversight responsibilities over the following professions:

- Child labor under part I of ch. 450, F.S.
- Farm labor contractors under part III of ch. 450, F.S.
- Talent agencies under part VII of ch. 468, F.S.

In addition to administering the professional boards, the department processes applications for licensure and license renewal. The department also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative frame-work for all of the professional boards housed under the department, the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

Regulation of Tobacco

The Division of Alcoholic Beverages and Tobacco (division) in the department is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of tobacco products and alcoholic beverages.[5]
Chapters 210, 386, and 569, F.S., provide the regulatory and tax structure for tobacco sales. Part I of ch. 210, F.S., provides for the taxation of cigarettes. Part II of ch. 210, F.S., provides for the taxation of other tobacco products. Cigarettes are taxed in a different manner than other tobacco products and cigars are not subject to an excise tax. Tobacco products, cigars, and cigarettes are subject to the sales tax.

Section 210.01(6), F.S., defines “wholesale dealer” to mean “any person located inside or outside this state who sells cigarettes to retail dealers or other persons for purposes of resale only.”

Section 210.01(7), F.S., defines “retail dealer” means any person located inside or outside this state other than a wholesale dealer engaged in the business of selling cigarettes.”

Section 210.01(21), F.S., defines “manufacturer” to mean “any domestic person or entity with a valid permit under 26 U.S.C. s. 5712 that manufactures, fabricates, assembles, processes, or labels a finished cigarette.”

Part II of ch. 210, F.S., defines “tobacco products” to mean loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos;

[3] Section 548.003, F.S.
[4] Section 468.4315, F.S
[5] S. 561.02, F.S.

shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but "tobacco products" does not include cigarettes, as defined by s. 210.01(1), F.S., or cigars.

Section 210.01(1), F.S., defines "cigarette" to mean any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.

Continuing Education Providers
Section 455.2179, F.S., provides for the approval of continuing education providers by the boards, or the department if there is no board. The department must forward applications for continuing education providers and courses to the appropriate licensing board. Current law does not permit the department to approve providers or courses without board review.

Inactive and Delinquent Status
Section 455.271, F.S., permits the boards, or the department if there is no board, to reinstate a voided license if the licensee has made a good faith effort to comply with licensure requirements and was unable to comply because of illness or unusual hardship. According to the department, the most common basis for requesting reinstatement of a void license is economic hardship.

Renewal and Cancellation Notices
Section 455.273, F.S., requires the department to mail renewal and cancelation notices to licensees' last know addresses of record at least 90 days prior to expiration or cancellation of the license. Section 455.273(2), F.S., requires the department to include a conspicuous statement in each renewal and cancellation notice stating that, if a licensee remains on inactive status for more than two consecutive licensure cycles, the licensee may be required to sit for a special purpose examination or other reactivation requirements prior to reactivation of their license.

Section 455.275, F.S., requires licensees to provide the department with written notification of their current mailing address and place of practice. The department must mail, to the licensee's last known address of record, notices and official communications to the licensees, except where service of process is required for disciplinary proceeding pursuant to s. 455.225, F.S.

Real Estate Schools-Distance Learning
Section 475.17(2)(a)2., F.S., authorizes the Florida Real Estate Commission to approve distance learning courses as an option to classroom hours as satisfactory completion continuing education requirements. Real estate schools have the option of providing classroom courses, distance learning courses, or both. A satisfactory completion of a distance learning course must require the satisfactory completion of a timed distance learning course examination. Such examination does not need to be monitored or given at a centralized location.

Appraisal Management Companies
Individual real estate appraisers are regulated under part II of ch. 475, F.S., by the Florida Real Estate Appraisal Board within the department. Section 475.6235, F.S., requires the registration of Appraisal Management Companies.

"Appraisal management company," is defined in s. 475.611(1)(c), F.S., to mean a person[6] who performs appraisal management services.

The term "appraisal management services" is defined in s.475.611(1)(d), F.S., to mean the coordination or management of appraisal services for compensation by:

> 1. Employing, contracting with, or otherwise retaining one or more appraisers to perform appraisal services for a client; or
> 2. Acting as a broker or intermediary between a client and one or more appraisers to facilitate the client's employing, contracting with, or otherwise retaining the appraisers.

Section 475.6235(1), F.S., provides that a person may not engage in appraisal services for compensation or advertise themselves as an appraisal management company or use the titles "appraisal management company," "appraiser cooperative," "appraiser portal," or "mortgage technology company," or any abbreviation or words to that effect, unless the person is registered with the department as an appraisal management. A person may not engage in appraisal management services for compensation in this state, advertise or represent herself or himself as an appraisal management company, or company under this section.

Employees of the appraisal management company are not required to obtain a separate registration.

The ''Dodd-Frank Wall Street Reform and Consumer Protection Act (Frank-Dodd Act)''[7] permits states to regulate appraisal management companies. However, an appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a federal financial institution regulatory agency is not be required to register with a state.[8]

Cosmetology

Section 477.013(4), F.S., defines the term "cosmetology" to mean:

> the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services.

Section 477.0135, F.S., provides several exceptions to the requirement of a cosmetology license. Section 477.0135(1)(f), F.S., provides an exemption for the cosmetology license requirement for "persons whose practice is limited to the application of cosmetic products to another person in connection with the sale, or attempted sale, of such products at retail without compensation from such other person other than the regular retail price of such merchandise."

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[6] Section 1.01(3), F.S., defines the word "person" to include "individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations."
[7] ''Dodd-Frank Wall Street Reform and Consumer Protection Act'' Pub. L. 111-203 (2010).
[8] *Id.* at s. 1473.

Section 477.0135(5), F.S., provides that a cosmetology "license is not required of any individual providing makeup, special effects, or cosmetology services to an actor, stunt person, musician, extra, or other talent during a production recognized by the Office of Film and Entertainment as a qualified production" as defined in s. 288.1254(1), F.S. These services are not required to be performed in a licensed salon. However, these persons may not provide such services to the general public without a license.

Section 477.0135(6), F.S., also provides a license exemption for makeup or special effects services provided in a theme park or entertainment complex, as defined in s. 509.013(9), F.S., to an actor, stunt person, musician, extra, or other talent, or providing makeup or special effects services to the general public. It appears that the exemption for makeup or special effects services to the general public is limited to those provided in the theme parks.

Section 477.019, F.S., permits cosmetologists who are licensed in another state to receive a Florida license if the license qualifications in the other state are similar to, equivalent to, or greater than the qualifications required in this state. The Florida qualifications include proof of passing a written examination; and completion of 1200 educational hours.[9] According to the department, individuals who have been practicing cosmetology services in another state for many years have difficulty providing proof of the completion of the 1200 educational hours. Many times this is because the other state does not retain the records for an extended period of time. In Florida, the Department of State Division of Library Services is in charge of the preservation of public records.[10] The division is authorized to adopt rules for the retention and disposal of public records.[11]

Section 477.0263, F.S., provides that all cosmetology services must be performed in a licensed salon, except when services are performed in a residence, nursing home or hospital because the client is too ill to travel to a licensed salon, or when services are provided in connection with the motion picture, fashion photography, theatrical, or television industry; or at a photography studio salon, manufacturer's trade show demonstration; or an educational seminar.

Construction Contracting

The Construction Industry Licensing Board (CILB) is responsible for the licensure and regulation under part I of ch. 489, F.S., of construction contractors. Construction contractors in Florida must be certified or registered before commencing business as a contractor.[12] Certification means that the contractor is licensed by the state to contract statewide.[13] Alternatively, a contractor may register with the state to perform construction services only within the limited geographic confines of the local jurisdiction in which the registered contractor has been licensed by the local jurisdiction.[14]

[9] *See* s. 477.019, F.S.
[10] *See* s. 257.35, F.S.
[11] *See* s. 257.36(6), F.S.
[12] Section 489.113(2), F.S.
[13] Section 489.113(1), F.S.
[14] Section 489.117(1), F.S.

A state certification or registration is required for persons who perform the following categories of construction services: general contractors, building contractors, residential contractors, sheet metal contractors, roofing contractors, air-conditioning contractors, mechanical contractors, swimming pool/spa, plumbing contractors, underground utility and excavation contractors, solar contractors, pollutant storage systems contractors, and glass and glazing contractors.[15]

Section 489.118, F.S., permits registered contractors to receive a state-wide certification without taking the state licensure examination if they meet the specified criteria, including holding a current, valid registration, passing a written examination that the board finds is substantially similar to the examination required to be licensed as a certified contractor, has at least five years of experience, has not had a contractor's license revoked, and is in compliance with the insurance and financial responsibility requirements in s. 489.115(5), F.S. To qualify for certification, registered contractors must have applied to the department by November 1, 2005.

Glass and Glazing Contractors

Section 489.105(3)(q), F.S., includes glass and glazing contractors within the Division II contractor classification. This classification requires that glass and glazing contractors must be licensed by the CILB, this license requirement includes pre-licensure qualification requirements that include experience, education, and/or continuing education requirements. This provision was added by s. 14, ch. 2011-222, L.O.F. Prior to last year, glass and glazing contractors could operate at the local level without being licensed depending on the local licensing requirements. These contractors could elect to be licensed state-wide by becoming certified and meeting the state experience and examination requirements. Many jurisdictions did not license glass and glazing contractors at the local level.

Pugilistic Exhibitions

Chapter 548, F.S., provides for the licensure and regulation of professional and amateur boxing, kickboxing, and mixed martial arts by the Florida State Boxing Commission. Section 548.006(3), F.S., provides the Florida State Boxing Commission exclusive jurisdiction for the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for boxing and kickboxing matches held in the state. This jurisdiction does not extend to amateur sanctioning organizations for mixed martial arts.

Section 548.0065, F.S., requires amateur sanctioning organizations to notify the department of upcoming amateur matches held in the state.

Section 548.007, F.S., provides that, with the exception of s. 548.008, F.S., the provisions of ch. 548, F.S., do not apply to matches conducted or sponsored by:

- A bona file nonprofit boxing, kickboxing, or martial arts school or education program. The match must be limited to participants who are students of the school or instructional program;
- Any company or detachment of the Florida National Guard; or
- The Fraternal Order of Police, if the match is limited to amateur participants and is held in conjunction with a charitable event.

[15] *See* s. 489.105(3)(a)-(q), F.S.

Section 548.008(1), F.S., prohibits matches involving amateurs that utilize, but are not necessarily limited to, strikes or blows to the head unless the match is sanctioned and supervised by an amateur sanctioning organization approved by the Florida State Boxing Commission.

Section 548.008(2), F.S., provides that no professional match may be held in this state unless it meets the requirements for holding the match as provided in ch. 548, F.S., and the rules adopted by the Florida State Boxing Commission.

Section 548.008(3)(a), F.S., provides that any person who participates in a match prohibited under this section, knowing the match is prohibited, commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.[16]

Section 548.008(3)(b), F.S., provides that any person who holds, promotes, or sponsors a match prohibited under this section, commits a felony of the third degree, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.[17]

The commission's primary duty is to ensure that all matches comply with the laws and rules and that the matches are competitive and physically safe for the participants. The commission licenses 1,655 professionals per year and processes approximately 71 live event permits annually. In addition to its daily processing of applications for licensure and the approval or denial of live event permits, the commission coordinates live event schedules and evaluates proposed fight cards. It also evaluates the assignment of officials (referees, judges, physicians) and event staff (event coordinator, chief inspector, inspectors, and timekeeper).

A department representative or commission representative is assigned to attend each official weigh-in and live event. This person attends the official weigh-in during which the application is processed, license fees are collected, the results of participant medical examinations are verified, pre-fight physicals are conducted by physicians, the promoter/participant contracts are collected, participants' weights are recorded, officials' (referee, judges, and physicians) pay from the promoter are collected, and the required accidental death and health insurance for each of the participants is verified. The department or commission representative is also accompanied to the event by department's OPS event staff, i.e., the event coordinator, timekeeper, and inspector. These OPS event staff and the representative from the department or commission also inspect the ring for safety standards, verify that emergency medical personnel and an ambulance are on-site, assign inspectors to each of the fighters, conduct match timekeeping, verify assigned officials are present, distribute officials' pay following the event, and conduct participant drug tests, if necessary.[18]

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[16] Section 775.082, F.S., provides that the penalty for misdemeanor of the second degree is punishable by a term of imprisonment not exceeding 60days. Section 775.083, F.S. provides that the penalty for misdemeanor of the second degree is punishable by a fine not to exceed $500.

[17] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not exceeding five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not exceeding $5,000. Section 775.084, F.S., provides increased penalties for habitual offenders.

[18] For a more detailed description of the State Boxing Commission's duties, *see 2012 Legislative Analysis for Amendment to SB 1252 Relating to Taxation of Closed Circuit Television*, Office of Legislative Affairs, Department of Business and Professional Regulation (January 20, 2012).

III. Effect of Proposed Changes:

Tobacco Regulation
The amendment creates a new subsection (4) of s**.** 210.16, F.S., to permit wholesale tobacco dealers to extend credit to retail dealers. It authorize the Division of Alcoholic Beverage and Tobacco (division) to suspend or deny the renewal of the tobacco permit of a retail dealer after the wholesale dealer submits proof to the division that the dealer has failed to satisfy a civil judgment for failure to pay for tobacco products purchased from a wholesale dealer. The permit would remain suspended until the retailer entered into t a payment plan or satisfied the civil judgment in full.

It also amends s. 210.181, F.S., to correct a cross-reference necessitated by the amendment to s. 210.16, F.S.

Military Veterans-Fee Waiver
The bill creates s. 455.213(12), F.S., to waive the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for a military veteran who applies to the department for a license within 24 months of being honorably discharged.

Continuing Education Providers
The bill amends s. 455.2179, F.S., to allow the department to approve continuing education providers and courses without board review if the provider or course application does not require expert review or denial. Any application that requires expert review by a board must be sent to the appropriate board for review and approval or denial determination. The bill also provides that only the department can determine the content of applications and supporting documents that are submitted for approval.

Inactive and Delinquent Status
The bill amends s. 455.271(6)(b), F. S., to department, in its discretion, the authority to approve applications for reinstatement of a void license if the department determines that the individual failed to comply due to illness or economic hardship. It deletes references to the department's boards to, in effect, place this authority exclusively with the department. This provision is also amended to replace the reference to "unusual hardship" hardship with the term "economic hardship."

Renewal and Cancellation Notices
The bill amends s. 455.273, F.S., to permit the department to forward renewal and cancellation notices to a licensee's email address of record.

The bill amends s. 455.273, F.S., to repeal the requirement that each licensure renewal and cancellation notification must provide a conspicuous statement that a licensee may be required to complete a special purposes examination or other reactivation requirement prior to activating a license.

The bill amends s. 455.275, F. S., to require licensees to update the department with their available email address in additional to their mailing address and place of employment. It permits the department to serve required notices by email, except where service of process is required for disciplinary proceeding pursuant to s. 455.225, F.S.

Real Estate Schools-Distance Learning
The bill amends s. 475.451, F.S., to permit continuing education instructors to complete their continuing education through either classroom or distance learning. It also provides that real estate schools may offer any continuing education course through distance learning if the course complies with s. 475.17(2), F.S., which authorizes the Florida Real Estate Commission to approve distance learning courses.

Appraisers and Appraisal Management Company
The bill amends s. 475.611(1)(c), F.S., to revise the definition of "appraisal management company" by incorporating the provision from s. 475.6235(1), F.S., which prohibits the use of the titles "appraisal management company," "appraiser cooperative," "appraiser portal," or "mortgage technology company," or other terms unless the person is registered with the department as an appraisal management company.

The bill also amends s. 475.611(1)(d), F.S., to reference "licensed or certified appraisers" instead of "appraisers."

Section 475.611(1)(y), F.S, defines the term "subsidiary" to mean an organization that is controlled by a financial institution that is regulated by a federal agency.

The bill amends s. 475.6171(4), F.S., to repeal the provision that no certifications as an appraiser shall be issued based upon the results of national examinations that are obtained more than 24 months after the date of the examination.

The bill amends s. 475.6235(1), F.S., to delete the prohibition against the use of the titles "appraisal management company," "appraiser cooperative," "appraiser portal," or "mortgage technology company," or other terms unless the person is registered with the department as an appraisal management company. This prohibition is added by the bill to the definition of the term "appraisal management company" in s. 475.611(1)(c), F.S.

The bill also creates s. 475.6235(9), F.S., exempts a financial institution, as defined in s. 655.005, F.S., from the provisions of this section if financial institution owns or operates an internal appraiser office, business, unit, or department, or an appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a Federal agency. This would conform the provision to the exemption from state regulation provided for bank-owned appraisal management companies as provided by the Dodd Frank Act.[19]

The bill amends s. 475.6245, F.S., to prohibit appraisal management companies from requiring that appraisers agree to hold harmless from the liability the appraisal management company or its

[19] *Supra* at n. 6.

owners, agents, employees, or independent contractors for services performed by the management company and not the appraiser.

Cosmetology
The bill amends s. 477.019(6), F.S., to permit cosmetology applicants who are licensed in another state to qualify for a license without having to submit proof of completing their required 1200 educational hours if the state's requirements include 1200 pre-licensure hours and passage of a written examination.

The bill amends s. 477.0263, F. S., to provide an exception from the requirement that all cosmetology services be performed in a licensed salon. The bill permits licensed cosmetologists and specialists to perform cosmetology and specialty services at special events held outside of salons if they are employed by a licensed salon and appointments for such services are made through a licensed salon. The term "special events" is not defined.

Construction Contracting
The bill amends s. 489.105(3), F.S., to repeal the license classification for glass and glazing contractors in paragraph (q). This would permit glass and glazing contractors to do business without obtaining a state license.

The bill amends ss. 489.107(4) and 489.1412(2)(g), F.S., to correct cross-references necessitated by repeal of the glass and glazers provision in s. 489.105(3)(q), F.S.

The bill amends s. 489.118, F. S., to extend the grandfather period for registered contractors to qualify for certification from November 1, 2005 to November 1, 2014.

Amateur Pugilistic Matches
The bill amends s. 548.007, F.S., to provide an exemption from all of ch. 489, F.S., for amateur boxing, martial arts or kickboxing matches that are conducted or sponsored by nonprofit schools or education programs, a company or detachment of the Florida National Guard or by the Fraternal Order of Police, if held in conjunction with a charitable event. Current law exempts such matches to the requirements of s. 548.008, F.S. Section 548.008, F.S., prohibits amateur matches unless sanctioned by an amateur sanctioning organization.

This provision would take effect upon becoming law.

Effective Date
Except as otherwise provided as taking effect upon becoming law, this bill would take effect on October 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill will make it less burdensome for current and future licensees to obtain and maintain licensure with the Department of Business and Professional Regulations. The bill will also make it less burdensome for former U.S. military personnel to obtain licensure with the Department.

Glass and glazing contractors would not be required to obtain a Division II contractor's license from the Construction Industry Licensing Board.

C. Government Sector Impact:

The department estimates that the bill will increase revenues to the Professional Regulation Trust Fund by $573,009 in FY 2012-2013 and $286,709 in FY 2013-2014, as a result of re-opening the time period registered contractors may grandfather their registered contractors' license to a state certified contractors' licenses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Budget Subcommittee on General Government Appropriations on February 28, 2012:
The committee substitute for committee substitute differs from the committee substitute by the Regulated Industries Committee as follows:

- It creates a new subsection (4) of s**.** 210.16, F.S., to permit wholesale tobacco dealers to extend credit to retail dealers, and to authorize the Division of Alcoholic Beverage and Tobacco to suspend or deny the renewal of the tobacco permit of a retail dealer after the wholesale dealer submits proof to the division that the dealer has failed to satisfy a civil judgment for failure to pay for tobacco products purchased from a wholesale dealer. The permit would remain suspended until the retailer entered into a payment plan or satisfied the civil judgment in full. It also amends s. 210.181, F.S., to correct a cross-reference necessitated by the amendment to s. 210.16, F.S.
- It does not amend s. 476.188, F.S., to permit barbers to provide barbering services outside of a licensed barbershop, include a consumer's place of employment, and to delete the limitation on providing barbering services at a residence may only when the client is in ill health and unable to go to the barbershop.
- It does not amend s. 476.0135(7), F.S., to provide that a cosmetology license is not required to provide makeup services to the general public.
- It amends s. 489.105(3), F.S., to repeal the license classification for glass and glazing contractors in paragraph (q). It also amends ss. 489.107(4) and 489.1412(2)(g), F.S., to correct cross-references necessitated by repeal of the glass and glazers provision in s. 489.105(3)(q), F.S.
- It does not amend s. 548.061, F.S., to limit the five percent tax on closed circuit television broadcasts of pugilistic matches to matches originating within this state and deletes the tax for matches that originate out-of-state.
- It amends s. 548.007, to exempt amateur boxing, martial arts or kickboxing matches from the prohibition against blows to the head in such matches unless the match is sanctioned by an amateur sanctioning organization when the matches are conducted or sponsored by nonprofit schools or education programs, a company or detachment of the Florida National Guard or by the Fraternal Order of Police, and held in conjunction with a charitable event.

CS by Regulated Industries on February 2, 2012:
The committee substitute (CS) does not amend s. 20.165(2), F.S., to create the Florida State Boxing Commission as a division within the Department of Business and Professional Regulation (department), and to provide that the Child Labor Program and the Farm Labor Program are established under the Division of Regulation.

The CS does not amend s. 455.01, F.S., to include activities or occupations regulated by the Florida State Boxing Commission within the definition of the term "profession."

The CS amends s. 475.611(1)(y), F.S, to define the term "subsidiary."

The CS creates s. 475.6235(9), F.S., to include, within the exemption in this subsection, financial institutions that own or operate an internal appraiser office, business, unit, or department and appraisal management companies that are owned and controlled by a subsidiary of a financial institution. It uses the term "financial institution" by referencing the definition in s. 655.005, F.S., in place of the terms "bank, credit union, or other lending institution".

The CS does not amend s. 477.019, F.S., to permit applicants for licensure by endorsement to substitute work experience for educational hours when applying for a licensure as provided by rule of the Board of Cosmetology. The CS amends s. 477.019(6), F.S., to permit cosmetology applicants, if licensed in another state, to qualify for a license without having to submit proof of completing their required educational hours if the state's requirements include 1200 pre-licensure hours and passage of a written examination.

The CS amends s. 548.061, F.S., relating to the tax on matches telecast by closed circuit.

The CS does not amend s. 548.006 (3), F.S., to give the Florida State Boxing Commission exclusive jurisdiction over all amateur mixed martial arts sanctioning organizations.

The CS does not amend s. 548.0065, F.S., to authorize the Florida State Boxing Commission to impose an advance notice requirement on amateur sanctioning organizations.

The CS does not amend s. 548.008(3) (a), F.S., to increase the penalty for participating in a prohibited match.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Jones) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Subsections (4) and (5) of section 210.16,
6 Florida Statutes, are renumbered as subsections (5) and (6),
7 respectively, and a new subsection (4) is added to that section
8 to read:
9 210.16 Revocation or suspension of permit.—
10 (4) At the discretion of the wholesale dealer making the
11 sale, credit for the sale of tobacco products may be extended to
12 a retail dealer that has been issued a permit pursuant to

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13 chapter 569. Upon submission of proof to the division by a
14 wholesale dealer, the division shall suspend or deny the renewal
15 of a retail permit to any person or, if a corporation, to any
16 officer or stockholder of the corporation who has failed to
17 satisfy the terms of a civil judgment obtained against the
18 person, corporation, officer, or stockholder for failure to pay
19 for tobacco products purchased from a wholesale dealer. The
20 permit shall remain suspended until the retail dealer submits
21 proof to the division that it has entered into an agreed payment
22 plan with the wholesale dealer or satisfied the civil judgment
23 in full.
24 Section 2. Subsection (1) of section 210.181, Florida
25 Statutes, is amended to read:
26 210.181 Civil penalties.—
27 (1) Except as provided in s. 210.16(6) ~~210.16(5)~~, whoever
28 knowingly omits, neglects, or refuses to comply with any duty
29 imposed upon him or her by this part, or to do or cause to be
30 done any of the things required by this part, or does anything
31 prohibited by this part shall, in addition to any other penalty
32 provided in this part, be liable for a fine of $1,000 or five
33 times the retail value of the cigarettes involved, whichever is
34 greater.
35 Section 3. Subsection (12) is added to section 455.213,
36 Florida Statutes, to read:
37 455.213 General licensing provisions.—
38 (12) The department shall waive the initial licensing fee,
39 the initial application fee, and the initial unlicensed activity
40 fee for a military veteran who applies to the department for a
41 license, in a format prescribed by the department, within 24

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42 months after discharge from any branch of the United States
43 Armed Forces. To qualify for this waiver, the veteran must have
44 been honorably discharged.
45 Section 4. Subsection (1) of section 455.2179, Florida
46 Statutes, is amended to read:
47 455.2179 Continuing education provider and course approval;
48 cease and desist orders.—
49 (1) If a board, or the department if there is no board,
50 requires completion of continuing education as a requirement for
51 renewal of a license, the board, or the department if there is
52 no board, shall approve the providers and courses for ~~of~~ the
53 continuing education. Notwithstanding this subsection or any
54 other provision of law, the department may approve continuing
55 education providers or courses even if there is a board. If the
56 department determines that an application for a continuing
57 education provider or course requires expert review or should be
58 denied, the department shall forward the application to the
59 appropriate board for review and approval or denial. The
60 approval of continuing education providers and courses must be
61 for a specified period of time, not to exceed 4 years. An
62 approval that does not include such a time limitation may remain
63 in effect pursuant to the applicable practice act or the rules
64 adopted under the applicable practice act. Notwithstanding this
65 subsection or any other provision of law, only the department
66 may determine the contents of any documents submitted for
67 approval of a continuing education provider or course.
68 Section 5. Paragraph (b) of subsection (6) of section
69 455.271, Florida Statutes, is amended to read:
70 455.271 Inactive and delinquent status.—

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71 (6)
72 (b) Notwithstanding the provisions of the professional
73 practice acts administered by the department, ~~the board, or~~ the
74 department ~~if there is no board,~~ may, at its discretion,
75 reinstate the license of an individual whose license has become
76 void if the ~~board or~~ department~~, as applicable,~~ determines that
77 the individual ~~has made a good faith effort to comply with this~~
78 ~~section but has~~ failed to comply because of illness or ~~unusual~~
79 economic hardship. The individual must apply to ~~the board, or~~
80 the department ~~if there is no board,~~ for reinstatement ~~in a~~
81 ~~manner prescribed by rules of the board or the department, as~~
82 ~~applicable,~~ and ~~shall~~ pay an applicable fee in an amount
83 determined by rule. The ~~board, or the~~ department ~~if there is no~~
84 ~~board,~~ shall require that such individual meet all continuing
85 education requirements prescribed by law, pay appropriate
86 licensing fees, and otherwise be eligible for renewal of
87 licensure under this chapter.
88
89 This subsection does not apply to individuals subject to
90 regulation under chapter 473.
91 Section 6. Section 455.273, Florida Statutes, is amended to
92 read:
93 455.273 Renewal and cancellation notices.—
94 ~~(1)~~ At least 90 days before the end of a licensure cycle,
95 the department ~~of Business and Professional Regulation~~ shall:
96 (1)~~(a)~~ Forward a licensure renewal notification to an
97 active or inactive licensee at the licensee's last known address
98 of record or e-mail address provided to ~~with~~ the department.
99 (2)~~(b)~~ Forward a notice of pending cancellation of

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100 licensure to a delinquent status licensee at the licensee's last
101 known address of record or e-mail address provided to ~~with~~ the
102 department.
103 ~~(2) Each licensure renewal notification and each notice of~~
104 ~~pending cancellation of licensure must state conspicuously that~~
105 ~~a licensee who remains on inactive status for more than two~~
106 ~~consecutive biennial licensure cycles and who wishes to~~
107 ~~reactivate the license may be required to demonstrate the~~
108 ~~competency to resume active practice by sitting for a special~~
109 ~~purpose examination or by completing other reactivation~~
110 ~~requirements, as defined by rule of the board or the department~~
111 ~~when there is no board.~~
112 Section 7. Subsections (1) and (2) of section 455.275,
113 Florida Statutes, are amended to read:
114 455.275 Address of record.—
115 (1) Each licensee of the department is solely responsible
116 for notifying the department in writing of the licensee's
117 current mailing address, e-mail address, and place of practice,
118 as defined by rule of the board or the department when there is
119 no board. A licensee's failure to notify the department of a
120 change of address constitutes a violation of this section, and
121 the licensee may be disciplined by the board or the department
122 when there is no board.
123 (2) Notwithstanding any other provision of law, service by
124 regular mail or e-mail to a licensee's last known mailing
125 address or e-mail address of record with the department
126 constitutes adequate and sufficient notice to the licensee for
127 any official communication to the licensee by the board or the
128 department except when other service is required pursuant to s.

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129 455.225.
130 Section 8. Paragraph (c) of subsection (2) of section
131 475.451, Florida Statutes, is amended, present subsections (4)
132 through (8) are renumbered as subsections (5) through (9),
133 respectively, and a new subsection (4) is added to that section,
134 to read:
135 475.451 Schools teaching real estate practice.—
136 (2) An applicant for a permit to operate a proprietary real
137 estate school, to be a chief administrator of a proprietary real
138 estate school or a state institution, or to be an instructor for
139 a proprietary real estate school or a state institution must
140 meet the qualifications for practice set forth in s. 475.17(1)
141 and the following minimal requirements:
142 (c) “School instructor” means an individual who instructs
143 persons in the classroom in noncredit college courses in a
144 college, university, or community college or courses in a career
145 center or proprietary real estate school.
146 1. Before commencing to provide such instruction, the
147 applicant must certify the applicant’s competency and obtain an
148 instructor permit by meeting one of the following requirements:
149 a. Hold a bachelor’s degree in a business-related subject,
150 such as real estate, finance, accounting, business
151 administration, or its equivalent and hold a valid broker’s
152 license in this state.
153 b. Hold a bachelor’s degree, have extensive real estate
154 experience, as defined by rule, and hold a valid broker’s
155 license in this state.
156 c. Pass an instructor’s examination approved by the
157 commission.

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158 2. Any requirement by the commission for a teaching
159 demonstration or practical examination must apply to all school
160 instructor applicants.
161 3. The department shall renew an instructor permit upon
162 receipt of a renewal application and fee. The renewal
163 application shall include proof that the permitholder has, since
164 the issuance or renewal of the current permit, successfully
165 completed a minimum of 7 classroom or distance learning hours of
166 instruction in real estate subjects or instructional techniques,
167 as prescribed by the commission. The commission shall adopt
168 rules providing for the renewal of instructor permits at least
169 every 2 years. Any permit that ~~which~~ is not renewed at the end
170 of the permit period established by the department ~~shall~~
171 automatically reverts ~~revert~~ to involuntarily inactive status.
172
173 The department may require an applicant to submit names of
174 persons having knowledge concerning the applicant and the
175 enterprise; may propound interrogatories to such persons and to
176 the applicant concerning the character of the applicant,
177 including the taking of fingerprints for processing through the
178 Federal Bureau of Investigation; and shall make such
179 investigation of the applicant or the school or institution as
180 it may deem necessary to the granting of the permit. If an
181 objection is filed, it shall be considered in the same manner as
182 objections or administrative complaints against other applicants
183 for licensure by the department.
184 (4) A real estate school may offer any course through
185 distance learning if the course complies with s. 475.17(2).
186 Section 9. Paragraphs (c) and (d) of subsection (1) of

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187 section 475.611, Florida Statutes, are amended, and paragraph
188 (y) is added to that subsection, to read:
189 475.611 Definitions.—
190 (1) As used in this part, the term:
191 (c) "Appraisal management company" means a person who
192 performs appraisal management services regardless of the use of
193 the term "appraisal management company," "appraiser
194 cooperative," "appraiser portal," "mortgage technology company,"
195 or other term.
196 (d) "Appraisal management services" means the coordination
197 or management of appraisal services for compensation by:
198 1. Employing, contracting with, or otherwise retaining one
199 or more licensed or certified appraisers to perform appraisal
200 services for a client; or
201 2. Acting as a broker or intermediary between a client and
202 one or more licensed or certified appraisers to facilitate the
203 client's employing, contracting with, or otherwise retaining the
204 appraisers.
205 (y) "Subsidiary" means an organization that is owned and
206 controlled by a financial institution that is regulated by a
207 federal financial institution regulatory agency.
208 Section 10. Subsection (4) of section 475.6171, Florida
209 Statutes, is amended to read:
210 475.6171 Issuance of registration or certification.—The
211 registration or certification of an applicant may be issued upon
212 receipt by the board of the following:
213 (4) If required, proof of passing a written examination as
214 specified in s. 475.616. ~~No certification shall be issued based~~
215 ~~upon any examination results obtained more than 24 months after~~

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216 ~~the date of examination.~~
217 Section 11. Subsection (1) of section 475.6235, Florida
218 Statutes, is amended, and subsection (9) is added to that
219 section, to read:
220 475.6235 Registration of appraisal management companies
221 required; exemptions.—
222 (1) A person may not engage, or offer to engage, in
223 appraisal management services for compensation in this state,
224 advertise or represent herself or himself as an appraisal
225 management company, ~~or use the titles "appraisal management~~
226 ~~company," "appraiser cooperative," "appraiser portal," or~~
227 ~~"mortgage technology company," or any abbreviation or words to~~
228 ~~that effect,~~ unless the person is registered with the department
229 as an appraisal management company under this section. However,
230 an employee of an appraisal management company is not required
231 to obtain a separate registration.
232 (9) This section does not apply to:
233 (a) Any financial institution, as defined in s. 655.005,
234 that owns and operates an internal appraisal office, business
235 unit, or department; or
236 (b) An appraisal management company that is a subsidiary
237 owned and controlled by a financial institution, as defined in
238 s. 655.005, that is regulated by a federal financial institution
239 regulatory agency.
240 Section 12. Paragraph (v) is added to subsection (1) of
241 section 475.6245, Florida Statutes, to read:
242 475.6245 Discipline of appraisal management companies.—
243 (1) The board may deny an application for registration of
244 an appraisal management company; may investigate the actions of

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245 any appraisal management company registered under this part; may
246 reprimand or impose an administrative fine not to exceed $5,000
247 for each count or separate offense against any such appraisal
248 management company; and may revoke or suspend, for a period not
249 to exceed 10 years, the registration of any such appraisal
250 management company, or place any such appraisal management
251 company on probation, if the board finds that the appraisal
252 management company or any person listed in s. 475.6235(2)(f):
253 (v) Has required or attempted to require an appraiser to
254 sign any indemnification agreement that would require the
255 appraiser to hold harmless the appraisal management company or
256 its owners, agents, employees, or independent contractors from
257 any liability, damage, loss, or claim arising from the services
258 performed by the appraisal management company or its owners,
259 agents, employees, or independent contractors and not the
260 services performed by the appraiser.
261 Section 13. Subsection (6) of section 477.019, Florida
262 Statutes, is amended to read:
263 477.019 Cosmetologists; qualifications; licensure;
264 supervised practice; license renewal; endorsement; continuing
265 education.—
266 (6) The board shall certify as qualified ~~adopt rules~~
267 ~~specifying procedures~~ for ~~the~~ licensure by endorsement as a
268 cosmetologist in this state an applicant ~~of practitioners~~
269 ~~desiring to be licensed in this state~~ who holds ~~hold~~ a current
270 active license to practice cosmetology in another state ~~and who~~
271 ~~have met qualifications substantially similar to, equivalent to,~~
272 ~~or greater than the qualifications required of applicants from~~
273 ~~this state~~. The board may not require proof of educational hours

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274 if the license was issued in a state that requires 1,200 or more
275 hours of prelicensure education and passage of a written
276 examination. This subsection does not apply to applicants who
277 received their license in another state through an
278 apprenticeship program.
279 Section 14. Subsection (4) is added to section 477.0263,
280 Florida Statutes, to read:
281 477.0263 Cosmetology services to be performed in licensed
282 salon; exceptions ~~exception~~.—
283 (4) Pursuant to rules adopted by the board, any cosmetology
284 or specialty service may be performed in a location other than a
285 licensed salon when the service is performed in connection with
286 a special event and is performed by a person who is employed by
287 a licensed salon and who holds the proper license or specialty
288 registration. An appointment for the performance of any such
289 service in a location other than a licensed salon must be made
290 through a licensed salon.
291 Section 15. Subsection (3) of section 489.105, Florida
292 Statutes, is amended to read:
293 489.105 Definitions.—As used in this part:
294 (3) "Contractor" means the person who is qualified for, and
295 is only responsible for, the project contracted for and means,
296 except as exempted in this part, the person who, for
297 compensation, undertakes to, submits a bid to, or does himself
298 or herself or by others construct, repair, alter, remodel, add
299 to, demolish, subtract from, or improve any building or
300 structure, including related improvements to real estate, for
301 others or for resale to others; and whose job scope is
302 substantially similar to the job scope described in one of the

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303 subsequent paragraphs of this subsection. For the purposes of
304 regulation under this part, “demolish” applies only to
305 demolition of steel tanks over 50 feet in height; towers over 50
306 feet in height; other structures over 50 feet in height, other
307 than buildings or residences over three stories tall; and
308 buildings or residences over three stories tall. Contractors are
309 subdivided into two divisions, Division I, consisting of those
310 contractors defined in paragraphs (a)-(c), and Division II,
311 consisting of those contractors defined in paragraphs (d)-(q)
312 ~~(d)-(r)~~:
313 (a) “General contractor” means a contractor whose services
314 are unlimited as to the type of work which he or she may do, who
315 may contract for any activity requiring licensure under this
316 part, and who may perform any work requiring licensure under
317 this part, except as otherwise expressly provided in s. 489.113.
318 (b) “Building contractor” means a contractor whose services
319 are limited to construction of commercial buildings and single-
320 dwelling or multiple-dwelling residential buildings, which do
321 not exceed three stories in height, and accessory use structures
322 in connection therewith or a contractor whose services are
323 limited to remodeling, repair, or improvement of any size
324 building if the services do not affect the structural members of
325 the building.
326 (c) “Residential contractor” means a contractor whose
327 services are limited to construction, remodeling, repair, or
328 improvement of one-family, two-family, or three-family
329 residences not exceeding two habitable stories above no more
330 than one uninhabitable story and accessory use structures in
331 connection therewith.

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332 (d) “Sheet metal contractor” means a contractor whose
333 services are unlimited in the sheet metal trade and who has the
334 experience, knowledge, and skill necessary for the manufacture,
335 fabrication, assembling, handling, erection, installation,
336 dismantling, conditioning, adjustment, insulation, alteration,
337 repair, servicing, or design, if not prohibited by law, of
338 ferrous or nonferrous metal work of U.S. No. 10 gauge or its
339 equivalent or lighter gauge and of other materials, including,
340 but not limited to, fiberglass, used in lieu thereof and of air-
341 handling systems, including the setting of air-handling
342 equipment and reinforcement of same, the balancing of air-
343 handling systems, and any duct cleaning and equipment sanitizing
344 that requires at least a partial disassembling of the system.
345 (e) “Roofing contractor” means a contractor whose services
346 are unlimited in the roofing trade and who has the experience,
347 knowledge, and skill to install, maintain, repair, alter,
348 extend, or design, if not prohibited by law, and use materials
349 and items used in the installation, maintenance, extension, and
350 alteration of all kinds of roofing, waterproofing, and coating,
351 except when coating is not represented to protect, repair,
352 waterproof, stop leaks, or extend the life of the roof. The
353 scope of work of a roofing contractor also includes required
354 roof-deck attachments and any repair or replacement of wood roof
355 sheathing or fascia as needed during roof repair or replacement.
356 (f) “Class A air-conditioning contractor” means a
357 contractor whose services are unlimited in the execution of
358 contracts requiring the experience, knowledge, and skill to
359 install, maintain, repair, fabricate, alter, extend, or design,
360 if not prohibited by law, central air-conditioning,

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361 refrigeration, heating, and ventilating systems, including duct
362 work in connection with a complete system if such duct work is
363 performed by the contractor as necessary to complete an air-
364 distribution system, boiler and unfired pressure vessel systems,
365 and all appurtenances, apparatus, or equipment used in
366 connection therewith, and any duct cleaning and equipment
367 sanitizing that requires at least a partial disassembling of the
368 system; to install, maintain, repair, fabricate, alter, extend,
369 or design, if not prohibited by law, piping, insulation of
370 pipes, vessels and ducts, pressure and process piping, and
371 pneumatic control piping; to replace, disconnect, or reconnect
372 power wiring on the load side of the dedicated existing
373 electrical disconnect switch; to install, disconnect, and
374 reconnect low voltage heating, ventilating, and air-conditioning
375 control wiring; and to install a condensate drain from an air-
376 conditioning unit to an existing safe waste or other approved
377 disposal other than a direct connection to a sanitary system.
378 The scope of work for such contractor also includes any
379 excavation work incidental thereto, but does not include any
380 work such as liquefied petroleum or natural gas fuel lines
381 within buildings, except for disconnecting or reconnecting
382 changeouts of liquefied petroleum or natural gas appliances
383 within buildings; potable water lines or connections thereto;
384 sanitary sewer lines; swimming pool piping and filters; or
385 electrical power wiring.
386 (g) “Class B air-conditioning contractor” means a
387 contractor whose services are limited to 25 tons of cooling and
388 500,000 Btu of heating in any one system in the execution of
389 contracts requiring the experience, knowledge, and skill to

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390 install, maintain, repair, fabricate, alter, extend, or design,
391 if not prohibited by law, central air-conditioning,
392 refrigeration, heating, and ventilating systems, including duct
393 work in connection with a complete system only to the extent
394 such duct work is performed by the contractor as necessary to
395 complete an air-distribution system being installed under this
396 classification, and any duct cleaning and equipment sanitizing
397 that requires at least a partial disassembling of the system; to
398 install, maintain, repair, fabricate, alter, extend, or design,
399 if not prohibited by law, piping and insulation of pipes,
400 vessels, and ducts; to replace, disconnect, or reconnect power
401 wiring on the load side of the dedicated existing electrical
402 disconnect switch; to install, disconnect, and reconnect low
403 voltage heating, ventilating, and air-conditioning control
404 wiring; and to install a condensate drain from an air-
405 conditioning unit to an existing safe waste or other approved
406 disposal other than a direct connection to a sanitary system.
407 The scope of work for such contractor also includes any
408 excavation work incidental thereto, but does not include any
409 work such as liquefied petroleum or natural gas fuel lines
410 within buildings, except for disconnecting or reconnecting
411 changeouts of liquefied petroleum or natural gas appliances
412 within buildings; potable water lines or connections thereto;
413 sanitary sewer lines; swimming pool piping and filters; or
414 electrical power wiring.
415 (h) “Class C air-conditioning contractor” means a
416 contractor whose business is limited to the servicing of air-
417 conditioning, heating, or refrigeration systems, including any
418 duct cleaning and equipment sanitizing that requires at least a

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419 partial disassembling of the system, and whose certification or
420 registration, issued pursuant to this part, was valid on October
421 1, 1988. Only a person who was registered or certified as a
422 Class C air-conditioning contractor as of October 1, 1988, shall
423 be so registered or certified after October 1, 1988. However,
424 the board shall continue to license and regulate those Class C
425 air-conditioning contractors who held Class C licenses before
426 October 1, 1988.
427 (i) “Mechanical contractor” means a contractor whose
428 services are unlimited in the execution of contracts requiring
429 the experience, knowledge, and skill to install, maintain,
430 repair, fabricate, alter, extend, or design, if not prohibited
431 by law, central air-conditioning, refrigeration, heating, and
432 ventilating systems, including duct work in connection with a
433 complete system if such duct work is performed by the contractor
434 as necessary to complete an air-distribution system, boiler and
435 unfired pressure vessel systems, lift station equipment and
436 piping, and all appurtenances, apparatus, or equipment used in
437 connection therewith, and any duct cleaning and equipment
438 sanitizing that requires at least a partial disassembling of the
439 system; to install, maintain, repair, fabricate, alter, extend,
440 or design, if not prohibited by law, piping, insulation of
441 pipes, vessels and ducts, pressure and process piping, pneumatic
442 control piping, gasoline tanks and pump installations and piping
443 for same, standpipes, air piping, vacuum line piping, oxygen
444 lines, nitrous oxide piping, ink and chemical lines, fuel
445 transmission lines, liquefied petroleum gas lines within
446 buildings, and natural gas fuel lines within buildings; to
447 replace, disconnect, or reconnect power wiring on the load side

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448 of the dedicated existing electrical disconnect switch; to
449 install, disconnect, and reconnect low voltage heating,
450 ventilating, and air-conditioning control wiring; and to install
451 a condensate drain from an air-conditioning unit to an existing
452 safe waste or other approved disposal other than a direct
453 connection to a sanitary system. The scope of work for such
454 contractor also includes any excavation work incidental thereto,
455 but does not include any work such as potable water lines or
456 connections thereto, sanitary sewer lines, swimming pool piping
457 and filters, or electrical power wiring.
458 (j) “Commercial pool/spa contractor” means a contractor
459 whose scope of work involves, but is not limited to, the
460 construction, repair, and servicing of any swimming pool, or hot
461 tub or spa, whether public, private, or otherwise, regardless of
462 use. The scope of work includes the installation, repair, or
463 replacement of existing equipment, any cleaning or equipment
464 sanitizing that requires at least a partial disassembling,
465 excluding filter changes, and the installation of new pool/spa
466 equipment, interior finishes, the installation of package pool
467 heaters, the installation of all perimeter piping and filter
468 piping, and the construction of equipment rooms or housing for
469 pool/spa equipment, and also includes the scope of work of a
470 swimming pool/spa servicing contractor. The scope of such work
471 does not include direct connections to a sanitary sewer system
472 or to potable water lines. The installation, construction,
473 modification, or replacement of equipment permanently attached
474 to and associated with the pool or spa for the purpose of water
475 treatment or cleaning of the pool or spa requires licensure;
476 however, the usage of such equipment for the purposes of water

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477 treatment or cleaning does not require licensure unless the
478 usage involves construction, modification, or replacement of
479 such equipment. Water treatment that does not require such
480 equipment does not require a license. In addition, a license is
481 not required for the cleaning of the pool or spa in a way that
482 does not affect the structural integrity of the pool or spa or
483 its associated equipment.
484 (k) "Residential pool/spa contractor" means a contractor
485 whose scope of work involves, but is not limited to, the
486 construction, repair, and servicing of a residential swimming
487 pool, or hot tub or spa, regardless of use. The scope of work
488 includes the installation, repair, or replacement of existing
489 equipment, any cleaning or equipment sanitizing that requires at
490 least a partial disassembling, excluding filter changes, and the
491 installation of new pool/spa equipment, interior finishes, the
492 installation of package pool heaters, the installation of all
493 perimeter piping and filter piping, and the construction of
494 equipment rooms or housing for pool/spa equipment, and also
495 includes the scope of work of a swimming pool/spa servicing
496 contractor. The scope of such work does not include direct
497 connections to a sanitary sewer system or to potable water
498 lines. The installation, construction, modification, or
499 replacement of equipment permanently attached to and associated
500 with the pool or spa for the purpose of water treatment or
501 cleaning of the pool or spa requires licensure; however, the
502 usage of such equipment for the purposes of water treatment or
503 cleaning does not require licensure unless the usage involves
504 construction, modification, or replacement of such equipment.
505 Water treatment that does not require such equipment does not

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506 require a license. In addition, a license is not required for
507 the cleaning of the pool or spa in a way that does not affect
508 the structural integrity of the pool or spa or its associated
509 equipment.
510 (l) “Swimming pool/spa servicing contractor” means a
511 contractor whose scope of work involves, but is not limited to,
512 the repair and servicing of a swimming pool, or hot tub or spa,
513 whether public or private, or otherwise, regardless of use. The
514 scope of work includes the repair or replacement of existing
515 equipment, any cleaning or equipment sanitizing that requires at
516 least a partial disassembling, excluding filter changes, and the
517 installation of new pool/spa equipment, interior refinishing,
518 the reinstallation or addition of pool heaters, the repair or
519 replacement of all perimeter piping and filter piping, the
520 repair of equipment rooms or housing for pool/spa equipment, and
521 the substantial or complete draining of a swimming pool, or hot
522 tub or spa, for the purpose of repair or renovation. The scope
523 of such work does not include direct connections to a sanitary
524 sewer system or to potable water lines. The installation,
525 construction, modification, substantial or complete disassembly,
526 or replacement of equipment permanently attached to and
527 associated with the pool or spa for the purpose of water
528 treatment or cleaning of the pool or spa requires licensure;
529 however, the usage of such equipment for the purposes of water
530 treatment or cleaning does not require licensure unless the
531 usage involves construction, modification, substantial or
532 complete disassembly, or replacement of such equipment. Water
533 treatment that does not require such equipment does not require
534 a license. In addition, a license is not required for the

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535 cleaning of the pool or spa in a way that does not affect the
536 structural integrity of the pool or spa or its associated
537 equipment.
538 (m) “Plumbing contractor” means a contractor whose
539 contracting business consists of the execution of contracts
540 requiring the experience, financial means, knowledge, and skill
541 to install, maintain, repair, alter, extend, or, if not
542 prohibited by law, design plumbing. A plumbing contractor may
543 install, maintain, repair, alter, extend, or, if not prohibited
544 by law, design the following without obtaining an additional
545 local regulatory license, certificate, or registration: sanitary
546 drainage or storm drainage facilities; venting systems; public
547 or private water supply systems; septic tanks; drainage and
548 supply wells; swimming pool piping; irrigation systems; or solar
549 heating water systems and all appurtenances, apparatus, or
550 equipment used in connection therewith, including boilers and
551 pressure process piping and including the installation of water,
552 natural gas, liquefied petroleum gas and related venting, and
553 storm and sanitary sewer lines; and water and sewer plants and
554 substations. The scope of work of the plumbing contractor also
555 includes the design, if not prohibited by law, and installation,
556 maintenance, repair, alteration, or extension of air-piping,
557 vacuum line piping, oxygen line piping, nitrous oxide piping,
558 and all related medical gas systems; fire line standpipes and
559 fire sprinklers if authorized by law; ink and chemical lines;
560 fuel oil and gasoline piping and tank and pump installation,
561 except bulk storage plants; and pneumatic control piping
562 systems, all in a manner that complies with all plans,
563 specifications, codes, laws, and regulations applicable. The

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564 scope of work of the plumbing contractor applies to private
565 property and public property, including any excavation work
566 incidental thereto, and includes the work of the specialty
567 plumbing contractor. Such contractor shall subcontract, with a
568 qualified contractor in the field concerned, all other work
569 incidental to the work but which is specified as being the work
570 of a trade other than that of a plumbing contractor. This
571 definition does not limit the scope of work of any specialty
572 contractor certified pursuant to s. 489.113(6), and does not
573 require certification or registration under this part of any
574 authorized employee of a public natural gas utility or of a
575 private natural gas utility regulated by the Public Service
576 Commission when disconnecting and reconnecting water lines in
577 the servicing or replacement of an existing water heater.
578 (n) “Underground utility and excavation contractor” means a
579 contractor whose services are limited to the construction,
580 installation, and repair, on public or private property, whether
581 accomplished through open excavations or through other means,
582 including, but not limited to, directional drilling, auger
583 boring, jacking and boring, trenchless technologies, wet and dry
584 taps, grouting, and slip lining, of main sanitary sewer
585 collection systems, main water distribution systems, storm sewer
586 collection systems, and the continuation of utility lines from
587 the main systems to a point of termination up to and including
588 the meter location for the individual occupancy, sewer
589 collection systems at property line on residential or single-
590 occupancy commercial properties, or on multioccupancy properties
591 at manhole or wye lateral extended to an invert elevation as
592 engineered to accommodate future building sewers, water

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593 distribution systems, or storm sewer collection systems at storm
594 sewer structures. However, an underground utility and excavation
595 contractor may install empty underground conduits in rights-of-
596 way, easements, platted rights-of-way in new site development,
597 and sleeves for parking lot crossings no smaller than 2 inches
598 in diameter if each conduit system installed is designed by a
599 licensed professional engineer or an authorized employee of a
600 municipality, county, or public utility and the installation of
601 such conduit does not include installation of any conductor
602 wiring or connection to an energized electrical system. An
603 underground utility and excavation contractor may not install
604 piping that is an integral part of a fire protection system as
605 defined in s. 633.021 beginning at the point where the piping is
606 used exclusively for such system.
607 (o) “Solar contractor” means a contractor whose services
608 consist of the installation, alteration, repair, maintenance,
609 relocation, or replacement of solar panels for potable solar
610 water heating systems, swimming pool solar heating systems, and
611 photovoltaic systems and any appurtenances, apparatus, or
612 equipment used in connection therewith, whether public, private,
613 or otherwise, regardless of use. A contractor, certified or
614 registered pursuant to this chapter, is not required to become a
615 certified or registered solar contractor or to contract with a
616 solar contractor in order to provide services enumerated in this
617 paragraph that are within the scope of the services such
618 contractors may render under this part.
619 (p) “Pollutant storage systems contractor” means a
620 contractor whose services are limited to, and who has the
621 experience, knowledge, and skill to install, maintain, repair,

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622 alter, extend, or design, if not prohibited by law, and use
623 materials and items used in the installation, maintenance,
624 extension, and alteration of, pollutant storage tanks. Any
625 person installing a pollutant storage tank shall perform such
626 installation in accordance with the standards adopted pursuant
627 to s. 376.303.
628 ~~(q) "Glass and glazing contractor" means a contractor whose~~
629 ~~services are unlimited in the execution of contracts requiring~~
630 ~~the experience, knowledge, and skill to install, attach,~~
631 ~~maintain, repair, fabricate, alter, extend, or design, in~~
632 ~~residential and commercial applications without any height~~
633 ~~restrictions, all types of windows, glass, and mirrors, whether~~
634 ~~fixed or movable; swinging or sliding glass doors attached to~~
635 ~~existing walls, floors, columns, or other structural members of~~
636 ~~the building; glass holding or supporting mullions or horizontal~~
637 ~~bars; structurally anchored impact-resistant opening protection~~
638 ~~attached to existing building walls, floors, columns, or other~~
639 ~~structural members of the building; prefabricated glass, metal,~~
640 ~~or plastic curtain walls; storefront frames or panels; shower~~
641 ~~and tub enclosures; metal fascias; and caulking incidental to~~
642 ~~such work and assembly.~~
643 (q) ~~(r)~~ "Specialty contractor" means a contractor whose
644 scope of work and responsibility is limited to a particular
645 phase of construction established in a category adopted by board
646 rule and whose scope is limited to a subset of the activities
647 described in one of the paragraphs of this subsection.
648 Section 16. Paragraphs (b) and (c) of subsection (4) of
649 section 489.107, Florida Statutes, are amended to read:
650 489.107 Construction Industry Licensing Board.—

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651 (4) The board shall be divided into two divisions, Division
652 I and Division II.
653 (b) Division II is comprised of the roofing contractor,
654 sheet metal contractor, air-conditioning contractor, mechanical
655 contractor, pool contractor, plumbing contractor, and
656 underground utility and excavation contractor members of the
657 board; one of the members appointed pursuant to paragraph
658 (2)(j); and one of the members appointed pursuant to paragraph
659 (2)(k). Division II has jurisdiction over the regulation of
660 contractors defined in s. 489.105(3)(d)-(p) ~~489.105(3)(d)-(q)~~.
661 (c) Jurisdiction for the regulation of specialty
662 contractors defined in s. 489.105(3)(q) ~~489.105(3)(r)~~ shall lie
663 with the division having jurisdiction over the scope of work of
664 the specialty contractor as defined by board rule.
665 Section 17. Paragraph (g) of subsection (2) of section
666 489.141, Florida Statutes, is amended to read:
667 489.141 Conditions for recovery; eligibility.—
668 (2) A claimant is not qualified to make a claim for
669 recovery from the recovery fund, if:
670 (g) The claimant has contracted with a licensee to perform
671 a scope of work described in s. 489.105(3)(d)-(p) ~~489.105(3)(d)-~~
672 ~~(r)~~.
673 Section 18. Section 489.118, Florida Statutes, is reenacted
674 and amended to read:
675 489.118 Certification of registered contractors;
676 grandfathering provisions.—The board shall, upon receipt of a
677 completed application and appropriate fee, issue a certificate
678 in the appropriate category to any contractor registered under
679 this part who makes application to the board and can show that

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680 he or she meets each of the following requirements:
681 (1) Currently holds a valid registered local license in one
682 of the contractor categories defined in s. 489.105(3)(a)-(p).
683 (2) Has, for that category, passed a written examination
684 that the board finds to be substantially similar to the
685 examination required to be licensed as a certified contractor
686 under this part. For purposes of this subsection, a written,
687 proctored examination such as that produced by the National
688 Assessment Institute, Block and Associates, NAI/Block, Experior
689 Assessments, Professional Testing, Inc., or Assessment Systems,
690 Inc., shall be considered to be substantially similar to the
691 examination required to be licensed as a certified contractor.
692 The board may not impose or make any requirements regarding the
693 nature or content of these cited examinations.
694 (3) Has at least 5 years of experience as a contractor in
695 that contracting category, or as an inspector or building
696 administrator with oversight over that category, at the time of
697 application. For contractors, only time periods in which the
698 contractor license is active and the contractor is not on
699 probation shall count toward the 5 years required by this
700 subsection.
701 (4) Has not had his or her contractor’s license revoked at
702 any time, had his or her contractor’s license suspended within
703 the last 5 years, or been assessed a fine in excess of $500
704 within the last 5 years.
705 (5) Is in compliance with the insurance and financial
706 responsibility requirements in s. 489.115(5).
707
708 Applicants wishing to obtain a certificate pursuant to this

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709 section must make application by November 1, 2014 ~~2005~~.
710 Section 19. Effective upon this act becoming a law, section
711 548.007, Florida Statutes, is amended to read:
712 548.007 Applicability of provisions to amateur matches and
713 certain other matches or events.—Sections ~~With the exception of~~
714 ~~s. 548.008, ss.~~ 548.001-548.079 do not apply to:
715 (1) A match conducted or sponsored by a bona fide nonprofit
716 school or education program whose primary purpose is instruction
717 in the martial arts, boxing, or kickboxing, if the match held in
718 conjunction with the instruction is limited to amateur
719 participants who are students of the school or instructional
720 program;
721 (2) A match conducted or sponsored by any company or
722 detachment of the Florida National Guard, if the match is
723 limited to participants who are members of the company or
724 detachment of the Florida National Guard; or
725 (3) A match conducted or sponsored by the Fraternal Order
726 of Police, if the match is limited to amateur participants and
727 is held in conjunction with a charitable event.
728 Section 20. Paragraphs (i) through (k) of subsection (1) of
729 section 561.29, Florida Statutes, are redesignated as paragraphs
730 (h) through (j), respectively, and present paragraphs (h)
731 through (k) of that subsection are amended to read:
732 561.29 Revocation and suspension of license; power to
733 subpoena.—
734 (1) The division is given full power and authority to
735 revoke or suspend the license of any person holding a license
736 under the Beverage Law, when it is determined or found by the
737 division upon sufficient cause appearing of:

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738 (h) Failure by the holder of any license under s. 561.20(1)
739 to maintain the licensed premises as provided in this paragraph
740 :
741 1. For licenses issued on or before September 30, 1988, ~~in~~
742 ~~an active manner in which~~ the licensed premises must be ~~are~~ open
743 for the bona fide sale of authorized alcoholic beverages during
744 regular business hours of at least 6 hours a day for a period of
745 120 days or more during any 12-month period commencing 18 months
746 after the acquisition of the license by the licensee.~~,~~
747 ~~regardless of the date the license was originally issued. Every~~
748 ~~licensee must notify the division in writing of any period~~
749 ~~during which his or her license is inactive and place the~~
750 ~~physical license with the division to be held in an inactive~~
751 ~~status. The division may waive or extend the requirement of this~~
752 ~~section upon the finding of hardship, including the purchase of~~
753 ~~the license in order to transfer it to a newly constructed or~~
754 ~~remodeled location. However, during such closed period, the~~
755 ~~licensee shall make reasonable efforts toward restoring the~~
756 ~~license to active status. This paragraph shall apply to all~~
757 ~~annual license periods commencing on or after July 1, 1981, but~~
758 ~~shall not apply to licenses issued after September 30, 1988.~~
759 2.~~(i)~~ For licenses issued ~~Failure of any licensee issued a~~
760 ~~new or transfer license~~ after September 30, 1988, the licensed
761 premises must be ~~under s. 561.20(1) to maintain the licensed~~
762 ~~premises in an active manner in which the licensed premises are~~
763 open for business to the public for the bona fide retail sale of
764 authorized alcoholic beverages during regular and reasonable
765 business hours for at least 8 hours a day for a period of 210
766 days or more during any 12-month period commencing 6 months

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767 after the acquisition of the license by the licensee.
768 3. It is the intent of this ~~act that for purposes of~~
769 ~~compliance with this~~ paragraph that ~~,~~ a licensee shall operate
770 the licensed premises in a manner so as to maximize sales and
771 tax revenues thereon; this includes maintaining a reasonable
772 inventory of merchandise, including authorized alcoholic
773 beverages, and the use of good business practices to achieve the
774 intent of this law. Any attempt by a licensee to circumvent the
775 intent of this law shall be grounds for revocation or suspension
776 of the alcoholic beverage license.
777 4. A licensee must notify the division in writing that the
778 license is inactive. To reactivate the license, the licensee
779 must apply to the division for reactivation within 12 months
780 after the license is placed in inactive status.
781 5. The division shall grant an extension to a licensee who
782 requests that his or her license remain inactive for longer than
783 12 months and can demonstrate to the division that:
784 a. The value of the license is less than the licensee's
785 original cost of the license;
786 b. The licensee is actively attempting to sell the license,
787 as evidenced by a formal written agreement with a broker or by
788 regular advertisement in a periodical of general circulation or
789 an industry publication;
790 c. Corporate approval, if applicable, is pending for
791 activation of the license at a new location;
792 d. Activation is pending a governmental approval of a new
793 site pursuant to special exception, zoning, variance,
794 enviromental approval, or comprehensive plan amendment;
795 e. Negotiation of a lease or purchase of a building or land

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796 is pending; ~~The division may, upon written request of the~~
797 ~~licensee, give a written waiver of this requirement for a period~~
798 ~~not to exceed 12 months in cases where the licensee demonstrates~~
799 ~~that~~
800 f. The ~~the~~ licensed premises has been physically destroyed
801 through no fault of the licensee; ~~, when~~
802 g. The ~~the~~ licensee has suffered an incapacitating illness
803 or injury which is likely to be prolonged; ~~,~~ or ~~when~~
804 h. The ~~the~~ licensed premises has been prohibited from
805 making sales as a result of any action of any court of competent
806 jurisdiction. An extension granted pursuant to this subparagraph
807 shall be continued upon subsequent written request showing that
808 the conditions for the extension continue through no fault of
809 the licensee, and, if applicable, substantial progress had been
810 made toward correcting the conditions. ~~Any waiver given pursuant~~
811 ~~to this subsection may be continued upon subsequent written~~
812 ~~request showing that substantial progress has been made toward~~
813 ~~restoring the licensed premises to a condition suitable for the~~
814 ~~resumption of sales or toward allowing for a court having~~
815 ~~jurisdiction over the premises to release said jurisdiction, or~~
816 ~~that an incapacitating illness or injury continues to exist.~~
817 However, in no event may any waiver given pursuant to this
818 subsection exceed 32 months. ~~may the waivers necessitated by any~~
819 ~~one occurrence cumulatively total more than 24 months. Every~~
820 ~~licensee shall notify the division in writing of any period~~
821 ~~during which his or her license is inactive and place the~~
822 ~~physical license with the division to be held in an inactive~~
823 ~~status.~~
824 (i) ~~(j)~~ Failure of any licensee issued a license under s.

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825 561.20(1) to maintain records of all monthly sales and all
826 monthly purchases of alcoholic beverages and to produce such
827 records for inspection by any division employee within 10 days
828 of written request therefor.
829 (j) ~~(k)~~ Failure by the holder of any license issued under
830 the Beverage Law to comply with a stipulation, consent order, or
831 final order.
832 Section 22. Paragraph (a) of subsection (3) of section
833 561.32, Florida Statutes, is amended to read:
834 561.32 Transfer of licenses; change of officers or
835 directors; transfer of interest.—
836 (3)(a) Before the issuance of any transfer of license
837 herein provided, the transferee shall pay a transfer fee of 10
838 percent of the annual license tax to the division, except for
839 those licenses issued pursuant to s. 565.02(1) and subject to
840 the limitation imposed in s. 561.20(1), for which the transfer
841 fee shall be $1,200.00. ~~assessed on the average annual value of~~
842 ~~gross sales of alcoholic beverages for the 3 years immediately~~
843 ~~preceding transfer and levied at the rate of 4 mills, except~~
844 ~~that such transfer fee shall not exceed $5,000; in lieu of the~~
845 ~~4-mill assessment, the transferor may elect to pay $5,000.~~
846 ~~Further, the maximum fee shall be applied with respect to any~~
847 ~~such license which has been inactive for the 3-year period.~~
848 ~~Records establishing the value of such gross sales shall~~
849 ~~accompany the application for transfer of the license, and~~
850 ~~falsification of such records shall be punishable as provided in~~
851 ~~s. 562.45 .~~ All transfer fees collected by the division on the
852 transfer of licenses issued pursuant to s. 565.02(1) and subject
853 to the limitation imposed in s. 561.20(1) shall be returned by

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854 the division to the municipality in which such transferred
855 license is operated or, if operated in the unincorporated area
856 of the county, to the county in which such transferred license
857 is operated.
858 Section 23. The provisions contained in ss. 5 and 6, ch.
859 2010-225, Laws of Florida, shall be effected through a type two
860 transfer of the relevant administrative rules, pursuant to s.
861 20.06(2), Florida Statutes.
862 Section 24. Except as otherwise expressly provided in this
863 act and except for this section, which shall take effect upon
864 this act becoming a law, this act shall take effect October 1,
865 2012.
866
867
868 ========== T I T L E A M E N D M E N T ==========
869 And the title is amended as follows:
870 Delete everything before the enacting clause
871 and insert:
872 A bill to be entitled
873 An act relating to business and professional
874 regulation; amending s. 210.16, F.S.; authorizing
875 credit for the sale of tobacco products to be extended
876 to a retail dealer under specified conditions;
877 providing for the suspension of the sale of tobacco
878 products to retail dealers delinquent in their credit
879 payments until certain conditions are met; amending s.
880 210.181, F.S.; conforming a cross-reference; amending
881 s. 455.213, F.S.; waiving initial licensing,
882 application, and unlicensed activity fees for certain

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883 military veterans; amending s. 455.2179, F.S.;
884 revising continuing education provider and course
885 approval procedures; amending s. 455.271, F.S.;
886 limiting to the Department of Business and
887 Professional Regulation the authority to reinstate a
888 license that has become void under certain
889 circumstances; amending s. 455.273, F.S.; revising the
890 method of license renewal notification or notice of
891 pending cancellation of licensure to include an e-mail
892 address; deleting a requirement that a licensure
893 renewal notification and a notice of cancellation of
894 licensure include certain information regarding the
895 applicant; amending s. 455.275, F.S.; revising a
896 provision relating to maintenance of current address-
897 of-record information to include e-mail address;
898 revising a provision relating to notice to a licensee
899 to allow service of process by e-mail; amending s.
900 475.451, F.S.; authorizing distance learning courses
901 as an acceptable alternative to classroom instruction
902 for renewal of a real estate instructor permit;
903 providing that distance learning courses are under the
904 discretion of the school offering the real estate
905 course; requiring distance learning courses to adhere
906 to certain requirements; amending s. 475.611, F.S.;
907 revising the definition of the terms “appraisal
908 management company” and “appraisal management
909 services”; defining the term “subsidiary”; amending s.
910 475.6171, F.S.; revising requirements for the issuance
911 of registration or certification upon receipt of

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912 proper documentation; amending s. 475.6235, F.S.;
913 revising provisions relating to titles an appraisal
914 management company must be registered to use;
915 providing exemptions from registration requirements;
916 amending s. 475.6245, F.S.; providing additional
917 grounds for discipline of appraisal management
918 companies, to which penalties apply; amending s.
919 477.019, F.S.; revising procedures for cosmetology
920 licensure by endorsement; amending s. 477.0263, F.S.;
921 authorizing the performance of cosmetology and
922 specialty services in a location other than a licensed
923 salon under certain circumstances; amending s.
924 489.105, F.S.; deleting the definition of the term
925 “glass and glazing contractor”; amending ss. 489.107
926 and 489.141, F.S.; conforming cross-references;
927 reenacting and amending s. 489.118, F.S.; reviving
928 grandfathering provisions and establishing a new
929 deadline for applications for certification of certain
930 registered contractors; amending s. 548.007, F.S.;
931 deleting exemptions from certain restrictions on
932 specified amateur matches and other events; in
933 duplicate; amending s. 561.29, F.S.; revising the
934 grounds for revocation or suspension of licenses
935 relating to failure to maintain the licensed premises
936 as required; revising requirements with respect to
937 inactive licenses; providing requirements for
938 extension of the time to reactivate an inactive
939 license; amending s. 561.32; providing amount of the
940 transfer fee; deleting method for calculating the

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941 amount of the transfer fee; deleting prohibition
942 against falsification of records used in the
943 calculation of the transfer fee; providing an
944 effective date.

304738

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Jones) recommended the following:

Senate Amendment to Amendment (754020) (with title amendment)

Delete lines 728 - 857.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 933 - 944
and insert:
duplicate; providing an effective date.

500090

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Between lines 388 and 389
insert:

Section 17. Section 565.07, Florida Statutes, is amended to read:

565.07 Sale or consumption of certain distilled spirits prohibited.—A ~~No~~ distilled spirit greater than 153 proof may not ~~shall~~ be sold~~, processed,~~ or consumed in the state. However, a distilled spirit greater than 153 proof may be distilled, bottled, packaged, or processed for export or sale outside the state.

500090

13

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

15 And the title is amended as follows:

16 Delete line 65

17 and insert:

18 state, must file certain reports; amending s. 565.07,

19 F.S.; allowing certain high-proof distilled spirits to

20 be distilled, bottled, packaged, or processed for

21 export or sale outside this state; providing an

By the Committee on Regulated Industries; and Senator Jones

580-02848-12 20121252c1

A bill to be entitled

An act relating to business and professional regulation; amending s. 455.213, F.S.; requiring the Department of Business and Professional Regulation to waive certain licensing fees for a military veteran who applies within a specified period after honorable discharge from any branch of the United States Armed Forces; amending s. 455.2179, F.S.; authorizing the department rather than the board to approve continuing education providers or courses under certain circumstances; reserving to the department the authority to determine the contents of documents submitted for approval of a continuing education provider or course; amending s. 455.271, F.S.; limiting to the department the authority to reinstate a license that has become void under certain circumstances; amending s. 455.273, F.S.; revising the method of license renewal notification or notice of pending cancellation of licensure to include an e-mail address; deleting a requirement that a licensure renewal notification and a notice of cancellation of licensure include certain information regarding the applicant; amending s. 455.275, F.S.; revising a provision relating to maintenance of current address-of-record information to include e-mail address; revising a provision relating to notice to a licensee to allow service of process by e-mail; amending s. 475.451, F.S.; authorizing distance learning courses as an acceptable alternative to classroom instruction

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

580-02848-12 20121252c1

for renewal of a real estate instructor permit; providing that distance learning courses are under the discretion of the school offering the real estate course; requiring distance learning courses to adhere to certain requirements; amending s. 475.611, F.S.; revising the definition of the terms “appraisal management company” and “appraisal management services” and defining the term “subsidiary”; amending s. 475.6171, F.S.; revising requirements for the issuance of registration or certification upon receipt of proper documentation; amending s. 475.6235, F.S.; revising provisions relating to titles an appraisal management company must be registered to use; providing exemptions from registration requirements; amending s. 475.6245, F.S.; providing additional grounds for discipline of appraisal management companies, to which penalties apply; amending s. 476.188, F.S.; revising the list of locations for the performance of barber services not in a registered barbershop; amending s. 477.0135, F.S.; exempting from cosmetology licensure individuals who perform makeup services to the general public; amending s. 477.019, F.S.; revising procedures for cosmetology licensure by endorsement to provide an exception to required proof of educational hours; amending s. 477.0263, F.S.; authorizing the performance of cosmetology and specialty services in a location other than a licensed salon under certain circumstances; reenacting and amending s. 489.118, F.S.; reviving grandfathering

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provisions and establishing a new deadline for applications for certification of certain registered contractors; amending s. 548.061, F.S.; removing the requirement that each person or club that holds or shows matches on a closed circuit telecast viewed within the state, but originating within another state, must file certain reports; providing an effective date.

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

Section 1. Subsection (12) is added to section 455.213, Florida Statutes, to read:

455.213 General licensing provisions.—

(12) The department shall waive the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for a military veteran who applies to the department for a license, in a format prescribed by the department, within 24 months after discharge from any branch of the United States Armed Forces. To qualify for this waiver, the veteran must have been honorably discharged.

Section 2. Subsection (1) of section 455.2179, Florida Statutes, is amended to read:

455.2179 Continuing education provider and course approval; cease and desist orders.—

(1) If a board, or the department if there is no board, requires completion of continuing education as a requirement for renewal of a license, the board, or the department if there is no board, shall approve the providers and courses for ~~of~~ the

continuing education. Notwithstanding this subsection or any other provision of law, the department may approve continuing education providers or courses even if there is a board. If the department determines that an application for a continuing education provider or course requires expert review or should be denied, the department shall forward the application to the appropriate board for review and approval or denial. The approval of continuing education providers and courses must be for a specified period of time, not to exceed 4 years. An approval that does not include such a time limitation may remain in effect pursuant to the applicable practice act or the rules adopted under the applicable practice act. Notwithstanding this subsection or any other provision of law, only the department may determine the contents of any documents submitted for approval of a continuing education provider or course.

Section 3. Paragraph (b) of subsection (6) of section 455.271, Florida Statutes, is amended to read:

455.271 Inactive and delinquent status.—

(6)

(b) Notwithstanding the provisions of the professional practice acts administered by the department, ~~the board, or~~ the department ~~if there is no board,~~ may, at its discretion, reinstate the license of an individual whose license has become void if the ~~board or~~ department~~, as applicable,~~ determines that the individual ~~has made a good faith effort to comply with this section but has~~ failed to comply because of illness or ~~unusual~~ economic hardship. The individual must apply to ~~the board, or~~ the department ~~if there is no board,~~ for reinstatement ~~in a manner prescribed by rules of the board or the department, as~~

117 ~~applicable,~~ and ~~shall~~ pay an applicable fee in an amount
118 determined by rule. The ~~board, or the~~ department ~~if there is no~~
119 ~~board,~~ shall require that such individual meet all continuing
120 education requirements prescribed by law, pay appropriate
121 licensing fees, and otherwise be eligible for renewal of
122 licensure under this chapter.
123
124 This subsection does not apply to individuals subject to
125 regulation under chapter 473.
126 Section 4. Section 455.273, Florida Statutes, is amended to
127 read:
128 455.273 Renewal and cancellation notices.—
129 ~~(1)~~ At least 90 days before the end of a licensure cycle,
130 the department ~~of Business and Professional Regulation~~ shall:
131 (1) ~~(a)~~ Forward a licensure renewal notification to an
132 active or inactive licensee at the licensee's last known address
133 of record or e-mail address provided to ~~with~~ the department.
134 (2) ~~(b)~~ Forward a notice of pending cancellation of
135 licensure to a delinquent status licensee at the licensee's last
136 known address of record or e-mail address provided to ~~with~~ the
137 department.
138 ~~(2) Each licensure renewal notification and each notice of~~
139 ~~pending cancellation of licensure must state conspicuously that~~
140 ~~a licensee who remains on inactive status for more than two~~
141 ~~consecutive biennial licensure cycles and who wishes to~~
142 ~~reactivate the license may be required to demonstrate the~~
143 ~~competency to resume active practice by sitting for a special~~
144 ~~purpose examination or by completing other reactivation~~
145 ~~requirements, as defined by rule of the board or the department~~

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146 ~~when there is no board.~~
147 Section 5. Subsections (1) and (2) of section 455.275,
148 Florida Statutes, are amended to read:
149 455.275 Address of record.—
150 (1) Each licensee of the department is solely responsible
151 for notifying the department in writing of the licensee's
152 current mailing address, e-mail address, and place of practice,
153 as defined by rule of the board or the department when there is
154 no board. A licensee's failure to notify the department of a
155 change of address constitutes a violation of this section, and
156 the licensee may be disciplined by the board or the department
157 when there is no board.
158 (2) Notwithstanding any other provision of law, service by
159 regular mail or e-mail to a licensee's last known mailing
160 address or e-mail address of record with the department
161 constitutes adequate and sufficient notice to the licensee for
162 any official communication to the licensee by the board or the
163 department except when other service is required pursuant to s.
164 455.225.
165 Section 6. Paragraph (c) of subsection (2) of section
166 475.451, Florida Statutes, is amended, present subsections (4)
167 through (8) are renumbered as subsections (5) through (9),
168 respectively, and a new subsection (4) is added to that section,
169 to read:
170 475.451 Schools teaching real estate practice.—
171 (2) An applicant for a permit to operate a proprietary real
172 estate school, to be a chief administrator of a proprietary real
173 estate school or a state institution, or to be an instructor for
174 a proprietary real estate school or a state institution must

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175 meet the qualifications for practice set forth in s. 475.17(1)
176 and the following minimal requirements:
177 (c) "School instructor" means an individual who instructs
178 persons in the classroom in noncredit college courses in a
179 college, university, or community college or courses in a career
180 center or proprietary real estate school.
181 1. Before commencing to provide such instruction, the
182 applicant must certify the applicant's competency and obtain an
183 instructor permit by meeting one of the following requirements:
184 a. Hold a bachelor's degree in a business-related subject,
185 such as real estate, finance, accounting, business
186 administration, or its equivalent and hold a valid broker's
187 license in this state.
188 b. Hold a bachelor's degree, have extensive real estate
189 experience, as defined by rule, and hold a valid broker's
190 license in this state.
191 c. Pass an instructor's examination approved by the
192 commission.
193 2. Any requirement by the commission for a teaching
194 demonstration or practical examination must apply to all school
195 instructor applicants.
196 3. The department shall renew an instructor permit upon
197 receipt of a renewal application and fee. The renewal
198 application shall include proof that the permitholder has, since
199 the issuance or renewal of the current permit, successfully
200 completed a minimum of 7 classroom or distance learning hours of
201 instruction in real estate subjects or instructional techniques,
202 as prescribed by the commission. The commission shall adopt
203 rules providing for the renewal of instructor permits at least

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204 every 2 years. Any permit that ~~which~~ is not renewed at the end
205 of the permit period established by the department ~~shall~~
206 automatically reverts ~~revert~~ to involuntarily inactive status.
207
208 The department may require an applicant to submit names of
209 persons having knowledge concerning the applicant and the
210 enterprise; may propound interrogatories to such persons and to
211 the applicant concerning the character of the applicant,
212 including the taking of fingerprints for processing through the
213 Federal Bureau of Investigation; and shall make such
214 investigation of the applicant or the school or institution as
215 it may deem necessary to the granting of the permit. If an
216 objection is filed, it shall be considered in the same manner as
217 objections or administrative complaints against other applicants
218 for licensure by the department.
219 (4) A real estate school may offer any course through
220 distance learning if the course complies with s. 475.17(2).
221 Section 7. Paragraphs (c) and (d) of subsection (1) of
222 section 475.611, Florida Statutes, are amended, and paragraph
223 (y) is added to that subsection, to read:
224 475.611 Definitions.—
225 (1) As used in this part, the term:
226 (c) "Appraisal management company" means a person who
227 performs appraisal management services regardless of the use of
228 the term "appraisal management company," "appraiser
229 cooperative," "appraiser portal," "mortgage technology company,"
230 or other term.
231 (d) "Appraisal management services" means the coordination
232 or management of appraisal services for compensation by:

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1. Employing, contracting with, or otherwise retaining one or more licensed or certified appraisers to perform appraisal services for a client; or

2. Acting as a broker or intermediary between a client and one or more licensed or certified appraisers to facilitate the client's employing, contracting with, or otherwise retaining the appraisers.

(y) "Subsidiary" means an organization that is owned and controlled by a financial institution that is regulated by a federal financial institution regulatory agency.

Section 8. Subsection (4) of section 475.6171, Florida Statutes, is amended to read:

475.6171 Issuance of registration or certification.—The registration or certification of an applicant may be issued upon receipt by the board of the following:

(4) If required, proof of passing a written examination as specified in s. 475.616. ~~No certification shall be issued based upon any examination results obtained more than 24 months after the date of examination.~~

Section 9. Subsection (1) of section 475.6235, Florida Statutes, is amended, and subsection (9) is added to that section, to read:

475.6235 Registration of appraisal management companies required; exemptions.—

(1) A person may not engage, or offer to engage, in appraisal management services for compensation in this state or~~,~~ advertise or represent herself or himself as an appraisal management company~~, or use the titles "appraisal management company," "appraiser cooperative," "appraiser portal," or~~

~~"mortgage technology company," or any abbreviation or words to that effect,~~ unless the person is registered with the department as an appraisal management company under this section. However, an employee of an appraisal management company is not required to obtain a separate registration.

(9) This section does not apply to:

(a) Any financial institution, as defined in s. 655.005, which owns and operates an internal appraisal office, business unit, or department; or

(b) An appraisal management company that is a subsidiary owned and controlled by a financial institution, as defined in s. 655.005, and regulated by a federal financial institution regulatory agency.

Section 10. Paragraph (v) is added to subsection (1) of section 475.6245, Florida Statutes, to read:

475.6245 Discipline of appraisal management companies.—

(1) The board may deny an application for registration of an appraisal management company; may investigate the actions of any appraisal management company registered under this part; may reprimand or impose an administrative fine not to exceed $5,000 for each count or separate offense against any such appraisal management company; and may revoke or suspend, for a period not to exceed 10 years, the registration of any such appraisal management company, or place any such appraisal management company on probation, if the board finds that the appraisal management company or any person listed in s. 475.6235(2)(f):

(v) Has required or attempted to require an appraiser to sign any indemnification agreement that would require the appraiser to hold harmless the appraisal management company or

291 its owners, agents, employees, or independent contractors from
292 any liability, damage, loss, or claim arising from the services
293 performed by the appraisal management company or its owners,
294 agents, employees, or independent contractors and not the
295 services performed by the appraiser.
296 Section 11. Subsection (2) of section 476.188, Florida
297 Statutes, is amended to read:
298 476.188 Barber services to be performed in registered
299 barbershop; exception.—
300 (2) Pursuant to rules established by the board, barber
301 services may be performed by a licensed barber in a location
302 other than a registered barbershop, including, but not limited
303 to, a nursing home, hospital, place of employment, or residence~~,~~
304 ~~when a client for reasons of ill health is unable to go to a~~
305 ~~registered barbershop~~. Arrangements for the performance of
306 barber services in a location other than a registered barbershop
307 shall be made only through a registered barbershop.
308 Section 12. Subsection (7) is added to section 477.0135,
309 Florida Statutes, to read:
310 477.0135 Exemptions.—
311 (7) A license is not required of any individual providing
312 makeup services to the general public.
313 Section 13. Subsection (6) of section 477.019, Florida
314 Statutes, is amended to read:
315 477.019 Cosmetologists; qualifications; licensure;
316 supervised practice; license renewal; endorsement; continuing
317 education.—
318 (6) The board shall adopt rules specifying procedures for
319 the licensure by endorsement of practitioners desiring to be

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320 licensed in this state who hold a current active license in
321 another state and who have met qualifications substantially
322 similar to, equivalent to, or greater than the qualifications
323 required of applicants from this state. The board shall not
324 require proof of educational hours if the license was issued in
325 a state that requires 1,200 or more hours of prelicensure
326 education and passage of a written examination. This subsection
327 does not apply to applicants who received their license in
328 another state through an apprenticeship program.
329 Section 14. Subsection (4) is added to section 477.0263,
330 Florida Statutes, to read:
331 477.0263 Cosmetology services to be performed in licensed
332 salon; exceptions ~~exception~~.—
333 (4) Pursuant to rules adopted by the board, any cosmetology
334 or specialty service may be performed in a location other than a
335 licensed salon when the service is performed in connection with
336 a special event and is performed by a person who is employed by
337 a licensed salon and who holds the proper license or specialty
338 registration. An appointment for the performance of any such
339 service in a location other than a licensed salon must be made
340 through a licensed salon.
341 Section 15. Section 489.118, Florida Statutes, is reenacted
342 and amended to read:
343 489.118 Certification of registered contractors;
344 grandfathering provisions.—The board shall, upon receipt of a
345 completed application and appropriate fee, issue a certificate
346 in the appropriate category to any contractor registered under
347 this part who makes application to the board and can show that
348 he or she meets each of the following requirements:

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349 (1) Currently holds a valid registered local license in one
350 of the contractor categories defined in s. 489.105(3)(a)-(p).
351 (2) Has, for that category, passed a written examination
352 that the board finds to be substantially similar to the
353 examination required to be licensed as a certified contractor
354 under this part. For purposes of this subsection, a written,
355 proctored examination such as that produced by the National
356 Assessment Institute, Block and Associates, NAI/Block, Experior
357 Assessments, Professional Testing, Inc., or Assessment Systems,
358 Inc., shall be considered to be substantially similar to the
359 examination required to be licensed as a certified contractor.
360 The board may not impose or make any requirements regarding the
361 nature or content of these cited examinations.
362 (3) Has at least 5 years of experience as a contractor in
363 that contracting category, or as an inspector or building
364 administrator with oversight over that category, at the time of
365 application. For contractors, only time periods in which the
366 contractor license is active and the contractor is not on
367 probation shall count toward the 5 years required by this
368 subsection.
369 (4) Has not had his or her contractor's license revoked at
370 any time, had his or her contractor's license suspended within
371 the last 5 years, or been assessed a fine in excess of $500
372 within the last 5 years.
373 (5) Is in compliance with the insurance and financial
374 responsibility requirements in s. 489.115(5).
375
376 Applicants wishing to obtain a certificate pursuant to this
377 section must make application by November 1, 2014 ~~2005~~.

378 Section 16. Section 548.061, Florida Statutes, is amended
379 to read:
380 548.061 Closed circuit television.—Each person or club that
381 holds or shows any matches on a closed circuit telecast viewed
382 within this state, ~~whether~~ originating within this state ~~or~~
383 ~~another state~~, shall file a written report, under oath, which
384 states the exact number of tickets sold for the showing, the
385 amount of gross receipts, and any other information the
386 commission requires and shall, within 72 hours after the
387 telecast, pay a tax of 5 percent of its total gross receipts
388 from the sale of tickets.
389 Section 17. This act shall take effect October 1, 2012.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/28/12
Meeting Date

Topic: DBPR Bill

Bill Number: 1252 *(if applicable)*

Name: Tim Nungesser

Amendment Barcode: *(if applicable)*

Job Title: Director, Office of Legislative Affairs

Address: 1940 N. Monroe St.
Street

Tallahassee, FL 32303
City *State* *Zip*

Phone: 850-487-4827

E-mail: tim.nungesser@dbpr.state.fl.us

Speaking: [X] For [ ] Against [ ] Information

Representing: DBPR

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/28/12
Date

1252
Bill Number

Barcode

Name David Shepp

Phone 863 581-4250

Address P.O. Box 3739
Street

E-mail dave@fsg.llc.net

Lakeland FL 33802
City State Zip

Job Title

Speaking: [✓] For [ ] Against [ ] Information

Appearing at request of Chair [ ]

Subject DBPR / Tobacco Distributors

Representing Florida Association of Wholesale Distributors

Lobbyist registered with Legislature: [✓] Yes [ ] No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

Amendment Withdrawn

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/28/12
Date

SB 1252
Bill Number

500090
Barcode

Name Tim Nungesser

Phone (850) 487-4827

Address 1940 N. Monroe St.
Street

E-mail Tim.Nungesser@dbpr.state.fl.us

Tall., , FL 32399-2210
City State Zip

Job Title Director Legis. Affairs

Speaking: ☐ For ☐ Against ☑ Information

Appearing at request of ~~Chair~~ Sponsor: ☐

Subject Distilled Spirits amendment

Representing DBPR

Lobbyist registered with Legislature: ☑ Yes ☐ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

The Florida Senate

Committee Agenda Request

To: Senator D. Alan Hays, Chair
Committee on General Government Appropriations

Subject: Committee Agenda Request

Date: February 7, 2012

I respectfully request that **Senate Bill #1252**, relating to DBPR expansion of divisions, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Dennis L. Jones, D.C.
Florida Senate, District 13

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/CS/SB 1254

INTRODUCER: Budget Subcommittee on General Government Appropriations; Environmental Preservation and Conservation Committee; Agriculture Committee; and Senator Siplin

SUBJECT: Department of Agriculture and Consumer Services

DATE: February 28, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Buford	AG	**Fav/CS**
2.	Uchino	Yeatman	EP	**Fav/CS**
3.	Blizzard	DeLoach	BGA	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill addresses issues relating to agriculture and certain powers and duties of the Department of Agriculture and Consumer Services (DACS). Specifically this bill:

- Establishes the Division of Food, Nutrition and Wellness;
- Designates the DACS, rather than the Department of Environmental Protection (DEP), as the staff responsible for acquiring and administering conservation easements on land that is acquired under the Rural and Family Lands Protection Program;
- Extends the date from September 15 to September 30 for mosquito control districts to provide their certified budgets to the DACS;
- Revises the products that mosquito control districts are authorized to use to control mosquito breeding;
- Repeals statutory language relating to the John A. Mulrennan, Sr., Arthropod Research Laboratory;
- Eliminates travel and per diem reimbursements for several councils;
- Allows the DACS to adopt the most current federal regulations to address the safety and protection of food offered at retail and wholesale;

- Eliminates the Food Safety Pilot Program, relating to inspection of food establishments and vehicles;
- Updates milk, milk products and frozen dessert laws;
- Updates the name of the Office of Energy and Water to the Office of Agricultural Water Policy;
- Repeals the statute relating to the Florida Agricultural Exposition which was closed in 2008;
- Eliminates three technical councils and replaces them with a new Agricultural Feed, Seed and Fertilizer Advisory Council;
- Requires a review of marketing orders when requested by an advisory council rather than an annual audit by a certified public accountant;
- Extends the expiration dates for the fertilizer tonnage fee program to December 31, 2022, and December 31, 2027, authorizing the DACS to continue to collect approximately $1 million annually that is used for the development of best management practices and nutrient pollution abatement efforts;
- Requires commercial feed distributors to report quarterly on the amount of feed distributed in Florida and provides penalties for failure to comply;
- Authorizes the DACS to impose and recover monetary penalties for commercial feed found to be deficient or excessive in nutrients;
- Provides that consumers who purchase commercial feed that is in violation of the DACS standards may seek legal or administrative action to recover penalties;
- Provides the ability for soil and water conservation districts to work across district lines to utilize water conservation devices, systems, and techniques;
- Provides that the proceeds of the sale of soil and water conservation district property be credited to the district rather than the DACS;
- Repeals provisions relating to cattle vaccination for brucellosis;
- Renames the “Wounded Warrior Special Hunt Area” as the “Operation Outdoor Freedom Special Hunt Area”;
- Allows the DACS to deposit funds from private sources, as well as federal funds, into the Florida Forest Service Incidental Trust Fund for reforestation projects;
- Gives the Florida Forest Service the sole authority to enforce silviculture and agricultural open burning and eliminates duplicative permitting by other entities of the state;
- Provides an education fee waiver for elementary, middle, high school, and vocational schools that participate in the aquaculture certification program;
- Eliminates the Aquaculture Interagency Coordinating Council; and
- Deletes the Aquaculture Interagency Coordinating Council from the membership of the Aquaculture Review Council.

This bill amends sections 20.14, 253.002, 379.2523, 379.2524, 388.161, 388.201, 388.323, 388.46, 493.6104, 500.09, 500.147, 502.014, 502.053, 570.0705, 570.074, 570.18, 570.53, 570.54, 573.112, 573.118, 576.045, 576.071, 580.041, 580.131, 581.011, 581.145, 582.06, 582.20, 582.29, 582.30, 582.31, 582.32, 589.19, 589.277, 590.02, 597.0021, 597.003, 597.004, 597.005, 604.21 and 616.252 of the Florida Statutes.

This bill creates section 570.451 of the Florida Statutes.

This bill repeals sections 388.42, 570.071, 570.29, 570.34, 576.091, 578.30, 580.151, 585.155, 589.03, and 597.006 of the Florida Statutes.

II. Present Situation:

Division of Food, Nutrition and Wellness

The 2011 Legislature created the Healthy Schools for Healthy Lives Act, which provides for a type two transfer of administration of school food and nutrition programs from the Department of Education to the DACS, pending a waiver from the United States Department of Agriculture. That waiver was granted in October 2011; and on January 1, 2012, the DACS assumed administration of the state's school food and nutrition programs. The Commissioner of Agriculture states the DACS is the most experienced and best positioned to manage Florida's school food and nutrition programs. Furthermore it is the commissioner's position that the transfer will foster increased coordination between Florida farmers and the school programs that provide food for Florida's children.[1]

Board of Trustees Lands

The Board of Trustees of the Internal Improvement Trust Fund consists of the Governor and Cabinet. The Division of State Lands within the DEP currently serves as staff to the board for the acquisition, administration, and disposition of state lands, with certain exceptions. This bill removes the DEP as the intermediary for acquisition of conservation easements that are acquired under the Rural and Family Lands Protection Program (RFLPP). The RFLPP was created by the 2001 Legislature to protect agricultural lands from development through permanent easement acquisitions from qualified and willing agricultural land owners. Landowners protecting their land under this program are free to undertake any agricultural practice as long as they are willing to follow established best management practices.

The DACS has entered into a Memorandum of Understanding (MOU) with the DEP which allows the DACS to carry out the responsibilities of acquiring conservation easements. In accordance with the MOU, the DACS negotiates, contracts, and performs all due diligence with regard to the real estate transactions, prepares the Board of Trustees agenda item and presents the item at a regular scheduled meeting. All information for the real estate transaction must be submitted to the DEP for review prior to the Board of Trustees meeting, and it also must be given to the DEP for a final review prior to closing. This bill eliminates steps the DACS considers redundant by removing the DEP as the intermediary and allowing the DACS to act as an agent of the Board of Trustees.

Per Diem and Travel Expenses for Advisory Committees

Section 112.061, F.S., establishes standard travel reimbursement rates, procedures, and limitations applicable to all public officers, employees, and authorized persons whose travel is authorized and paid by a public agency. This allows members of select statutorily created advisory councils to receive compensation for per diem and travel expenses. The members

[1] Analysis, Senate Bill 1312, 2011 Legislative Session.

organize and host the meetings of the councils, and have in the past been provided with per diem and travel expenses in accordance with these provisions.

In order to reduce costs, several advisory committees and councils were stripped of the ability to receive travel expenses and per diem by the 2011 Legislature. This bill includes some committees and councils that were overlooked in 2011 and also reinstates travel expenses and per diem for some advisory committees that do not fall under the DACS purview.[2]

Mosquito Control

Mosquito control is Florida's first line of defense against mosquito-borne diseases such as West Nile encephalitis, St. Louis encephalitis, eastern encephalitis, dengue and many others.[3] Chapter 388, F.S., addresses mosquito control efforts in the state. It allows any city, town or county, or any other area in the state to create a special taxing district for the control of arthropods. There are currently sixty two mosquito control programs in Florida.

The fiscal year for districts is the twelve month period extending from October 1 of one year through September 30 of the following year. Prior to July 15 of each year, the district governing board must complete the preparation of a tentative detailed work plan budget. The tentative budget must include proposed operations and requirements for arthropod control measures during the ensuing fiscal year. For the purpose of determining eligibility for state aid, the governing board must submit copies to the DACS for review and approval. The board must adopt and execute a certified budget and submit it to the DACS for approval by September 15, which prevents current revenue and expense information from being included and is inconsistent with county budgetary schedules.

Disposal of Surplus Property

Mosquito control districts are currently required to offer surplus property (such as application equipment, spray trucks, aircraft, aircraft parts, etc.) to all other counties or districts engaged in arthropod control at a price established by the board of commissioners that owns the equipment. This equipment is typically highly specialized and only of use to other mosquito control programs, if it has any residual value at all. If no acceptable offer is received within a reasonable time, the equipment can be offered to other governmental units or private nonprofit agencies. The mosquito program that disposes of the surplus property retains the funds for use in the control program. Eliminating this requirement will allow the equipment to be offered to other mosquito control programs, and, if not taken by them, disposed of by auction or scrap disposal without the additional step of offering it to all local governments. This will eliminate an unnecessary step in the equipment disposal process for mosquito control programs.

John A. Mulrennan, Sr., Arthropod Research Laboratory

The John A. Mulrennan, Sr., Arthropod Research Laboratory is a research laboratory in Panama City, Florida, under the administration of the Florida Agricultural and Mechanical University

[2] CS/CS/HB 7215, 2011 Legislative Session.
[3] University of Florida, Institute of Food and Agricultural Sciences, Florida Medical Entomology Laboratory, http://fmel.ifas.ufl.edu/ (last visited Feb. 1, 2012).

(FAMU). The FAMU closed the laboratory on June 30, 2011.[4] The laboratory performed basic and applied research to develop and test formulations, application techniques, and procedures of pesticides and biological control agents for the control of arthropods and, in particular, biting arthropods of public health or nuisance importance. Each quarter, the laboratory provided the DACS with such information as it needed to assist in the performance of its duties with respect to arthropod control under ch. 388, F.S. The laboratory also served as a center for training of students and state and local government personnel in the safe and effective control of biting arthropods.

The FAMU was represented on the Florida Coordinating Council on Mosquito Control in order to coordinate the activities of the laboratory with the needs and interests of mosquito control stakeholders in Florida. With the close of the laboratory, there is no reason for continued representation on the council or for mention of the laboratory in statute.

U.S. Food and Drug Administration Food Code

The United States Food Code is a model created by the Food and Drug Administration (FDA) to assist federal, state, local and tribal control jurisdictions in regulating any entity that sells, manufactures, or provides food as part of their services. This law was instituted because some food manufacturers were producing and selling impure products for consumption. The FDA Food Code was adopted to protect the citizens of this country from bodily harm that could arise from consuming contaminated food and to provide various entities a uniform standard, and a final authority, regarding any questionable practices in the preparation or sales of food. The FDA Food Code is currently updated every four years.[5]

The Division of Food Safety (division) is responsible for assuring the public of a safe, wholesome and properly represented food supply through permitting and inspection of food establishments, inspection of food products, and performance of specialized laboratory analyses on a variety of food products sold or produced in the state. The division monitors food from farm gate through processing and distribution to the retail point of purchase. Section 500.09(3), F.S., requires the division to adopt the rules necessary to enforce the provisions of ch. 500, F.S., and authorizes the DACS to adopt by reference the rules adopted by the Food and Drug Administration with regard to food safety. The DACS has indicated that the authority to adopt all current changes to the FDA Food Code and Federal Code of Regulations as they are released and implemented by the federal government will best protect the health and safety of Florida citizens.

Food Safety Pilot Program

The 1997 Legislature created a food safety pilot program for the inspection of food establishments and vehicles to increase efficiency and reduce costs by allowing certain food establishments to start self-inspection. To be eligible for this program, a food establishment must have a good inspection record, certified food managers, active food training programs, thorough

[4] Florida Agricultural and Mechanical University, College of Engineering, Sciences, Technology & Agriculture, Public Health Entomology Research and Education Center, http://www.famu.edu/cesta/main/index.cfm/research/public-health-entomology-research-and-education-center/#my-menu (last visited Feb. 1, 2012).
[5] United States Food and Drug Administration, *Introduction to FDA Food Code*, http://www.fda.gov/food/foodsafety/retailfoodprotection/foodcode/default.htm (last visited Feb. 1, 2012).

records, and written Sanitation Standard Operation Procedures in place. Seventeen food establishments participated in the program, and the DACS audited the participants periodically to ensure compliance with the federal and state food laws.[6] By 2004, due to the difficulty of compliance, there were no establishments remaining in the program. As an alternative to the pilot program, the Division of Food Safety has implemented a variable inspection frequency, which rewards food establishments with good sanitary history by reducing the frequency of inspections. The variable inspection frequency has proven to be less burdensome on the industry than the pilot program.

Milkfat Testing

Currently, the DACS is required to maintain a program to issue permits to persons who test milk or milk products for fat content if the tests will be used as a basis for payment to a dairy farmer. Approximately sixty five permitted analysts currently pay $125 for a two-year permit that involves certain steps to obtain. First, a person seeking to be licensed as a Milk Fat Tester/Analyst must be employed by and work in an industry milk laboratory. Next, the applicant must also have a satisfactory onsite evaluation by the State Milk Laboratory Evaluation Officer and participate in the state's Split Sample Milk Fat Program twice a year with satisfactory results. In this program, samples are prepared and shipped to industry labs for analysts to test and report back their results to the Central Dairy Laboratory. Since this program was implemented in 1973, the USDA Milk Marketing Administration has started a program that provides the same function of making sure the dairy farmer is fairly paid, making the state program redundant.

Florida Agricultural Exposition

In a joint venture, the DACS and the Department of Corrections constructed and equipped an agricultural exposition center in 1969 known as the Florida Agricultural Exposition in Indiantown, Florida. The purpose of the facility was to:

- Demonstrate and sell Florida agricultural and agriculture business products;
- Attract and inform buyers;
- Conduct agricultural short courses and conferences;
- Organize tours in the aid of marketing Florida agricultural products to the domestic, Latin American, and other foreign markets; and
- Train prisoners of the correctional institutions of the state in agricultural labor and management.

A local rancher who was involved with the facility said that the facility had an emphasis on cows and used inmates at the Martin Correctional Institution to gentle the livestock or help show the different breeds.[7] To support the facility, the DACS and the Department of Corrections were authorized to accept monetary donations from growers and dealers of agricultural products and their associated entities, the federal government, and other sources. The DACS was also authorized to expend up to $25,000 of its own funds, if available. As a result of decreased use, significantly increased costs, and a profile change in inmates of the Martin Correctional Institute, the facility was closed in 2008.

[6] Analysis, Senate Bill 2044, 1997 Legislative Session.
[7] Telephone interview with Michael Duane by librarian of Elisabeth Lahti Library, Indiantown, Florida.

Office of Energy and Water

In 1995, the Legislature authorized the Commissioner of Agriculture to create an Office of Water Coordination and to designate the bureaus and positions that report to that office regarding water policy and water issues that affect agriculture and are within the DACS' jurisdiction. That year, the DACS established the Office of Agricultural Water Policy (OAWP). It facilitated communication and coordination among federal, state, and local governmental agencies, environmental representatives, and the agriculture industry on agricultural water resource issues. A primary function of the OAWP was to develop and assist with the implementation of best management practices in order for agricultural producers to meet their obligation under the Florida Watershed Restoration Act. The producers were required to reduce agricultural pollutant loadings to impaired waters within a basin for which the DEP had adopted a Basin Management Action Plan. The OAWP also facilitated and assisted in the development of other watershed protection plans throughout the state, including the Lake Okeechobee, St. Lucie Watershed, and Caloosahatchee Watershed protection plans, among others. The OAWP was also very involved in Everglades restoration efforts and in other federal matters, such as the discussion/debate over U.S. Environmental Protection Agency (EPA) numeric nutrient criteria for Florida.[8]

The State Energy Office, within the Governor's Office, was originally created and organized on July 1, 1975, by the Florida Legislature. Since 1975, the Energy Office has been housed in several state agencies, including the Department of Administration, the Department of Community Affairs, the DEP and the Executive Office of the Governor. In the mid 2000s, the state began to focus more on energy issues and on how to increase the state's energy independence, decrease dependence on foreign oil and create a clean energy economy. To do this, the Legislature and the Governor's office created two separate bodies to advise them on these issues and to develop a plan to implement any recommended policy actions. In 2006, the Florida Energy Commission was created by the Florida Energy Act, and the following year, the Governor created the Governor's Action Team on Energy and Climate Change. As a result of the Florida Energy Commission and Governor's Action Team recommendations, the 2008 Legislature created the Florida Energy and Climate Commission and consolidated staff from three different agencies to create the Governor's Energy Office housed in the Executive Office of the Governor.[9]

The 2011 Legislature moved the state's energy office from the Executive Office of the Governor to the DACS and created the Office of Energy and Water. To facilitate an expanded energy focus within the DACS, a separate Office of Energy will be established and this bill will change the name of the Office of Energy and Water to the Office of Agricultural Water Policy.

Plant Industry Technical Council

The Plant Industry Technical Council is an advisory committee that was created by the Legislature in 1959. Appointed by the Commissioner of Agriculture, the council is composed of

[8] Analysis, Senate Bill 2076, 2011 Legislative Session.
[9] DACS, *Agency Summary, Governor's Energy Office & Florida Energy & Climate Commission*, *available at* http://www.freshfromflorida.com/offices/energy/docs/meetings/01142011_FECC_GEO_Agency_Summary.pdf (last visited Feb. 1, 2012).

industry representatives who consult with and advise the Commission and the director of the Division of Plant Industry (division) about policies and issues related to their respective industries.[10] According to the DACS, the council has met sporadically over the last decade and in the past few years has not been as effective at addressing plant industry-related issues. The division has had better success in dealing with issues by using working groups or task forces that are commodity based or specific to a given issue. Recently, the division has been working with the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection Quarantine Program and with the United States Department of Homeland Security's Customs and Border Protection Modernization Program through a recently established Florida Partnership Council. The new council meets quarterly, and once annually it brings in industry stakeholders for a "State of the State" meeting to seek input and review of overall plant protection programs in Florida. The DACS is therefore recommending that the Plant Industry Technical Council be eliminated.

Aquatic Plant Nursery Registration

The water hyacinth is a floating plant that often jams rivers and lakes with uncounted thousands of tons of floating plant matter.[11] Section 581.145, F.S., authorizes the DACS to issue, when requested, a permit to an aquaculture producer to export water hyacinths to countries other than the United States and only when the hyacinths are cultivated in a nursery for the sole purpose of exportation and the aquaculture activity has been certified by the department. An aquaculture producer is forbidden from shipping water hyacinths to another country under the permit for the purpose of importing the hyacinths back into the United States. Drop shipments cannot be made to any destination within the United States. This provision does not restrict or interfere with the DEP's efforts, or those of any other agency or local government responsible for the management of noxious aquatic plants, to control or eradicate noxious non-nursery aquatic plants, including water hyacinths. It is also not a consideration in the approval or the release of biological control agents for water hyacinths or any other noxious aquatic plants.

Even though the water hyacinth is not on the United States Department of Agriculture's Noxious Plant List, Florida aquatic plant producers have been prohibited from distributing these products through interstate commerce. This puts Florida aquatic plant producers at a competitive disadvantage in the United States marketplace.

Division of Agricultural Environmental Services Technical Councils

Currently, within the DACS there are three separate advisory councils that mitigate issues regarding fertilizer, seeds, and commercial feed. While each council addresses issues unique to its particular area, overlap occurs due to the nature of the three topics. All of the various industry groups have agreed to combine the three separate councils into one all-encompassing council. This bill creates the Agricultural Feed, Seed and Fertilizer Advisory Council, which will replace the following three councils:

- **Commercial Feed Technical Council –** This council considers and studies all issues involving commercial feed in Florida and reviews and makes recommendations to the DACS

[10] University of Florida, *Division of Plant Industry, 39th Biennial Report* (1990-1992), *available at* http://ufdc.ufl.edu/UF00075925/00003 (last visited Feb. 1, 2012).
[11] University of Florida, Center for Aquatic and Invasive Plants, *Home*, http://plants.ifas.ufl.edu/ (last visited Feb. 1, 2012).

on related matters. The council is composed of thirteen members representing various interests of the feed industry.

- **Seed Technical Council -** This council considers and studies all issues involving seed, seedlings, vegetative propagating materials and plants and reviews and makes recommendations to the DACS on related matters. The council is composed of eleven members representing various interest of the seed industry.
- **Commercial Fertilizer Technical Council -** This council considers and studies all issues involving commercial fertilizer in Florida and reviews and makes recommendations to the DACS on related matters. The council is composed of thirteen members of the fertilizer industry.

Commercial Feed Master Registration

The Division of Agricultural Environmental Services regulates animal feeds, including pet foods, through the inspection of production and distribution establishments and laboratory analysis of samples. Section 580.041, F.S., requires distributors of commercial feed in the state to obtain a master registration each year before distributing their brand. Distributors must consent to comply with provisions of ch. 580, F.S., as well as applicable rules. Registration forms must be accompanied by a fee based on tons of feed distributed in the state during the previous year. The terms of compliance for registration include:

- Submitting samples of manufactured feed for testing by laboratories certified by the DACS or obtaining an exemption from testing, as provided by ch. 580, F.S.
- Maintaining a bookkeeping system and records that allow the DACS to verify the accuracy of the reported tonnage of feed distributed in the state.
- Allowing the DACS to examine pertinent records.

The DACS has statutory authority to assess penalties for violations of ch. 580, F.S., as well as to refuse, suspend, or cancel the master registration of a distributor who violates or fails to comply with the provisions of ch. 580, F.S.

The DACS has indicated that because the reporting of the tonnage of feed distributed in the state is provided on a voluntary basis, many registrants defer or refuse to provide the information, while other registrants incur the costs of providing this information. Because the registration cost is based on the tons of feed distributed in the state, the failure to report the tonnage presents a problem when assessing the registration fee.

Additionally, current law requires registrants to have feed samples and ingredients testing at a frequency determined by rule.[12] The rule states that testing is based on the quantity and type of feed distributed. Without proper reporting, it is impossible for the DACS to determine if registrants are in compliance with statutory requirements.

Commercial Feed Penalties Payable to Consumers

When ch. 580, F.S., was revised in 1995, the changes failed to include the authority for the DACS to impose and recover monetary penalties for commercial feed found to be deficient or

[12] Rule 5E-3.003, F.A.C.

excessive in nutrients by the department's Certified Feed Laboratories program. Current statutory language provides only for recovery of deficiency penalty payments by the end-use consumer and only through formal legal action. No provision has been made for assessment or recovery of penalties by the state in instances where no consumer is associated with the deficient feed product.

Agricultural Marketing Orders

There are thousands of small agricultural producers in Florida who depend on scientific research and marketing campaigns to grow and market their crops. Most cannot afford to own and operate their own laboratories and marketing firms, or maintain the staff it would take to run them. However, these small producers sometimes formally organize to establish a marketing order and vote to contribute small, set amounts into a "pot" for such activities. Then they use the pot of money to contract with professional firms that specialize in research and marketing.[13]

Marketing orders are instrumentalities issued by the DACS and designed to regulate the distribution and handling of agricultural products in intrastate commerce. Section 573.118, F.S., provides for marketing orders to become effective when consented to by a majority of producers or handlers of such commodities in the state. To establish a marketing order, at least ten percent of the affected producers must petition the DACS to give notice of a public hearing regarding a proposed marketing order. Once the notice has been filed and the hearing has been conducted, the DACS may issue the marketing order if it determines the order will accomplish certain objectives prescribed by statute.[14] Prior to a marketing order being issued, the petitioners must deposit such monies with the DACS to defray the cost of implementing the marketing order. Thereafter, persons directly affected by the marketing order shall pay such amounts as the DACS deems necessary to cover the administration and enforcement of the marketing order. On an annual basis, the DACS must arrange for an audit of the books and accounts of the marketing order by a certified public accountant (CPA). The CPA must notify the DACS and all parties covered by the marketing order of the results no later than thirty days following the audit.

Fertilizer Tonnage Fee

Between 1985 and 1992, the DACS and the DEP jointly conducted surveys of drinking water wells in predominantly agricultural regions of Florida. Survey results from limited sampling in thirty- eight Florida counties showed elevated levels of nitrate in drinking water wells in thirty-six of the thirty- eight counties tested. Of those thirty- six counties, thirteen had at least one site with nitrate levels above the federal drinking water standard of ten parts per million (ppm) set by the EPA.

Based on these findings, the DACS initiated development of a comprehensive program to protect Florida's water resources while maintaining the state's large agricultural industry. The DACS, in partnership with the DEP, the Florida Farm Bureau, the Florida Fruit and Vegetable Association, the Florida Fertilizer and Agrichemical Association, and other groups, developed a voluntary,

[13] DACS, *State Agricultural Marketing Orders*, http://www.florida-agriculture.com/marketingorders.htm (last visited Feb. 1, 2012).
[14] Section 573.108, F.S.

incentive-based program to develop individual practices or combinations of practices to specify how nitrogen-based fertilizers are to be used. Two categories of practices were created:

- Interim Measures (IMs) – Based on currently available knowledge, IMs were intended to provide a reasonable expectation of reducing nitrate levels entering ground water.
- Best Management Practices (BMPs) – BMPs are determined by research or field testing at representative sites to be the most effective and practicable methods of fertilization that meets crop needs and nitrate groundwater quality standards.

To fund the development of research-based BMPs and IMs, the Legislature authorized the DACS to impose supplemental fees on users of all fertilizer materials containing nitrogen to be deposited into the General Inspection Trust Fund. The authorization was granted through adoption of s. 576.045, F.S. Subsection (2) of s. 576.045, F.S., imposes the following fees which expire on December 31, 2012:

- $100 for each license to distribute fertilizer.
- $100 for each of the first five specialty fertilizer registrations and $25 for each registration after the first five.
- Fifty cents per ton for bulk fertilizer sold in Florida which contains nitrogen or phosphorus.[15]

The revenue from the collection of the tonnage fee on fertilizers containing nitrogen or phosphorus is used for the development and implementation of agricultural BMPs and nutrient abatement and research efforts. The provisions of this program are set to expire on December 31, 2012, and December 31, 2017, respectively. Failing to extend these expiration dates would create a shortfall of approximately $1 million annually and would impair efforts to protect and restore water quality.

Soil and Water Conservation Districts

Soil and water conservation districts (districts) are governmental subdivisions of the state that coordinate with federal, state, regional, and other local partners to develop and implement soil and water conservation practices on private lands. In 1935, the United States Department of Agriculture, Natural Resources Conservation Service was established by Congress to assist individuals, groups, and units of government with natural resources conservation. Florida's 62 districts were established in 1937 under ch. 582, F.S., based on that federal legislation.
Soil and water conservation districts were originally organized, for the most part, within county boundaries by landowner petition based on a need for soil and water conservation and in the interest of public health, safety, and welfare. The governing body of a district consists of five elected supervisors.

Section 582.29, F.S., provides for agencies of the state that have jurisdiction over the administration of any state-owned lands, and any county, or other governmental subdivision of the state that has jurisdiction over any county-owned or other publicly owned land, lying within the boundaries of any district must cooperate to the fullest extent with the supervisors of the district in effecting the programs and operations undertaken by the supervisors under the provisions of ch. 582, F.S.

[15] Analysis, Senate Bill 1644, 2003 Legislative Session.

The supervisors of the districts are given free access to enter and perform work upon such publicly-owned lands. The provisions of land use regulations adopted must be in all respects observed by the agencies administering such publicly-owned lands. The DACS' Office of Agricultural Water Policy has field staff located around the state who work directly with the districts as their DACS liaisons. The DACS coordinates with the districts on programs concerning best management practices implementation, cost share programs, mobile irrigation labs, and public land management.

Currently, districts do not have the authority to work across district lines to assist landowners whose property falls outside a district boundary or in an area that doesn't have an active district. The DACS has indicated that the legislative changes in this bill will enable the districts to work across district lines, work with landowners whose property falls outside of a district boundary or in areas that don't have an active a district in order to maximize the utilization of water conservation devices, systems and techniques.[16]

Section 582.30, F.S., provides that any time after five years from the organization of a district, any ten percent of owners of land lying within the boundaries of such district may file a petition with the DACS asking that the operations of the district be terminated and the existence of the district discontinued. Upon petition, the DACS may conduct public meetings and hearings as necessary to assist in the consideration of termination of the district. Within sixty days after receiving the petition, the DACS must give due notice of holding a referendum, as well as supervising and issuing regulations to govern the referendum. The ballot must be clearly marked with the propositions "For terminating the existence of the district" and "Against terminating the existence of the district" and provide a square before each proposition with a direction to insert an "x" mark in the square before one or the other of the propositions as the voter so chooses. All owners of land lying within the boundaries of the district are eligible to vote in such a referendum. If the referendum has been duly noticed and fairly conducted, no informalities relating to the conduct of the referendum can invalidate the referendum or its results. If two-thirds or more of the qualified voters in the referendum have voted for the discontinuance of the district, the DACS must certify to the supervisors of the district the result of the referendum and that the continued operation of the district is not administratively practicable or feasible.

Alternatively, upon review and recommendation of the Soil and Water Conservation Council regarding the continued viability of the district, the Commissioner of Agriculture may dissolve or discontinue a district if the commissioner certifies that the continued operation of the district is not administratively practicable or feasible. If a district has failed to comply with any of the audit and financial reporting requirements of ch. 189, F.S., the commissioner, after review and confirmation by the DACS' inspector general, may certify dissolution or discontinuance of the district without prior review and recommendation of the Soil and Water Conservation Council. Notice of the proposed certification of dissolution or discontinuance must be published once a week for two weeks in a newspaper of general circulation within the county or counties where the district is located. The notice must state the district's name, a general description of the territory included in the district, and requires that objections to the proposed dissolution or any

[16] DACS, Office of Agricultural Water Policy, *Florida Soil and Water Conservation Districts*, http://www.floridaagwaterpolicy.com/Fswcd.html (last visited Feb. 1, 2012).

claims against assets of the district must be filed with the DACS no later than sixty days following the date of last publication.

Section 582.31, F.S., provides for a district to terminate the affairs of the district, upon receipt from the department of a certification that the department has found that the continued operation of the district is not administratively practicable and feasible. The supervisors of the district must dispose of all district property at a public auction and pay over the proceeds of the sale to the State Treasury, which is placed to the credit of the department to be used to liquidate any legal obligations of the district at the time of its termination. The supervisors must file an application with the Department of State for the discontinuance of the district, and must include with the application the DACS certificate setting forth the determination the continued operation of the district is not administratively practicable and feasible. The application must reiterate that the property has been disposed of and the proceeds paid over to the State Treasury. A full accounting of the properties and the proceeds of the sale must be included in the application. The Department of State must then issue to the supervisors of the district a certificate of dissolution and record the certificate in the appropriate book of record.

Section 582.32, F.S., provides that once a certificate of dissolution has been issued, all land use regulations adopted and in force within the district are no longer valid. Contracts entered into by the district or supervisors of the district remain in effect for the period provided for in the contract, with the DACS being substituted for the district or supervisors of the district as party to the contract. The DACS shall be entitled to all benefits and subject to all liabilities under such contracts and have the same right and liability to perform, to require performance, and to modify or terminate such contracts by mutual consent as the district or supervisors of the district would have had. The dissolution of the district does not affect the lien of any judgment entered under the provisions of ch. 582, F.S., nor the pendency of any action instituted under the provisions of ch. 582, F.S. The DACS can succeed to all the rights and obligations of the district or the supervisors of the district as to such liens and actions. The DACS is not required to entertain petitions for the discontinuance of any district or conduct referenda upon such petitions in accordance with the provisions of ch. 582, F.S., more often than once in five years. If no statutory provisions control the dissolution of a special district, s. 189.4045(2), F.S., provides that the local general-purpose government assumes all assets and liabilities of the dissolved district.

Soil and Water Conservation Council

Section 582.06, F.S., creates the Soil and Water Conservation Council (council) within the DACS, which is composed of 23 members. Eleven of the members are persons who have been involved in the practice of soil or water conservation, or in the development or implementation of interim measures or best management practices related to soil or water conservation. These eleven members must also be engaged in agriculture or an occupation related to the agricultural industry for at least five years at the time of their appointment. The remaining twelve members must include one representative each from the DEP, the five water management districts (WMDs), the Institute of Food and Agricultural Sciences (IFAS) at the University of Florida, the United States Department of Agriculture Natural Resources Conservation Service, the Florida Association of Counties, and the Florida League of Cities and two representatives of environmental interests.

The bill reduces the membership of the council from twenty-three members to seven members, all of whom must be familiar with agricultural production and the challenges landowners face. The DACS believes this change will enable members to more narrowly focus their efforts and to communicate more specifically with the Commissioner of Agriculture.

Brucellosis Vaccinations

Bovine brucellosis is a cattle disease that is near eradication in the United States after more than fifty years of efforts by state departments of agriculture, the U.S. Department of Agriculture, and the cattle industry. The Cooperative State-Federal Brucellosis Eradication Program is administered under a Memorandum of Understanding between the appropriate agency in each of the states and the U.S. Department of Agriculture. This program includes all of the activities associated with detecting, controlling, and eliminating brucellosis from domestic livestock in the U.S. One of the long term responsibilities of the DACS' Division of Animal Industry has been the administration of Florida's Brucellosis Eradication Program. Each owner of a herd of cattle in the state must enroll the herd in the program to determine whether the herd is infected with brucellosis.

Florida was declared "Brucellosis Class Free" in 2001 and, except for specific geographic regions surrounding Yellowstone National Park, the remainder of the United States is also "Brucellosis Class Free." Although calfhood vaccination continues on a voluntary basis by some Florida producers, vaccine is no longer provided at state expense. Whole-herd vaccination is no longer needed or available to producers.[17]

Forest Protection

The Florida Forest Service (FFS) has the primary responsibility for prevention, detection, and suppression of wildfires wherever they may occur. It controls and authorizes open burning for the maintenance and continuous clearing of agricultural land. During Fiscal Years 2005-2006 and 2006-2007, the FFS in cooperation with the University of Florida Institute for Food and Agricultural Sciences developed a certification program for Florida Pile Burners to raise the overall quality of the open burning program in Florida. In Fiscal Year 2009-2010, the DACS amended the open burning rules and regulations to include the pile burner certification program. Rule 5I-2, Florida Administrative Code, outlines the steps necessary to become certified and the requirements to keep that certification. A burn permit must be obtained for burns relating to agriculture, silviculture and rural land clearing. Currently, there is some confusion regarding where persons wishing to burn for agricultural and silvicultural reasons need to acquire a burning authorization. The FFS does not charge a fee for these authorizations, but other governmental agencies do. Authorizing the FFS to have sole authority to authorize silviculture and agriculture open burning would eliminate double permitting by any other entity of the state and eliminate that cost to the public.

[17] Analysis, Senate Bill 22-C, 2008 Legislative Session.

Tree Planting Programs

Section 589.277, F.S., authorizes the FFS to administer federal state and privately sponsored tree-planting programs to assist private rural landowners and urban communities. Contributions from governmental and private sources may be deposited into the Federal Grants Trust Fund. The FFS has the authority to develop and implement guidelines and procedures to utilize the financial resources of the fund for urban and rural reforestation. Grants to municipalities, counties, nonprofit organizations, and qualifying private landowners may be made from allocated monies for the purpose of purchasing, planting, and maintaining native tree species. The FFS must work with the Department of Education to develop programs to teach the importance of trees in the urban, rural and global environment.

While current statutory language states that both governmental and private contributions may be deposited into the Federal Grants Trust Fund, the federal government does not allow private funds to be deposited into this trust fund. Therefore, the FFS cannot accept funds from a non-federal source.

Creation of Certain State Forests

The 2011 Legislature directed the Florida Forest Service to designate areas of state forests as "Wounded Warrior Special Hunt Areas" to honor wounded veterans and service members, and to provide outdoor recreational opportunities for eligible veterans and service members.[18] Admittance to these areas is limited to:

- persons who are active duty members of any branch of the United States Armed Forces and who have a combat-related injury; or
- veterans who served during a period of wartime service or peacetime service and have a service-connected disability or were discharged from military service because of a disability acquired or aggravated while serving on active duty.

This bill renames the "Wounded Warrior Special Hunt Area" as the "Operation Outdoor Freedom Special Hunt Area." Currently, there is another organization using the term "Wounded Warrior."

Aquaculture Certificate of Registration

Any person engaging in aquaculture must be certified by the DACS and pay an annual registration fee of $100. This would include all schools with aquaculture education programs. The DACS believes that exposure to its aquaculture certification program helps to educate the next generation of Floridians on the benefits of aquaculture. This includes potential career paths, proper handling of non-native aquatic species and showing hands-on practical educational opportunities. Increasing outreach and educational efforts to schools has been a priority of the Aquaculture Review Council. There are approximately fifteen programs in schools that are currently certified.

[18] CS/HB 663, 2011 Legislative Session.

Aquaculture Interagency Coordinating Council

The Aquaculture Interagency Coordinating Council was created in 1984 to facilitate and coordinate much needed interagency communication during the time that aquaculture regulations were divided among many different state agencies. With the consolidation of regulations via the Aquaculture Certification program and development of Aquaculture Best Management Practices, there is no longer the compelling need for an annual meeting and associated annual report of various state agencies to discuss issues of concern. Regular communication between the respective state agencies, usually between the DACS and the Fish and Wildlife Conservation Commission, readily takes place now. In addition, several of the agencies originally designated as members of the council either no longer exist or no longer have the statutory responsibilities they had when the council was created including the Office of Tourism, Trade and Economic Development, the Department of Community Affairs, and the Department of Labor and Employment Security.

Federal Packers and Stockyard Act

The federal Packers and Stockyards Act (PSA) requires certain regulated entities to obtain a bond before the U.S. Department of Agriculture will allow them to do business. The PSA bond is a financial instrument a packer obtains from a private bond company stating the bond company will meet the packer's financial obligations to pay sellers of livestock if the packer is unable to do so.

In order to meet the bonding requirements of the PSA, a dealer may:

- purchase a surety bond from an insurance company or other financial institution that issues surety bonds. The issuing company will act as trustee on the surety bond;
- receive an irrevocable letter of credit from a bank that would be held in trust for the benefit of sellers that might need to file a claim against the dealer for failure to pay; or
- purchase a certificate of deposit from a financial institution to be held in trust for the benefit of sellers that might need to file a claim against the dealer for failure to pay.

In the instance of a surety bond purchased from an insurance company, generally the insurance company would act as trustee in the event a claim was filed against the bond. When an irrevocable letter of credit or certificate of deposit is issued to meet the bonding requirements of the PSA, a trust agreement must be executed placing the irrevocable letter of credit or certificate of deposit in trust for the benefit of sellers that might need to file a claim against the dealer for failure to pay. A trustee must be named to administer the settlement of claims.[19]

III. Effect of Proposed Changes:

Section 1 amends s. 20.14, F.S., to establish the Division of Food, Nutrition and Wellness within the Department of Agriculture and Consumer Services (DACS). This new division will administer the school food and nutrition programs that were transferred to the DACS during the 2011 Legislative Session.

[19] Email from Grace Lovett, Director of the Office of Legislative Affairs, DACS (Feb. 6, 2012) (on file with the Senate Committee on Environmental Preservation and Conservation).

Section 2 amends s. 253.002, F.S., to authorize the DACS to act as agent to the Board of Trustees for the Internal Improvement Trust Fund for all matters concerning conservation easements that are acquired under the Rural and Family Lands Protection Program.

Section 3 amends s. 379.2523, F.S., to delete obsolete references to the Aquaculture Interagency Coordinating Council which is abolished in section 49 of this bill.

Section 4 amends s. 379.2524, F.S., to delete provisions that prohibit compensation and authorize members of the Sturgeon Production Working Group to be reimbursed for per diem and travel expenses incurred while participating in business involving the group.

Section 5 amends s. 388.161, F.S., to remove obsolete language that refers to pesticidal practices that are no longer legal. It revises the products that mosquito control districts are authorized to use to control mosquito breeding.

Section 6 amends s. 388.201, F.S., to change the date from September 15 to September 30 for mosquito districts to submit their certified budgets to the DACS.

Section 7 amends s. 388.323, F.S., to eliminate the requirement that mosquito control programs offer surplus property to all local governments or private nonprofit agencies before disposing of the property.

Section 8 repeals s. 388.42, F.S., relating to the John A. Mulrennan, Sr., Arthropod Research Laboratory, which has been closed by the Florida Agricultural and Mechanical University.

Section 9 amends s. 388.46, F.S., to remove the Florida Agricultural and Mechanical University from membership of the Florida Coordinating Council on Mosquito Control. The bill also removes references of reporting requirements to the Florida Coastal Management Program Interagency Management Committees. This section specifies that the Subcommittee on Managed Marshes take into account the mosquito control source reduction implications and natural resource interests when providing technical assistance and guidance on saltmarsh management plans and research proposals.

Section 10 amends s. 493.6104, F.S., to delete provisions that prohibit compensation and authorize members of the Private Investigation, Recovery, and Security Advisory Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 11 amends s. 500.09, F.S., to authorize the DACS to adopt rules to incorporate by reference the current federal model Food Code issued by the Food and Drug Administration and Public Health Service of the United States Department of Health and Human Services.

Section 12 amends s. 500.147, F.S., to eliminate a food safety pilot program for the inspection of food establishments and vehicles which was implemented by the DACS in 1997. There has been no recorded participation in this program since 2004.

Section 13 amends s. 502.014, F.S., to delete provisions relating to a permitting program for persons who test milk or milk products for fat content.

Section 14 amends s. 502.053, F.S., to delete duplicative permitting requirements for milkfat testers. The USDA Milk Marketing Administration provides these same functions. It also deletes the DACS' authority to charge applicants a fee not to exceed $125 for a milkfat tester's license.

Section 15 amends s. 570.0705, F.S., to prohibit members of advisory bodies from receiving per diem and reimbursement for travel expenses under certain circumstances. The bill deletes a provision that prohibits members from receiving compensation for their services.

Section 16 repeals s. 570.071, F.S., relating to the Florida Agricultural Exposition in Indiantown, Florida, which was closed in 2008.

Section 17 amends s. 570.074, F.S., to update the name of the Office of Energy and Water to the Office of Agricultural Water Policy and to revise the jurisdiction of the office.

Section 18 amends s. 570.18, F.S., to correct a cross-reference.

Section 19 repeals s. 570.29, F.S., relating to a duplicative divisions list included in the Department of Agriculture and Consumer Services. The list is contained in s. 20.14, F.S.

Section 20 repeals s. 570.34, F.S., to abolish the Plant Industry Technical Council.

Section 21 creates s. 570.451, F.S., to establish the Agricultural Feed, Seed, and Fertilizer Advisory Council within the DACS. The council will be composed of fifteen members who represent the DACS, IFAS, and representatives of specified industries. Members will be appointed by the Commissioner of Agriculture for a term of up to four years. The bill specifies the powers and duties of the council, which include organization, frequency of meetings, procedures and recordkeeping. The council must also review relevant documents and provide the DACS with advice and recommendations on issues concerning the regulation of agricultural feed, seed, and fertilizer.

Section 22 amends s. 570.53, F.S., to remove a cross-reference.

Section 23 amends s. 570.54, F.S., to remove a cross-reference.

Section 24 amends s. 573.112, F.S., to provide for members of the Citrus Research and Development Foundation, Inc. (foundation), to be reimbursed by the foundation for per diem and travel expenses incurred while serving in an advisory capacity to the DACS. In the 2011 Session, payment of travel expenses and per diem was eliminated for the foundation, as well as other councils and working groups, to reduce government expenses. The foundation exists as a Florida not-for-profit corporation, organized as a direct support organization certified by the University of Florida's board of trustees, and operating for the benefit of the citrus industry and the state of

Florida.[20] The DACS has indicated that since the foundation is supported by private sources, its members should have kept the authority to be reimbursed for per diem and travel expenses incurred while participating in business involving the foundation.

Section 25 amends s. 573.118, F.S., to delete a requirement for the DACS to cause an annual audit, by a certified public accountant, of collections and expenditures from agricultural commodity marketing order assessments. The bill would require specific procedures to maintain marketing order records within the state's accounting system. The bill would also require a review of accounts, if requested by an advisory council, which will reduce the administrative burden that mostly affects citrus, peanut, and tobacco marketing orders.

Section 26 amends s. 576.045, F.S., to extend the expiration date for subsections (1), (2), (3), (4), and (6) of s. 576.045, F.S. from December 31, 2012, to December 31, 2022. It also extends the expiration date for subsections (5) and (7) of s. 576.045, F.S., from December 31, 2017, to December 31, 2027. This change continues current revenue from the collection of a tonnage fee on fertilizers containing nitrogen or phosphorus that is sold in this state.

Section 27 amends s. 576.071, F.S., to remove a reference to the Fertilizer Technical Council.

Section 28 repeals s. 576.091, F.S., to eliminate the Fertilizer Technical Council.

Section 29 repeals s. 578.30, F.S., to eliminate the Seed Technical Council.

Section 30 amends s. 580.041, F.S., to clarify that commercial feed distributors must maintain records and a bookkeeping system that will allow the DACS to track the type and tonnage of commercial feed sold in Florida. The bill requires quarterly reporting of the number of tons of feed distributed on forms furnished by the DACS. It also provides penalties for violations by distributors of commercial feed.

Section 31 amends s. 580.131, F.S., to revise requirements for the assessment of penalties and enforcement of violations by manufacturers and distributors of commercial feed or feedstuff. It authorizes the DACS to assess penalties. The bill requires registered distributors of commercial feed to pay penalties to consumers within sixty days after the DACS notifies a registrant in writing of any penalty. It imposes additional penalties for nonpayment. It provides for the deposit and use of proceeds from any penalties paid to the DACS if the consumer cannot be identified.

Section 32 repeals s. 580.151, F.S., to eliminate the Commercial Feed Technical Council.

Section 33 amends s. 581.011, F.S., to remove a definition for "technical council," referring to the Plant Industry Technical Council, to conform to the repeal of the council in Section 21 of the bill.

Section 34 amends s. 581.145, F.S., to revise requirements for the issuance of permits to aquaculture producers for the transport and sale of water hyacinths to other states and countries.

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[20] Florida Citrus Mutual, *Florida Citrus Research and Development Foundation Inc.*, *available at* http://www.flcitrusmutual.com/files/9979ddcb-1713-47bb-8.pdf (last visited Feb. 1, 2012).

Section 35 amends s. 582.06, F.S., to revise requirements for the composition and appointment of members of the Soil and Water Conservation Council. It reduces the number of council members from twenty-three to seven, who are all appointed by the Commissioner of Agriculture. Included in this reduction are members from the DEP, the five WMDs, IFAS, the U.S. Department of Agriculture Natural Resources Conservation Service, the Florida Association of Counties, the Florida League of Cities and two members representing environmental interests. It deletes provisions that authorize members of the council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 36 amends s. 582.20, F.S., to authorize Soil and Water Conservation Districts (districts) to work across district boundaries, or on lands where no district exists, or on lands within another district with the concurrence of such district in order to maximize the utilization of water conservation devices, systems and techniques.

Section 37 amends s. 582.29, F.S., to revise the jurisdiction of districts to include territory contiguous to a district's boundaries.

Section 38 amends s. 582.30, F.S., to revise requirements and procedures for the dissolution or discontinuance of a district.

Section 39 amends s. 582.31, F.S., to revise requirements for payment of the proceeds from the sale of property of a dissolving district to the State Treasury and clarifies that proceeds from public auction be placed to the credit of the district to provide for any legal obligations.

Section 40 amends s. 582.32, F.S., to remove the DACS as the agency responsible for contracts, assets and liabilities of a dissolved soil and water conservation district. The bill transfers responsibility from the DACS to local general-purpose governments, pursuant to s. 189.4045(2), F.S.

Section 41 repeals s. 585.155, F.S., relating to the inspection and vaccination of cattle for brucellosis, since Florida was declared free of bovine brucellosis in 2001.

Section 42 repeals s. 589.03, F.S., to delete provisions that authorize members of the Florida Forestry Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 43 amends s. 589.19, F.S., to rename the "Wounded Warrior Special Hunt Area" of the state forests as an "Operation Outdoor Freedom Special Hunt Area." The bill also conforms obsolete references to the former Division of Forestry, now the Florida Forest Service.

Section 44 amends s. 589.277, F.S., to allow contributions from governmental and private sources for tree planting programs to be deposited into the Incidental Trust Fund as well as the Federal Grants Trust Fund. The bill also conforms obsolete references to the former Division of Forestry.

Section 45 amends s. 590.02, F.S., to preempt state and local government agencies, other than the Florida Forest Service, from enforcing regulations concerning broadcast burning or agricultural or silvicultural pile burning except under certain circumstances. The bill also conforms obsolete references to the former Division of Forestry.

Section 46 amends s. 597.0021, F.S., to remove a reference to the obsolete Aquaculture Interagency Coordinating Council.

Section 47 amends s. 597.003, F.S., to remove references to the obsolete Aquaculture Interagency Coordinating Council.

Section 48 amends s. 597.004, F.S., to provide an annual registration fee waiver to all elementary, middle, high school, and vocational schools that participate in the aquaculture certification program.

Section 49 amends s. 597.005, F.S., to remove references to the obsolete Aquaculture Interagency Coordinating Council. The bill also decreases the membership of the Aquaculture Review Council, since there will no longer be a member of the Aquaculture Interagency Coordinating Council to serve on the council.

Section 50 repeals s. 597.006, F.S., to eliminate the Aquaculture Interagency Coordinating Council.

Section 51 amends s. 604.21, F.S., to authorize the Commissioner of Agriculture, or the Commissioner's designee, to act as a trustee for a bond or security in compliance with the PSA. The bill also authorizes the Commissioner of Agriculture to enter into agreements with the U.S. Department of Agriculture to implement the PSA.

Section 52 amends s. 616.252, F.S., to provide members of the Florida State Fair Authority with reimbursement for per diem and travel expenses incurred while participating in business involving the authority.

Section 53 provides that this act shall take effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

See Government Sector Impact section.

B. Private Sector Impact:

The DACS estimates:

- Amending s. 253.002, F.S., to authorize the DACS to perform all staff duties and functions related to the Rural and Family Lands Protection Program, will result in a decrease in the time it take landowners to enter into an easement agreement with the state.
- Amending s. 580. 131, F.S., will allow persons who have purchased commercial feed that has been distributed in violation of ch. 580, F.S., to seek administrative action, as well as legal action, to recover penalties.

C. Government Sector Impact:

Revenues

The DACS estimates that there will be:

- A reduction of approximately $1,500 annually in non-recurring revenues from the waiver of the aquaculture certification fee for schools.
- An increase of approximately $3,600 annually in recurring revenues as a result of feed distributors being required to report the tons of feed distributed in the state.
- A reduction of approximately $4,700 annually in recurring revenues as a result of the elimination of the milkfat tester permits.

Expenditures

The DACS estimates that there will be a reduction of approximately $11,300 annually in recurring expenditures if it is not required to pay per diem and travel expenses for the Private Investigation, Recovery and Security Advisory Council.

Other Fiscal Comments

- Amending s. 388.201, F.S., will allow local governments additional time to prepare budget information regarding arthropod control before it must be submitted to DACS for review.
- Amending s. 388.323, F.S., will delete a requirement for local governments to offer mosquito control equipment to governmental units or private non-profit agencies that most likely would have no use for it.
- Amending s. 573.118, F.S., will delete a requirement that audits of marketing order accounts to be performed by a certified public accountant, resulting in a reduced administrative burden and saving the cost of an expensive audit.
- Amending s. 576.045, F.S., will extend the expiration dates for the fertilizer tonnage fee, allowing the DACS to continue to collect approximately $1 million annually that

is used towards the development of best management practices and nutrient pollution abatement efforts.
- Amending s. 582.31, F.S., will remove DACS from responsibility for any outstanding contracts upon dissolution of a soil and water conservation district.
- Amending s. 590.02, F.S., will allow DACS to receive private funds to administer tree-planting programs.
- Amending s. 597.004, F.S., may cause DACS to lose approximately $1,500 annually in aquaculture registration fees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Budget Subcommittee on General Government Appropriations on February 28, 2012:
- Authorizes the Commissioner of Agriculture and Consumer Services to certify dissolution or discontinuance of a soil and water conservation district for failure to comply with audit or financial reporting requirements pursuant to chapter 189, F.S.

CS/CS by Environmental Preservation and Conservation on February 6, 2012:
- Clarifies when a soil and water conservation district is dissolved all assets and liabilities transfer to the local general-purpose government pursuant to s. 189.4045(2), F.S.;
- Authorizes the Commissioner of Agriculture, or the Commissioner's designee, to act as a trustee for a bond or security in compliance with the PSA; and
- Authorizes the Commissioner of Agriculture to enter into agreements with the U.S. Department of Agriculture to implement the PSA.

CS by Agriculture Committee on January 23, 2012:
CS for Senate Bill 1254 is different from Senate Bill 1254 in that it:
- Deletes Section 15 of Senate Bill 1254 which provides direct statutory authority to the Department of Agriculture and Consumer Services to distribute grants funds to farmers.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

445356

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
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The Committee on Budget Subcommittee on General Government Appropriations (Latvala) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 1036 - 1037
4 and insert:
5 of chapter 189 and~~, the commissioner, after review and~~

By the Committees on Environmental Preservation and Conservation; and Agriculture; and Senator Siplin

592-03008-12 20121254c2

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; amending s. 20.14, F.S.; establishing the Division of Food, Nutrition, and Wellness within the department; amending s. 253.002, F.S.; requiring the department to perform certain staff duties and functions for the Board of Trustees of the Internal Improvement Trust Fund related to conservation easements; amending s. 379.2523, F.S.; deleting references to the Aquaculture Interagency Coordinating Council to conform to the repeal by the act of provisions creating the council; amending s. 379.2524, F.S.; deleting provisions that prohibit compensation and authorize per diem and travel expenses for members of the Sturgeon Production Working Group; amending s. 388.161, F.S.; revising the substances that mosquito control districts are authorized to use for controlling mosquito breeding; amending s. 388.201, F.S.; revising the date by which mosquito control districts must submit their certified budgets for approval by the department; amending s. 388.323, F.S.; revising procedures for a county's or mosquito control district's disposal of certain surplus equipment; repealing s. 388.42, F.S., relating to the John A. Mulrennan, Sr., Arthropod Research Laboratory; amending s. 388.46, F.S.; revising the membership and responsibilities of the Florida Coordinating Council on Mosquito Control; revising the duties of the council's Subcommittee on Managed

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Marshes; amending s. 493.6104, F.S.; deleting provisions that prohibit compensation and authorize per diem and travel expenses for members of the Private Investigation, Recovery, and Security Advisory Council; amending s. 500.09, F.S.; authorizing the department to adopt rules incorporating by reference the federal model Food Code; amending ss. 500.147 and 502.014, F.S.; deleting provisions for a food safety pilot program and a permitting program for persons who test milk or milk products; amending s. 502.053, F.S.; deleting requirements for milkfat tester licenses; amending s. 570.0705, F.S.; prohibiting members of certain advisory bodies from receiving per diem or travel expenses except under certain circumstances; deleting a provision that prohibits members from receiving compensation for their services; repealing s. 570.071, F.S., relating to the Florida Agricultural Exposition and the receipt and expenditure of funds for the exposition; amending s. 570.074, F.S.; renaming and revising the policy jurisdiction of the department's Office of Energy and Water; amending s. 570.18, F.S.; conforming cross-references; repealing s. 570.29, F.S., relating to divisions of the Department of Agriculture and Consumer Services; repealing s. 570.34, F.S., relating to the Plant Industry Technical Council; creating s. 570.451, F.S.; creating the Agricultural Feed, Seed, and Fertilizer Advisory Council; providing for the council's powers and duties and the appointment of council members;

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59 amending ss. 570.53 and 570.54, F.S.; conforming
60 cross-references; amending s. 573.112, F.S.; providing
61 that members of the Citrus Research and Development
62 Foundation's board of directors are entitled to
63 reimbursement for per diem and travel expenses;
64 amending s. 573.118, F.S.; revising requirements for
65 the accounting and review of collections and
66 expenditures from agricultural commodity marketing
67 order assessments; deleting requirements for the audit
68 of such accounts; amending s. 576.045, F.S.; revising
69 the expiration dates of certain provisions regulating
70 fertilizers containing nitrogen or phosphorous;
71 amending s. 576.071, F.S.; deleting a reference to the
72 Fertilizer Technical Council to conform to the repeal
73 by the act of provisions creating the council;
74 repealing ss. 576.091 and 578.30, F.S., relating to
75 the Fertilizer Technical Council and Seed Technical
76 Council; amending s. 580.041, F.S.; revising the
77 reporting requirements and penalties for violations by
78 distributors of commercial feed; amending s. 580.131,
79 F.S.; revising requirements for the assessment of
80 penalties and enforcement of violations by
81 manufacturers and distributors of commercial feed or
82 feedstuff; authorizing the department to assess
83 penalties; requiring registered distributors of
84 commercial feed to pay such penalties to consumers
85 within a specified period; imposing additional
86 penalties for nonpayment; providing for the deposit
87 and use of certain funds paid to the department;

88 repealing s. 580.151, F.S., relating to the Commercial
89 Feed Technical Council; amending s. 581.011, F.S.;
90 conforming provisions; amending s. 581.145, F.S.;
91 revising requirements for the issuance of permits to
92 aquaculture producers for the transport and sale of
93 water hyacinths to other states and countries;
94 amending s. 582.06, F.S.; revising requirements for
95 the composition and appointment of members of the Soil
96 and Water Conservation Council and the reimbursement
97 of members for per diem and travel expenses; amending
98 ss. 582.20 and 582.29, F.S.; revising the geographic
99 jurisdiction of soil and water conservation districts
100 to include certain territory outside of the districts'
101 boundaries; amending s. 582.30, F.S.; revising
102 requirements and procedures for the dissolution or
103 discontinuance of soil and water conservation
104 districts; revising notice requirements for such
105 proposed dissolution or discontinuance; amending s.
106 582.31, F.S.; revising requirements for payment of the
107 proceeds from the sale of property of a dissolving
108 soil and water conservation district to the State
109 Treasury; amending s. 582.32, F.S.; revising the
110 procedures on continuing existing contracts; repealing
111 s. 585.155, F.S., relating to the inspection and
112 vaccination of cattle for brucellosis; repealing s.
113 589.03, F.S., relating to the compensation and
114 reimbursement for per diem and travel expenses of
115 members of the Florida Forestry Council; amending s.
116 589.19, F.S.; renaming the "Wounded Warrior Special

117 Hunt Areas" of the state forests; conforming obsolete
118 references to the former Division of Forestry;
119 amending s. 589.277, F.S.; revising requirements for
120 the deposit of contributions for tree planting
121 programs; conforming obsolete references to the former
122 Division of Forestry; amending s. 590.02, F.S.;
123 specifying that state and local government agencies
124 other than the Florida Forest Service may not enforce
125 regulations of broadcast burning or agricultural and
126 silvicultural pile burning except under certain
127 circumstances; conforming obsolete references to the
128 former Division of Forestry; amending ss. 597.0021 and
129 597.003, F.S.; deleting references to the Aquaculture
130 Interagency Coordinating Council to conform to the
131 repeal by the act of provisions creating the council;
132 amending s. 597.004, F.S.; authorizing the waiver of
133 aquaculture registration fees for certain schools;
134 amending s. 597.005, F.S.; revising the composition of
135 the Aquaculture Review Council to conform to the
136 repeal by the act of provisions creating the
137 Aquaculture Interagency Coordinating Council; revising
138 the legislative committees to whom the Aquaculture
139 Review Council must provide analyses of unresolved
140 industry issues; repealing s. 597.006, F.S., relating
141 to the Aquaculture Interagency Coordinating Council;
142 amending s. 604.21, F.S.; authorizing the Commissioner
143 of Agriculture to act as trustee on bonds posted by
144 the United States Department of Agriculture under
145 certain circumstances; authorizing the Commissioner of

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146 Agriculture to enter into agreements with the United
147 States Department of Agriculture; amending s. 616.252,
148 F.S.; providing for the reimbursement of members of
149 the Florida State Fair Authority for per diem and
150 travel expenses; providing an effective date.
151
152 Be It Enacted by the Legislature of the State of Florida:
153
154 Section 1. Paragraph (m) is added to subsection (2) of
155 section 20.14, Florida Statutes, to read:
156 20.14 Department of Agriculture and Consumer Services.—
157 There is created a Department of Agriculture and Consumer
158 Services.
159 (2) The following divisions of the Department of
160 Agriculture and Consumer Services are established:
161 (m) Food, Nutrition, and Wellness.
162 Section 2. Subsection (1) of section 253.002, Florida
163 Statutes, is amended to read:
164 253.002 Department of Environmental Protection, water
165 management districts, Fish and Wildlife Conservation Commission,
166 and Department of Agriculture and Consumer Services; duties with
167 respect to state lands.—
168 (1) The Department of Environmental Protection shall
169 perform all staff duties and functions related to the
170 acquisition, administration, and disposition of state lands,
171 title to which is or will be vested in the Board of Trustees of
172 the Internal Improvement Trust Fund. However, upon the effective
173 date of rules adopted pursuant to s. 373.427, a water management
174 district created under s. 373.069 shall perform the staff duties

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175 and functions related to the review of any application for
176 authorization to use board of trustees-owned submerged lands
177 necessary for an activity regulated under part IV of chapter 373
178 for which the water management district has permitting
179 responsibility as set forth in an operating agreement adopted
180 pursuant to s. 373.046(4).~~; and~~ The Department of Agriculture
181 and Consumer Services shall perform the staff duties and
182 functions related to the review of applications and compliance
183 with conditions for use of board of trustees-owned submerged
184 lands under authorizations or leases issued pursuant to ss.
185 253.67-253.75 and 597.010 and the acquisition, administration,
186 and disposition of conservation easements pursuant to s. 570.71.
187 Unless expressly prohibited by law, the board of trustees may
188 delegate to the department any statutory duty or obligation
189 relating to the acquisition, administration, or disposition of
190 lands, title to which is or will be vested in the board of
191 trustees. The board of trustees may also delegate to any water
192 management district created under s. 373.069 the authority to
193 take final agency action, without any action on behalf of the
194 board, on applications for authorization to use board of
195 trustees-owned submerged lands for any activity regulated under
196 part IV of chapter 373 for which the water management district
197 has permitting responsibility as set forth in an operating
198 agreement adopted pursuant to s. 373.046(4). This water
199 management district responsibility under this subsection shall
200 be subject to the department's general supervisory authority
201 pursuant to s. 373.026(7). The board of trustees may also
202 delegate to the Department of Agriculture and Consumer Services
203 the authority to take final agency action on behalf of the board

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204 on applications to use board of trustees-owned submerged lands
205 for any activity for which that department has responsibility
206 pursuant to ss. 253.67-253.75, 369.25, 369.251, and 597.010.
207 However, the board of trustees shall retain the authority to
208 take final agency action on establishing any areas for leasing,
209 new leases, expanding existing lease areas, or changing the type
210 of lease activity in existing leases. Upon issuance of an
211 aquaculture lease or other real property transaction relating to
212 aquaculture, the Department of Agriculture and Consumer Services
213 must send a copy of the document and the accompanying survey to
214 the Department of Environmental Protection. The board of
215 trustees may also delegate to the Fish and Wildlife Conservation
216 Commission the authority to take final agency action, without
217 any action on behalf of the board, on applications for
218 authorization to use board of trustees-owned submerged lands for
219 any activity regulated under ss. 369.20 and 369.22.
220 Section 3. Paragraph (a) of subsection (5) and paragraph
221 (b) of subsection (6) of section 379.2523, Florida Statutes, are
222 amended to read:
223 379.2523 Aquaculture definitions; marine aquaculture
224 products, producers, and facilities.—
225 (5) The department shall:
226 (a) Coordinate with the Aquaculture Review Council~~, the~~
227 ~~Aquaculture Interagency Coordinating Council,~~ and the Department
228 of Agriculture and Consumer Services when developing criteria
229 for aquaculture general permits.
230 (6) The Fish and Wildlife Conservation Commission shall
231 encourage the development of aquaculture in the state through
232 the following:

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233 (b) Facilitating aquaculture research on life histories,
234 stock enhancement, and alternative species, and providing
235 research results that would assist in the evaluation,
236 development, and commercial production of candidate species for
237 aquaculture, including:
238 1. Providing eggs, larvae, fry, and fingerlings to
239 aquaculturists when excess cultured stocks are available from
240 the commission's facilities and the culture activities are
241 consistent with the commission's stock enhancement projects.
242 Such stocks may be obtained by reimbursing the commission for
243 the cost of production on a per-unit basis. Revenues resulting
244 from the sale of stocks shall be deposited into the trust fund
245 used to support the production of such stocks.
246 2. Conducting research programs to evaluate candidate
247 species when funding and staff are available.
248 3. Encouraging the private production of marine fish and
249 shellfish stocks for the purpose of providing such stocks for
250 statewide stock enhancement programs. When such stocks become
251 available, the commission shall reduce or eliminate duplicative
252 production practices that would result in direct competition
253 with private commercial producers.
254 4. Developing a working group, in cooperation with the
255 Department of Agriculture and Consumer Services and~~,~~ the
256 Aquaculture Review Council, ~~and the Aquaculture Interagency~~
257 ~~Coordinating Council,~~ to plan and facilitate the development of
258 private marine fish and nonfish hatcheries and to encourage
259 private/public partnerships to promote the production of marine
260 aquaculture products.
261 Section 4. Paragraph (c) of subsection (3) of section

262 379.2524, Florida Statutes, is amended to read:
263 379.2524 Commercial production of sturgeon.—
264 (3) MEETINGS; PROCEDURES; RECORDS.—The working group shall
265 meet at least twice a year and elect, by a quorum, a chair and
266 vice chair.
267 (c) A quorum shall consist of a majority of the group
268 members. ~~Members of the group shall not receive compensation,~~
269 ~~but shall be entitled to per diem and travel expenses, including~~
270 ~~attendance at meetings, as allowed public officers and employees~~
271 ~~pursuant to s. 112.061.~~
272 Section 5. Subsection (1) of section 388.161, Florida
273 Statutes, is amended to read:
274 388.161 District boards of commissioners; powers and
275 duties.—
276 (1) The board of commissioners may do any and all things
277 necessary for the control and elimination of all species of
278 mosquitoes and other arthropods of public health importance and
279 the board of commissioners is specifically authorized to provide
280 for the construction and maintenance of canals, ditches, drains,
281 dikes, fills, and other necessary works and to install and
282 maintain pumps, excavators, and other machinery and equipment,
283 to use pesticides registered ~~oil, larvicide paris green, or any~~
284 ~~other chemicals approved~~ by the department but only in such
285 quantities as may be necessary to control mosquito breeding and
286 not be detrimental to fish life.
287 Section 6. Subsection (4) of section 388.201, Florida
288 Statutes, is amended to read:
289 388.201 District budgets; hearing.—
290 (4) The governing board:

(a) Shall consider ~~give consideration to~~ objections filed against adoption of the tentative detailed work plan budget and in its discretion may amend, modify, or change such budget; and

(b) Shall by September 30 ~~15 following~~ adopt and execute on a form furnished by the department a certified budget for the district which shall be the operating and fiscal guide for the district. Certified copies of this budget shall be submitted by September 30 ~~15~~ to the department for approval.

Section 7. Subsections (1) and (2) of section 388.323, Florida Statutes, are amended to read:

388.323 Disposal of surplus property.—Surplus property shall be disposed of according to the provisions set forth in s. 274.05 with the following exceptions:

(1) Serviceable equipment no longer needed by a county or district shall first be offered to any or all other counties or districts engaged in arthropod control at a price established by the board of commissioners owning the equipment. ~~If no acceptable offer is received within a reasonable time, the equipment shall be offered to such other governmental units or private nonprofit agencies as provided in s. 274.05.~~

(2) The alternative procedure for disposal of surplus property, as prescribed in s. 274.06, shall be followed if it is ~~has been~~ determined that no other county or~~,~~ district engaged in arthropod control~~, governmental unit, or private nonprofit agency~~ has need for the equipment.

Section 8. Section 388.42, Florida Statutes, is repealed.

Section 9. Subsection (2) of section 388.46, Florida Statutes, is amended to read:

388.46 Florida Coordinating Council on Mosquito Control;

establishment; membership; organization; responsibilities.—

(2) MEMBERSHIP, ORGANIZATION, AND RESPONSIBILITIES.—

(a) *Membership.*—The Florida Coordinating Council on Mosquito Control shall be comprised of the following representatives or their authorized designees:

1. The Secretary of Environmental Protection. ~~and~~

2. The State Surgeon General.~~;~~

3.~~2.~~ The executive director of the Fish and Wildlife Conservation Commission.~~;~~

4.~~3.~~ The state epidemiologist.;

5.~~4.~~ The Commissioner of Agriculture.~~; and~~

6. The Board of Trustees of the Internal Improvement Trust Fund.

7.~~5.~~ Representatives from:

a. The University of Florida, Institute of Food and Agricultural Sciences, Florida Medical Entomological Research Laboratory.~~;~~

~~b. Florida Agricultural and Mechanical University;~~

b.~~c.~~ The United States Environmental Protection Agency.~~;~~

c.~~d.~~ The United States Department of Agriculture, Insects Affecting Man Laboratory.~~;~~

d.~~e.~~ The United States Fish and Wildlife Service.~~;~~

8.~~f.~~ Two mosquito control directors to be nominated by the Florida Mosquito Control Association, two representatives of Florida environmental groups, and two private citizens who are property owners whose lands are regularly subject to mosquito control operations, to be appointed to 4-year terms by the Commissioner of Agriculture~~; and~~

~~g. The Board of Trustees of the Internal Improvement Trust~~

349 ~~Fund~~.
350 (b) *Organization.*—The council shall be chaired by the
351 Commissioner of Agriculture or the commissioner's authorized
352 designee. A majority of the membership of the council shall
353 constitute a quorum for the conduct of business. The chair shall
354 be responsible for recording and distributing to the members a
355 summary of the proceedings of all council meetings. The council
356 shall meet at least three times each year, or as needed. The
357 council may designate subcommittees from time to time to assist
358 in carrying out its responsibilities, provided that the
359 Subcommittee on Managed Marshes shall be the first subcommittee
360 appointed by the council. The subcommittee shall continue to
361 provide technical assistance and guidance on saltmarsh ~~mosquito~~
362 ~~impoundment~~ management plans and ~~develop and review~~ research
363 proposals, taking into account the mosquito control source
364 reduction implications and natural resource interests in these
365 habitats ~~for mosquito source reduction techniques~~.
366 (c) *Responsibilities.*—The council shall:
367 1. Develop and implement guidelines to assist the
368 department in resolving disputes arising over the control of
369 arthropods on publicly owned lands.
370 ~~2. Identify and recommend to Florida Agricultural and~~
371 ~~Mechanical University research priorities for arthropod control~~
372 ~~practices and technologies.~~
373 2.~~3.~~ Develop and recommend to the department a request for
374 proposal process for arthropod control research.
375 3.~~4.~~ Identify potential funding sources for research or
376 implementation projects and evaluate and prioritize proposals
377 upon request by the funding source.

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378 4.~~5.~~ Prepare and present reports, as needed, on arthropod
379 control activities in the state to the Pesticide Review Council~~,~~
380 ~~the Florida Coastal Management Program Interagency Management~~
381 ~~Committee,~~ and other governmental organizations, as appropriate.
382 Section 10. Subsections (7) and (8) of section 493.6104,
383 Florida Statutes, are renumbered as subsections (6) and (7),
384 respectively, and present subsection (6) of that section is
385 amended to read:
386 493.6104 Advisory council.—
387 ~~(6) Council members shall serve without pay; however, state~~
388 ~~per diem and travel allowances may be claimed for attendance at~~
389 ~~officially called meetings as provided by s. 112.061.~~
390 Section 11. Subsection (3) of section 500.09, Florida
391 Statutes, is amended to read:
392 500.09 Rulemaking; analytical work.—
393 (3) The department may adopt rules necessary for the
394 efficient enforcement of this chapter. Such rules must be
395 consistent with those adopted under the federal act in regard to
396 food and, to this end, may adopt by reference those rules and
397 the current edition of the model Food Code issued by the Food
398 and Drug Administration and Public Health Service of the United
399 States Department of Health and Human Services, when applicable
400 and practicable.
401 Section 12. Subsection (6) of section 500.147, Florida
402 Statutes, is amended to read:
403 500.147 Inspection of food establishments and vehicles~~;~~
404 ~~food safety pilot program~~.—
405 ~~(6) The department is authorized to initiate a food safety~~
406 ~~pilot program establishing a special, documented food inspection~~

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~~program based on sound science principles of the Hazard Analysis Critical Control Point (HACCP) system and involving cooperative compliance efforts of both the department and the food establishment to assure consumers a safe, wholesome, and properly labeled food supply. A food establishment shall be eligible for such a pilot program only if program criteria are met. Criteria used to establish this special program include, but are not limited to, the following:~~

~~(a) A good inspection history over a specified time period.~~

~~(b) Certified food manager activities demonstrated to be effective in assessing food safety practices and correcting deficiencies at the food establishment.~~

~~(c) An active food training program in place for employees.~~

~~(d) "Self inspection" records of the food establishment made available for review by the department.~~

~~(e) Written sanitation standard operation procedures in place and the food establishment's verification records made available for review by the department.~~

~~(f) Freezer/refrigeration units and hot-cold temperature logs or recording charts made available for review by the department.~~

~~(g) Records of corrective action to resolve food safety deficiencies made available for review by the department.~~

Section 13. Subsections (4) through (7) of section 502.014, Florida Statutes, are renumbered as subsections (3) through (6), respectively, and present subsection (3) of that section is amended to read:

502.014 Powers and duties.—

~~(3) The department shall manage a program to issue permits~~

~~to persons who test milk or milk products for milkfat content by weight, volume, chemical, electronic, or other means when the result of such test is used as a basis for payment for the milk or milk products.~~

Section 14. Subsections (1) and (2) and paragraphs (a) and (e) of subsection (3) of section 502.053, Florida Statutes, are amended to read:

502.053 Permits and ~~licenses;~~ fees; requirements; exemptions; temporary permits.—

(1) PERMITS ~~AND LICENSES~~.—

(a) Each Grade "A" milk plant, whether located in the state or outside the state, and each manufacturing milk plant, milk producer, milk hauler, milk hauling service, washing station operator, milk plant operator, milk distributor, single-service-container manufacturer, receiving station, and transfer station in the state shall apply to the department for a permit to operate. The application shall be on forms developed by the department.

(b) Each frozen dessert plant, whether located in the state or outside the state, that manufactures frozen desserts or other products defined in this chapter and offers these products for sale in this state must apply to the department for a permit to operate. The application must be submitted on forms prescribed by the department. All frozen dessert permits expire on June 30 of each year.

~~(c) Any person who tests milk or milk products for milkfat content by weight, volume, chemical, electronic, or other method when the result of such test is used as a basis for payment for the milk or milk products must apply to the department for a~~

465 ~~license. To qualify for a license, the applicant must~~
466 ~~demonstrate a sufficiency of knowledge, ability, and equipment~~
467 ~~to adequately perform milkfat tests. The license shall be issued~~
468 ~~for a period of 2 years after the date of first issuance upon~~
469 ~~application to the department on forms prescribed by the~~
470 ~~department.~~
471 (c) ~~(d)~~ Permits ~~and licenses~~ are nontransferable between
472 persons or locations and are subject to suspension or revocation
473 as provided in this chapter.
474 (2) FEES.—
475 ~~(a)~~ The initial application for a frozen dessert plant
476 permit must be accompanied by a permit fee of $200. The annual
477 permit renewal fee is $100.
478 ~~(b) The department shall charge each applicant for a~~
479 ~~milkfat tester's license a fee not to exceed $125.~~
480 (3) REQUIREMENTS.—
481 (a) To obtain a ~~frozen dessert plant~~ permit ~~or milkfat~~
482 ~~tester's license~~, an applicant must satisfy all requirements
483 that are defined by the department in rule and must agree to
484 comply with the applicable provisions of this chapter and rules
485 adopted under this chapter. The department shall mail a copy of
486 the permit ~~or license~~ to the applicant to signify that
487 administrative requirements have been met.
488 ~~(c) Each licensed milkfat tester shall keep records of~~
489 ~~milkfat tests conducted by him or her for a period of 1 year,~~
490 ~~and such records must be available for inspection by the~~
491 ~~department at all reasonable hours.~~
492 Section 15. Subsection (9) of section 570.0705, Florida
493 Statutes, is amended to read:

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494 570.0705 Advisory committees.—From time to time the
495 commissioner may appoint any advisory committee to assist the
496 department with its duties and responsibilities.
497 (9) Notwithstanding s. 20.052(4)(d), members of each
498 advisory committee, council, board, working group, task force,
499 or other advisory body created by law within the department or
500 created by the department under this section may not be
501 reimbursed for per diem or travel expenses as provided in s.
502 112.061 ~~shall receive no compensation for their services~~.
503 Section 16. Section 570.071, Florida Statutes, is repealed.
504 Section 17. Section 570.074, Florida Statutes, is amended
505 to read:
506 570.074 Department of Agriculture and Consumer Services;
507 ~~energy and~~ water policy.—The commissioner may create an Office
508 of Agricultural ~~Energy and~~ Water Policy under the supervision of
509 a senior manager exempt under s. 110.205 in the Senior
510 Management Service. The commissioner may designate the bureaus
511 and positions in the various organizational divisions of the
512 department that report to this office relating to any matter
513 over which the department has jurisdiction in matters relating
514 to ~~energy and~~ water policy affecting agriculture, application of
515 such policies, and coordination of such matters with state and
516 federal agencies.
517 Section 18. Section 570.18, Florida Statutes, is amended to
518 read:
519 570.18 Organization of departmental work.—In the assignment
520 of functions to the divisions of the department created in s.
521 20.14 ~~570.29~~, the department shall retain within the Division of
522 Administration, in addition to executive functions, those powers

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523 and duties enumerated in s. 570.30. The department shall
524 organize the work of the other divisions in such a way as to
525 secure maximum efficiency in the conduct of the department. The
526 divisions created in s. 20.14 ~~570.29~~ are solely to make possible
527 the definite placing of responsibility. The department shall be
528 conducted as a unit in which every employee, including each
529 division director, is assigned a definite workload, and there
530 shall exist between division directors a spirit of cooperative
531 effort to accomplish the work of the department.
532 Section 19. Section 570.29, Florida Statutes, is repealed.
533 Section 20. Section 570.34, Florida Statutes, is repealed.
534 Section 21. Section 570.451, Florida Statutes, is created
535 to read:
536 570.451 Agricultural Feed, Seed, and Fertilizer Advisory
537 Council.—
538 (1) The Agricultural Feed, Seed, and Fertilizer Advisory
539 Council is created within the department.
540 (2) The council is composed of the following 15 members
541 appointed by the commissioner:
542 (a) One representative of the department.
543 (b) One representative of the dean for extension of the
544 Institute of Food and Agricultural Sciences at the University of
545 Florida.
546 (c) One representative each from the state's beef cattle,
547 poultry, aquaculture, field crops, citrus, vegetable, and dairy
548 production industries.
549 (d) Two representatives each from the state's fertilizer,
550 seed, and commercial feed industries.
551

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552 Each member shall be appointed for a term of not to exceed 4
553 years and shall serve until his or her successor is appointed.
554 (3)(a) A majority of the council members constitutes a
555 quorum for all purposes, and an act by a majority of such quorum
556 at any meeting constitutes an official act of the council. The
557 secretary shall keep a complete record of each meeting, which
558 must show the names of members present and the actions taken.
559 Such records must be kept on file with the department.
560 (b) Members of the council shall meet and organize by
561 electing a chair, a vice chair, and a secretary whose terms
562 shall be for 2 years each. Council officers may not serve
563 consecutive terms.
564 (c) The council shall meet at the call of its chair, at the
565 request of a majority of its members, at the request of the
566 department, or at such time as an agricultural or environmental
567 emergency arises, but not less than twice per year.
568 (d) The meetings, powers and duties, procedures, and
569 recordkeeping of the council shall be in accordance with the
570 provisions of s. 570.0705 relating to advisory committees
571 established within the department.
572 (4) The council shall:
573 (a) Receive reports of relevant enforcement activity
574 conducted by the Division of Agricultural Environmental
575 Services, including the number of inspections, the number of
576 administrative actions, the number of complaints received and
577 investigated, and the dispositions of complaints.
578 (b) Provide advice to the department on the conduct of
579 relevant enforcement activities.
580 (c) Receive reports on disciplinary actions.

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581 (d) Make recommendations to the commissioner for actions to
582 be taken with respect to the regulation of agricultural feed,
583 seed, and fertilizer.
584 Section 22. Paragraph (e) of subsection (6) of section
585 570.53, Florida Statutes, is amended to read:
586 570.53 Division of Marketing and Development; powers and
587 duties.—The powers and duties of the Division of Marketing and
588 Development include, but are not limited to:
589 (6)
590 (e) Extending in every practicable way the distribution and
591 sale of Florida agricultural products throughout the markets of
592 the world as required of the department by s. ~~ss.~~ 570.07(7),
593 (8), (10), and (11) ~~and 570.071~~ and chapters 571, 573, and 574.
594 Section 23. Subsection (2) of section 570.54, Florida
595 Statutes, is amended to read:
596 570.54 Director; duties.—
597 (2) It shall be the duty of the director of this division
598 to supervise, direct, and coordinate the activities authorized
599 by ss. 570.07(4), (7), (8), (10), (11), (12), (17), (18), and
600 (20), ~~570.071,~~ 570.21, 534.47-534.53, and 604.15-604.34 and
601 chapters 504, 571, 573, and 574 and to exercise other powers and
602 authority as authorized by the department.
603 Section 24. Subsection (7) of section 573.112, Florida
604 Statutes, is amended to read:
605 573.112 Advisory council.—
606 (7) Notwithstanding any provision of this section, the
607 Citrus Research and Development Foundation, Inc., a direct-
608 support organization of the University of Florida established
609 pursuant to s. 1004.28, shall serve as the advisory council for

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610 a citrus research marketing order, provide the department with
611 advice on administering the order, and, in accordance with the
612 order, conduct citrus research and perform other duties assigned
613 by the department. Notwithstanding s. 1004.28(3) or any
614 provision of this section, the foundation's board of directors
615 shall be composed of 13 members, including 10 citrus growers, 2
616 representatives of the university's Institute of Food and
617 Agricultural Sciences, and 1 member appointed by the
618 Commissioner of Agriculture, who are each entitled to
619 reimbursement from the foundation for per diem and travel
620 expenses as provided in s. 112.061.
621 Section 25. Subsection (4) of section 573.118, Florida
622 Statutes, is amended to read:
623 573.118 Assessment; funds; review of accounts ~~audit~~;
624 loans.—
625 (4) In the event of levying and collecting of assessments,
626 for each fiscal year in which assessment funds are received by
627 the department, the department shall maintain records of
628 collections and expenditures for each marketing order separately
629 within the state's accounting system. If requested by an
630 advisory council, department staff shall cause to be made a
631 thorough review ~~annual audit~~ of the ~~books and~~ accounts ~~by a~~
632 ~~certified public accountant~~, such review ~~audit~~ to be completed
633 within 60 days after the request is received ~~end of the fiscal~~
634 ~~year~~. The department and all producers and handlers covered by
635 the marketing order shall be properly advised of the details of
636 the review ~~annual official audit~~ of the account ~~accounts as~~
637 ~~shown by the certified public accountant~~ within 30 days after ~~of~~
638 the review ~~audit~~.

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639 Section 26. Subsection (8) of section 576.045, Florida
640 Statutes, is amended to read:
641 576.045 Nitrogen and phosphorus; findings and intent; fees;
642 purpose; best management practices; waiver of liability;
643 compliance; rules; exclusions; expiration.—
644 (8) EXPIRATION OF PROVISIONS.—Subsections (1), (2), (3),
645 (4), and (6) expire on December 31, 2022 ~~2012~~. Subsections (5)
646 and (7) expire on December 31, 2027 ~~2017~~.
647 Section 27. Section 576.071, Florida Statutes, is amended
648 to read:
649 576.071 Commercial value.—The commercial value used in
650 assessing penalties for any deficiency shall be determined by
651 using annualized plant nutrient values contained in one or more
652 generally recognized journals ~~recommended by the Fertilizer~~
653 ~~Technical Council~~.
654 Section 28. Section 576.091, Florida Statutes, is repealed.
655 Section 29. Section 578.30, Florida Statutes, is repealed.
656 Section 30. Paragraph (c) of subsection (1) and subsection
657 (3) of section 580.041, Florida Statutes, are amended to read:
658 580.041 Master registration; fee; refusal or cancellation
659 of registration; reporting.—
660 (1)
661 (c) Registration shall be conditioned on the distributor's
662 compliance with all provisions of this chapter and rules adopted
663 under this chapter ~~thereof~~, including:
664 1. Submitting samples of manufactured feed for testing by
665 laboratories that have been certified by the department or
666 obtaining an exemption from the certified laboratory testing
667 requirement, as provided by this chapter and rules thereof.

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668 2. Maintaining a bookkeeping system and records necessary
669 to indicate accurately the type and tonnage of commercial feeds
670 sold in this state ~~that will allow the department to verify the~~
671 ~~accuracy of the reported tonnage~~.
672 3. Reporting within 30 days after the end of each quarter,
673 in the format prescribed by the department, the number of tons
674 of feed distributed in the state during each of the following
675 reporting periods: July through September, October through
676 December, January through March, and April through June.
677 4.~~3.~~ Allowing the department to verify the accuracy of
678 reported type and tonnage and to otherwise examine pertinent
679 records at reasonable times.
680 (3) The department may refuse, suspend, or cancel the
681 master registration of, or impose one or more of the penalties
682 provided in s. 580.121, against any distributor or registrant
683 who violates or fails to comply with the provisions of this
684 chapter.
685 Section 31. Section 580.131, Florida Statutes, is amended
686 to read:
687 580.131 Penalty payable to consumer.—
688 (1) Any consumer who purchases without notice a commercial
689 feed or feedstuff that is ~~has been~~ distributed in violation of
690 this chapter or rules adopted under this chapter shall, in any
691 legal or administrative action that may be instituted, recover
692 penalties as follows:
693 (a) ~~(1)~~ If a certified laboratory analysis shows that any
694 feed bearing a guarantee of 20 percent protein~~,~~ or less~~,~~ falls
695 more than 1 percent protein below the guarantee, or if the
696 analysis shows that any feed bearing a guarantee of more than 20

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697 percent protein falls more than 2 percent protein below the
698 guarantee, $4 per ton for each percent protein deficiency shall
699 be assessed against the manufacturer or distributor.
700 (b) ~~(2)~~ If a certified laboratory analysis shows that any
701 feed is deficient in fat by more than 0.5 ~~five-tenths~~ percent
702 fat, $4 per ton for each percent fat deficiency shall be
703 assessed against the manufacturer or distributor.
704 (c) ~~(3)~~ If a certified laboratory analysis shows that any
705 feed bearing a maximum guarantee of not more than 20 percent
706 fiber exceeds this guarantee by more than 1 percent fiber, or if
707 the analysis shows that any feed bearing a maximum guarantee of
708 more than 20 percent fiber exceeds this guarantee by more than 2
709 percent fiber, $4 per ton for each percent fiber excess shall be
710 assessed against the manufacturer or distributor.
711 (d) ~~(4)~~ If a certified laboratory analysis shows that any
712 commercial feed is deficient or excessive in the required drug,
713 mineral, or nutritive guarantees other than protein, fat, or
714 fiber, a penalty of $4 per ton shall be assessed against the
715 manufacturer or distributor for each deficiency or excessive
716 level found.
717 (e) ~~(5)~~ If a certified laboratory analysis shows that any
718 commercial feed or feedstuff is found to be adulterated as
719 provided in s. 580.071, a penalty of $4 per ton shall be
720 assessed against the manufacturer or distributor for each
721 violation found.
722 (f) ~~(6)~~ If any feed is found by the department to be short
723 in weight, 4 times the invoice value of the actual shortage
724 shall be assessed against the manufacturer or distributor, but
725 in no instance shall the penalty be less than $25. The

726 department by rule may establish variations for short weight.
727 (g) ~~(7)~~ ~~In no case shall~~ Any penalty assessed under ~~as~~
728 ~~specified in~~ this section ~~be less than $10~~, regardless of the
729 monetary value of the violation, must be at least $10.
730 (2)(a) Within 60 days after the department notifies a
731 registrant in writing of any penalty assessed under this
732 section, the registrant shall pay the penalty to the consumer.
733 If the consumer's identity cannot be determined, the registrant
734 shall, within the 60-day period, pay the assessed penalty to the
735 department.
736 (b) A registrant who, within the 60-day period, fails to
737 pay the full amount of the assessed penalty to the consumer or
738 the department, as applicable, in addition to the penalty
739 assessed under this section, is also subject to the penalties
740 provided in s. 580.121.
741 (c) The proceeds from any penalties paid to the department
742 under this section shall be deposited into the department's
743 General Inspection Trust Fund and be used by the department for
744 the exclusive purpose of administering this chapter.
745 Section 32. Section 580.151, Florida Statutes, is repealed.
746 Section 33. Subsection (30) of section 581.011, Florida
747 Statutes, is amended to read:
748 581.011 Definitions.—As used in this chapter:
749 ~~(30) "Technical council" means the Plant Industry Technical~~
750 ~~Council.~~
751 Section 34. Subsection (3) of section 581.145, Florida
752 Statutes, is amended to read:
753 581.145 Aquatic plant nursery registration; special permit
754 requirements.—

755 (3) Notwithstanding any other provision of state or federal
756 law, the Department of Agriculture and Consumer Services shall
757 issue, by request, a permit to the aquaculture producer to
758 engage in the business of transporting and selling ~~exporting~~
759 water hyacinths (*Eichhornia spp.*) only to other states or
760 countries that permit such transportation and sale ~~other than~~
761 ~~the United States and only~~ when such ~~water hyacinths are~~
762 ~~cultivated in a nursery for the sole purpose of exportation and~~
763 ~~the~~ aquaculture activities have ~~activity has~~ been certified by
764 the Department of Agriculture and Consumer Services. In
765 accordance with any appropriate state or federal law or United
766 States treaty, a ~~no~~ Florida aquaculture producer may not ~~shall~~
767 ship water hyacinths to other states or countries ~~other than the~~
768 ~~United States~~ under such a permit for the purpose of importing
769 water hyacinths back into Florida ~~the United States, nor shall~~
770 ~~drop shipments be made to any other destination within the~~
771 ~~United States~~. This subsection does not ~~provision shall in no~~
772 ~~way~~ restrict or interfere with the ~~Department of Environmental~~
773 ~~Protection's~~ efforts of the Fish and Wildlife Conservation
774 Commission, or the efforts ~~those~~ of any other agency or local
775 government with responsibilities for the management of noxious
776 aquatic plants, to control or eradicate noxious nonnursery
777 aquatic plants, including water hyacinths. This subsection may
778 ~~provision shall~~ not be considered ~~a consideration~~ in the
779 approval or the release of biological control agents for water
780 hyacinths or any other noxious aquatic plants.
781 Section 35. Section 582.06, Florida Statutes, is amended to
782 read:
783 582.06 Soil and Water Conservation Council; powers and

784 duties.—
785 (1) COMPOSITION.—
786 (a) The Soil and Water Conservation Council is created in
787 the Department of Agriculture and Consumer Services and shall be
788 composed of 7 ~~23~~ members ~~as follows:~~
789 ~~(a) Eleven members shall be persons~~ who have been involved
790 in the practice of soil or water conservation, or in the
791 development or implementation of interim measures or best
792 management practices related thereto, and who have been engaged
793 in agriculture or an occupation related to the agricultural
794 industry for at least 5 years at the time of their appointment.
795 ~~(b) Twelve members shall include one representative each~~
796 ~~from the Department of Environmental Protection, the five water~~
797 ~~management districts, the Institute of Food and Agricultural~~
798 ~~Sciences at the University of Florida, the United States~~
799 ~~Department of Agriculture Natural Resources Conservation~~
800 ~~Service, the Florida Association of Counties, and the Florida~~
801 ~~League of Cities and two representatives of environmental~~
802 ~~interests.~~
803 (b) ~~(c)~~ All members shall be appointed by the commissioner.
804 ~~Members appointed pursuant to paragraph (b) shall be appointed~~
805 ~~by the commissioner from recommendations provided by the~~
806 ~~organization or interest represented.~~
807 (c) ~~(d)~~ Members shall serve 4-year terms or until their
808 successors are duly qualified and appointed. If a vacancy
809 occurs, it shall be filled for the remainder of the term in the
810 manner of an initial appointment.
811 (2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS~~;~~
812 ~~COMPENSATION~~.—The meetings, powers and duties, procedures, and

813 recordkeeping of the Soil and Water Conservation Council~~, and~~
814 ~~per diem and reimbursement of expenses of council members,~~ shall
815 be governed by the provisions of s. 570.0705 relating to
816 advisory committees established within the department.
817 Section 36. Section 582.20, Florida Statutes, is amended to
818 read:
819 582.20 Powers of districts and supervisors.—A soil and
820 water conservation district organized under the provisions of
821 this chapter shall constitute a governmental subdivision of this
822 state, and a public body corporate and politic, exercising
823 public powers, and such district and the supervisors thereof,
824 shall have the following powers, in addition to others granted
825 in other sections of this chapter:
826 (1) To conduct surveys, investigations, and research
827 relating to the character of soil erosion and floodwater and
828 sediment damages, to the conservation, development and
829 utilization of soil and water resources and the disposal of
830 water, and to the preventive and control measures and works of
831 improvement needed; to publish the results of such surveys,
832 investigations, or research; and to disseminate information
833 concerning such preventive and control measures and works of
834 improvement; provided, however, that in order to avoid
835 duplication of research activities, no district shall initiate
836 any research program except in cooperation with the government
837 of this state or any of its agencies, or with the United States
838 or any of its agencies.~~;~~
839 (2) To conduct demonstrational projects within the
840 district's boundaries, territory within another district's
841 boundaries subject to the other district's approval, or

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842 territory not contained within any district's boundaries
843 ~~district~~ on lands owned or controlled by this state or any of
844 its agencies, with the cooperation of the agency administering
845 and having jurisdiction thereof, and on any other lands within
846 the district's boundaries, territory within another district's
847 boundaries subject to the other district's approval, or
848 territory not contained within any district's boundaries
849 ~~district~~ upon obtaining the consent of the owner and occupiers
850 of such lands or the necessary rights or interests in such
851 lands, in order to demonstrate by example the means, methods,
852 and measures by which soil and soil resources may be conserved,
853 and soil erosion in the form of soil blowing and soil washing
854 may be prevented and controlled, and works of improvement for
855 flood prevention or the conservation, development and
856 utilization of soil and water resources, and the disposal of
857 water may be carried out.~~;~~
858 (3) To carry out preventive and control measures and works
859 of improvement for flood prevention or the conservation,
860 development and utilization of soil and water resources, and the
861 disposal of water within the district's boundaries, territory
862 within another district's boundaries subject to the other
863 district's approval, or territory not contained within any
864 district's boundaries ~~district~~, including, but not limited to,
865 engineering operations, methods of cultivation, the growing of
866 vegetation, changes in use of land, and the measures listed in
867 s. 582.04 on lands owned or controlled by this state or any of
868 its agencies, with the cooperation of the agency administering
869 and having jurisdiction thereof, and on any other lands within
870 the district's boundaries, territory within another district's

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871 boundaries subject to the other district's approval, or
872 territory not contained within any district's boundaries
873 ~~district~~ upon obtaining the consent of the owner and the
874 occupiers of such lands or the necessary rights or interests in
875 such lands.~~;~~
876 (4) To cooperate, or enter into agreements with, and within
877 the limits of appropriations duly made available to it by law,
878 to furnish financial or other aid to, any agency, governmental
879 or otherwise, or any owner or occupier of lands within the
880 district's boundaries, territory within another district's
881 boundaries subject to the other district's approval, or
882 territory not contained within any district's boundaries
883 ~~district~~, in the carrying on of erosion control or prevention
884 operations and works of improvement for flood prevention or the
885 conservation, development and utilization, of soil and water
886 resources and the disposal of water within the district's
887 boundaries, territory within another district's boundaries
888 subject to the other district's approval, or territory not
889 contained within any district's boundaries ~~district~~, subject to
890 such conditions as the supervisors may deem necessary to advance
891 the purposes of this chapter.~~;~~
892 (5) To obtain options upon and to acquire, by purchase,
893 exchange, lease, gift, grant, bequest, devise or otherwise, any
894 property, real or personal, or rights or interests therein; to
895 maintain, administer, and improve any properties acquired, to
896 receive income from such properties and to expend such income in
897 carrying out the purposes and provisions of this chapter; and to
898 sell, lease, or otherwise dispose of any of its property or
899 interests therein in furtherance of the purposes and the

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900 provisions of this chapter.~~;~~
901 (6) To make available, on such terms as it shall prescribe,
902 to landowners and occupiers within the district's boundaries,
903 territory within another district's boundaries subject to the
904 other district's approval, or territory not contained within any
905 district's boundaries ~~district~~, agricultural and engineering
906 machinery and equipment, fertilizer, seeds and seedlings, and
907 such other material or equipment, as will assist such landowners
908 and occupiers to carry on operations upon their lands for the
909 conservation of soil resources and for the prevention or control
910 of soil erosion and for flood prevention or the conservation,
911 development and utilization, of soil and water resources and the
912 disposal of water.~~;~~
913 (7) To construct, improve, operate and maintain such
914 structures as may be necessary or convenient for the performance
915 of any of the operations authorized in this chapter.~~;~~
916 (8) To develop comprehensive plans for the conservation of
917 soil and water resources and for the control and prevention of
918 soil erosion and for flood prevention or the conservation,
919 development and utilization of soil and water resources, and the
920 disposal of water within the district's boundaries, territory
921 within another district's boundaries subject to the other
922 district's approval, or territory not contained within any
923 district's boundaries ~~district~~, which plans shall specify in
924 such detail as may be possible the acts, procedures,
925 performances, and avoidances which are necessary or desirable
926 for the effectuation of such plans, including the specification
927 of engineering operations, methods of cultivation, the growing
928 of vegetation, cropping programs, tillage practices, and changes

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929 in use of land; control of artesian wells; and to publish such
930 plans and information and bring them to the attention of owners
931 and occupiers of lands within the district's boundaries,
932 territory within another district's boundaries subject to the
933 other district's approval, or territory not contained within any
934 district's boundaries. ~~district;~~
935 (9) To take over, by purchase, lease, or otherwise, and to
936 administer any soil-conservation, erosion-control, erosion-
937 prevention project, or any project for flood-prevention or for
938 the conservation, development and utilization of soil and water
939 resources, and the disposal of water, located within the
940 district's ~~its~~ boundaries, territory within another district's
941 boundaries subject to the other district's approval, or
942 territory not contained within any district's boundaries,
943 undertaken by the United States or any of its agencies, or by
944 this state or any of its agencies; to manage as agent of the
945 United States or any of its agencies, or of the state or any of
946 its agencies, any soil-conservation, erosion-control, erosion-
947 prevention, or any project for flood-prevention or for the
948 conservation, development, and utilization of soil and water
949 resources, and the disposal of water within the district's ~~its~~
950 boundaries, territory within another district's boundaries
951 subject to the other district's approval, or territory not
952 contained within any district's boundaries; to act as agent for
953 the United States, or any of its agencies, or for the state or
954 any of its agencies, in connection with the acquisition,
955 construction, operation or administration of any soil-
956 conservation, erosion-control, erosion-prevention, or any
957 project for flood-prevention or for the conservation,

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958 development and utilization of soil and water resources, and the
959 disposal of water within the district's ~~its~~ boundaries,
960 territory within another district's boundaries subject to the
961 other district's approval, or territory not contained within any
962 district's boundaries; to accept donations, gifts, and
963 contributions in money, services, materials, or otherwise, from
964 the United States or any of its agencies, or from this state or
965 any of its agencies, or from others, and to use or expend such
966 moneys, services, materials or other contributions in carrying
967 on its operations.~~;~~
968 (10) To sue and be sued in the name of the district; to
969 have a seal, which seal shall be judicially noticed; to have
970 perpetual succession unless terminated as provided in this
971 chapter; to make and execute contracts and other instruments
972 necessary or convenient to the exercise of its powers; upon a
973 majority vote of the supervisors of the district, to borrow
974 money and to execute promissory notes and other evidences of
975 indebtedness in connection therewith, and to pledge, mortgage,
976 and assign the income of the district and its personal property
977 as security therefor, the notes and other evidences of
978 indebtedness to be general obligations only of the district and
979 in no event to constitute an indebtedness for which the faith
980 and credit of the state or any of its revenues are pledged; to
981 make, amend, and repeal rules and regulations not inconsistent
982 with this chapter to carry into effect its purposes and powers.
983 (11) As a condition to the extending of any benefits under
984 this chapter to, or the performance of work upon, any lands not
985 owned or controlled by this state or any of its agencies, the
986 supervisors may require contributions in money, services,

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987 materials, or otherwise to any operations conferring such
988 benefits, and may require landowners and occupiers to enter into
989 and perform such agreements or covenants as to the permanent use
990 of such lands as will tend to prevent or control erosion and
991 prevent floodwater and sediment damages thereon.~~;~~
992 (12) No provisions with respect to the acquisition,
993 operation, or disposition of property by public bodies of this
994 state shall be applicable to a district organized hereunder
995 unless the Legislature shall specifically so state. The property
996 and property rights of every kind and nature acquired by any
997 district organized under the provisions of this chapter shall be
998 exempt from state, county, and other taxation.
999 Section 37. Section 582.29, Florida Statutes, is amended to
1000 read:
1001 582.29 State agencies to cooperate.—Agencies of this state
1002 which shall have jurisdiction over, or be charged with, the
1003 administration of any state-owned lands, and of any county, or
1004 other governmental subdivision of the state, which shall have
1005 jurisdiction over, or be charged with the administration of, any
1006 county-owned or other publicly owned lands, lying within the
1007 boundaries of any district organized under this chapter, the
1008 boundaries of another district subject to that district's
1009 approval, or territory not contained within the boundaries of
1010 any district organized under this chapter, shall cooperate to
1011 the fullest extent with the supervisors of such districts in the
1012 effectuation of programs and operations undertaken by the
1013 supervisors under the provisions of this chapter. The
1014 supervisors of such districts shall be given free access to
1015 enter and perform work upon such publicly owned lands. The

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1016 provisions of land use regulations adopted shall be in all
1017 respects observed by the agencies administering such publicly
1018 owned lands.
1019 Section 38. Subsection (3) of section 582.30, Florida
1020 Statutes, is amended, and subsections (4) and (5) are added to
1021 that section, to read:
1022 582.30 Discontinuance of districts; referendum;
1023 commissioner's authority.—
1024 (3) In the alternative, ~~upon review and recommendation of~~
1025 ~~the Soil and Water Conservation Council regarding the continued~~
1026 ~~viability of a district,~~ the Commissioner of Agriculture may
1027 dissolve or discontinue a ~~such~~ district if: ~~the commissioner~~
1028 ~~certifies that the continued operation of the district is not~~
1029 ~~administratively practicable and feasible.~~
1030 (a) Upon review and recommendation of the Soil and Water
1031 Conservation Council, the council determines that the continued
1032 operation of the district is not administratively practicable
1033 and feasible under the provisions of this chapter;
1034 (b) The ~~If A~~ district fails ~~has failed~~ to comply with any
1035 ~~of the~~ audit or ~~and~~ financial reporting requirement ~~requirements~~
1036 of chapter 189, or fails to comply with any requirement of s.
1037 582.20(1)-(9), and ~~the commissioner, after review and~~
1038 ~~confirmation by~~ the department's inspector general reviews and
1039 confirms in writing that the district has failed to comply with
1040 such requirement; or~~, may certify dissolution or discontinuance~~
1041 ~~of such district without prior review and recommendation of the~~
1042 ~~Soil and Water Conservation Council.~~
1043 (c) The department receives a resolution adopted by the
1044 supervisors of the district requesting that the commissioner

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1045 issue a certificate determining that the continued operation of
1046 the district is not administratively practicable and feasible
1047 under the provisions of this chapter.
1048 (4) If the requirements for dissolution or discontinuance
1049 of a district are satisfied under subsection (1), subsection
1050 (2), or subsection (3), the department shall publish notice of a
1051 ~~such~~ proposed certification determining that the continued
1052 operation of the district is not administratively practicable
1053 and feasible under the provisions of this chapter. The notice ~~of~~
1054 ~~dissolution or discontinuance~~ shall be published once a week for
1055 2 weeks in a newspaper of general circulation within the county
1056 or counties in which ~~wherein~~ the district is located, stating
1057 the name of the district and a general description of the
1058 territory included in the district, and requiring that any
1059 comments or objections to the proposed certification,
1060 ~~dissolution~~ or any claims against the assets of the district,
1061 must be filed with the department clerk not later than 60 days
1062 after ~~following~~ the date of last publication.
1063 (5)(a) Upon expiration of the 60-day period after the date
1064 of last publication, the commissioner, upon review of any
1065 comments or objections received under subsection (4), may issue
1066 a certificate determining that the continued operation of the
1067 district is not administratively practicable and feasible under
1068 the provisions of this chapter.
1069 (b) If the commissioner issues a certificate determining
1070 that the continued operation of a district is not
1071 administratively practicable and feasible under the provisions
1072 of this chapter, the department shall file the original
1073 certificate with the Department of State and shall provide a

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1074 copy of the certificate to the supervisors of the district at
1075 the district's principal office designated under s.
1076 582.15(1)(c).
1077 Section 39. Section 582.31, Florida Statutes, is amended to
1078 read:
1079 582.31 Certification of results of referendum;
1080 dissolution.—Upon receipt from the Department of Agriculture and
1081 Consumer Services of a certification that the department has
1082 determined that the continued operation of the district is not
1083 administratively practicable and feasible, pursuant to the
1084 provisions of this chapter, the supervisors shall forthwith
1085 proceed to terminate the affairs of the district. The
1086 supervisors shall dispose of all property belonging to the
1087 district at public auction and shall pay over the proceeds of
1088 such sale to be converted into the State Treasury, which amount
1089 shall be placed to the credit of the district ~~department~~ for the
1090 purpose of liquidating any legal obligations the ~~said~~ district
1091 may have at the time of its discontinuance. The supervisors
1092 shall thereupon file an application, duly verified, with the
1093 Department of State for the discontinuance of the ~~such~~ district,
1094 and shall transmit with such application the certificate of the
1095 Department of Agriculture and Consumer Services setting forth
1096 the determination of the department that the continued operation
1097 of the ~~such~~ district is not administratively practicable and
1098 feasible. The application shall recite that the property of the
1099 district has been disposed of and the proceeds paid over as in
1100 this section provided, and shall set forth a full accounting of
1101 such properties and proceeds of the sale. The Department of
1102 State shall issue to the supervisors a certificate of

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1103 dissolution and shall record such certificate in an appropriate
1104 book of record in its office.
1105 Section 40. Subsection (1) of section 582.32, Florida
1106 Statutes, is amended to read:
1107 582.32 Continuance of existing contracts, etc.—
1108 (1) Upon issuance of a certificate of dissolution, s.
1109 189.4045(2) applies, and all land use regulations theretofore
1110 adopted and in force within such districts shall be of no
1111 further force and effect. ~~All contracts theretofore entered~~
1112 ~~into, to which the district or supervisors are parties, shall~~
1113 ~~remain in force and effect for the period provided in such~~
1114 ~~contracts. The Department of Agriculture and Consumer Services~~
1115 ~~shall be substituted for the district or supervisors as party to~~
1116 ~~such contracts. The department shall be entitled to all benefits~~
1117 ~~and subject to all liabilities under such contracts and shall~~
1118 ~~have the same right and liability to perform, to require~~
1119 ~~performance, and to modify or terminate such contracts by mutual~~
1120 ~~consent or otherwise, as the supervisors of the district would~~
1121 ~~have had. Such dissolution shall not affect the lien of any~~
1122 ~~judgment entered under the provisions of this chapter, nor the~~
1123 ~~pendency of any action instituted under the provisions of this~~
1124 ~~chapter, and the department shall succeed to all the rights and~~
1125 ~~obligations of the district or supervisors as to such liens and~~
1126 ~~actions.~~
1127 Section 41. Section 585.155, Florida Statutes, is repealed.
1128 Section 42. Section 589.03, Florida Statutes, is repealed.
1129 Section 43. Section 589.19, Florida Statutes, is amended to
1130 read:
1131 589.19 Creation of certain state forests; naming of certain

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1132 state forests.—
1133 (1) When the Board of Trustees of the Internal Improvement
1134 Trust Fund, any state agency, or any agency created by state
1135 law, authorized to accept reforestation lands in the name of the
1136 state, approves the recommendations of the Florida Forest
1137 Service ~~Division of Forestry~~ in reference to the acquisition of
1138 land and acquires ~~acquire~~ such land, the ~~said~~ board, state
1139 agency, or agency created by state law~~,~~ may formally designate
1140 and dedicate any area as a reforestation project, or state
1141 forest, and where so designated and dedicated such area shall be
1142 under the administration of the Florida Forest Service, ~~division~~
1143 which is ~~shall be~~ authorized to manage and administer such ~~said~~
1144 area according to the purpose for which it was designated and
1145 dedicated.
1146 (2) The first state forest acquired by the Board of
1147 Trustees of the Internal Improvement Trust Fund in Baker County
1148 is to be named the John M. Bethea State Forest. This is to honor
1149 Mr. John M. Bethea who was Florida's fourth state forester and
1150 whose distinguished career in state government spanned 46 years
1151 and who is a native of Baker County.
1152 (3) The state forest managed by the Florida Forest Service
1153 ~~Division of Forestry~~ in Seminole County is to be named the
1154 Charles H. Bronson State Forest to honor Charles H. Bronson, the
1155 tenth Commissioner of Agriculture, for his distinguished
1156 contribution to this state's agriculture and natural resources.
1157 (4)(a) The Florida Forest Service ~~Division of Forestry~~
1158 shall designate one or more areas of state forests as an
1159 "Operation Outdoor Freedom ~~a "Wounded Warrior~~ Special Hunt Area"
1160 to honor wounded veterans and servicemembers. The purpose of

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1161 such designated areas is to provide special outdoor recreational
1162 opportunities for eligible veterans and servicemembers.
1163 (b) The Florida Forest Service ~~division~~ shall limit guest
1164 admittance to such designated areas to any person who:
1165 1. Is an active duty member of any branch of the United
1166 States Armed Forces and has a combat-related injury as
1167 determined by his or her branch of the United States Armed
1168 Forces; or
1169 2. Is a veteran who served during a period of wartime
1170 service as defined in s. 1.01(14) or peacetime service as
1171 defined in s. 296.02 and:
1172 a. Has a service-connected disability as determined by the
1173 United States Department of Veterans Affairs; or
1174 b. Was discharged or released from military service because
1175 of a disability acquired or aggravated while serving on active
1176 duty.
1177 (c) The Florida Forest Service ~~division~~ may grant
1178 admittance to such designated areas to a person who is not an
1179 eligible veteran or servicemember for purposes of accompanying
1180 an eligible veteran or servicemember who requires the person's
1181 assistance to use such designated areas.
1182 (d) Funding required for specialized accommodations shall
1183 be provided through the Friends of Florida State Forests Program
1184 created under s. 589.012.
1185 (e) The Florida Forest Service ~~division~~ may adopt rules to
1186 administer this subsection.
1187 Section 44. Section 589.277, Florida Statutes, is amended
1188 to read:
1189 589.277 Tree planting programs.—

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1190 (1) The ~~Division of Forestry of the~~ Florida Forest Service
1191 ~~Department of Agriculture and Consumer Services~~ shall administer
1192 federal, state, and privately sponsored tree planting programs
1193 designed to assist private rural landowners and urban
1194 communities.
1195 (2) Contributions from governmental and private sources for
1196 tree planting programs may be accepted into the Federal Grants
1197 Trust Fund or the Incidental Trust Fund of the Florida Forest
1198 Service.
1199 (3) The Florida Forest Service shall ~~Division of Forestry~~
1200 ~~is authorized and directed to~~ develop and implement guidelines
1201 and procedures under which the financial resources of the fund
1202 allocated for tree planting programs may be utilized for urban
1203 and rural reforestation.
1204 (4) Grants to municipalities, counties, nonprofit
1205 organizations, and qualifying private landowners may be made
1206 from allocated moneys in the fund for the purpose of purchasing,
1207 planting, and maintaining native tree species.
1208 (5) The Florida Forest Service ~~Division of Forestry~~ shall
1209 assist the Department of Education in developing programs that
1210 teach the importance of trees in the urban, rural, and global
1211 environment.
1212 Section 45. Section 590.02, Florida Statutes, is amended to
1213 read:
1214 590.02 Florida Forest Service; ~~Division~~ powers, authority,
1215 and duties; liability; building structures; Florida Center for
1216 Wildfire and Forest Resources Management Training.—
1217 (1) The Florida Forest Service ~~division~~ has the following
1218 powers, authority, and duties:

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1219 (a) To enforce the provisions of this chapter;
1220 (b) To prevent, detect, suppress, and extinguish wildfires
1221 wherever they may occur on public or private land in this state
1222 and to do all things necessary in the exercise of such powers,
1223 authority, and duties;
1224 (c) To provide firefighting crews, who shall be under the
1225 control and direction of the Florida Forest Service ~~division~~ and
1226 its designated agents;
1227 (d) To appoint center managers, forest area supervisors,
1228 forestry program administrators, a forest protection bureau
1229 chief, a forest protection assistant bureau chief, a field
1230 operations bureau chief, deputy chiefs of field operations,
1231 district managers, forest operations administrators, senior
1232 forest rangers, investigators, forest rangers, firefighter
1233 rotorcraft pilots, and other employees who may, at the Florida
1234 Forest Service's ~~division's~~ discretion, be certified as forestry
1235 firefighters pursuant to s. 633.35(4). Other provisions of law
1236 notwithstanding, center managers, district managers, forest
1237 protection assistant bureau chief, and deputy chiefs of field
1238 operations shall have Selected Exempt Service status in the
1239 state personnel designation;
1240 (e) To develop a training curriculum for forestry
1241 firefighters which must contain the basic volunteer structural
1242 fire training course approved by the Florida State Fire College
1243 of the Division of State Fire Marshal and a minimum of 250 hours
1244 of wildfire training;
1245 (f) To make rules to accomplish the purposes of this
1246 chapter;
1247 (g) To provide fire management services and emergency

1248 response assistance and to set and charge reasonable fees for
1249 performance of those services. Moneys collected from such fees
1250 shall be deposited into the Incidental Trust Fund of the Florida
1251 Forest Service ~~division~~; and
1252 (h) To require all state, regional, and local government
1253 agencies operating aircraft in the vicinity of an ongoing
1254 wildfire to operate in compliance with the applicable state
1255 Wildfire Aviation Plan.
1256 (2) The Florida Forest Service's ~~Division~~ employees, and
1257 the firefighting crews under their control and direction, may
1258 enter upon any lands for the purpose of preventing and
1259 suppressing wildfires and investigating smoke complaints or open
1260 burning not in compliance with authorization and to enforce the
1261 provisions of this chapter.
1262 (3) Employees of the Florida Forest Service ~~division~~ and of
1263 federal, state, and local agencies, and all other persons and
1264 entities that are under contract or agreement with the Florida
1265 Forest Service ~~division~~ to assist in firefighting operations as
1266 well as those entities, called upon by the Florida Forest
1267 Service ~~division~~ to assist in firefighting may, in the
1268 performance of their duties, set counterfires, remove fences and
1269 other obstacles, dig trenches, cut firelines, use water from
1270 public and private sources, and carry on all other customary
1271 activities in the fighting of wildfires without incurring
1272 liability to any person or entity.
1273 (4)(a) The department may build structures, notwithstanding
1274 chapters 216 and 255, not to exceed a cost of $50,000 per
1275 structure from existing resources on forest lands, federal
1276 excess property, and unneeded existing structures. These

1277 structures must meet all applicable building codes.
1278 (b) Notwithstanding s. 553.80(1), the department shall
1279 exclusively enforce the Florida Building Code as it pertains to
1280 wildfire and law enforcement facilities under the jurisdiction
1281 of the department.
1282 (5) The Florida Forest Service ~~division~~ shall organize its
1283 operational units to most effectively prevent, detect, and
1284 suppress wildfires, and to that end, may employ the necessary
1285 personnel to manage its activities in each unit. The Florida
1286 Forest Service ~~division~~ may construct lookout towers, roads,
1287 bridges, firelines, and other facilities and may purchase or
1288 fabricate tools, supplies, and equipment for firefighting. The
1289 Florida Forest Service ~~division~~ may reimburse the public and
1290 private entities that it engages to assist in the suppression of
1291 wildfires for their personnel and equipment, including aircraft.
1292 (6) The Florida Forest Service ~~division~~ shall undertake
1293 privatization alternatives for fire prevention activities
1294 including constructing fire lines and conducting prescribed
1295 burns and, where appropriate, entering into agreements or
1296 contracts with the private sector to perform such activities.
1297 (7) The Florida Forest Service ~~division~~ may organize,
1298 staff, equip, and operate the Florida Center for Wildfire and
1299 Forest Resources Management Training. The center shall serve as
1300 a site where fire and forest resource managers can obtain
1301 current knowledge, techniques, skills, and theory as they relate
1302 to their respective disciplines.
1303 (a) The center may establish cooperative efforts involving
1304 federal, state, and local entities; hire appropriate personnel;
1305 and engage others by contract or agreement with or without

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1306 compensation to assist in carrying out the training and
1307 operations of the center.
1308 (b) The center shall provide wildfire suppression training
1309 opportunities for rural fire departments, volunteer fire
1310 departments, and other local fire response units.
1311 (c) The center will focus on curriculum related to, but not
1312 limited to, fuel reduction, an incident management system,
1313 prescribed burning certification, multiple-use land management,
1314 water quality, forest health, environmental education, and
1315 wildfire suppression training for structural firefighters.
1316 (d) The center may assess appropriate fees for food,
1317 lodging, travel, course materials, and supplies in order to meet
1318 its operational costs and may grant free meals, room, and
1319 scholarships to persons and other entities in exchange for
1320 instructional assistance.
1321 (e) An advisory committee consisting of the following
1322 individuals or their designees must review program curriculum,
1323 course content, and scheduling: the director of the Florida
1324 Forest Service ~~Division of Forestry~~; the assistant director of
1325 the Florida Forest Service ~~Division of Forestry~~; the director of
1326 the School of Forest Resources and Conservation of the
1327 University of Florida; the director of the Division of
1328 Recreation and Parks of the Department of Environmental
1329 Protection; the director of the Division of the State Fire
1330 Marshal; the director of the Florida Chapter of The Nature
1331 Conservancy; the executive vice president of the Florida
1332 Forestry Association; the president of the Florida Farm Bureau
1333 Federation; the executive director of the Fish and Wildlife
1334 Conservation Commission; the executive director of a water

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1335 management district as appointed by the Commissioner of
1336 Agriculture; the supervisor of the National Forests in Florida;
1337 the president of the Florida Fire Chief's Association; and the
1338 executive director of the Tall Timbers Research Station.
1339 (8) The Cross City Work Center shall be named the L. Earl
1340 Peterson Forestry Station. This is to honor Mr. L. Earl
1341 Peterson, Florida's sixth state forester, whose distinguished
1342 career in state government has spanned 44 years, and who is a
1343 native of Dixie County.
1344 (9)(a) Notwithstanding ss. 273.055 and 287.16, the
1345 department may retain, transfer, warehouse, bid, destroy, scrap,
1346 or otherwise dispose of surplus equipment and vehicles that are
1347 used for wildland firefighting.
1348 (b) All money received from the disposition of state-owned
1349 equipment and vehicles that are used for wildland firefighting
1350 shall be retained by the department. Money received pursuant to
1351 this section is appropriated for and may be disbursed for the
1352 acquisition of exchange and surplus equipment used for wildland
1353 firefighting, and for all necessary operating expenditures
1354 related to such equipment, in the same fiscal year and the
1355 fiscal year following the disposition. The department shall
1356 maintain records of the accounts into which the money is
1357 deposited.
1358 (10)(a) The Florida Forest Service ~~division~~ has exclusive
1359 authority to require and issue authorizations for broadcast
1360 burning and agricultural and silvicultural pile burning. An
1361 agency, commission, department, county, municipality, or other
1362 political subdivision of the state may not adopt or enforce
1363 laws, regulations, rules, or policies pertaining to broadcast

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1364 burning or agricultural and silvicultural pile burning unless an
1365 emergency order is declared in accordance with s. 252.38(3).
1366 (b) The Florida Forest Service ~~division~~ may delegate to a
1367 county or municipality its authority, as delegated by the
1368 Department of Environmental Protection pursuant to ss.
1369 403.061(28) and 403.081, to require and issue authorizations for
1370 the burning of yard trash and debris from land clearing
1371 operations in accordance with s. 590.125(6).
1372 Section 46. Subsection (3) of section 597.0021, Florida
1373 Statutes, is amended to read:
1374 597.0021 Legislative intent.—
1375 (3) It is the intent of the Legislature that the
1376 Aquaculture Review Council is ~~and the Aquaculture Interagency~~
1377 ~~Coordinating Council are~~ established to provide a means of
1378 communication between the aquaculture industry and the
1379 regulatory agencies.
1380 Section 47. Paragraphs (b) and (d) of subsection (1) of
1381 section 597.003, Florida Statutes, are amended to read:
1382 597.003 Powers and duties of Department of Agriculture and
1383 Consumer Services.—
1384 (1) The department is hereby designated as the lead agency
1385 in encouraging the development of aquaculture in the state and
1386 shall have and exercise the following functions, powers, and
1387 duties with regard to aquaculture:
1388 (b) Coordinate the development, annual revision, and
1389 implementation of a state aquaculture plan. The plan shall
1390 include prioritized recommendations for research and development
1391 as suggested by the Aquaculture Review Council~~, the Aquaculture~~
1392 ~~Interagency Coordinating Council,~~ and public and private

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1393 institutional research, extension, and service programs.
1394 (d) Provide staff for the Aquaculture Review Council ~~and~~
1395 ~~the Aquaculture Interagency Coordinating Council~~.
1396 Section 48. Paragraph (h) of subsection (1) of section
1397 597.004, Florida Statutes, is amended to read:
1398 597.004 Aquaculture certificate of registration.—
1399 (1) CERTIFICATION.—Any person engaging in aquaculture must
1400 be certified by the department. The applicant for a certificate
1401 of registration shall submit the following to the department:
1402 (h) An ~~One hundred dollar~~ annual registration fee of $100.
1403 The annual registration fee is waived for each elementary,
1404 middle, or high school and each vocational school that
1405 participates in the aquaculture certification program.
1406 Section 49. Subsection (1), paragraphs (a) and (b) of
1407 subsection (2), and paragraph (h) of subsection (3) of section
1408 597.005, Florida Statutes, are amended to read:
1409 597.005 Aquaculture Review Council.—
1410 (1) COMPOSITION.—There is created within the department the
1411 Aquaculture Review Council to consist of eight ~~nine~~ members as
1412 follows: the chair of the State Agricultural Advisory Council or
1413 designee~~; the chair of the Aquaculture Interagency Coordinating~~
1414 ~~Council;~~ and seven additional members to be appointed by the
1415 commissioner, including an alligator farmer, a food fish farmer,
1416 a shellfish farmer, a tropical fish farmer, an aquatic plant
1417 farmer, a representative of the commercial fishing industry, and
1418 a representative of the aquaculture industry at large. Members
1419 shall be appointed for 4-year terms. Each member shall be
1420 selected from no fewer than two or more than three nominees
1421 submitted by recognized statewide organizations representing

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1422 each industry segment or the aquaculture industry at large. In
1423 the absence of nominees, the commissioner shall appoint persons
1424 who otherwise meet the qualifications for appointment to the
1425 council. Members shall serve until their successors are duly
1426 qualified and appointed. An appointment to fill a vacancy shall
1427 be for the unexpired portion of the term.
1428 (2) MEETINGS; PROCEDURES; RECORDS.—
1429 (a) The members of the council shall meet at least
1430 quarterly; shall elect a chair, a vice chair, and a secretary~~,~~
1431 ~~and an industry representative to the Aquaculture Interagency~~
1432 ~~Coordinating Council~~; and shall use accepted rules of procedure.
1433 The terms of such officers shall be for 1 year.
1434 (b) The council shall meet at the call of its chair, at the
1435 request of a majority of its membership, at the request of the
1436 department, or at such times as may be prescribed by its rules
1437 of procedure. ~~However, the council shall hold a joint annual~~
1438 ~~meeting with the Aquaculture Interagency Coordinating Council.~~
1439 (3) RESPONSIBILITIES.—The primary responsibilities of the
1440 Aquaculture Review Council are to:
1441 (h) For any problem that cannot be solved through simple
1442 cooperation or negotiation, provide an issue analysis ~~to the~~
1443 ~~Aquaculture Interagency Coordinating Council and~~ to the chairs
1444 of the legislative agriculture ~~appropriations~~ committees. The
1445 analysis shall include, but not be limited to, specific facts
1446 and industry hardships, regulatory provisions, questions
1447 relative to the issue, and suggestions for solving the problem.
1448 Section 50. Section 597.006, Florida Statutes, is repealed.
1449 Section 51. Subsection (12) is added to section 604.21,
1450 Florida Statutes, to read:

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1451 604.21 Complaint; investigation; hearing.—
1452 (12) Notwithstanding any other law to the contrary, the
1453 Commissioner of Agriculture or the commissioner's authorized
1454 designee may act as trustee on any bond or other form of
1455 security posted with the United States Department of Agriculture
1456 in compliance with the Packers and Stockyards Act. The
1457 Commissioner of Agriculture may enter into agreements with the
1458 United States Department of Agriculture as necessary to
1459 implement the Packers and Stockyards Act.
1460 Section 52. Subsection (3) of section 616.252, Florida
1461 Statutes, is amended to read:
1462 616.252 Florida State Fair Authority; membership; number,
1463 terms, compensation.—
1464 (3) Members of the authority are not entitled to
1465 compensation for their services as members but shall be
1466 reimbursed by the authority for per diem and travel expenses as
1467 provided in s. 112.061 ~~and may not be reimbursed for travel~~
1468 ~~expenses~~. Except for the nonvoting youth member, each member may
1469 be compensated for any special or full-time service performed in
1470 the authority's behalf as officers or agents of the authority.
1471 Section 53. This act shall take effect July 1, 2012.

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THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2-28-12
Date

1254
Bill Number

Barcode

Name Grace Lovett

Phone 488 3022

Address PL 10 The Capitol
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E-mail grace.lovett@freshfromflorida.com

Tallahassee FL 32301
City State Zip

Job Title Leg. Affairs

Speaking: [X] For [ ] Against [ ] Information

Appearing at request of Chair [ ]

Subject DACS Department bill

Representing Agriculture + Consumer Services

Lobbyist registered with Legislature: [X] Yes [ ] No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

The Florida Senate

Committee Agenda Request

To: Senator D. Alan Hays, Chair
Committee on General Government Appropriations

Subject: Committee Agenda Request

Date: February 9, 2012

I respectfully request that **Senate Bill #1254**, relating to Department of Agriculture and Consumer Services, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Gary Siplin
Florida Senate, District 19

SENATE APPROPRIATIONS
RECEIVED
12 FEB 13 PM 3:51
SENT TO CHAIRMAN ____
STAFF DIR. ____ STAFF ____

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: SB 852

INTRODUCER: Senator Siplin

SUBJECT: Healthy Foods Retail Act

DATE: February 27, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Buford	AG	**Favorable**
2.	Blizzard	DeLoach	BGA	**Favorable**
3.				
4.				
5.				
6.				

I. Summary:

This bill makes legislative findings regarding obstacles to a healthy diet, obesity resulting from a poor diet, the effect of inadequate access to retailers selling healthy, affordable foods, and the resulting impact on the health of low income families, children, and elderly people. It provides definitions for certain terms used in the act. The bill requires the Department of Agriculture and Consumer Services (DACS) to establish a financing program, to the extent funds are available, to fund healthy food retailers and it sets guidelines for participation, funding limitations, determination of eligible projects, types of expenditures authorized, requirements to be met by applicant, basis for setting the amount of funding, establishment of controls and compliance monitoring, and legislative reporting. It authorizes funding to be leveraged with other funding and it provides rule making authority for the department to administer this program.

The DACS estimates it would need an additional three positions and $156,400 to implement and administer this program in the 2012-2013 fiscal year. This impact may be offset by an anticipated application fee but the amount of revenue from this source is unknown at this time.

The bill provides that the financing program proposed will be established to the extent funds are available. As there is no dedicated appropriation of funds for the program, the establishment of the program will depend upon a reallocation in an undetermined amount of existing department funds.

This bill creates unnumbered sections in the Florida Statutes.

II. Present Situation:

Let's Move is a comprehensive initiative aimed at solving the problem of obesity. At its launch in February 2010, the President of the United States signed a Presidential Memorandum creating a Task Force on Childhood Obesity. Let's Move reports that one in three children in America is overweight or obese and likely to suffer from diabetes at some point in their lives as well as other obesity-related health problems like heart disease, high blood pressure, cancer and asthma.[1] Among other suggestions, the organization has outlined actions to foster healthier food choices in school and recommendations for providing access to healthy, affordable food. In connection with this initiative, the nation's leading health foundations have created the Partnership for a Healthier America to facilitate partnerships with States, communities, and the non-profit and private sectors to address childhood obesity.[2]

It is estimated that more than 23 million Americans, more than one-fourth of them being children, live in low-income urban and rural neighborhoods that are more than a mile from a supermarket with access to affordable, quality, and nutritious foods, resulting in many children not eating recommended levels of fruits, vegetables, and whole grains.[3]

PolicyLink is a national research and action institute that was founded in 1999 for the purpose of advancing economic and social equity with a focus on low income communities and communities of color by relying on the experience of and sharing findings and analysis with national and local policymakers.[4] In a publication issued July 20, 2011, PolicyLink followed up on a prior report prepared by PolicyLink and The California Endowment, a private health foundation, in 2005.[5] The publication highlights the relationship between obesity and lack of access to healthy, fresh food, and particularly the problem it poses for low-income children and children of color, who face some of the highest rates of obesity. It found the situation to exist in both urban and rural communities. Strategies suggested by the report to develop new healthy food retail opportunities include: create financing sources to develop new grocery stores in low-income neighborhoods; improve small stores; start and sustain farmers' markets; and connect local farmers to low-income consumers. In summary, the PolicyLink report maintains that better access contributes to healthier eating which contributes to lower rates of obesity and diet-related disease. The PolicyLink, in conjunction with the Food Trust,[6] reported similar findings in a publication issued March 15, 2010[7] emphasizing that the lack of access to healthy and affordable foods in low-income communities has created "food deserts" due to the abundance of convenience stores and fast food restaurants that sell cheap, high-fat, high-sugar, processed foods while offering few healthy options, with a corresponding high presence of obesity, diabetes, and other diet-related diseases. There is a general agreement about the consequences of the lack of

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[1] See http://www.letsmove.gov. website. Last visited December 12, 2011.
[2] See http://www.ahealthieramerica.org. website. Last visited December 13, 2011.
[3] First Lady Michelle Obama Launches Let's Move: America's Move to Raise a Healthier Generation of Kids; press release dated February 9, 2010. Found at http://www.whitehouse.gov/the-press-office/first-lady-michelle-obama-launches-lets-move.
[4] See http://policylink.org. Last visited January 3, 2012.
[5] Healthy Food, Healthy Communities, http://www.policylink.org/site/c.lkIXLbMNJrE/b.5158569/k.A334/Publications.htm.
[6] The Food Trust was founded in 1992 as a non profit entity whose goal is to make affordable, healthy food available to all. See http://thefoodtrust.org. Last visited January 3, 2012.
[7] The Grocery Gap;, Who Has Access to Healthy Foods and Why It Matters, www.policylink.org/atf/cf/...BB43-406D.../FINALGroceryGap.pdf.

access to healthy foods and suggested solutions range from developing and expanding retail outlets to removing transportation barriers to allow for better access.

At the federal level, the Healthy, Hunger Free Kids Act of 2010[8] reauthorizes expiring provisions of the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 to provide funding for federal school meal and child nutrition programs and increase access to healthy food for low-income children. One of its aims is to ensure that more local foods are used in the school setting by helping communities establish local farm to school networks. On November 30, 2011, bipartisan bills were introduced in both the United States Senate and House to establish a Healthy Food Financing Initiative (HFFI)[9] which will, if it becomes law, appropriate $125 million to improve access to healthy foods in underserved areas by providing loans and grants to eligible fresh, healthy food retailers as administered by a National Fund Manager in partnership with local groups, and state and municipal governments.

Several states have adapted financing initiatives aimed at facilitating access to healthy foods in underserved areas.[10] Louisiana adopted the first statewide Healthy Food Retail Act in 2009 contingent upon funding by the state.[11] While there has been no appropriation to fund this program on a statewide basis, the National Policy & Legal Analysis Network to Prevent Childhood Obesity cites the city of New Orleans' use of Community Development Grant Money as a creative way to fund the state's Healthy Food Retail program.[12]

The DACS has created the Florida "Farm to School" program to bring nutritious, fresh fruits and vegetables from local farms to schools. The DACS is not intended to be a party to any agreement but a source of information to promote opportunities for schools and growers to work together to increase the volume of locally grown produce that is served in school cafeterias and dining halls.[13]

The Junior League of Greater Orlando (League) is a community service organization that created HIP kids (Healthy Informed Playful Kids) to address immediate and long term challenges faced by hungry children. As an outgrowth of that cause, the Chair of the Public Affairs Committee researched nationwide programs aimed at bringing healthy foods into food deserts, defined for their purposes as low-income communities whose closest grocery store or market is at least 1-5 miles from that community resulting in little to no access to fresh fruits and vegetables and other healthy foods.[14] Examples of successful efforts were found in several states. A result was that this bill, which is modeled after the Louisiana Healthy Food Retail Act of 2009, was filed.

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[8] Public Law 111-296, Dec 13, 2010; found at http://www.gpo.gov/fdsys/pkg/PLAW-111-publ296/pdf.
[9] S. 1926 and H.R. 3525.
[10] Pennsylvania, see http://www.thefoodtrust.org/php/programs/fffi.php. Site last visited January 3, 2012; Illinois, see http://www.rwjf.org/publichealth/digest.jsp?id=10962. Site last visited January 4, 2012; New York, see http://www.esd.ny.gov/BusinessPrograms/HealthyFoodHealthyCommunities.html. Site last visited January 4, 2012; and New Jersey, see http://www.trfund.com/financing/realestate/NJ_FoodAccessInitiative_HandoutwApp.pdf. Site last visited January 4, 2012.
[11] Chapter 3-D. Healthy Food Retail Act, http://legis.state.la.us/lss/newWin.asp?doc=670617.
[12] Financing Healthy Food Retail & Promoting Physical Activity Opportunities, Manel Kappagoda, JD, MPH, April 9, 2010, see http://www.ncsl.org/portals/1/documents/health/MKappagodaSF10.pdf.
[13] Http://www/florida-agriculture.com/FarmToSchool. Site last visited December 12, 2011.
[14] Telephone conversation with Katherine Martin, Chairperson, December 3, 2012.

III. Effect of Proposed Changes:

Section 1 provides that the act may be cited as the "Healthy Foods Retail Act."

The bill suggests the following legislative findings:

a) Low income families, children, and elderly people face obstacles to a healthy diet when fresh fruits and vegetables and other healthy foods aren't readily available or affordable. National research indicates that these types of residents are most often affected by inadequate access to supermarkets and other retailers that sell healthy foods as well as by high rates of obesity.
b) Obesity, resulting from poor diet and physical inactivity, is the fastest growing cause of disease and death in the United States and especially puts adults and children at risk for developing serious health problems.
c) People who have better access to retail food outlets that sell fresh fruits, vegetables, and other healthy food tend to have healthier diets and lower levels of obesity according to studies.
d) The development of quality retail food outlets creates jobs, expands markets for farmers, and supports economic vitality in underserved communities.
e) The purpose is to establish a program to:
    - provide a source of financing for food retailers in underserved communities;
    - increase access to affordable healthy food;
    - promote sale and consumption of fresh fruits and vegetables, especially those that are locally grown; and
    - support expanded economic opportunities in low-income and rural communities.

The bill provides the following definitions for this act:

a) "Department" means the Department of Agriculture and Consumer Services.
b) "Funding" means grants, loans, or a combination of grants and loans.
c) "Healthy food retailers" means for-profit or not-for-profit retailers that sell high-quality fresh fruits and vegetables at competitive prices.
d) "Program" means a public-private partnership administered by the department to provide a dedicated source of financing for food retailers that provide increased access to the supply of healthy food contemplated by this act.
e) "Underserved community" means a geographic area located in a lower income or high-poverty area with limited access to healthy food retailers.

The bill directs the department to establish a financing program, to the extent funds are available, to fund healthy food retailers that provide access to affordable healthy food in underserved communities in accordance with the following guidelines:

a) The department may contract with qualified nonprofit organizations or community development financial institutions to administer the program, raise matching funds, provide marketing support, evaluate applicants, make award decisions, underwrite loans, and monitor compliance and impact as well as coordinate with complementary nutrition assistance and educational programs.
b) Funding shall be provided on a competitive, one-time basis for eligible projects.
c) Types of projects that may be funded by the program are:
    - new construction of supermarkets and grocery stores;

- store renovations and expansion and infrastructure upgrades that improve availability and quality of fresh produce;
- marketing and distribution outlets that enable food retailers in underserved communities to regularly obtain fresh produce; and
- other projects that meet the intent of this act to create or improve access to healthy food retailers.

d) Specific purposes for which funds may be used, excluding any use for a restaurant, are:
- site acquisition and preparation;
- construction costs;
- equipment and furnishings;
- workforce training;
- security;
- predevelopment costs such as market studies and appraisals; and
- working capital for first-time inventory and start-up costs.

e) For-profit or not-for-profit entities, both private and public, may apply for funding.

f) Applicants must meet the following criteria:
- the project must benefit an underserved community;
- a meaningful commitment to sell fresh fruits and vegetables must be demonstrated that will be measured by standards developed by the department;
- vouchers issued by the Supplemental Nutrition Assistance Program (SNAP) must be accepted and clients of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) must be served. For program applicants that are not eligible to be included in either of these two categories, the department shall establish standards to measure a meaningful commitment to serve low-income households.

g) The amount of funding shall be based on the following criteria:
- a demonstrated capacity to successfully implement the project, including relevant experience and likelihood of self-sustainability;
- the ability of applicant to repay debt;
- the degree to which the project requires public funding and the level of need in the area to be served. Consideration may be given to factors that indicate accessibility to retail outlets for low-income residents, such as proximity to public transit lines;
- the degree to which the project will promote sales of fresh produce, especially locally grown;
- the degree to which the project will have a positive impact on the underserved community, including job creation or retention for local residents; and
- other criteria consistent with this act as determined by the department.

h) The department shall establish benchmarks and reporting requirements to make certain the program benefits both rural and urban communities, in addition to establishing monitoring and accountability mechanisms, such as tracking fruit and vegetable sales data.

i) The department shall prepare an annual report for the Legislature for any projects funded.

To the extent practicable, funds described in this act may be leveraged with other funding, including, but not limited to, the New Markets Tax Credits Program, federal and foundation

grants, incentives available to Empowerment Zones or Renewal Communities, operator equity, and funding from private sector financial institutions under the federal Community Reinvestment Act of 1977.

The department may adopt rules as necessary to administer this section.

Section 2 provides that this act shall take effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private entities and public-private partnerships will benefit in an unknown amount to the extent they are awarded grants and may further benefit from loans and loan terms that facilitate or accelerate the growth or expansion of business opportunities.

C. Government Sector Impact:

The DACS is charged with implementing and administering this program and it estimates that it would incur expenditures as shown in the table below. This impact may be offset by an anticipated application fee but the amount of revenue from this source is unknown at this time.

Expenditures		FY 12-13	FY 13-14
Recurring			
FTEs (3)		$141,430	$141,430
Support		$ 15,000	$ 7,500
Total recurring		$156,430	$148,930

The bill provides that the financing program proposed will be established to the extent funds are available. As there is no dedicated appropriation of funds for the program, the establishment of the program will depend upon a reallocation in an undetermined amount of existing department funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Siplin

19-00746-12 2012852__

A bill to be entitled

An act relating to the Healthy Foods Retail Act; providing legislative findings; providing definitions; directing the Department of Agriculture and Consumer Services to establish a financing program to help fund projects that increase access to fresh fruits and vegetables in underserved areas; authorizing the department to contract with other organizations to administer the program; specifying how the funding is to be used; providing who is eligible for funding; providing criteria for project funding and evaluation; requiring an annual report to the Legislature; authorizing available funds to be leveraged to access federal funding; authorizing the department to adopt rules; providing an effective date.

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

Section 1. Healthy Foods Retail Act.—

(1) This section may be cited as the "Healthy Foods Retail Act."

(2) The Legislature finds that:

(a) When fresh fruits and vegetables and other healthy foods are not easily available or affordable, people, particularly low-income families, children, and the elderly, face serious barriers to eating a healthy diet. National research indicates that residents of low-income, minority, and rural communities are most often affected by inadequate access to supermarkets and other retailers selling healthy food, as

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19-00746-12 2012852__

well as by high rates of obesity.

(b) Obesity, which results from poor diet and physical inactivity, is the fastest growing cause of disease and death in the United States, putting growing numbers of adults and children at risk for developing heart disease, type 2 diabetes, hypertension, certain cancers, and other health problems.

(c) Increasing access to retail food outlets that sell fresh fruits, vegetables, and other healthy food is an important strategy for fighting the obesity epidemic and improving health. Studies have shown that people who have better access to supermarkets and fresh produce tend to have healthier diets and lower levels of obesity.

(d) Developing quality retail food outlets also creates jobs, expands markets for farmers, and supports economic vitality in underserved communities.

(e) The program established pursuant to this section is intended to provide a dedicated source of financing for food retailers operating in underserved communities in this state, in both urban and rural areas; to increase access to affordable healthy food in order to improve diets and health; to promote the sale and consumption of fresh fruits and vegetables, particularly those that are locally grown; and to support expanded economic opportunities in low-income and rural communities.

(3) As used in this section, the term:

(a) "Department" means the Department of Agriculture and Consumer Services.

(b) "Funding" means grants, loans, or a combination of grants and loans.

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59 (c) "Healthy food retailers" means for-profit or not-for-
60 profit retailers that sell high-quality fresh fruits and
61 vegetables at competitive prices, including, but not limited to,
62 supermarkets, grocery stores, and farmers' markets.
63 (d) "Program" means a public-private partnership
64 established under this section and administered by the
65 department to provide a dedicated source of financing for food
66 retailers that provide increased access to fresh fruits and
67 vegetables and other affordable healthy food for state
68 residents.
69 (e) "Underserved community" means a geographic area that
70 has limited access to healthy food retailers and is located in a
71 lower income or high-poverty area, or an area that is otherwise
72 found to have serious limitations on access to healthy food.
73 (4) To the extent funds are available, the department, in
74 cooperation with public and private sector partners, shall
75 establish a financing program that provides funding to healthy
76 food retailers that provide increased access to fresh fruits and
77 vegetables and other affordable healthy food in underserved
78 communities.
79 (a) The department may contract with one or more qualified
80 nonprofit organizations or community development financial
81 institutions to administer the program, raise matching funds,
82 provide for marketing the program statewide, evaluate
83 applicants, make award decisions, underwrite loans, and monitor
84 compliance and impact. The department and its partners shall
85 coordinate with complementary nutrition assistance and education
86 programs.
87 (b) The program shall provide funding on a competitive,

88 one-time basis as appropriate for eligible projects.
89 (c) The program may provide funding for projects such as:
90 1. New construction of supermarkets and grocery stores.
91 2. Store renovations, store expansion, and infrastructure
92 upgrades that improve the availability and quality of fresh
93 produce.
94 3. Farmers' markets and public markets, food cooperatives,
95 mobile markets and delivery projects, and distribution projects
96 that enable food retailers in underserved communities to
97 regularly obtain fresh produce.
98 4. Other projects that create or improve access to healthy
99 food retailers and meet the intent of this section as determined
100 by the department.
101 (d) Funding made available for projects may be used for the
102 following purposes:
103 1. Site acquisition and preparation.
104 2. Construction costs.
105 3. Equipment and furnishings.
106 4. Workforce training.
107 5. Security.
108 6. Predevelopment costs such as market studies and
109 appraisals.
110 7. Working capital for first-time inventory and start-up
111 costs.
112
113 A restaurant is not eligible for funding under this section.
114 (e) An applicant for funding may be a for-profit or a not-
115 for-profit entity, including, but not limited to, a sole
116 proprietorship, partnership, limited liability company,

117 corporation, cooperative, nonprofit organization, nonprofit
118 community development entity, university, or governmental
119 entity.
120 (f) In order to be considered for funding, an applicant
121 must meet the following criteria:
122 1. The project for which the applicant seeks funding must
123 benefit an underserved community.
124 2. The applicant must demonstrate a meaningful commitment
125 to sell fresh fruits and vegetables, according to a measurable
126 standard established by the department.
127 3. Generally, the applicant must accept vouchers issued by
128 the Supplemental Nutrition Assistance Program and be able to
129 serve clients of the Special Supplemental Nutrition Program for
130 Women, Infants, and Children (WIC). The department shall
131 establish an alternative standard for demonstrating a meaningful
132 commitment to making healthy food affordable to low-income
133 households for categories of program applicants that are not
134 eligible to accept vouchers issued under the Supplemental
135 Nutrition Assistance Program or serve WIC clients.
136 (g) In order to determine the amount of funding to award,
137 project applicants shall be evaluated on the following criteria:
138 1. Demonstrated capacity to successfully implement the
139 project, including the applicant's relevant experience, and the
140 likelihood that the project will be economically self-
141 sustaining.
142 2. The ability of the applicant to repay debt.
143 3. The degree to which the project requires an investment
144 of public funding to move forward, create impact, or be
145 competitive, and the level of need in the area to be served.

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146 Additional factors that will improve or preserve retail access
147 for low-income residents, such as proximity to public transit
148 lines, may also be taken into account.
149 4. The degree to which the project will promote sales of
150 fresh produce, particularly locally grown fruits and vegetables.
151 5. The degree to which the project will have a positive
152 economic impact on the underserved community, including creating
153 or retaining jobs for local residents.
154 6. Other criteria the department determines to be
155 consistent with the purposes of this section.
156 (h) The department shall establish program benchmarks and
157 reporting processes to make certain that the program benefits
158 both rural and urban communities. The department shall also
159 establish monitoring and accountability mechanisms for projects
160 receiving funding, such as tracking fruit and vegetable sales
161 data.
162 (i) The department shall prepare and submit an annual
163 report to the Legislature, including outcome data, on any
164 projects funded.
165 (5) To the extent practicable, funds described in this
166 section may be used to leverage other funding, including, but
167 not limited to, the New Markets Tax Credits Program, federal and
168 foundation grants, incentives available to federally designated
169 Empowerment Zones or Renewal Communities, operator equity, and
170 funding from private sector financial institutions under the
171 federal Community Reinvestment Act of 1977.
172 (6) The department may adopt rules as necessary to
173 administer this section.
174 Section 2. This act shall take effect July 1, 2012.

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

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2-28-12
Date

SB 852
Bill Number

Barcode

Name Kathleen Pollack

Phone (407) 415-4519

Address 2325 Roanoke Ct.
Street

Lake Mary FL 32746
City State Zip

E-mail kathleen.pollack@gmail.com

Job Title Bus. Development

Speaking: [X] For [ ] Against [ ] Information

Appearing at request of Chair [ ]

Subject Healthy Food Retail Act

Representing Junior League of Greater Orlando

Lobbyist registered with Legislature: [ ] Yes [X] No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

The Florida Senate

Committee Agenda Request

To: Senator D. Alan Hays, Chair
Committee on General Government Appropriations

Subject: Committee Agenda Request

Date: January 15, 2012

I respectfully request that **Senate Bill #852**, relating to Healthy Foods Retail Act, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Gary Siplin
Florida Senate, District 19

SENATE APPROPRIATIONS
12 JAN 18 AM 8:10
STAFF DIR. ____ STAFF ____

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/SB 1262

INTRODUCER: Budget Subcommittee on General Government Appropriations; Banking and Insurance Committee and Senator Oelrich

SUBJECT: Warranty Associations

DATE: February 28, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	**Fav/CS**
2.	Betta	DeLoach	BGA	**Fav/CS**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill provides criteria for motor vehicle service agreement companies to effectuate refunds through the issuing salesperson or agent. The bill authorizes home and service warranty associations to effectuate refunds through the issuing sales representative. The bill authorizes rather than requires the examination of warranty associations. Additionally, the bill creates provisions authorizing the donation or grant of money to the Department of Financial Services (DFS) to pursue unauthorized warranty associations.

This bill substantially amends the following sections of the Florida Statutes: 634.011, 634.121, 634.141, 634.312, 634.314, 634.414, and 634.416.

This bill creates the following sections of the Florida Statutes: 634.2855, 634.3385, and 634.4385.

II. Present Situation:

Motor vehicle service agreement companies, home warranty associations, and service warranty associations are governed under ch. 634, F.S. The Office of Insurance Regulation (OIR) is responsible for regulating warranty associations within Florida.

Warranty Agreements

Motor Vehicle Service Agreement: Motor vehicle service agreements are defined as indemnifying the service agreement holder (owner) of the motor vehicle listed on the service agreement from losses caused by the failure or improper function of any mechanical or other component part arising out of the ownership, operation, and use of the motor vehicle. Included in the definition are agreements that provide for coverage issued in conjunction with an additive product applied to the motor vehicle, payment of vehicle protection expenses, and payment for paintless dent-removal services. Service agreements that cover motor vehicles used for commercial purposes and sold to persons other than consumers are excluded from the definition and are exempt from regulation under the Florida Insurance Code.[1]

Home Warranty: Any organization, other than an authorized insurer, that issues home warranties is a home warranty association. Home warranties are agreements whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance, or necessitated by the failure of an inspection to detect the likelihood of any such loss.[2]

Service Warranty: A service warranty is a maintenance service contract equal to or greater than one year in length or an agreement for a specific duration to perform the repair, replacement, or maintenance of a consumer product, or for indemnification for repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling in return for the payment of a segregated charge by the consumer.[3] Under s. 634.401, F.S., indemnify means to undertake repair or replacement of a consumer product, or pay compensation for such repair or replacement by cash, check, store credit, gift card, or other similar means, in return for the payment of a segregated premium, when such consumer product suffers operational failure.

Agreement Cancellation

Motor Vehicle Service Agreement: Any motor vehicle service agreement is cancelable by the purchaser (agreement holder) within 60 days after purchase. The purchaser is entitled to a refund of 100 percent of the gross premium paid minus any claims paid on the service agreement.[4] An administrative fee of not more than five percent of the gross premium paid by the agreement holder may be assessed. Once a motor vehicle service agreement has been in effect for 60 days, it may not be canceled by the insurer or service agreement company unless:

[1] Section 634.011(8), F.S.
[2] Section 634.301(2), F.S.
[3] Section 634.401(13), F.S.
[4] Section 634.121(3)(a), F.S.

1. there has been a material misrepresentation or fraud at the time of sale of the service agreement;
2. the agreement holder has failed to maintain the motor vehicle as prescribed by the manufacturer;
3. the odometer has been tampered with or disabled and the agreement holder has failed to repair the odometer; or
4. for nonpayment of premium by the agreement holder.[5]

If the insurer or service agreement company cancels the service agreement, the refund to the agreement holder must not be less than 100 percent of the paid unearned pro rata premium minus any claims paid on the agreement. However, if the agreement is canceled after 60 days by the agreement holder, the insurer or service agreement company must return directly to the holder not less than 90 percent of the unearned pro rata premium minus any claims paid on the agreement.[6] A full refund to the agreement holder on canceled service agreements remains the responsibility of the service agreement company; however, the salesperson and agent are responsible for refunding the unearned pro rata commission. Under current law the company may effectuate refunds through the issuing salesperson or agent.[7]

Home Warranty: Under s. 634.312, F.S., any home warranty agreement may be canceled by the purchaser within 10 days after purchase. The refund must be 100 percent of the gross premium paid minus any claims paid on the agreement. An administrative fee not to exceed five percent of the gross premium paid by the warranty agreement holder may be charged. If canceled after 10 days by the warranty holder, the return of premium shall be based upon 90 percent of unearned pro rata premium minus any claims that have been paid. If canceled by the home warranty association for any reason other than for fraud or misrepresentation, a return of premium shall be based upon 100 percent of unearned pro rata premium, minus any claims paid.[8] Current law does not explicitly authorize a home warranty association to effectuate refunds through the issuing salesperson or agent.

Service Warranty: If a service warranty is canceled by the warranty holder, return of premium shall be based upon no less than 90 percent of unearned pro rata premium minus any claims that have been paid, or the cost of repairs made on behalf of the warranty holder. If the association cancels the agreement the return of premium shall be based upon 100 percent of unearned pro rata premium minus any claims paid or the cost of repairs made.[9] Current law does not explicitly authorize a service warranty association to effectuate refunds through the issuing salesperson or agent.

Examination of Companies

The OIR's financial examination of motor vehicle service agreement companies, home warranty associations, and service warranty associations is subject to the same procedures as required under part II of ch. 624. The OIR may examine the companies as often as may be warranted for

[5] Section 634.121(3)(b), F.S.
[6] Section 634.121(3)(b)(4), F.S.
[7] Section 634.121(3)(b)(4), F.S.
[8] Section 634.312(5), F.S.
[9] Section 634.414(1), F.S.

the protection of policyholders and the public interest, but must examine each company not less frequently than once every five years.[10] Criteria are provided for the OIR to consider in determining whether to conduct an examination of a company or association. The examinations may be conducted by an independent certified public accountant, actuary, investment specialist, information technology specialist, or reinsurance specialist with the costs paid for by the companies.[11]

Section 634.141, F.S., authorizes the establishment of rules whereby a motor vehicle service company may be exempted from examination. Motor vehicle service agreement companies that meet certain criteria and file an exemption fee of $2,000 to be deposited in the Regulatory Trust Fund may be exempt from examination.[12] On or before May 1 of each year, a service warranty association may submit to the OIR a Form 10-K, as filed with the United States Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934. The OIR may waive the examination requirement for service warranty associations upon receipt and review of the Form 10-K and deposit of the $2,000 filing into the Insurance Regulatory Trust Fund. According to the OIR, currently there are approximately 15 entities with exemption requests.[13]

The OIR is not required to examine a service warranty association that has less than $20,000 in gross written premiums as reflected in its most recent annual statement, but may if it has reason to believe that the association is noncompliant or is otherwise in an unsound financial condition. If the OIR examines an association that has less than $20,000 in gross written premiums, the examination fee may not exceed five percent of the gross written premiums of the association.[14]

Gifts and Grants to Combat Unauthorized Entities

Under s. 626.9894, F.S., the DFS is authorized to accept, for purposes of anti-fraud efforts, any donation or grant of property or moneys from any governmental unit, public agency, institution, person, firm, or corporation. All rights to the gifts and grants are immediately vested in the Division of Insurance Fraud and deposited into the Insurance Regulatory Trust Fund. The moneys deposited into the Insurance Regulatory Trust Fund shall be separately accounted for and may be appropriated by the Legislature for the purpose of enabling the division to carry out its responsibilities, or for the purpose of funding or defraying the costs of dedicated fraud prosecutors.[15]

III. Effect of Proposed Changes:

Motor Vehicle Service Agreement

The provision excluding service agreements sold to persons other than consumers and that cover motor vehicles used for commercial purposes is deleted by the bill. Therefore, motor vehicle service agreement coverage for commercial vehicles having a gross weight rating of less than

[10] Section 624.316(2)(a), F.S.
[11] Section 624.316(2)(e), F.S.
[12] The Office of Insurance Regulation, Rule 69O-200.014, FAC.
[13] The Office of Insurance Regulation Staff Analysis, January 10, 2012.
[14] Section 634.416, F.S.
[15] Section 626.9894, F.S.

10,000 pounds will be required to be offered through a regulated company. Vehicles over 10,000 pounds will continue to not be covered.[16] This assures that small business owners get the same consumer protection that private motor vehicle owners receive.

Agreement Cancellation

Under the bill if a motor vehicle service agreement company effectuates refunds through the issuing salesperson or agent, the company must send to the salesperson or agent effectuating the refund the unearned pro rata premium refund due less any unearned pro rata commission. The salesperson or agent must then refund the unearned pro rata premium including any unearned pro rata commission and the sales tax to the service agreement holder. The bill requires the salesperson, agent, or company maintain a copy of certain specified documents demonstrating the refund to the service agreement holder occurred. The salesperson or agent effectuating the refund shall provide a copy of the required documentation to the company within 45 days after a request is made by the DFS or the OIR. If the OIR finds that a salesperson or agent exhibits a pattern or practice of failing to properly effectuate refunds owed or to maintain and remit to the service agreement company the required documentation, the OIR shall notify the DFS.

The bill creates the option to effectuate a refund through the issuing sales representatives for home warranty associations or service warranty associations, but does not provide detail or require certain documentation be retained regarding the effectuation of the refund. However, according to the OIR there are no procedures in place for the sales representatives or agents of home or service warranty associations to effectuate refunds.[17] The bill provides that refunds for service warranties may be made by cash, check, store credit, gift card, or other similar means. The bill provides that upon the request of the service warranty holder the refund must be remitted by check.

Examination of Companies

The bill provides that the OIR is not required to conduct periodic examinations of motor vehicle service agreement companies, home warranty associations, or service warranty associations but may at the OIR's discretion. An examination may only cover a period of the most recent five years. The bill provides that the costs of an examination conducted by an independent examiner is limited to no more than 10 percent of the companies' prior year reported net income. The bill maintains that if the OIR examines a service warranty association that has less than $20,000 in gross written premiums, the examination fee may not exceed five percent of the gross written premiums of the association.

Gifts and Grants to Combat Unauthorized Entities

The bill creates new provisions that allow a governmental unit, public agency, institution, person, firm, or legal entity to provide money, and not property, to the DFS to enable the DFS to pursue unauthorized entities operating in violation of provisions relating to warranty associations. The DFS may transfer the funds to the OIR to pursue unauthorized entities. The bill

[16] Section 634.011(6)((a)(1), F.S.
[17] The Office of Insurance Regulation Staff Analysis, January 10, 2012.

requires all donations to the DFS to be deposited into the Insurance Regulatory Trust Fund (fund) and separately accounted for. The bill allows money deposited into the fund to be appropriated by the Legislature pursuant to ch. 216, F.S., for the purpose of enabling the DFS or the OIR to pursue unauthorized warranty entities. The bill provides that any balance of moneys deposited into the fund for the purpose of pursuing unauthorized warranty entities and remaining at the end of any fiscal year shall be available for carrying out the duties of the DFS or the OIR.

The bill has an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The OIR will no longer conduct regularly scheduled examinations of warranty associations; therefore, the warranty associations will save costs associated with preparing for and undergoing the examinations. The warranty associations will also save on the costs of an independent examiner, since the fees are capped at 10 percent of their prior year net income.

C. Government Sector Impact:

The Department of Financial Services will receive grants and donations under the newly created provisions for pursuing unauthorized warranty associations; however, this revenue is considered as non-recurring since it is not guaranteed.[18]

VI. Technical Deficiencies:

None.

[18] The Department of Financial Services Staff Analysis and Fiscal Impact Statement, December 29, 2011.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Budget Subcommittee on General Government Appropriations on February 28, 2012:
The committee substitute retains the criteria provided for the OIR to consider in determining whether to conduct an examination of a company or association is eliminated. The committee substitute retains the authorization for the creation of the exemption processes and fees for motor vehicle service agreement companies. For service warranty associations, the committee substitute retains language specific to the rate charged for service warranty providers and the filing fee of $2,000 for the Form 10-K filed as with the United States Securities and Exchange Commission.

CS by Banking and Insurance Committee on January 26, 2012:
The committee substitute retains many of the same provisions of the bill as filed and makes the following major changes:

- Deletes the provision in current law that provides service agreements sold to persons other than consumers, and that cover motor vehicles used for commercial purposes are excluded from the definition of motor vehicle service agreement and are exempt from regulation under the Florida Insurance Code.
- Clarifies the provisions in the bill authorizing donations to the Department of Financial Services (DFS) for the purpose of pursuing unauthorized entities that violate the laws regarding warranty associations.
- Caps the costs associated with the Office of Insurance Regulation's (OIR) use of independent examiners.
- Makes technical changes to correct drafting errors.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Jones) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (8) of section 634.011, Florida Statutes, is amended to read:

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

(8) “Motor vehicle service agreement” or “service agreement” means any contract or agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement and arising out of the ownership, operation, and use of the motor vehicle against loss caused by failure of

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13 any mechanical or other component part, or any mechanical or
14 other component part that does not function as it was originally
15 intended; however, nothing in this part shall prohibit or affect
16 the giving, free of charge, of the usual performance guarantees
17 by manufacturers or dealers in connection with the sale of motor
18 vehicles. Transactions exempt under s. 624.125 are expressly
19 excluded from this definition and are exempt from the provisions
20 of this part. ~~Service agreements that are sold to persons other~~
21 ~~than consumers and that cover motor vehicles used for commercial~~
22 ~~purposes are excluded from this definition and are exempt from~~
23 ~~regulation under the Florida Insurance Code.~~ The term "motor
24 vehicle service agreement" includes any contract or agreement
25 that provides:
26 (a) For the coverage or protection defined in this
27 subsection and which is issued or provided in conjunction with
28 an additive product applied to the motor vehicle that is the
29 subject of such contract or agreement;
30 (b) For payment of vehicle protection expenses.
31 1.a. "Vehicle protection expenses" means a preestablished
32 flat amount payable for the loss of or damage to a vehicle or
33 expenses incurred by the service agreement holder for loss or
34 damage to a covered vehicle, including, but not limited to,
35 applicable deductibles under a motor vehicle insurance policy;
36 temporary vehicle rental expenses; expenses for a replacement
37 vehicle that is at least the same year, make, and model of the
38 stolen motor vehicle; sales taxes or registration fees for a
39 replacement vehicle that is at least the same year, make, and
40 model of the stolen vehicle; or other incidental expenses
41 specified in the agreement.

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42 b. “Vehicle protection product” means a product or system
43 installed or applied to a motor vehicle or designed to prevent
44 the theft of the motor vehicle or assist in the recovery of the
45 stolen motor vehicle.
46 2. Vehicle protection expenses shall be payable in the
47 event of loss or damage to the vehicle as a result of the
48 failure of the vehicle protection product to prevent the theft
49 of the motor vehicle or to assist in the recovery of the stolen
50 motor vehicle. Vehicle protection expenses covered under the
51 agreement shall be clearly stated in the service agreement form,
52 unless the agreement provides for the payment of a
53 preestablished flat amount, in which case the service agreement
54 form shall clearly identify such amount.
55 3. Motor vehicle service agreements providing for the
56 payment of vehicle protection expenses shall either:
57 a. Reimburse a service agreement holder for the following
58 expenses, at a minimum: deductibles applicable to comprehensive
59 coverage under the service agreement holder’s motor vehicle
60 insurance policy; temporary vehicle rental expenses; sales taxes
61 and registration fees on a replacement vehicle that is at least
62 the same year, make, and model of the stolen motor vehicle; and
63 the difference between the benefits paid to the service
64 agreement holder for the stolen vehicle under the service
65 agreement holder’s comprehensive coverage and the actual cost of
66 a replacement vehicle that is at least the same year, make, and
67 model of the stolen motor vehicle; or
68 b. Pay a preestablished flat amount to the service
69 agreement holder.
70

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71 Payments shall not duplicate any benefits or expenses paid to
72 the service agreement holder by the insurer providing
73 comprehensive coverage under a motor vehicle insurance policy
74 covering the stolen motor vehicle; however, the payment of
75 vehicle protection expenses at a preestablished flat amount of
76 $5,000 or less does not duplicate any benefits or expenses
77 payable under any comprehensive motor vehicle insurance policy;
78 or
79 (c)1. For the payment for paintless dent-removal services
80 provided by a company whose primary business is providing such
81 services.
82 2. “Paintless dent-removal” means the process of removing
83 dents, dings, and creases, including hail damage, from a vehicle
84 without affecting the existing paint finish, but does not
85 include services that involve the replacement of vehicle body
86 panels or sanding, bonding, or painting.
87 Section 2. Paragraph (b) of subsection (3) of section
88 634.121, Florida Statutes, is amended, and paragraphs (c), (d),
89 and (e) are added to that subsection, to read:
90 634.121 Forms, required procedures, provisions.—
91 (3)
92 (b) After the service agreement has been in effect for 60
93 days, it may not be canceled by the insurer or service agreement
94 company unless:
95 1. There has been a material misrepresentation or fraud at
96 the time of sale of the service agreement;
97 2. The agreement holder has failed to maintain the motor
98 vehicle as prescribed by the manufacturer;
99 3. The odometer has been tampered with or disabled and the

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100 agreement holder has failed to repair the odometer; or
101 4. For nonpayment of premium by the agreement holder, in
102 which case the service agreement company shall provide the
103 agreement holder notice of cancellation by certified mail.
104
105 If the service agreement is canceled by the insurer or service
106 agreement company, the return of premium must not be less than
107 100 percent of the paid unearned pro rata premium, less any
108 claims paid on the agreement. If, after 60 days, the service
109 agreement is canceled by the service agreement holder, the
110 insurer or service agreement company shall return directly to
111 the agreement holder not less than 90 percent of the unearned
112 pro rata premium, less any claims paid on the agreement. The
113 service agreement company remains responsible for full refunds
114 to the consumer on canceled service agreements. However, the
115 salesperson and agent are responsible for the refund of the
116 unearned pro rata commission. A service agreement company may
117 effectuate refunds through the issuing salesperson or agent in
118 accordance with paragraphs (c) and (d).
119 (c) If the service agreement company effectuates refunds
120 through the issuing salesperson or agent, the service agreement
121 company must send the unearned pro rata premium refund due, less
122 any unearned pro rata commission, to the salesperson or agent
123 effectuating the refund. Upon receipt, the salesperson or agent
124 must refund the unearned pro rata premium, including any
125 unearned pro rata commission, and the sales tax refund owed to
126 the service agreement holder.
127 (d) The salesperson, agent, or service agreement company
128 shall maintain a copy of one of the following documents, as

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129 applicable, demonstrating that the refund owed pursuant to
130 paragraph (c) has been refunded:
131 1. A copy of the front and back of the cancelled check for
132 the applicable refund amount owed to the service agreement
133 holder;
134 2. A copy of the front of the check for the applicable
135 refund amount owed to the service agreement holder and a copy of
136 the statement from the bank account on which the check was drawn
137 showing that the check was cashed;
138 3. A copy of the front of the check issued by the service
139 agreement company to the salesperson or agent in the amount of
140 the service agreement company's portion of the refund owed to
141 the service agreement holder and a copy of the statement from
142 the bank account on which the check was drawn showing that the
143 check was cashed;
144 4. A copy of a completed buyer's order demonstrating that
145 the applicable refund amount owed to the service agreement
146 holder was credited toward the purchase or lease of another
147 vehicle;
148 5. Any document received from or sent to a lender, finance
149 company, or creditor demonstrating that a loan or amount
150 financed by the agreement holder was decreased by the amount of
151 the applicable refund amount owed to the service agreement
152 holder; or
153 6. Any other evidence approved by the office in a written
154 communication to a person licensed pursuant to this part
155 demonstrating that the applicable refund amount due to the
156 service agreement holder was properly made.
157

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158 A salesperson or agent effectuating a refund shall maintain a
159 copy of the documentation required by this paragraph and shall
160 provide a copy to the service agreement company within 45 days
161 after a request is made by the department or the office to
162 either the service agreement company or the salesperson.
163 (e) If the office finds that a salesperson or agent
164 exhibits a pattern or practice of failing to properly effectuate
165 refunds owed or to maintain and remit to the service agreement
166 company the documentation required by paragraph (d), the office
167 shall notify the department of its finding.
168 Section 3. Subsection (1) of section 634.141, Florida
169 Statutes, is amended to read:
170 634.141 Examination of companies.—
171 (1) Motor vehicle service agreement companies licensed
172 under this part may be subject to periodic examination by the
173 office in the same manner and subject to the same terms and
174 conditions as apply ~~applies~~ to insurers under part II of chapter
175 624. The office is not required to conduct periodic examinations
176 pursuant to this section, but may examine a service agreement
177 company at its discretion. An examination conducted pursuant to
178 this section may cover a period of only the most recent 5 years.
179 The costs of examinations conducted pursuant to ss.
180 624.316(2)(e) and 624.3161(3) may not exceed 10 percent of the
181 companies' reported net income for the prior year. The
182 commission may by rule establish provisions whereby a company
183 may be exempted from examination.
184 Section 4. Section 634.2855, Florida Statutes, is created
185 to read:
186 634.2855 Unauthorized entities; gifts and grants.—A

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187 governmental unit, public agency, institution, person, firm, or
188 legal entity may provide money to the department to enable the
189 department to pursue unauthorized entities operating in
190 violation of this part. The department may transfer funds to the
191 office to investigate, discipline, sanction, and take all action
192 consistent with this part relative to unauthorized entities. All
193 donations or grants of moneys to the department shall be
194 deposited into the Insurance Regulatory Trust Fund and shall be
195 separately accounted for in accordance with this section. Moneys
196 deposited into the Insurance Regulatory Trust Fund pursuant to
197 this section may be appropriated by the Legislature, pursuant to
198 chapter 216, for the purpose of enabling the department or the
199 office to carry out the provisions of this section.
200 Notwithstanding s. 216.301 and pursuant to s. 216.351, any
201 balance of moneys deposited into the Insurance Regulatory Trust
202 Fund pursuant to this section remaining at the end of any fiscal
203 year shall be available for carrying out the duties and
204 responsibilities of the department or the office.
205 Section 5. Subsection (5) of section 634.312, Florida
206 Statutes, is amended to read:
207 634.312 Forms; required provisions and procedures.—
208 (5) Each home warranty contract shall contain a
209 cancellation provision. Any home warranty agreement may be
210 canceled by the purchaser within 10 days after purchase. The
211 refund must be 100 percent of the gross premium paid, less any
212 claims paid on the agreement. A reasonable administrative fee
213 may be charged, not to exceed 5 percent of the gross premium
214 paid by the warranty agreement holder. After the home warranty
215 agreement has been in effect for 10 days, if the contract is

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216 canceled by the warranty holder, a return of premium shall be
217 based upon 90 percent of unearned pro rata premium less any
218 claims that have been paid. If the contract is canceled by the
219 association for any reason other than for fraud or
220 misrepresentation, a return of premium shall be based upon 100
221 percent of unearned pro rata premium, less any claims paid on
222 the agreement. A home warranty association may effectuate a
223 refund through the issuing sales representative.
224 Section 6. Section 634.314, Florida Statutes, is amended to
225 read:
226 634.314 Examination of associations.—
227 ~~(1)~~ Home warranty associations licensed under this part may
228 be subject to periodic examinations by the office, in the same
229 manner and subject to the same terms and conditions as apply to
230 insurers under part II of chapter 624 of the insurance code. The
231 office is not required to conduct periodic examinations pursuant
232 to this section, but may examine a home warranty company at its
233 discretion. An examination conducted pursuant to this section
234 may cover a period of only the most recent 5 years. The costs of
235 examinations conducted pursuant to ss. 624.316(2)(e) and
236 624.3161(3) may not exceed 10 percent of the companies' reported
237 net income for the prior year.
238 ~~(2) The office shall determine whether to conduct an~~
239 ~~examination of a home warranty association by considering:~~
240 ~~(a) The amount of time that the association has been~~
241 ~~continuously licensed and operating under the same management~~
242 ~~and control.~~
243 ~~(b) The association's history of compliance with applicable~~
244 ~~law.~~

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245 ~~(c) The number of consumer complaints against the~~
246 ~~association.~~
247 ~~(d) The financial condition of the association,~~
248 ~~demonstrated by the financial reports submitted pursuant to s.~~
249 ~~634.313.~~
250 Section 7. Section 634.3385, Florida Statutes, is created
251 to read:
252 634.3385 Unauthorized entities; gifts and grants.—A
253 governmental unit, public agency, institution, person, firm, or
254 legal entity may provide money to the department to enable the
255 department to pursue unauthorized entities operating in
256 violation of this part. The department may transfer funds to the
257 office to investigate, discipline, sanction, and take all action
258 consistent with this part relative to unauthorized entities. All
259 donations or grants of moneys to the department shall be
260 deposited into the Insurance Regulatory Trust Fund and shall be
261 separately accounted for in accordance with this section. Moneys
262 deposited into the Insurance Regulatory Trust Fund pursuant to
263 this section may be appropriated by the Legislature, pursuant to
264 chapter 216, for the purpose of enabling the department or the
265 office to carry out the provisions of this section.
266 Notwithstanding s. 216.301 and pursuant to s. 216.351, any
267 balance of moneys deposited into the Insurance Regulatory Trust
268 Fund pursuant to this section remaining at the end of any fiscal
269 year shall be available for carrying out the duties and
270 responsibilities of the department or the office.
271 Section 8. Section 634.414, Florida Statutes, is amended to
272 read:
273 634.414 Forms; required provisions.—

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274 (1) Each service warranty contract shall contain a
275 cancellation provision. If the contract is canceled by the
276 warranty holder, return of premium shall be based upon no less
277 than 90 percent of unearned pro rata premium less any claims
278 that have been paid or less the cost of repairs made on behalf
279 of the warranty holder. If the contract is canceled by the
280 association, return of premium shall be based upon 100 percent
281 of unearned pro rata premium, less any claims paid or the cost
282 of repairs made on behalf of the warranty holder. Service
283 warranty associations may effectuate refunds through the issuing
284 sales representative.
285 (2) Refunds owed pursuant to this section may be made by
286 cash, check, store credit, gift card, or other similar means.
287 Upon request of the service warranty holder, the refund shall be
288 remitted by check.
289 (3) ~~(2)~~ By July 1, 2011, each service warranty contract sold
290 in this state must be accompanied by a written disclosure to the
291 consumer that the rate charged for the contract is not subject
292 to regulation by the office. A service warranty association may
293 comply with this requirement by including such disclosure in its
294 service warranty contract form or in a separate written notice
295 provided to the consumer at the time of sale.
296 Section 9. Section 634.416, Florida Statutes, is amended to
297 read:
298 634.416 Examination of associations.—
299 (1) ~~(a)~~ Service warranty associations licensed under this
300 part may be subject to periodic examination by the office, in
301 the same manner and subject to the same terms and conditions
302 that apply to insurers under part II of chapter 624. The office

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303 is not required to conduct periodic examinations pursuant to
304 this section, but may examine a service warranty company at its
305 discretion. An examination conducted pursuant to this section
306 may cover a period of only the most recent 5 years. The costs of
307 examinations conducted pursuant to ss. 624.316(2)(e) and
308 624.3161(3) may not exceed 10 percent of the companies' reported
309 net income for the prior year.
310 ~~(b) The office shall determine whether to conduct an~~
311 ~~examination of a service warranty association by considering:~~
312 ~~1. The amount of time that the association has been~~
313 ~~continuously licensed and operating under the same management~~
314 ~~and control.~~
315 ~~2. The association's history of compliance with applicable~~
316 ~~law.~~
317 ~~3. The number of consumer complaints against the~~
318 ~~association.~~
319 ~~4. The financial condition of the association, demonstrated~~
320 ~~by the financial reports submitted pursuant to s. 634.313.~~
321 ~~(2) The rate charged a service warranty association by the~~
322 ~~office for examination may be adjusted to reflect the amount~~
323 ~~collected for the Form 10-K filing fee as provided in this~~
324 ~~section.~~
325 (2) ~~(3)~~ On or before May 1 of each year, an association may
326 submit to the office the Form 10-K, as filed with the United
327 States Securities and Exchange Commission pursuant to the
328 Securities Exchange Act of 1934, as amended. Upon receipt and
329 review of the most current Form 10-K, the office may waive the
330 examination requirement; if the office determines not to waive
331 the examination, such examination will be limited to that

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332 examination necessary to ensure compliance with this part. The
333 Form 10-K shall be accompanied by a filing fee of $2,000 to be
334 deposited into the Insurance Regulatory Trust Fund.
335 (3) ~~(4) The office is not required to examine an association~~
336 ~~that has less than $20,000 in gross written premiums as~~
337 ~~reflected in its most recent annual statement. The office may~~
338 ~~examine such an association if it has reason to believe that the~~
339 ~~association may be in violation of this part or is otherwise in~~
340 ~~an unsound financial condition.~~ If the office examines an
341 association that has less than $20,000 in gross written
342 premiums, the examination fee may not exceed 5 percent of the
343 gross written premiums of the association.
344 Section 10. Section 634.4385, Florida Statutes, is created
345 to read:
346 634.4385 Unauthorized entities; gifts and grants.—A
347 governmental unit, public agency, institution, person, firm, or
348 legal entity may provide money to the department to enable the
349 department to pursue unauthorized entities operating in
350 violation of this part. The department may transfer funds to the
351 office to investigate, discipline, sanction, and take all action
352 consistent with this part relative to unauthorized entities. All
353 donations or grants of moneys to the department shall be
354 deposited into the Insurance Regulatory Trust Fund and shall be
355 separately accounted for in accordance with this section. Moneys
356 deposited into the Insurance Regulatory Trust Fund pursuant to
357 this section may be appropriated by the Legislature, pursuant to
358 chapter 216, for the purpose of enabling the department or the
359 office to carry out the provisions of this section.
360 Notwithstanding s. 216.301 and pursuant to s. 216.351, any

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361 balance of moneys deposited into the Insurance Regulatory Trust
362 Fund pursuant to this section remaining at the end of any fiscal
363 year shall be available for carrying out the duties and
364 responsibilities of the department or the office.
365 Section 11. This act shall take effect July 1, 2012.
366
367 ========== T I T L E A M E N D M E N T ==========
368 And the title is amended as follows:
369 Delete everything before the enacting clause
370 and insert:
371 A bill to be entitled
372 An act relating to warranty associations; amending s.
373 634.011, F.S.; revising the definition of the term
374 "motor vehicle service agreement"; amending s.
375 634.121, F.S.; providing criteria for a motor vehicle
376 service agreement company to effectuate refunds
377 through the issuing salesperson or agent; requiring
378 the salesperson, agent, or service agreement company
379 to maintain a copy of certain documents; requiring a
380 salesperson or agent to provide a copy of a document
381 to the service agreement company if requested by the
382 Department of Financial Services or the Office of
383 Insurance Regulation; requiring the office to provide
384 to the department findings that a salesperson or agent
385 exhibits a pattern or practice of failing to
386 effectuate refunds or to maintain and remit to the
387 service agreement company the required documentation;
388 amending s. 634.141, F.S.; authorizing rather than
389 requiring the office to examine service agreement

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390 companies; limiting the examination period to the most
391 recent 5 years; limiting the cost of certain
392 examinations; creating s. 634.2855, F.S.; authorizing
393 a governmental entity, public agency, institution,
394 person, firm, or legal entity to provide money to the
395 department to pursue unauthorized entities operating
396 as motor vehicle service agreement companies;
397 providing requirements for the deposit of the money;
398 providing that funds remaining at the end of any
399 fiscal year shall be available for carrying out duties
400 and responsibilities of the department or the office;
401 amending s. 634.312, F.S.; authorizing a home warranty
402 association to effectuate a refund through the issuing
403 sales representative; amending s. 634.314, F.S.;
404 authorizing rather than requiring the office to
405 examine home warranty associations; limiting the
406 examination period to the most recent 5 years;
407 limiting the cost of certain examinations; removing
408 the requirement that the commission establish rules
409 for conducting examinations; removing the criteria for
410 determining whether an examination is warranted;
411 creating s. 634.3385, F.S.; authorizing a governmental
412 entity, public agency, institution, person, firm, or
413 legal entity to provide money to the department to
414 pursue unauthorized entities operating as home
415 warranty associations; providing that funds remaining
416 at the end of any fiscal year shall be available for
417 carrying out duties and responsibilities of the
418 department or the office; amending s. 634.414, F.S.;

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419 authorizing service warranty associations to
420 effectuate refunds through the issuing sales
421 representative; authorizing a service warranty
422 association to issue refunds by cash, check, store
423 credit, gift card, or other similar means; amending s.
424 634.416, F.S.; authorizing rather than requiring the
425 office to examine service warranty associations;
426 limiting the examination period to the most recent 5
427 years; limiting the costs of certain examinations;
428 removing the requirement that the commission establish
429 rules for conducting examinations; removing the
430 criteria for determining whether an examination is
431 warranted; removing provisions relating to the rates
432 charged a to service warranty association for
433 examinations; creating s. 634.4385, F.S.; authorizing
434 a governmental entity, public agency, institution,
435 person, firm, or legal entity to provide money to the
436 department to pursue unauthorized entities operating
437 as service warranty associations; providing that funds
438 remaining at the end of any fiscal year shall be
439 available for carrying out duties and responsibilities
440 of the department or the office; providing an
441 effective date.

By the Committee on Banking and Insurance; and Senator Oelrich

597-02429-12 20121262c1

A bill to be entitled

An act relating to warranty associations; amending s. 634.011, F.S.; revising the definition of the term "motor vehicle service agreement"; amending s. 634.121, F.S.; providing criteria for a motor vehicle service agreement company to effectuate refunds through the issuing salesperson or agent; requiring the salesperson, agent, or service agreement company to maintain a copy of certain documents; requiring a salesperson or agent to provide a copy of a document to the service agreement company if requested by the Department of Financial Services or the Office of Insurance Regulation; requiring the office to provide to the department findings that a salesperson or agent exhibits a pattern or practice of failing to effectuate refunds or to maintain and remit to the service agreement company the required documentation; amending s. 634.141, F.S.; authorizing rather than requiring the office to examine service agreement companies; limiting the examination period to the most recent 5 years; limiting the cost of certain examinations; removing the requirement that the Financial Services Commission establish rules for conducting examinations; removing the criteria for determining whether an examination is warranted; creating s. 634.2855, F.S.; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide money to the department to pursue unauthorized entities operating as motor

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vehicle service agreement companies; providing requirements for the deposit of the money; providing that funds remaining at the end of any fiscal year shall be available for carrying out duties and responsibilities of the department or the office; amending s. 634.312, F.S.; authorizing a home warranty association to effectuate a refund through the issuing sales representative; amending s. 634.314, F.S.; authorizing rather than requiring the office to examine home warranty associations; limiting the examination period to the most recent 5 years; limiting the cost of certain examinations; removing the requirement that the commission establish rules for conducting examinations; removing the criteria for determining whether an examination is warranted; creating s. 634.3385, F.S.; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide money to the department to pursue unauthorized entities operating as home warranty associations; providing that funds remaining at the end of any fiscal year shall be available for carrying out duties and responsibilities of the department or the office; amending s. 634.414, F.S.; authorizing service warranty associations to effectuate refunds through the issuing sales representative; authorizing a service warranty association to issue refunds by cash, check, store credit, gift card, or other similar means; amending s. 634.416, F.S.; authorizing rather than requiring the

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office to examine service warranty associations; limiting the examination period to the most recent 5 years; limiting the costs of certain examinations; removing the requirement that the commission establish rules for conducting examinations; removing the criteria for determining whether an examination is warranted; removing provisions relating to the rates charged to a service warranty association for examinations; removing the provision authorizing the office to waive the examination requirement upon receipt and review of the Form 10-K; creating s. 634.4385, F.S.; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide money to the department to pursue unauthorized entities operating as service warranty associations; providing that funds remaining at the end of any fiscal year shall be available for carrying out duties and responsibilities of the department or the office; providing an effective date.

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

Section 1. Subsection (8) of section 634.011, Florida Statutes, is amended to read:

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

(8) "Motor vehicle service agreement" or "service agreement" means any contract or agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement and arising out of the ownership, operation,

and use of the motor vehicle against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended; however, nothing in this part shall prohibit or affect the giving, free of charge, of the usual performance guarantees by manufacturers or dealers in connection with the sale of motor vehicles. Transactions exempt under s. 624.125 are expressly excluded from this definition and are exempt from the provisions of this part. ~~Service agreements that are sold to persons other than consumers and that cover motor vehicles used for commercial purposes are excluded from this definition and are exempt from regulation under the Florida Insurance Code.~~ The term "motor vehicle service agreement" includes any contract or agreement that provides:

(a) For the coverage or protection defined in this subsection and which is issued or provided in conjunction with an additive product applied to the motor vehicle that is the subject of such contract or agreement;

(b) For payment of vehicle protection expenses.

1.a. "Vehicle protection expenses" means a preestablished flat amount payable for the loss of or damage to a vehicle or expenses incurred by the service agreement holder for loss or damage to a covered vehicle, including, but not limited to, applicable deductibles under a motor vehicle insurance policy; temporary vehicle rental expenses; expenses for a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; sales taxes or registration fees for a replacement vehicle that is at least the same year, make, and model of the stolen vehicle; or other incidental expenses

117 specified in the agreement.
118 b. “Vehicle protection product” means a product or system
119 installed or applied to a motor vehicle or designed to prevent
120 the theft of the motor vehicle or assist in the recovery of the
121 stolen motor vehicle.
122 2. Vehicle protection expenses shall be payable in the
123 event of loss or damage to the vehicle as a result of the
124 failure of the vehicle protection product to prevent the theft
125 of the motor vehicle or to assist in the recovery of the stolen
126 motor vehicle. Vehicle protection expenses covered under the
127 agreement shall be clearly stated in the service agreement form,
128 unless the agreement provides for the payment of a
129 preestablished flat amount, in which case the service agreement
130 form shall clearly identify such amount.
131 3. Motor vehicle service agreements providing for the
132 payment of vehicle protection expenses shall either:
133 a. Reimburse a service agreement holder for the following
134 expenses, at a minimum: deductibles applicable to comprehensive
135 coverage under the service agreement holder’s motor vehicle
136 insurance policy; temporary vehicle rental expenses; sales taxes
137 and registration fees on a replacement vehicle that is at least
138 the same year, make, and model of the stolen motor vehicle; and
139 the difference between the benefits paid to the service
140 agreement holder for the stolen vehicle under the service
141 agreement holder’s comprehensive coverage and the actual cost of
142 a replacement vehicle that is at least the same year, make, and
143 model of the stolen motor vehicle; or
144 b. Pay a preestablished flat amount to the service
145 agreement holder.

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146
147 Payments shall not duplicate any benefits or expenses paid to
148 the service agreement holder by the insurer providing
149 comprehensive coverage under a motor vehicle insurance policy
150 covering the stolen motor vehicle; however, the payment of
151 vehicle protection expenses at a preestablished flat amount of
152 $5,000 or less does not duplicate any benefits or expenses
153 payable under any comprehensive motor vehicle insurance policy;
154 or
155 (c)1. For the payment for paintless dent-removal services
156 provided by a company whose primary business is providing such
157 services.
158 2. “Paintless dent-removal” means the process of removing
159 dents, dings, and creases, including hail damage, from a vehicle
160 without affecting the existing paint finish, but does not
161 include services that involve the replacement of vehicle body
162 panels or sanding, bonding, or painting.
163 Section 2. Paragraph (b) of subsection (3) of section
164 634.121, Florida Statutes, is amended, and paragraphs (c), (d),
165 and (e) are added to that subsection, to read:
166 634.121 Forms, required procedures, provisions.—
167 (3)
168 (b) After the service agreement has been in effect for 60
169 days, it may not be canceled by the insurer or service agreement
170 company unless:
171 1. There has been a material misrepresentation or fraud at
172 the time of sale of the service agreement;
173 2. The agreement holder has failed to maintain the motor
174 vehicle as prescribed by the manufacturer;

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175 3. The odometer has been tampered with or disabled and the
176 agreement holder has failed to repair the odometer; or
177 4. For nonpayment of premium by the agreement holder, in
178 which case the service agreement company shall provide the
179 agreement holder notice of cancellation by certified mail.
180
181 If the service agreement is canceled by the insurer or service
182 agreement company, the return of premium must not be less than
183 100 percent of the paid unearned pro rata premium, less any
184 claims paid on the agreement. If, after 60 days, the service
185 agreement is canceled by the service agreement holder, the
186 insurer or service agreement company shall return directly to
187 the agreement holder not less than 90 percent of the unearned
188 pro rata premium, less any claims paid on the agreement. The
189 service agreement company remains responsible for full refunds
190 to the consumer on canceled service agreements. However, the
191 salesperson and agent are responsible for the refund of the
192 unearned pro rata commission. A service agreement company may
193 effectuate refunds through the issuing salesperson or agent in
194 accordance with paragraphs (c) and (d).
195 (c) If the service agreement company effectuates refunds
196 through the issuing salesperson or agent, the service agreement
197 company must send the unearned pro rata premium refund due, less
198 any unearned pro rata commission, to the salesperson or agent
199 effectuating the refund. Upon receipt, the salesperson or agent
200 must refund the unearned pro rata premium, including any
201 unearned pro rata commission, and the sales tax refund owed to
202 the service agreement holder.
203 (d) The salesperson, agent, or service agreement company

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204 shall maintain a copy of one of the following documents, as
205 applicable, demonstrating that the refund owed pursuant to
206 paragraph (c) has been refunded:
207 1. A copy of the front and back of the cancelled check for
208 the applicable refund amount owed to the service agreement
209 holder;
210 2. A copy of the front of the check for the applicable
211 refund amount owed to the service agreement holder and a copy of
212 the statement from the bank account on which the check was drawn
213 showing that the check was cashed;
214 3. A copy of the front of the check issued by the service
215 agreement company to the salesperson or agent in the amount of
216 the service agreement company's portion of the refund owed to
217 the service agreement holder and a copy of the statement from
218 the bank account on which the check was drawn showing that the
219 check was cashed;
220 4. A copy of a completed buyer's order demonstrating that
221 the applicable refund amount owed to the service agreement
222 holder was credited toward the purchase or lease of another
223 vehicle;
224 5. Any document received from or sent to a lender, finance
225 company, or creditor demonstrating that a loan or amount
226 financed by the agreement holder was decreased by the amount of
227 the applicable refund amount owed to the service agreement
228 holder; or
229 6. Any other evidence approved by the office in a written
230 communication to a person licensed pursuant to this part
231 demonstrating that the applicable refund amount due to the
232 service agreement holder was properly made.

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233

234 A salesperson or agent effectuating a refund shall maintain a
235 copy of the documentation required by this paragraph and shall
236 provide a copy to the service agreement company within 45 days
237 after a request is made by the department or the office to
238 either the service agreement company or the salesperson.
239 (e) If the office finds that a salesperson or agent
240 exhibits a pattern or practice of failing to properly effectuate
241 refunds owed or to maintain and remit to the service agreement
242 company the documentation required by paragraph (d), the office
243 shall notify the department of its finding.
244 Section 3. Section 634.141, Florida Statutes, is amended to
245 read:
246 634.141 Examination of companies.—
247 ~~(1)~~ Motor vehicle service agreement companies licensed
248 under this part may be subject to periodic examination by the
249 office in the same manner and subject to the same terms and
250 conditions as apply ~~applies~~ to insurers under part II of chapter
251 624. The office is not required to conduct periodic examinations
252 pursuant to this section, but may examine a service agreement
253 company at its discretion. An examination conducted pursuant to
254 this section may cover a period of only the most recent 5 years.
255 The costs of examinations conducted pursuant to ss.
256 624.316(2)(e) and 624.3161(3) may not exceed 10 percent of the
257 companies' reported net income for the prior year. ~~The~~
258 ~~commission may by rule establish provisions whereby a company~~
259 ~~may be exempted from examination.~~
260 ~~(2) The office shall determine whether to conduct an~~
261 ~~examination of a company by considering:~~

262 ~~(a) The amount of time that the company has been~~
263 ~~continuously licensed and operating under the same management~~
264 ~~and control.~~
265 ~~(b) The company's history of compliance with applicable~~
266 ~~law.~~
267 ~~(c) The number of consumer complaints against the company.~~
268 ~~(d) The financial condition of the company, demonstrated by~~
269 ~~the financial reports submitted pursuant to s. 634.137.~~
270 Section 4. Section 634.2855, Florida Statutes, is created
271 to read:
272 634.2855 Unauthorized entities; gifts and grants.—A
273 governmental unit, public agency, institution, person, firm, or
274 legal entity may provide money to the department to enable the
275 department to pursue unauthorized entities operating in
276 violation of this part. The department may transfer funds to the
277 office to investigate, discipline, sanction, and take all action
278 consistent with this part relative to unauthorized entities. All
279 donations or grants of moneys to the department shall be
280 deposited into the Insurance Regulatory Trust Fund and shall be
281 separately accounted for in accordance with this section. Moneys
282 deposited into the Insurance Regulatory Trust Fund pursuant to
283 this section may be appropriated by the Legislature, pursuant to
284 chapter 216, for the purpose of enabling the department or the
285 office to carry out the provisions of this section.
286 Notwithstanding s. 216.301 and pursuant to s. 216.351, any
287 balance of moneys deposited into the Insurance Regulatory Trust
288 Fund pursuant to this section remaining at the end of any fiscal
289 year shall be available for carrying out the duties and
290 responsibilities of the department or the office.

291 Section 5. Subsection (5) of section 634.312, Florida
292 Statutes, is amended to read:
293 634.312 Forms; required provisions and procedures.—
294 (5) Each home warranty contract shall contain a
295 cancellation provision. Any home warranty agreement may be
296 canceled by the purchaser within 10 days after purchase. The
297 refund must be 100 percent of the gross premium paid, less any
298 claims paid on the agreement. A reasonable administrative fee
299 may be charged, not to exceed 5 percent of the gross premium
300 paid by the warranty agreement holder. After the home warranty
301 agreement has been in effect for 10 days, if the contract is
302 canceled by the warranty holder, a return of premium shall be
303 based upon 90 percent of unearned pro rata premium less any
304 claims that have been paid. If the contract is canceled by the
305 association for any reason other than for fraud or
306 misrepresentation, a return of premium shall be based upon 100
307 percent of unearned pro rata premium, less any claims paid on
308 the agreement. A home warranty association may effectuate a
309 refund through the issuing sales representative.
310 Section 6. Section 634.314, Florida Statutes, is amended to
311 read:
312 634.314 Examination of associations.—
313 ~~(1)~~ Home warranty associations licensed under this part may
314 be subject to periodic examinations by the office, in the same
315 manner and subject to the same terms and conditions as apply to
316 insurers under part II of chapter 624 of the insurance code. The
317 office is not required to conduct periodic examinations pursuant
318 to this section, but may examine a home warranty company at its
319 discretion. An examination conducted pursuant to this section

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320 may cover a period of only the most recent 5 years. The costs of
321 examinations conducted pursuant to ss. 624.316(2)(e) and
322 624.3161(3) may not exceed 10 percent of the companies' reported
323 net income for the prior year.
324 ~~(2) The office shall determine whether to conduct an~~
325 ~~examination of a home warranty association by considering:~~
326 ~~(a) The amount of time that the association has been~~
327 ~~continuously licensed and operating under the same management~~
328 ~~and control.~~
329 ~~(b) The association's history of compliance with applicable~~
330 ~~law.~~
331 ~~(c) The number of consumer complaints against the~~
332 ~~association.~~
333 ~~(d) The financial condition of the association,~~
334 ~~demonstrated by the financial reports submitted pursuant to s.~~
335 ~~634.313.~~
336 Section 7. Section 634.3385, Florida Statutes, is created
337 to read:
338 634.3385 Unauthorized entities; gifts and grants.—A
339 governmental unit, public agency, institution, person, firm, or
340 legal entity may provide money to the department to enable the
341 department to pursue unauthorized entities operating in
342 violation of this part. The department may transfer funds to the
343 office to investigate, discipline, sanction, and take all action
344 consistent with this part relative to unauthorized entities. All
345 donations or grants of moneys to the department shall be
346 deposited into the Insurance Regulatory Trust Fund and shall be
347 separately accounted for in accordance with this section. Moneys
348 deposited into the Insurance Regulatory Trust Fund pursuant to

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349 this section may be appropriated by the Legislature, pursuant to
350 chapter 216, for the purpose of enabling the department or the
351 office to carry out the provisions of this section.
352 Notwithstanding s. 216.301 and pursuant to s. 216.351, any
353 balance of moneys deposited into the Insurance Regulatory Trust
354 Fund pursuant to this section remaining at the end of any fiscal
355 year shall be available for carrying out the duties and
356 responsibilities of the department or the office.
357 Section 8. Section 634.414, Florida Statutes, is amended to
358 read:
359 634.414 Forms; required provisions.—
360 (1) Each service warranty contract shall contain a
361 cancellation provision. If the contract is canceled by the
362 warranty holder, return of premium shall be based upon no less
363 than 90 percent of unearned pro rata premium less any claims
364 that have been paid or less the cost of repairs made on behalf
365 of the warranty holder. If the contract is canceled by the
366 association, return of premium shall be based upon 100 percent
367 of unearned pro rata premium, less any claims paid or the cost
368 of repairs made on behalf of the warranty holder. Service
369 warranty associations may effectuate refunds through the issuing
370 sales representative.
371 (2) Refunds owed pursuant to this section may be made by
372 cash, check, store credit, gift card, or other similar means.
373 Upon request of the service warranty holder, the refund shall be
374 remitted by check.
375 (3) ~~(2)~~ By July 1, 2011, each service warranty contract sold
376 in this state must be accompanied by a written disclosure to the
377 consumer that the rate charged for the contract is not subject

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378 to regulation by the office. A service warranty association may
379 comply with this requirement by including such disclosure in its
380 service warranty contract form or in a separate written notice
381 provided to the consumer at the time of sale.
382 Section 9. Section 634.416, Florida Statutes, is amended to
383 read:
384 634.416 Examination of associations.—
385 ~~(1)(a)~~ Service warranty associations licensed under this
386 part may be subject to periodic examination by the office, in
387 the same manner and subject to the same terms and conditions
388 that apply to insurers under part II of chapter 624. The office
389 is not required to conduct periodic examinations pursuant to
390 this section, but may examine a service warranty company at its
391 discretion. An examination conducted pursuant to this section
392 may cover a period of only the most recent 5 years. The costs of
393 examinations conducted pursuant to ss. 624.316(2)(e) and
394 624.3161(3) may not exceed 10 percent of the companies' reported
395 net income for the prior year.
396 ~~(b) The office shall determine whether to conduct an~~
397 ~~examination of a service warranty association by considering:~~
398 ~~1. The amount of time that the association has been~~
399 ~~continuously licensed and operating under the same management~~
400 ~~and control.~~
401 ~~2. The association's history of compliance with applicable~~
402 ~~law.~~
403 ~~3. The number of consumer complaints against the~~
404 ~~association.~~
405 ~~4. The financial condition of the association, demonstrated~~
406 ~~by the financial reports submitted pursuant to s. 634.313.~~

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

407 ~~(2) The rate charged a service warranty association by the~~
408 ~~office for examination may be adjusted to reflect the amount~~
409 ~~collected for the Form 10-K filing fee as provided in this~~
410 ~~section.~~
411 ~~(3) On or before May 1 of each year, an association may~~
412 ~~submit to the office the Form 10-K, as filed with the United~~
413 ~~States Securities and Exchange Commission pursuant to the~~
414 ~~Securities Exchange Act of 1934, as amended. Upon receipt and~~
415 ~~review of the most current Form 10-K, the office may waive the~~
416 ~~examination requirement; if the office determines not to waive~~
417 ~~the examination, such examination will be limited to that~~
418 ~~examination necessary to ensure compliance with this part. The~~
419 ~~Form 10-K shall be accompanied by a filing fee of $2,000 to be~~
420 ~~deposited into the Insurance Regulatory Trust Fund.~~
421 ~~(4) The office is not required to examine an association~~
422 ~~that has less than $20,000 in gross written premiums as~~
423 ~~reflected in its most recent annual statement. The office may~~
424 ~~examine such an association if it has reason to believe that the~~
425 ~~association may be in violation of this part or is otherwise in~~
426 ~~an unsound financial condition.~~ If the office examines an
427 association that has less than $20,000 in gross written
428 premiums, the examination fee may not exceed 5 percent of the
429 gross written premiums of the association.
430 Section 10. Section 634.4385, Florida Statutes, is created
431 to read:
432 634.4385 Unauthorized entities; gifts and grants.—A
433 governmental unit, public agency, institution, person, firm, or
434 legal entity may provide money to the department to enable the
435 department to pursue unauthorized entities operating in

436 violation of this part. The department may transfer funds to the
437 office to investigate, discipline, sanction, and take all action
438 consistent with this part relative to unauthorized entities. All
439 donations or grants of moneys to the department shall be
440 deposited into the Insurance Regulatory Trust Fund and shall be
441 separately accounted for in accordance with this section. Moneys
442 deposited into the Insurance Regulatory Trust Fund pursuant to
443 this section may be appropriated by the Legislature, pursuant to
444 chapter 216, for the purpose of enabling the department or the
445 office to carry out the provisions of this section.
446 Notwithstanding s. 216.301 and pursuant to s. 216.351, any
447 balance of moneys deposited into the Insurance Regulatory Trust
448 Fund pursuant to this section remaining at the end of any fiscal
449 year shall be available for carrying out the duties and
450 responsibilities of the department or the office.
451 Section 11. This act shall take effect July 1, 2012.

Warrick

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic: For the Bill

Bill Number: 1262 (if applicable)

Name: Jim Meenan

Amendment Barcode: (if applicable)

Job Title:

Address: 204 S. Monroe St.
Street

Tallahassee FL 32312
City State Zip

Phone: 850 681-6710

E-mail: Jim@blankla.com

Speaking: ☐ For ☐ Against ☐ Information

Representing: Florida Service Agreement Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator D. Alan Hays, Chair
Committee on General Government Appropriations

Subject: Committee Agenda Request

Date: January 26, 2012

I respectfully request that **Senate Bill # 1262**, relating to Warranty Associations, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Steve Oelrich

Senator Steve Oelrich
Florida Senate, District 14

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/SB 1342

INTRODUCER: Banking and Insurance Committee and Senator Storms

SUBJECT: Child Support Enforcement

DATE: February 27, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	**Favorable**
2.	Eichin	Buford	TR	**Fav/2 amendments**
3.	Johnson	Burgess	BI	**Fav/CS**
4.	Blizzard	DeLoach	BGA	**Favorable**
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	x	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill amends Florida law relating to child support enforcement. Specifically, the bill:

- Provides that a default in support payments is not required in Title IV-D cases for the Department of Revenue (DOR) to request that payments be made through the State Disbursement Unit;
- Provides that a driver's license of an obligor will not be suspended if the obligor begins paying any delinquency by income deduction;
- Makes it discretionary for the DOR to notify the Department of Highway Safety and Motor Vehicles (DHSMV) to request suspension of a driver's license of an obligor;
- Authorizes the DOR to commence an administrative paternity proceeding based on an affidavit or written declaration provided by a caregiver that states the putative father may be the child's biological father;
- Requires that a request to informally discuss a proposed administrative support order with the DOR be made in writing within fifteen days after the date of the mailing of the proposed order;
- Eliminates the requirement for the DOR to provide certain notices by registered or certified mail, requiring regular mail instead;

- Authorizes the DOR to send notices to a garnishee by secure e-mail or facsimile upon consent by the garnishee;
- Requires the Department of Financial Services (DFS) and the DOR to work cooperatively to establish an automated method for identifying persons who are doing business with the state and who owe overdue support so that support payments may be withheld by the state;
- Makes changes related to the use of unclaimed property for past due support; and
- Authorizes the DOR to place an administrative lien on certain claims, judgments, and property.

This bill amends the following sections of the Florida Statutes: 61.13, 61.13016, 322.058, 409.256, 409.2563, 409.25656, 409.25658, and 409.2575. This bill reenacts section 409.256(7), Florida Statutes.

II. Present Situation:

Child support enforcement is a federally funded program that has been administered by the Department of Revenue (DOR) since 1994. A "Title IV-D case" is defined as any case in which the child support enforcement agency is enforcing the child support order pursuant to Title IV-D of the Social Security Act. The DOR provides services under the federally required program in sixty five counties and through contracts in two counties.[1]

The DOR is responsible for some case-processing activities including opening and closing cases; collecting and maintaining of case, financial and location information; and receiving and responding to verbal and written inquiries. During the 2009 calendar year, 1.1 million cases were maintained by DOR. In Fiscal Year 2008-2009, the DOR had a 7.3 percent increase in new service requests and 6.6 percent increase in reopened cases.

To remain eligible for the Temporary Assistance for Needy Families (TANF) Block Grant, Florida must have a federally compliant child support program. The program must contain the following services:

- Paternity establishment;
- Support order establishment;
- Support order review and modification;
- Location of parents, employers, assets;
- Payment collection and disbursement; and
- Order enforcement.

The DOR establishes the initial child support order and modifies existing orders when a family's circumstances change. The DOR processed $48 million in child support collections on support orders established during Fiscal Year 2008-2009. Some child support orders are established by the DOR administratively. Section 409.2563, F.S., was created to provide the DOR with an alternative procedure for establishing child support obligations in Title IV-D cases in a fair and expeditious manner, when there is no court order of support. Prior to beginning the administrative process, the DOR screens cases for complex circumstances and, if identified, will

[1] Miami-Dade County cases are handled by the state attorney's office, and Manatee County cases are handled by the clerk of court.

proceed with those cases judicially. In order to establish a support order administratively, the DOR must provide notice to both the parent from whom support is not being sought and to the parent from whom support is being sought.[2] After providing notice, the DOR must calculate the proposed support obligation based on the financial affidavits provided by the parties or, if the parties did not provide the required affidavits, then the department may rely on any reliable source for the information. If there is no reliable source, the DOR may calculate the proposed support obligation based on the assumption that the parent had an earning capacity equal to the federal minimum wage during the applicable period.[3] The DOR must send copies of the proposed administrative support order to both parents, along with a notice of rights to the parent from whom support is being sought. This notice of rights must inform the parent that within ten days from the date of the mailing, the parent may contact the DOR to discuss the proposed administrative order.[4] If a request for an administrative hearing in response to the proposed order is not made timely, the department renders a final order that incorporates the terms of the proposed order.[5] If the parent from whom support is being sought files a timely request for hearing or the department determines that an evidentiary hearing is appropriate, the DOR will refer the proceeding to the Division of Administrative Hearings.

Child support orders are enforced by the DOR, as well as the receipt and disbursement of collections. During the 2009 calendar year, over $1.41 billion was collected and distributed, with 98 percent of collections distributed within twenty four hours. Of all parents in the DOR caseload, fewer than 30 percent pay their full child support obligation on a monthly basis. In addition, the DOR initiated enforcement actions on 92 percent of the support collections ultimately received.

The DOR has several methods for collecting past due child support. Pursuant to s. 61.13016, F.S., the obligor is notified by the DOR or a clerk of court within fifteen days of non-payment or failure to comply with a subpoena or other order, that his or her driver's license may be suspended unless such payment is made or order complied with. Although not provided for in statute, the DOR also allows an obligor to begin paying a delinquent support order by income deduction in order to avoid license suspension. According to the DOR, income deduction is the most reliable way to obtain child support payments.[6] If the obligor fails to comply with any of these actions, twenty days after the notification is sent to the obligor, the DOR notifies the DHSMV, which is required to suspend the driver's license under s. 322.058, F.S.

If a person has a support obligation subject to enforcement by the DOR, the DOR may inform all persons with credits or personal property (i.e. wages) belonging to the obligor under their control to not transfer any of the credits or personal property up to the amount listed in the notice, without DOR consent.[7] Additionally, the department shall provide notice to the DFS identifying the obligor and the amount of support outstanding.

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[2] Section 409.2563(4), F.S.
[3] Section 409.2563(5)(a), F.S.
[4] Section 409.2563(5)(c), F.S.
[5] In contested cases, there is a formal hearing before the Division of Administrative Hearings.
[6] E-mail from Debbie Thomas, Dept. of Revenue, to Senate professional staff (Dec. 12, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[7] Section 409.25656(1), F.S.

Under current law, DOR must provide notice to the DFS identifying the obligor and the amount of support outstanding. The DFS must withhold all payments to any obligor who provides commodities or services to the state, leases real property to the state, or constructs a public building or public work for the state. DOR may then levy upon the withheld payments.[8]

Another way DOR may collect past due support is with unclaimed property. The DOR, in cooperation with the DFS, shall identify persons owing support who are presumed to have unclaimed property held by the DFS. Before paying an obligor's approved claim for unclaimed property, the DFS must notify the DOR that the claim was approved, and the DOR shall immediately send a notice by certified mail to the obligor advising the obligor of the DOR's intent to intercept the approved claim up to the amount of the past due support.[9]

III. Effect of Proposed Changes:

This bill amends provisions relating to child support enforcement. Section 61.13, F.S., is amended to provide that in Title IV-D cases, the DOR does not need to allege a default in support payments, and a default is not required, in order for the DOR to request that child support payments be made through the depository. If such a request is made, the depository shall notify all parties that future payments in Title IV-D cases be made to the state disbursement unit.

The bill provides additional means for an obligor to avoid having his or her driver's license suspended. Specifically, if an obligor begins paying any delinquency by income deduction, the obligor's license will not be suspended (and it must be reinstated if it had already been suspended). Additionally, the bill makes it discretionary for the DOR to notify the DHSMV to suspend a driver's license of an obligor if the delinquency is not paid in full.

Effective July 1, 2012, the bill amends s. 409.256, F.S., to authorize the DOR to commence a paternity proceeding if a caregiver states in an affidavit that the putative father is or may be the child's biological father. Under current law, the DOR may commence a proceeding only if the child's mother or a putative father states in an affidavit that the putative father is or may be the child's biological father.

Section 409.2563(5), F.S., is amended to require that requests by a parent from whom support is being sought for an informal discussion with the DOR about the proposed administrative support order be made in writing within 15 days after the date of mailing the proposed support order.

The bill eliminates the requirement for the DOR to serve garnishment notices by registered mail, requiring instead that the DOR serve notice on garnishees and obligors by regular mail. If the garnishee provides written consent, the department may send notices to the garnishee by secure e-mail or facsimile. The bill requires the DFS and the DOR to work cooperatively to establish an automated method for identifying persons who are doing business with the state and who owe past due support so that the support payments may be withheld by the state.

[8] Section 409.25656(10), F.S.
[9] Section 409.25658, F.S.

Under current law, the DOR provides to the DFS a listing of obligors for whom warrants are outstanding. The DFS then withholds all payments to any obligor doing business with the state and the DOR may levy upon the withheld payments. The change made by this bill essentially reverses this method so that the DFS is disclosing to the DOR a file of individuals to whom the state pays money. This change may mean that information on persons who do not owe past due child support may also be transmitted to the DOR.

The bill requires the DOR, in cooperation with the DFS, to identify persons who owe past due support collected by the department and who are presumed to have unclaimed property held by the DFS. If a claim for unclaimed property is approved by the DFS, the DOR will send a notice by certified mail to the obligor, advising the obligor of the department's intent to intercept the approved claim. The DFS must retain custody of the property until a final order has been entered and any appeals have concluded or, if the intercept is uncontested, until notified by DOR. If an obligor does not request a hearing, the DOR must notify the DFS electronically, or in writing, to transfer the property to the department.

The bill authorizes the DOR to place an administrative lien for unpaid support on a motor vehicle or vessel, even if owned unencumbered by the obligor. In addition, the DOR is authorized to place an administrative lien on claims, settlement proceeds, and judgments. The DOR must notify the obligor of the intent to place a lien by regular mail sent to the obligor's address on file with the depository. The notice must state the amount of past due support owed and inform the obligor of the right to contest the lien at an administrative hearing.

Finally, the bill reenacts s. 409.256, F.S., in order to incorporate the changes made by the bill to s. 322.058, F.S.

The bill is effective upon becoming a law, except as otherwise provided in the act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill authorizes the DOR to place an administrative lien for unpaid support on claims, settlements, and judgments, as well as on motor vehicles or vessels that are owned unencumbered by the obligor. This provision may have a financial impact on obligors expecting to receive money in relation to a claim, settlement, or judgment, but also owe unpaid or delinquent support. However, these changes may result in additional funds being provided for child support.

C. Government Sector Impact:

According to the DOR, procedures will need to be modified to implement the provisions in this bill. However, the DOR expects that any operational impact of the bill will be insignificant.[10]

The Department of Highway Safety and Motor Vehicles estimates an insignificant reduction in revenues related to the reinstatement of driver licenses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance Committee on February 16, 2012:
Provides technical, conforming changes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

[10] Department of Revenue, *2012 Bill Analysis, SB 1342*, January 25, 2012 (on file with the Senate Committee on Banking and Insurance).

By the Committee on Banking and Insurance; and Senator Storms

A bill to be entitled

An act relating to child support enforcement; amending s. 61.13, F.S.; providing that, for IV-D cases, an affidavit filed with a child support depository requesting that child support payments be made through the depository need not allege a default in support payments; amending s. 61.13016, F.S.; requiring the Department of Highway Safety and Motor Vehicles to suspend an obligor's driver license unless the obligor begins paying child support by income deduction; amending s. 322.058, F.S.; requiring the Department of Highway Safety and Motor Vehicles to reinstate an obligor's driving privileges if the obligor is paying his or her support obligation by income deduction order or is receiving unemployment compensation, social security disability payments, supplemental security income, or temporary cash assistance; amending s. 409.256, F.S.; adding a caregiver to the list of persons who may provide a statement regarding a putative father; amending s. 409.2563, F.S.; providing for the filing of a written request to informally discuss a proposed administrative support order with the Department of Revenue; amending s. 409.25656, F.S.; providing that notice of a levy upon property may be delivered by regular mail rather than by registered mail; providing for notices to be sent to a garnishee by e-mail or facsimile; requiring the Chief Financial Officer to work cooperatively with the department to establish an automated method for

periodically disclosing to the department an electronic file of individuals to whom the state pays money for goods or services or who lease real property to the state; requiring the department to use the collected data to identify individuals who owe past due or overdue child support and to garnish payments owed to such individuals by the state; amending s. 409.25658, F.S.; revising provisions relating to unclaimed property to be transferred to the Department of Revenue to pay for past due child support; amending s. 409.2575, F.S.; providing that the Department of Revenue rather than the director of the state IV-D program may cause a lien to be placed on a motor vehicle and vessel; reenacting s. 409.256(7), F.S., relating to administrative procedures to establish paternity, to incorporate the amendments made to s. 322.058, F.S., in a reference thereto; providing effective dates.

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

Section 1. Paragraph (d) of subsection (1) of section 61.13, Florida Statutes, is amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(1)

(d)1. All child support orders shall provide the full name and date of birth of each minor child who is the subject of the child support order.

59 2. If both parties request and the court finds that it is
60 in the best interest of the child, support payments need not be
61 subject to immediate income deduction. Support orders that are
62 not subject to immediate income deduction may be directed
63 through the depository under s. 61.181 or made payable directly
64 to the obligee. Payments made by immediate income deduction
65 shall be made to the State Disbursement Unit. The court shall
66 provide a copy of the order to the depository.
67 3. For support orders payable directly to the obligee, any
68 party, or the department in a IV-D case, may subsequently file
69 an affidavit with the depository alleging a default in payment
70 of child support and stating that the party wishes to require
71 that payments be made through the depository. For IV-D cases,
72 the affidavit need not allege a default in support payments and
73 default is not required. The party shall provide copies of the
74 affidavit to the court and to each other party. Fifteen days
75 after receipt of the affidavit, the depository shall notify all
76 parties that future payments shall be paid through the
77 depository, except that payments in Title IV-D cases and income
78 deduction payments shall be made to the State Disbursement Unit.
79 Section 2. Subsections (1) and (3) of section 61.13016,
80 Florida Statutes, are amended to read:
81 61.13016 Suspension of driver's licenses and motor vehicle
82 registrations.—
83 (1) The driver's license and motor vehicle registration of
84 a support obligor who is delinquent in payment or who has failed
85 to comply with subpoenas or a similar order to appear or show
86 cause relating to paternity or support proceedings may be
87 suspended. When an obligor is 15 days delinquent making a

88 payment in support or failure to comply with a subpoena, order
89 to appear, order to show cause, or similar order in IV-D cases,
90 the Title IV-D agency may provide notice to the obligor of the
91 delinquency or failure to comply with a subpoena, order to
92 appear, order to show cause, or similar order and the intent to
93 suspend by regular United States mail that is posted to the
94 obligor's last address of record with the Department of Highway
95 Safety and Motor Vehicles. When an obligor is 15 days delinquent
96 in making a payment in support in non-IV-D cases, and upon the
97 request of the obligee, the depository or the clerk of the court
98 must provide notice to the obligor of the delinquency and the
99 intent to suspend by regular United States mail that is posted
100 to the obligor's last address of record with the Department of
101 Highway Safety and Motor Vehicles. In either case, the notice
102 must state:
103 (a) The terms of the order creating the support obligation;
104 (b) The period of the delinquency and the total amount of
105 the delinquency as of the date of the notice or describe the
106 subpoena, order to appear, order to show cause, or other similar
107 order that ~~which~~ has not been complied with;
108 (c) That notification must ~~will~~ be given to the Department
109 of Highway Safety and Motor Vehicles to suspend the obligor's
110 driver's license and motor vehicle registration unless, within
111 20 days after the date the notice is mailed, the obligor:
112 1.a. Pays the delinquency in full and any other costs and
113 fees accrued between the date of the notice and the date the
114 delinquency is paid;
115 b. Enters into a written agreement for payment with the
116 obligee in non-IV-D cases or with the Title IV-D agency in IV-D

117 cases; or in IV-D cases, complies with a subpoena or order to
118 appear, order to show cause, or a similar order; ~~or~~
119 c. Files a petition with the circuit court to contest the
120 delinquency action; or ~~and~~
121 d. Begins paying by income deduction, or is receiving
122 unemployment compensation, social security disability payments,
123 supplemental security income, or temporary cash assistance; and
124 2. Pays any applicable delinquency fees.
125
126 If the obligor in non-IV-D cases enters into a written agreement
127 for payment before the expiration of the 20-day period, the
128 obligor must provide a copy of the signed written agreement to
129 the depository or the clerk of the court.
130 (3) If the obligor does not, within 20 days after the
131 mailing date on the notice, pay the delinquency;~~,~~ enter into a
132 written ~~payment~~ agreement;~~,~~ comply with the subpoena, order to
133 appear, order to show cause, or other similar order; begin
134 paying by income deduction, or is receiving unemployment
135 compensation, social security disability payments, supplemental
136 security income, or temporary cash assistance;~~,~~ or file a motion
137 to contest, the Title IV-D agency in IV-D cases, or the
138 depository or clerk of the court in non-IV-D cases, shall file
139 the notice with the Department of Highway Safety and Motor
140 Vehicles and request the suspension of the obligor's driver's
141 license and motor vehicle registration in accordance with s.
142 322.058.
143 Section 3. Subsections (2) and (3) of section 322.058,
144 Florida Statutes, are amended to read:
145 322.058 Suspension of driving privileges due to support

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

146 delinquency; reinstatement.—
147 (2) The department must reinstate the driving privilege and
148 allow registration of a motor vehicle when the Title IV-D agency
149 in IV-D cases or the depository or the clerk of the court in
150 non-IV-D cases provides to the department an affidavit stating
151 that:
152 (a) The person has paid the delinquency;
153 (b) The person has reached a written agreement for payment
154 with the Title IV-D agency or the obligee in non-IV-D cases;
155 (c) A court has entered an order granting relief to the
156 obligor ordering the reinstatement of the license and motor
157 vehicle registration; ~~or~~
158 (d) The person has complied with the subpoena, order to
159 appear, order to show cause, or similar order; or
160 (e) The obligor is paying by income deduction or is
161 receiving unemployment compensation, social security disability
162 payments, supplemental security income, or temporary cash
163 assistance.
164 (3) The department is ~~shall~~ not ~~be held~~ liable for any
165 license or vehicle registration suspension resulting from the
166 discharge of its duties under this section.
167 Section 4. Effective July 1, 2012, paragraph (a) of
168 subsection (2) of section 409.256, Florida Statutes, is amended
169 to read:
170 409.256 Administrative proceeding to establish paternity or
171 paternity and child support; order to appear for genetic
172 testing.—
173 (2) JURISDICTION; LOCATION OF HEARINGS; RIGHT OF ACCESS TO
174 THE COURTS.—

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

175 (a) The department may commence a paternity proceeding or a
176 paternity and child support proceeding as provided in subsection
177 (4) if:
178 1. The child's paternity has not been established.
179 2. No one is named as the father on the child's birth
180 certificate or the person named as the father is the putative
181 father named in an affidavit or a written declaration as
182 provided in subparagraph 5.
183 3. The child's mother was unmarried when the child was
184 conceived and born.
185 4. The department is providing services under Title IV-D.
186 5. The child's mother or caregiver or a putative father has
187 stated in an affidavit, or in a written declaration as provided
188 in s. 92.525(2), that the putative father is or may be the
189 child's biological father. The affidavit or written declaration
190 must set forth the factual basis for the allegation of paternity
191 as provided in s. 742.12(2).
192 Section 5. Effective July 1, 2012, paragraph (c) of
193 subsection (5) of section 409.2563, Florida Statutes, is amended
194 to read:
195 409.2563 Administrative establishment of child support
196 obligations.—
197 (5) PROPOSED ADMINISTRATIVE SUPPORT ORDER.—
198 (c) The department shall provide a notice of rights with
199 the proposed administrative support order, which notice must
200 inform the parent from whom support is being sought that:
201 1. The parent from whom support is being sought may, within
202 20 days after the date of mailing or other service of the
203 proposed administrative support order, request a hearing by

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

204 filing a written request for hearing in a form and manner
205 specified by the department;
206 2. If the parent from whom support is being sought files a
207 timely request for a hearing, the case shall be transferred to
208 the Division of Administrative Hearings, which shall conduct
209 further proceedings and may enter an administrative support
210 order;
211 3. A parent from whom support is being sought who fails to
212 file a timely request for a hearing shall be deemed to have
213 waived the right to a hearing, and the department may render an
214 administrative support order pursuant to paragraph (7)(b);
215 4. The parent from whom support is being sought may consent
216 in writing to entry of an administrative support order without a
217 hearing;
218 5. The parent from whom support is being sought may, within
219 15 ~~10~~ days after the date of mailing or other service of the
220 proposed administrative support order, request to informally
221 discuss the proposed administrative support order by filing a
222 written request to the department ~~contact a department~~
223 ~~representative,~~ at the address ~~or telephone number~~ specified in
224 the notice, ~~to informally discuss the proposed administrative~~
225 ~~support order~~ and, if informal discussions are requested timely,
226 the time for requesting a hearing will be extended until 10 days
227 after the department notifies the parent that the informal
228 discussions have been concluded; and
229 6. If an administrative support order that establishes a
230 parent's support obligation is rendered, whether after a hearing
231 or without a hearing, the department may enforce the
232 administrative support order by any lawful means.

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

233 Section 6. Subsections (3), (4), and (5), paragraph (b) of
234 subsection (7), and subsections (10) and (11) of section
235 409.25656, Florida Statutes, are amended to read:
236 409.25656 Garnishment.—
237 (3) During the last 30 days of the 60-day period set forth
238 in subsection (1), the executive director or his or her designee
239 may levy upon such credits, personal property, or debts. The
240 levy must be accomplished by delivery of a notice of levy by
241 regular ~~registered~~ mail, upon receipt of which the person
242 possessing the credits, other personal property, or debts shall
243 transfer them to the department or pay to the department the
244 amount owed by the obligor. If the department levies upon
245 securities and the value of the securities is less than the
246 total amount of past due or overdue support, the person who
247 possesses or controls the securities shall liquidate the
248 securities in a commercially reasonable manner. After
249 liquidation, the person shall transfer to the department the
250 proceeds, less any applicable commissions or fees, or both,
251 which are charged in the normal course of business. If the value
252 of the securities exceeds the total amount of past due or
253 overdue support, the obligor may, within 7 days after receipt of
254 the department's notice of levy, instruct the person who
255 possesses or controls the securities which securities are to be
256 sold to satisfy the obligation for past due or overdue support.
257 If the obligor does not provide instructions for liquidation,
258 the person who possesses or controls the securities shall
259 liquidate the securities in a commercially reasonable manner in
260 an amount sufficient to cover the obligation for past due or
261 overdue support and any applicable commissions or fees, or both,

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262 which are charged in the normal course of business, beginning
263 with the securities purchased most recently. After liquidation,
264 the person who possesses or controls the securities shall
265 transfer to the department the total amount of past due or
266 overdue support.
267 (4) A notice that is delivered under this section is
268 effective at the time of delivery against all credits, other
269 personal property, or debts of the obligor which are not at the
270 time of such notice subject to an attachment, garnishment, or
271 execution issued through a judicial process. Upon the
272 garnishee's written consent the department may send notices to
273 the garnishee by secure e-mail or facsimile.
274 (5) The department may ~~is authorized to~~ bring an action in
275 circuit court for an order compelling compliance with any notice
276 issued under this section.
277 (7)
278 (b) Not less than 30 days before the day of the levy, the
279 notice of intent to levy required under paragraph (a) must be
280 given in person or sent by regular ~~certified or registered~~ mail
281 to the person's last known address.
282 (10) The Chief Financial Officer shall work cooperatively
283 with the department to establish an automated method for
284 periodically disclosing to the department an electronic file of
285 individuals to whom the state pays money for goods or services
286 or who lease real property to the state. The department shall
287 use the data provided to identify individuals who owe past due
288 or overdue support and may garnish payments owed to such
289 individuals by the state as provided in this section. ~~The~~
290 ~~department shall provide notice to the Chief Financial Officer,~~

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~~in electronic or other form specified by the Chief Financial Officer, listing the obligors for whom warrants are outstanding. Pursuant to subsection (1), the Chief Financial Officer shall, upon notice from the department, withhold all payments to any obligor who provides commodities or services to the state, leases real property to the state, or constructs a public building or public work for the state. The department may levy upon the withheld payments in accordance with subsection (3).~~ Section 215.422 does not apply from the date the notice is filed with the Chief Financial Officer until the date the department notifies the Chief Financial Officer of its consent to make payment to the person or 60 days after receipt of the department's notice in accordance with subsection (1), whichever occurs earlier.

(11) The Department of Revenue may ~~has the authority to~~ adopt rules to administer ~~implement~~ this section.

Section 7. Section 409.25658, Florida Statutes, is amended to read:

409.25658 Use of unclaimed property for past due support.—

(1) In a joint effort to facilitate the collection and payment of past due support, the Department of Revenue, in cooperation with the Department of Financial Services, shall identify persons owing support collected by the department ~~through a court~~ who are presumed to have unclaimed property held by the Department of Financial Services.

(2) The department shall periodically provide the Department of Financial Services with an electronic file of support obligors who owe past due support. The Department of Financial Services shall conduct a data match of the file

against all apparent owners of unclaimed property under chapter 717 and provide the resulting match list to the department.

(3) Upon receipt of the data match list, the department shall provide ~~to~~ the Department of Financial Services with the obligor's last known address. The Department of Financial Services shall follow the notification procedures under s. 717.118.

(4) Before ~~Prior to~~ paying an obligor's approved claim, the Department of Financial Services shall notify the department that the ~~such~~ claim has been approved. Upon confirmation that the Department of Financial Services has approved the claim, the department shall immediately send a notice by certified mail to the obligor at the address provided by the obligor to the Department of Financial Services, with a copy to the Department of Financial Services, advising the obligor of the department's intent to intercept the approved claim up to the amount of the past due support, and informing the obligor of the obligor's right to request a hearing under chapter 120. The Department of Financial Services shall retain custody of the property until a final order has been entered and any appeals thereon have been concluded, or, if the intercept is uncontested, until notified by the department. If the obligor fails to request a hearing, the department shall notify ~~enter a final order instructing~~ the Department of Financial Services, electronically or in writing, to transfer to the department the property in the amount stated in the notice or electronic file ~~final order~~. Upon ~~such~~ transfer, the Department of Financial Services shall be released from further liability related to the transferred property.

(5) ~~The provisions of~~ This section provides ~~provide~~ a

349 supplemental remedy, and the department may use this remedy in
350 conjunction with any other method of collecting support.
351 Section 8. Section 409.2575, Florida Statutes, is amended
352 to read:
353 409.2575 Administrative liens ~~on motor vehicles and~~
354 ~~vessels~~.—
355 (1) The department ~~director of the state IV-D program, or~~
356 ~~the director's designee,~~ may cause a lien for unpaid and
357 delinquent support to be placed upon motor vehicles, as defined
358 in chapter 320, and upon vessels, as defined in chapter 327,
359 which ~~that~~ are registered in the name of an obligor who is
360 delinquent in support payments~~, if the title to the property is~~
361 ~~held by a lienholder,~~ in the manner provided in chapter 319 or
362 chapter 328, and upon a claim, settlement, or judgment that may
363 result in payment to the obligor. The department shall notify
364 the obligor of the intent to place a lien by regular mail sent
365 to the obligor's address of record on file with the depository.
366 The notice must state the amount of past due support owed and
367 inform the obligor of the right to contest the lien at an
368 administrative hearing as provided by chapter 120. Notice of
369 lien shall not be mailed unless the delinquency in support
370 exceeds $600.
371 (2) If the first lienholder fails, neglects, or refuses to
372 forward the certificate of title to the appropriate department
373 as requested pursuant to s. 319.24 or s. 328.15, the department
374 ~~director of the IV-D program, or the director's designee,~~ may
375 apply to the circuit court for an order to enforce the
376 requirements of s. 319.24 or s. 328.15, whichever applies.
377 Section 9. For the purpose of incorporating the amendment

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378 made by this act to section 322.058, Florida Statutes, in a
379 reference thereto, subsection (7) of section 409.256, Florida
380 Statutes, is reenacted to read:
381 409.256 Administrative proceeding to establish paternity or
382 paternity and child support; order to appear for genetic
383 testing.—
384 (7) FAILURE OR REFUSAL TO SUBMIT TO GENETIC TESTING.—If a
385 person who is served with an order to appear for genetic testing
386 fails to appear without good cause or refuses to submit to
387 testing without good cause, the department may take one or more
388 of the following actions:
389 (a) Commence a proceeding to suspend the driver's license
390 and motor vehicle registration of the person ordered to appear,
391 as provided in s. 61.13016;
392 (b) Impose an administrative fine against the person
393 ordered to appear in the amount of $500; or
394 (c) File a petition in circuit court to establish
395 paternity, obtain a support order for the child, and seek
396 reimbursement from the person ordered to appear for the full
397 cost of genetic testing incurred by the department.
398
399 As provided in s. 322.058(2), a suspended driver's license and
400 motor vehicle registration may be reinstated when the person
401 ordered to appear complies with the order to appear for genetic
402 testing. The department may collect an administrative fine
403 imposed under this subsection by using civil remedies or other
404 statutory means available to the department for collecting
405 support.
406 Section 10. Except as otherwise expressly provided in this

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407 act, this act shall take effect upon becoming a law.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Children, Families, and Elder Affairs, *Chair*
Budget - Subcommittee on Criminal and Civil Justice Appropriations
Community Affairs
Military Affairs, Space, and Domestic Security
Reapportionment
Transportation

SENATOR RONDA STORMS
10th District

February 21, 2012

Senator Alan Hays, Chair
Senate Budget Subcommittee on General Government Appropriations
324 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Hays:

Senate Bill 1342, relating to *Child Support Enforcement,* has been referred to your committee for its forth committee of reference.

I would greatly appreciate you placing SB 1342 on the Senate Budget Subcommittee on General Government Appropriations committee's agenda at your earliest convenience. Please do not hesitate to contact me should you have any questions.

Thank you for your consideration of this request.

Sincerely,

Senator Ronda Storms
Florida State Senate
10th District

Cc: Jamie DeLoach, Staff Director
201 The Capitol

REPLY TO:
❒ Lithia Oaks Business Center, 421 Lithia Pinecrest Road, Brandon, Florida 33511 (813) 651-2189 FAX: (813) 651-2188
❒ 413 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5072
Internet Address: storms.ronda.web@flsenate.gov

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/SB 1372

INTRODUCER: Banking and Insurance Committee and Senator Alexander

SUBJECT: Florida Hurricane Catastrophe Fund

DATE: February 27, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	**Fav/CS**
2.	Betta	DeLoach	BGA	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

Senate Bill 1372 revises the Florida Hurricane Catastrophe Fund (FHCF or Fund) coverage limits, reimbursement percentage, retention, cash build-up factor, and optional coverages. The bill is designed to reduce the overall financial obligations of the fund, reducing the likelihood and amount of bonding and emergency assessments needed to fund deficits in the event the Fund experiences a shortfall after a major hurricane. The major proposed changes are summarized as follows:

Decreases the FHCF Mandatory Coverage Limit – The bill phases in annual decreases of the FHCF mandatory coverage limit beginning in the 2012-2013 contract year as follows:

- For the 2012-2013 contract year, $17 billion (the current Fund limit).
- For the 2013-2014 contract year, $15.5 billion.
- For the 2014-2015 contract year, $14 billion.
- For the 2015-2016 contract year, $12 billion.

Increases the FHCF Retention – The bill increases the FHCF industry retention to $8 billion for the 2013-2014 contract year.

Decreases the Maximum Reimbursement Percentage for FHCF Coverage – The bill reduces the maximum reimbursement amount from 90 percent to the following percentages:

- For the 2013-2014 contract year, 85 percent.
- For the 2014-2015 contract year, 80 percent.
- For the 2015-2016 contract year and all subsequent contract years, 75 percent.

Increases the FHCF Cash Build-Up Factor – Currently, the FHCF charges insurers a "cash build-up factor" that is added to the actuarially indicated reimbursement premium. The cash build-up factor was 15 percent for the 2011-2012 contract year, and will increase to 20 percent for the 2012-2013 contract year and 25 percent for the 2013-2014 contract year. The bill continues increasing the cash build-up factor by five percent annually in subsequent years, culminating in a 50 percent factor for the 2018-2019 contract year.

Reduces the FHCF Emergency Assessment Authority – Beginning in the 2015-2016 contract year the bill reduces the FHCF assessment authority to five percent of premium for obligations attributable to a particular contract year, and reduces the maximum aggregates assessment to eight percent of premium. Current law will apply to obligations incurred in prior contract years.

Eliminates the Temporary Increase Coverage Level Option Coverage (TICL) – The bill repeals the TICL coverage after the 2012-2013 contract year.

This bill substantially amends the following section of the Florida Statutes: 215.555.

II. Present Situation:

Florida Hurricane Catastrophe Fund

The FHCF is a tax-exempt fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers. The FHCF is administered by the State Board of Administration (SBA) and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent) of hurricane losses above the insurer's retention (deductible). The FHCF provides insurers an additional source of reinsurance that is significantly less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the FHCF, the fund acts to lower residential property insurance premiums for consumers. The FHCF must charge insurers the actuarially indicated premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.

FHCF Mandatory Coverage

All insurers that write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF. The FHCF is authorized by statute to sell $17 billion of mandatory layer coverage. Each insurer that purchases coverage may receive up to its proportional share of the $17 billion mandatory layer of coverage based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. For example, if an insurer paid ten percent

of the total premium paid in a contract year, then that insurer would be eligible to receive up to ten percent of the mandatory layer of coverage ($1.7 billion of the $17 billion mandatory layer).

Insurers that experience multiple hurricanes causing loss during the contract year may receive reimbursement from the FHCF for losses that exceed the applicable retention. The insurer's full retention is applied to each hurricane causing the two largest losses for that insurer. For each other covered event resulting in losses, the insurer's retention is only one-third of the full retention.

FHCF Premiums

The FHCF must charge insurers the "actuarially indicated" premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology. The "actuarially indicated" premium is an amount that is adequate to pay current and future obligations and expenses of the fund.[1] In practice, each insurer pays the FHCF annual reimbursement premiums that are proportionate to each insurer's share of the FHCF's risk exposure. The cost of FHCF coverage is significantly lower than the cost of private reinsurance due to the fact that the fund is a tax-exempt non-profit corporation and does not charge a "risk load."

FHCF Retention

Insurers must first pay hurricane losses up to their specified "retention" for each hurricane, similar to a deductible, before being reimbursed by the FHCF coverage. The full retention is applied to the two hurricanes causing the greatest losses to the insurer. The retention is adjusted annually based on the FHCF's exposure. Like the maximum recovery amount, a retention is calculated for each insurer based on its share of fund premiums. For example, an insurer paying ten percent of total fund premiums had a retention of $736.9 million, (10 percent of $7.369 billion) for the 2011-2012 contract year.

FHCF Optional Coverages

Beginning in 2007, the Legislature increased the coverage limits of the FHCF by adding additional layers of optional coverage that property insurers may buy:

- *Temporary Increase in Coverage Limit Options ("TICL")* – Allows an insurer to purchase additional reinsurance in $1 billion increments, above the FHCF mandatory coverage. A total of $12 billion in additional TICL coverage was made available. In 2009, The Legislature required a staggered phasing out of the TICL layer of coverage over a six year period at a rate of $2 billion per year. During the current 2011-2012 contract year private insurers purchased $994 million of the $6 billion in available TICL coverage. For the upcoming 2012-2013 contract year there will be $4 billion dollars in TICL coverage available for purchase.
- *Temporary Emergency Additional Coverage Options ("TEACO")* – Allowed residential property insurers to purchase additional coverage below each insurer's market share of the

[1] Section 215.555(2)(a), F.S. Additional amounts needed to pay debt service on revenue bonds and provide required debt service coverage may also be included in the actuarially indicated premium that an insurer pays.

FHCF retention during the 2007, 2008, and 2009 hurricane seasons. The TEACO options allowed an insurer to select its share of a retention level of $3 billion, $4 billion, or $5 billion, to cover 90 percent, 75 percent, or 45 percent of its losses up to the normal retention for the mandatory FHCF coverage. The TEACO options expired after the 2009-2010 contract year.

- *FHCF Below Retention Coverage* – In 2009, the Legislature re-authorized the sale of $10 million in optional additional FHCF coverage below the fund's mandatory coverage retention to limited apportionment companies and companies that had been approved to participate in the Insurance Capital Build-Up Incentive Program. The premium for the coverage is 50 percent of the coverage amount and insurers that purchase the coverage may access it before the mandatory coverage. This coverage option will expire on May 31, 2012, and thus not be available for the 2012-2013 contract year.

FHCF Bonding and Assessment Authority

Reimbursements to insurers for losses above the current cash balance of the fund are financed through bonding. When the cash balance of the FHCF is insufficient to cover losses, the law authorizes the FHCF to issue revenue bonds, which are funded by emergency assessments on property and casualty policyholders. If a large storm triggered the full capacity of the FHCF, bond issues totaling over $11 billion could be necessary for the fund to meet its maximum obligations.

Bonds would be funded by an emergency assessment of up to six percent of premium on most lines of property and casualty insurance for funding losses from a single year, and up to 10 percent of premium for funding losses from multiple years. All lines of property and casualty insurance, including surplus lines insurance, are subject to emergency assessment except for workers' compensation and medical malpractice liability insurance. The FHCF's broad-based assessment authority is one of the reasons the FHCF was able to obtain an exemption from federal taxation from the Internal Revenue Service as an integral part of state government.

FHCF Financial Obligations and Claims Paying Resources

The FHCF's coverage obligations for the 2011-2012 hurricane season totaled $18.389 billion dollars for a single storm, which consisted of:

- $17 billion of mandatory coverage;
- $994 million dollars in optional TICL[2] coverage; and
- $395 million in optional coverage for insurers that qualify as limited apportionment companies[3] or were approved to participate in the Insurance Capital Buildup Program.

[2] Legislation enacted in 2007 (ch. 2007-1, L.O.F.), increased the coverage limits of the FHCF for the 2007, 2008 and 2009 hurricane seasons by adding two additional layers of optional coverage that property insurers may buy: Temporary Increase in Coverage Limit Options ("TICL"), that allows residential property insurers to purchase additional reinsurance above the FHCF mandatory coverage and Temporary Emergency Additional Coverage Options ("TEACO"), that allows such insurers to purchase additional coverage below each insurer's market share of the FHCF retention. In 2009, the Legislature reduced the FHCF's exposure and payout by phasing out the TICL layer of coverage over a 6 year period at a rate of $2 billion a year until the TICL coverage is completely phased out in the 2014-2015 contract year (ch. 2009-87, L.O.F.).

[3] Section 627.351(6)(c)13., F.S.

The FHCF cash balance for the 2011-2012 hurricane season was $7.17 billion. Obligations exceeding the cash balance of the FHCF would require bonding of up to $11.219 billion. The assessment base for the FHCF is approximately $33.603 billion for premiums written at year end 2010.

FHCF Claims-Paying Capacity Estimates

In May and October of each contract year, the SBA is required to publish in the Florida Administrative Weekly a statement of the fund's estimated borrowing capacity, the fund's estimated claims-paying capacity, and the projected balance of the fund as of December 31. After the end of each calendar year, the board is required to notify insurers of the estimated borrowing capacity, estimated claims-paying capacity, and the balance of the fund as of December 31 to provide insurers with data necessary to assist them in determining their retention and projected payout from the fund for loss reimbursement purposes.

The October 18, 2011, Claims Paying Capacity Estimate (estimate) is the most recent such report to be issued. The report, prepared by Raymond James, evaluated the FHCF's bonding capacity by analyzing the current financial markets and obtaining written feedback from a senior managing underwriter from four large financial services firms (Barclay's, Citi, Goldman Sachs, and J.P. Morgan). The October 18, 2011, estimate noted that the FHCF's total obligations of $18.389 billion exceed the projected year-end fund balance of $7.170 billion, thus the FHCF may need to raise up to $11.219 billion through bonding in order to fund its liabilities.

The senior managers from Citi, Goldman Sachs, J.P. Morgan, and Barclays estimated the bonding capacity of the FHCF to be from $5 billion to $11 billion over the 12 months following a storm, leading to an average estimate of $8 billion in bonding capacity. However, the estimate anticipates that the FHCF will have an additional bonding capacity of $6 billion from 12 to 24 months after the hurricane, which would enable the FHCF to pay its entire obligations and leave an estimated $2.78 billion in bonding capacity to fund losses in a subsequent hurricane season. The first Claims Paying Capacity Estimate for the 2012-2013 hurricane season is due to be published in May 2012.

The estimate expressed concerns about the ability of the FHCF to successfully issue $11 billion in bonding over the first 12 months after a hurricane. The report notes that the largest single issue in the municipal market since 2009 was a $6.543 billion dollar tax-exempt bond issue by the State of California. The report also found that municipal bond issuance for 2011 declined over 35 percent from the prior year and opined weak economic conditions and investor reluctance to invest capital in such issues as likely major factors in this reduction. However, the Estimate also noted that California was able to issue over $23 billion in municipal debt in 2009 and $10.544 billion in 2010, perhaps indicating that the FHCF could issue sufficient debt to pay its maximum obligation.

III. Effect of Proposed Changes:

Section 1 amends s. 215.555, F.S., primarily by reducing the FHCF coverage limits, reducing the maximum reimbursement percentage, increasing the retention, increasing the cash build-up

factor, and eliminating the TICL coverage after the 2012-2013 contract year. The major proposed changes are summarized as follows:

Increases the FHCF Retention

The bill increases the FHCF industry retention to $8 billion for the 2013-2014 contract year. The bill maintains current law which authorizes the retention to be adjusted upward based upon the growth in the reported exposure of the fund.

Decreases the Maximum Reimbursement Percentage for FHCF Coverage

Under current law, insurers have the option to purchase FHCF reinsurance that provides reimbursement of 90 percent, 75 percent, or 45 percent of the insurer's losses within the mandatory FHCF layer of coverage. The bill reduces the maximum reimbursement amount from 90 percent to the following percentages:

- For the 2013-2014 contract year, 85 percent.
- For the 2014-2015 contract year, 80 percent.
- For the 2015-2016 contract year and all subsequent contract years, 75 percent.

The bill requires insurers that elect the maximum coverage level available must purchase the following year's renewal of the reimbursement contract at the highest available coverage level if revenue bonds after a covered event (hurricane) are outstanding.

Decreases the FHCF Mandatory Coverage Limit

The bill phases in annual decreases of the FHCF mandatory coverage limit beginning in the 2012-2013 contract year as follows:

- For the 2012-2013 contract year, $17 billion.
- For the 2013-2014 contract year, $15.5 billion.
- For the 2014-2015 contract year, $14 billion.
- For the 2015-2016 contract year, $12 billion.

The bill requires the FHCF coverage limit to be increased after the 2015-2016 contract year if certain events occur. If the State Board of Administration determines that the FHCF has an estimated claims-paying capacity sufficient to provide $12 billion of capacity for the current contract year and an additional $12 billion for subsequent contract years, then the FHCF coverage limit must be increased by one-half of the fund's estimated claims paying capacity in excess of $24 billion. However, the increase may not increase by an amount greater than the dollar growth of the FHCF's balance as of December 31 over the prior calendar year.

Increases the FHCF Cash Build-Up Factor

Current law requires the FHCF to charge insurers a "cash build-up factor" that is added to the actuarially indicated reimbursement premium. The application of the cash build-up factor began with the 2009-2010 contract year at five percent and increases in five percent increments in each subsequent contract year. During the current 2011-2012 contract year a 15 percent factor was

applied, and will continue to increase to 20 percent for the 2012-2013 contract year and 25 percent for the 2013-2014 contract year. The bill creates additional increases to the cash build-up factor as follows:

- For the 2014-2015 contract year, 30 percent.
- For the 2015-2016 contract year, 35 percent.
- For the 2016-2017 contract year, 40 percent.
- For the 2017-2018 contract year, 45 percent.
- For the 2018-2019 contract year and subsequent contract years, 50 percent.

Reduces the FHCF Emergency Assessment Authority

Under current law, when the FHCF has insufficient revenue to fund its obligations, costs, and expenses the SBA may issue revenue bonds for the benefit of the FHCF. When such revenue bonds are issued, the SBA must direct the Office of Insurance Regulation (OIR) to levy emergency assessments on all property and casualty lines of business, including surplus lines insurers, but not including workers' compensation or medical malpractice premiums. The assessments may not exceed six percent of premium for losses attributable to a particular contract year, and the aggregate assessments on a policy may not exceed ten percent of premium.

The bill maintains the current assessment authority for losses attributable to contract years prior to the 2015-2016 contract year. However, beginning in the 2015-2016 contract year the bill reduces the FHCF assessment authority to five percent of premium for obligations attributable to a particular contract year, and reduces the maximum aggregate assessment to eight percent of premium. The reduction in assessment authority beginning in the 2015-2016 contract year corresponds with the reduction of the FHCF mandatory coverage limit to 12 billion dollars during that contract year.

Eliminates the Optional TICL Coverage

The bill repeals the TICL coverage after the 2012-2013 contract year. Current law requires the FHCF to make available $4 billion dollars in TICL coverage above the mandatory layer of FHCF coverage for the 2012-2013 contract year, $2 billion in TICL coverage for the 2013-2014 contract year, and eliminates the coverage thereafter. The bill eliminates the TICL coverage for the 2013-2014 contract year, but otherwise does not change existing law.

Other Provisions

The bill renames the "Florida Hurricane Catastrophe Fund Finance Corporation" the "State Board of Administration Finance Corporation." The name change is proposed to eliminate confusion among private sector investors who may not realize that the bonds issued by the SBA to eliminate FHCF shortfalls are revenue bonds and not other products such as catastrophe bonds. The change may also enable the state to procure such bonds at more advantageous terms by changing the finance corporation's name to eliminate terms with negative connotations such as "hurricane" and "catastrophe."

Repeals language authorizing the FHCF to sell Temporary Emergency Options for Additional Coverage (TEACO) reinsurance. The language is unnecessary because the authorization to offer TEACO coverage ended with the 2009-2010 contract year.

Section 2 contains a technical conforming amendment to s. 627.0629(5), F.S.

Section 3 the bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Representatives from the FHCF state that the current mandatory layer of coverage ($17 billion) plus the optional coverages offered under current law ($4 billion in TICL coverage for 2012-2013) place potential liabilities on the fund that it may not be able to meet due to the current status of the financial markets. These representatives note that if a major hurricane had fallen upon Florida during the 2011 hurricane season, the Fund would have needed to rely upon an $11.3 billion bond issue, which would have been a record for municipal debt issuance if issued in a short period of time. Though additional bonding capacity may be available if the bond issues are spread out over a longer period of time (two years instead of one year), the FHCF notes that some private market insurers will likely require prompt payment of FHCF funds to maintain their ability to pay claims timely and avoid insolvency in the event of a major storm.

Representatives from the FHCF assert that residential policyholders save approximately 25 percent to 30 percent on their annual residential property insurance premiums due to savings attributable to reinsurance sold by the Fund. These savings total approximately $2 billion per year. These representatives concede that reducing the Fund's capacity will cause an increase in policyholder premiums because insurers will replace FHCF reinsurance coverage with private market reinsurance at higher costs. The estimated

market-wide premium impact is expected result in an average market-wide cumulative rate increase of approximately ten percent from the 2012 hurricane season to the 2015 hurricane season. However, representatives from the Fund assert that such premium increases are probably unavoidable because the status of the worldwide financial markets has created a situation where the FHCF may not be able to meet its current obligations. Accordingly, many insurers will seek to procure private market reinsurance to cover amounts that the FHCF estimates cannot be paid in the first 12 months after a storm. This ultimately will harm either the availability or affordability of private market property insurance in the state.

Representatives of some business groups have voiced support for reducing the obligations of the FHCF to $12 billion over time and increasing the retention layer to $8 billion because these changes will reduce the likelihood that the FHCF will be required to levy assessments on all property and casualty lines of business (except workers' compensation and medical malpractice liability insurance). Many of these business groups view these assessments as a "tax" on other lines of insurance (such as motor vehicle insurance) that subsidizes the residential property insurance market.

Representatives of some private market residential property insurers have voiced concerns over the provisions of the bill that reduce the mandatory layer of the Fund while increasing the industry retention. The reductions in the size of the fund would require private market insurers to replace the FHCF reinsurance with more expensive private market reinsurance. The most expensive replacement reinsurance coverage will be for coverage "below the retention" because of the greater odds that such coverage will be triggered. Some of the residential property insurers expressing concerns over the bill also assert that the rate impact of the legislation may be greater than estimated by the FHCF, particularly with regard to individual companies.

The representatives of companies concerned about the provisions of the bill assert that the increased costs associated with purchasing private market insurance may harm the ability of some companies to compete with Citizens Property Insurance Corporation (Citizens). These representatives note that Citizens premium increases are generally capped at ten percent by statute and that Citizens is not required to charge actuarially indicated rates for coverage. Accordingly, private market insurers have difficulty in competing with Citizens in the open market. Increasing the reinsurance cost to private market insurers may exacerbate this problem.

C. Government Sector Impact:

The bill reduces the assessment liability of the FHCF, which decreases the probability that the Fund will be required to issue bonds to meet its financial obligations. Supporters of the legislation also note that the FHCF is not the only insurance-related state entity granted assessment authority. Citizens and the Florida Insurance Guaranty Association (FIGA) each have statutory authority to issue bond debt to meet obligations incurred in the event a major hurricane exhausts the financial resources of each entity. Reducing the likelihood of FHCF bonding and assessments will assist Citizens and the FIGA in being

able to raise funds from bond issues because FHCF bonds will be less likely to be in competition for investors in the event of a storm.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on February 16, 2012:
Technical change.

A. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Banking and Insurance; and Senator Alexander

597-03518-12 20121372c1

A bill to be entitled

An act relating to the Florida Hurricane Catastrophe Fund; amending s. 215.555, F.S.; revising the definitions of "retention" and "corporation"; providing for calculation of an insurer's reimbursement premium and retention under the reimbursement contract; revising coverage levels available under the reimbursement contract; revising aggregate coverage limits; providing for the phase-in of changes to coverage levels and limits; revising the cash build-up factor included in reimbursement premiums; providing for phase-in; reducing maximum allowable emergency assessments; changing the name of the Florida Hurricane Catastrophe Fund Finance Corporation; repealing provisions related to temporary emergency options for additional coverage; terminating the temporary increase in coverage limits option at the end of the 2012-2013 contract year; limiting to the 2012-2013 contract year provisions relating to the TICL options addendum, TICL reimbursement premiums, and the claims-paying capacity of the fund, to conform; amending s. 627.0629, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Paragraphs (e) and (n) of subsection (2), paragraphs (b) and (c) of subsection (4), paragraph (b) of subsection (5), paragraphs (b) and (d) of subsection (6), and

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subsections (16), (17), and (18) of section 215.555, Florida Statutes, are amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

(2) DEFINITIONS.—As used in this section:

(e) "Retention" means the amount of losses below which an insurer is not entitled to reimbursement from the fund. An insurer's retention shall be calculated as follows:

1.a. The board shall calculate and report to each insurer the retention multiples for that year.

(I) For the contract year beginning June 1, 2005, the retention multiple shall be equal to $4.5 billion divided by the total estimated reimbursement premium for the contract year; for subsequent years, up to and including the 2012-2013 contract year, the retention multiple shall be equal to $4.5 billion, adjusted based upon the reported exposure for the contract year occurring 2 years before the particular contract year to reflect the percentage growth in exposure to the fund for covered policies since 2004, divided by the total estimated reimbursement premium for the contract year.

(II) For the contract year beginning June 1, 2013, the retention multiple shall be equal to $8 billion divided by the total estimated reimbursement premium for the contract year. For subsequent years, the retention multiple shall be equal to $8 billion, adjusted based upon the reported exposure for the contract year occurring 2 years before the particular contract year to reflect the percentage growth in exposure to the fund for covered policies since 2011, divided by the total reimbursement premium for the contract year.

b. For the 2012-2013 contract year, total reimbursement

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59 premium for purposes of the calculation under this subparagraph
60 shall be estimated using the assumption that all insurers have
61 selected the 90-percent coverage level.
62 c. In order to implement the phase-in of reduced coverage
63 levels as provided in paragraph (4)(b), total reimbursement
64 premium for purposes of the calculation under this subparagraph
65 shall be estimated using the following assumptions:
66 (I) For the 2013-2014 contract year, the assumption is that
67 all insurers have selected the 85-percent coverage level.
68 (II) For the 2014-2015 contract year, the assumption is
69 that all insurers have selected the 80-percent coverage level.
70 (III) For the 2015-2016 contract year and subsequent
71 contract years, the assumption is that all insurers have
72 selected the 75-percent coverage level.
73 2. The retention multiple as determined under subparagraph
74 1. shall be adjusted to reflect the coverage level elected by
75 the insurer.
76 a. For an insurer electing the maximum coverage level
77 available under paragraph (4)(b) for a particular contract year
78 ~~For insurers electing the 90-percent coverage level~~, the
79 adjusted retention multiple is 100 percent of the amount
80 determined under subparagraph 1.
81 b. In order to implement the phase-in of reduced coverage
82 levels as provided in paragraph (4)(b), for an insurer electing
83 a coverage level other than the maximum coverage level, the
84 adjusted retention multiple is as follows:
85 (I) With respect to the 2012-2013 contract year, for an
86 insurer ~~For insurers~~ electing the 75-percent coverage level, the
87 retention multiple is 90/75ths ~~120 percent~~ of the amount

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88 determined under subparagraph 1., and for an insurer ~~For~~
89 ~~insurers~~ electing the 45-percent coverage level, the adjusted
90 retention multiple is 90/45ths ~~200 percent~~ of the amount
91 determined under subparagraph 1.
92 (II) With respect to the 2013-2014 contract year, for an
93 insurer electing the 75-percent coverage level, the retention
94 multiple is 85/75ths of the amount determined under subparagraph
95 1., and for an insurer electing the 45-percent coverage level,
96 the retention multiple is 85/45ths of the amount determined
97 under subparagraph 1.
98 (III) With respect to the 2014-2015 contract year, for an
99 insurer electing the 75-percent coverage level, the retention
100 multiple is 80/75ths of the amount determined under subparagraph
101 1., and for an insurer electing the 45-percent coverage level,
102 the retention multiple is 80/45ths of the amount determined
103 under subparagraph 1.
104 (IV) With respect to the 2015-2016 contract year and
105 subsequent contract years, for an insurer electing the 75-
106 percent coverage level, the retention multiple is the amount
107 determined under subparagraph 1., and for an insurer electing
108 the 45-percent coverage level, the retention multiple is
109 75/45ths of the amount determined under subparagraph 1.
110 3. An insurer shall determine its provisional retention by
111 multiplying its provisional reimbursement premium by the
112 applicable adjusted retention multiple and shall determine its
113 actual retention by multiplying its actual reimbursement premium
114 by the applicable adjusted retention multiple.
115 4. For insurers who experience multiple covered events
116 causing loss during the contract year, beginning June 1, 2005,

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117 each insurer's full retention shall be applied to each of the
118 covered events causing the two largest losses for that insurer.
119 For each other covered event resulting in losses, the insurer's
120 retention shall be reduced to one-third of the full retention.
121 The reimbursement contract shall provide for the reimbursement
122 of losses for each covered event based on the full retention
123 with adjustments made to reflect the reduced retentions on or
124 after January 1 of the contract year provided the insurer
125 reports its losses as specified in the reimbursement contract.
126 (n) "Corporation" means the State Board of Administration
127 ~~Florida Hurricane Catastrophe Fund~~ Finance Corporation created
128 in paragraph (6)(d).
129 (4) REIMBURSEMENT CONTRACTS.—
130 (b)1.a. The contract shall contain a promise by the board
131 to reimburse the insurer for a specified percentage ~~45 percent,~~
132 ~~75 percent, or 90 percent~~ of its losses from each covered event
133 in excess of the insurer's retention, plus 5 percent of the
134 reimbursed losses to cover loss adjustment expenses.
135 b. The available coverage levels are as follows:
136 (I) For the 2012-2013 contract year, 90 percent, 75
137 percent, and 45 percent.
138 (II) For the 2013-2014 contract year, 85 percent, 75
139 percent, and 45 percent.
140 (III) For the 2014-2015 contract year, 80 percent, 75
141 percent, and 45 percent.
142 (IV) For the 2015-2016 contract year and subsequent
143 contract years, 75 percent and 45 percent.
144 2.a. The insurer must elect one of the percentage coverage
145 levels specified in this paragraph and may, upon renewal of a

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146 reimbursement contract, elect a lower percentage coverage level
147 if no revenue bonds issued under subsection (6) after a covered
148 event are outstanding, or elect a higher percentage coverage
149 level, regardless of whether or not revenue bonds are
150 outstanding. All members of an insurer group must elect the same
151 percentage coverage level. Any joint underwriting association,
152 risk apportionment plan, or other entity created under s.
153 627.351 must elect the maximum ~~90-percent~~ coverage level
154 available under subparagraph 1.
155 b. In order to implement the phase-in of reduced coverage
156 levels as provided in subparagraph 1., and notwithstanding any
157 provisions of sub-subparagraph a. to the contrary, if revenue
158 bonds issued under subsection (6) after a covered event are
159 outstanding and the insurer has elected the maximum coverage
160 level available under subparagraph 1., the insurer must, upon
161 renewal of the reimbursement contract, elect the maximum
162 coverage level available under subparagraph 1. for the renewal
163 contract year.
164 3. The contract shall provide that reimbursement amounts
165 shall not be reduced by reinsurance paid or payable to the
166 insurer from other sources.
167 4. Notwithstanding any other provision contained in this
168 section, the board shall make available to insurers that
169 purchased coverage provided by this subparagraph in 2008,
170 insurers qualifying as limited apportionment companies under s.
171 627.351(6)(c), and insurers that have been approved to
172 participate in the Insurance Capital Build-Up Incentive Program
173 pursuant to s. 215.5595 a contract or contract addendum that
174 provides an additional amount of reimbursement coverage of up to

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175 $10 million. The premium to be charged for this additional
176 reimbursement coverage shall be 50 percent of the additional
177 reimbursement coverage provided, which shall include one prepaid
178 reinstatement. The minimum retention level that an eligible
179 participating insurer must retain associated with this
180 additional coverage layer is 30 percent of the insurer's surplus
181 ~~as of December 31, 2008, for the 2009-2010 contract year; as of~~
182 ~~December 31, 2009, for the 2010-2011 contract year; and~~ as of
183 December 31, 2010, for the 2011-2012 contract year. This
184 coverage shall be in addition to all other coverage that may be
185 provided under this section. The coverage provided by the fund
186 under this subparagraph shall be in addition to the claims-
187 paying capacity as defined in subparagraph (c)1., but only with
188 respect to those insurers that select the additional coverage
189 option and meet the requirements of this subparagraph. The
190 claims-paying capacity with respect to all other participating
191 insurers and limited apportionment companies that do not select
192 the additional coverage option shall be limited to their
193 reimbursement premium's proportionate share of the actual
194 claims-paying capacity otherwise defined in subparagraph (c)1.
195 and as provided for under the terms of the reimbursement
196 contract. The optional coverage retention as specified shall be
197 accessed before the mandatory coverage under the reimbursement
198 contract, but once the limit of coverage selected under this
199 option is exhausted, the insurer's retention under the mandatory
200 coverage will apply. This coverage will apply and be paid
201 concurrently with mandatory coverage. This subparagraph expires
202 on May 31, 2012.
203 (c)1. The contract shall also provide that the obligation

204 of the board with respect to all contracts covering a particular
205 contract year shall not exceed the actual claims-paying capacity
206 of the fund up to the limit specified in this subparagraph.
207 a. For the 2012-2013 contract year, the limit is $17
208 billion.
209 b. For the 2013-2014 contract year, the limit is $15.5
210 billion.
211 c. For the 2014-2015 contract year, the limit is $14
212 billion.
213 d. For the 2015-2016 contract year and subsequent contract
214 years, the limit is $12 billion.
215 e. For contract years after the 2015-2016 contract year, if
216 ~~a limit of $17 billion for that contract year, unless~~ the board
217 determines that there is sufficient estimated claims-paying
218 capacity to provide $12 ~~$17~~ billion of capacity for the current
219 contract year and an additional $12 ~~$17~~ billion of capacity for
220 subsequent contract years~~. If the board makes such a~~
221 ~~determination~~, the estimated claims-paying capacity for the
222 particular contract year shall be determined by adding to the
223 $12 ~~$17~~ billion limit one-half of the fund's estimated claims-
224 paying capacity in excess of $24 ~~$34~~ billion. However, the
225 dollar growth in the limit may not increase in any year by an
226 amount greater than the dollar growth of the balance of the fund
227 as of December 31~~, less any premiums or interest attributable to~~
228 ~~optional coverage~~, as defined by rule, which occurred over the
229 prior calendar year.
230 2. In May and October of the contract year, the board shall
231 publish in the Florida Administrative Weekly a statement of the
232 fund's estimated borrowing capacity, the fund's estimated

233 claims-paying capacity, and the projected balance of the fund as
234 of December 31. After the end of each calendar year, the board
235 shall notify insurers of the estimated borrowing capacity,
236 estimated claims-paying capacity, and the balance of the fund as
237 of December 31 to provide insurers with data necessary to assist
238 them in determining their retention and projected payout from
239 the fund for loss reimbursement purposes. In conjunction with
240 the development of the premium formula, as provided for in
241 subsection (5), the board shall publish factors or multiples
242 that assist insurers in determining their retention and
243 projected payout for the next contract year. For all regulatory
244 and reinsurance purposes, an insurer may calculate its projected
245 payout from the fund as its share of the total fund premium for
246 the current contract year multiplied by the sum of the projected
247 balance of the fund as of December 31 and the estimated
248 borrowing capacity for that contract year as reported under this
249 subparagraph.
250 (5) REIMBURSEMENT PREMIUMS.—
251 (b)1. The State Board of Administration shall select an
252 independent consultant to develop a formula for determining the
253 actuarially indicated premium to be paid to the fund. The
254 formula shall specify, for each zip code or other limited
255 geographical area, the amount of premium to be paid by an
256 insurer for each $1,000 of insured value under covered policies
257 in that zip code or other area. In establishing premiums, the
258 board shall consider the coverage elected under paragraph (4)(b)
259 and any factors that tend to enhance the actuarial
260 sophistication of ratemaking for the fund, including
261 deductibles, type of construction, type of coverage provided,

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262 relative concentration of risks, and other such factors deemed
263 by the board to be appropriate.
264 2. The formula must provide for a cash build-up factor as
265 specified in this subparagraph. ~~For the 2009-2010 contract year,~~
266 ~~the factor is 5 percent. For the 2010-2011 contract year, the~~
267 ~~factor is 10 percent.~~
268 a. For the 2011-2012 contract year, the factor is 15
269 percent.
270 b. For the 2012-2013 contract year, the factor is 20
271 percent.
272 c. For the 2013-2014 contract year ~~and thereafter~~, the
273 factor is 25 percent.
274 d. For the 2014-2015 contract year, the factor is 30
275 percent.
276 e. For the 2015-2016 contract year, the factor is 35
277 percent.
278 f. For the 2016-2017 contract year, the factor is 40
279 percent.
280 g. For the 2017-2018 contract year, the factor is 45
281 percent.
282 h. For the 2018-2019 contract year and subsequent contract
283 years, the factor is 50 percent.
284 3. The formula may provide for a procedure to determine the
285 premiums to be paid by new insurers that begin writing covered
286 policies after the beginning of a contract year, taking into
287 consideration when the insurer starts writing covered policies,
288 the potential exposure of the insurer, the potential exposure of
289 the fund, the administrative costs to the insurer and to the
290 fund, and any other factors deemed appropriate by the board. The

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291 formula must be approved by unanimous vote of the board. The
292 board may, at any time, revise the formula pursuant to the
293 procedure provided in this paragraph.
294 (6) REVENUE BONDS.—
295 (b) *Emergency assessments*—
296 1. If the board determines that the amount of revenue
297 produced under subsection (5) is insufficient to fund the
298 obligations, costs, and expenses of the fund and the
299 corporation, including repayment of revenue bonds and that
300 portion of the debt service coverage not met by reimbursement
301 premiums, the board shall direct the Office of Insurance
302 Regulation to levy, by order, an emergency assessment on direct
303 premiums for all property and casualty lines of business in this
304 state, including property and casualty business of surplus lines
305 insurers regulated under part VIII of chapter 626, but not
306 including any workers' compensation premiums or medical
307 malpractice premiums. As used in this subsection, the term
308 "property and casualty business" includes all lines of business
309 identified on Form 2, Exhibit of Premiums and Losses, in the
310 annual statement required of authorized insurers by s. 624.424
311 and any rule adopted under this section, except for those lines
312 identified as accident and health insurance and except for
313 policies written under the National Flood Insurance Program. The
314 assessment shall be specified as a percentage of direct written
315 premium and is subject to annual adjustments by the board in
316 order to meet debt obligations. The same percentage shall apply
317 to all policies in lines of business subject to the assessment
318 issued or renewed during the 12-month period beginning on the
319 effective date of the assessment.

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320 2.a. A premium is not subject to an annual assessment under
321 this paragraph in excess of 6 percent of premium with respect to
322 obligations arising out of losses attributable to any one
323 contract year prior to the 2015-2016 contract year, and a
324 premium is not subject to an aggregate annual assessment under
325 this paragraph in excess of 10 percent of premium if all of the
326 losses that generated the obligations were attributable to
327 contract years prior to the 2015-2016 contract year. An annual
328 assessment under this paragraph shall continue as long as the
329 revenue bonds issued with respect to which the assessment was
330 imposed are outstanding, including any bonds the proceeds of
331 which were used to refund the revenue bonds, unless adequate
332 provision has been made for the payment of the bonds under the
333 documents authorizing issuance of the bonds.
334 b. Except as provided in sub-subparagraph a., a premium is
335 not subject to an annual assessment under this paragraph in
336 excess of 5 percent of premium with respect to obligations
337 arising out of losses attributable to any one contract year, and
338 a premium is not subject to an aggregate annual assessment under
339 this paragraph in excess of 8 percent of premium. An annual
340 assessment under this paragraph shall continue as long as the
341 revenue bonds issued with respect to which the assessment was
342 imposed are outstanding, including any bonds the proceeds of
343 which were used to refund the revenue bonds, unless adequate
344 provision has been made for the payment of the bonds under the
345 documents authorizing issuance of the bonds.
346 3. Emergency assessments shall be collected from
347 policyholders. Emergency assessments shall be remitted by
348 insurers as a percentage of direct written premium for the

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349 preceding calendar quarter as specified in the order from the
350 Office of Insurance Regulation. The office shall verify the
351 accurate and timely collection and remittance of emergency
352 assessments and shall report the information to the board in a
353 form and at a time specified by the board. Each insurer
354 collecting assessments shall provide the information with
355 respect to premiums and collections as may be required by the
356 office to enable the office to monitor and verify compliance
357 with this paragraph.
358 4. With respect to assessments of surplus lines premiums,
359 each surplus lines agent shall collect the assessment at the
360 same time as the agent collects the surplus lines tax required
361 by s. 626.932, and the surplus lines agent shall remit the
362 assessment to the Florida Surplus Lines Service Office created
363 by s. 626.921 at the same time as the agent remits the surplus
364 lines tax to the Florida Surplus Lines Service Office. The
365 emergency assessment on each insured procuring coverage and
366 filing under s. 626.938 shall be remitted by the insured to the
367 Florida Surplus Lines Service Office at the time the insured
368 pays the surplus lines tax to the Florida Surplus Lines Service
369 Office. The Florida Surplus Lines Service Office shall remit the
370 collected assessments to the fund or corporation as provided in
371 the order levied by the Office of Insurance Regulation. The
372 Florida Surplus Lines Service Office shall verify the proper
373 application of such emergency assessments and shall assist the
374 board in ensuring the accurate and timely collection and
375 remittance of assessments as required by the board. The Florida
376 Surplus Lines Service Office shall annually calculate the
377 aggregate written premium on property and casualty business,

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378 other than workers' compensation and medical malpractice,
379 procured through surplus lines agents and insureds procuring
380 coverage and filing under s. 626.938 and shall report the
381 information to the board in a form and at a time specified by
382 the board.
383 5.a. Any assessment authority not used for a particular
384 contract year may be used for a subsequent contract year. If,
385 for a subsequent contract year, the board determines that the
386 amount of revenue produced under subsection (5) is insufficient
387 to fund the obligations, costs, and expenses of the fund and the
388 corporation, including repayment of revenue bonds and that
389 portion of the debt service coverage not met by reimbursement
390 premiums, the board shall direct the Office of Insurance
391 Regulation to levy an emergency assessment up to an amount not
392 exceeding the amount of unused assessment authority from a
393 previous contract year or years, plus an additional 4 percent,
394 if ~~provided that~~ the assessments in the aggregate do not exceed
395 the limits specified in subparagraph 2. and all of the losses
396 that generated the obligations were attributable to contract
397 years prior to the 2015-2016 contract year.
398 b. Except as provided in sub-subparagraph a., any
399 assessment authority not used for a particular contract year may
400 be used for a subsequent contract year. If, for a subsequent
401 contract year, the board determines that the amount of revenue
402 produced under subsection (5) is insufficient to fund the
403 obligations, costs, and expenses of the fund and the
404 corporation, including repayment of revenue bonds and that
405 portion of the debt service coverage not met by reimbursement
406 premiums, the board shall direct the Office of Insurance

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407 Regulation to levy an emergency assessment up to an amount not
408 exceeding the amount of unused assessment authority from a
409 previous contract year or years, plus an additional 3 percent,
410 if the assessments in the aggregate do not exceed the limits
411 specified in subparagraph 2.
412 6. The assessments otherwise payable to the corporation
413 under this paragraph shall be paid to the fund unless and until
414 the Office of Insurance Regulation and the Florida Surplus Lines
415 Service Office have received from the corporation and the fund a
416 notice, which shall be conclusive and upon which they may rely
417 without further inquiry, that the corporation has issued bonds
418 and the fund has no agreements in effect with local governments
419 under paragraph (c). On or after the date of the notice and
420 until the date the corporation has no bonds outstanding, the
421 fund shall have no right, title, or interest in or to the
422 assessments, except as provided in the fund's agreement with the
423 corporation.
424 7. Emergency assessments are not premium and are not
425 subject to the premium tax, to the surplus lines tax, to any
426 fees, or to any commissions. An insurer is liable for all
427 assessments that it collects and must treat the failure of an
428 insured to pay an assessment as a failure to pay the premium. An
429 insurer is not liable for uncollectible assessments.
430 8. When an insurer is required to return an unearned
431 premium, it shall also return any collected assessment
432 attributable to the unearned premium. A credit adjustment to the
433 collected assessment may be made by the insurer with regard to
434 future remittances that are payable to the fund or corporation,
435 but the insurer is not entitled to a refund.

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436 9. When a surplus lines insured or an insured who has
437 procured coverage and filed under s. 626.938 is entitled to the
438 return of an unearned premium, the Florida Surplus Lines Service
439 Office shall provide a credit or refund to the agent or such
440 insured for the collected assessment attributable to the
441 unearned premium prior to remitting the emergency assessment
442 collected to the fund or corporation.
443 10. The exemption of medical malpractice insurance premiums
444 from emergency assessments under this paragraph is repealed May
445 31, 2013, and medical malpractice insurance premiums shall be
446 subject to emergency assessments attributable to loss events
447 occurring in the contract years commencing on June 1, 2013.
448 (d) *State Board of Administration* ~~*Florida Hurricane*~~
449 ~~*Catastrophe Fund*~~ *Finance Corporation.*—
450 1. In addition to the findings and declarations in
451 subsection (1), the Legislature also finds and declares that:
452 a. The public benefits corporation created under this
453 paragraph will provide a mechanism necessary for the cost-
454 effective and efficient issuance of bonds. This mechanism will
455 eliminate unnecessary costs in the bond issuance process,
456 thereby increasing the amounts available to pay reimbursement
457 for losses to property sustained as a result of hurricane
458 damage.
459 b. The purpose of such bonds is to fund reimbursements
460 through the Florida Hurricane Catastrophe Fund to pay for the
461 costs of construction, reconstruction, repair, restoration, and
462 other costs associated with damage to properties of
463 policyholders of covered policies due to the occurrence of a
464 hurricane.

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465 c. The efficacy of the financing mechanism will be enhanced
466 by the corporation's ownership of the assessments, by the
467 insulation of the assessments from possible bankruptcy
468 proceedings, and by covenants of the state with the
469 corporation's bondholders.
470 2.a. There is created a public benefits corporation, which
471 is an instrumentality of the state, to be known as the State
472 Board of Administration ~~Florida Hurricane Catastrophe Fund~~
473 Finance Corporation.
474 b. The corporation shall operate under a five-member board
475 of directors consisting of the Governor or a designee, the Chief
476 Financial Officer or a designee, the Attorney General or a
477 designee, the director of the Division of Bond Finance of the
478 State Board of Administration, and the Chief Operating Officer
479 ~~senior employee of the State Board of Administration responsible~~
480 ~~for operations~~ of the Florida Hurricane Catastrophe Fund.
481 c. The corporation has all of the powers of corporations
482 under chapter 607 and under chapter 617, subject only to the
483 provisions of this subsection.
484 d. The corporation may issue bonds and engage in such other
485 financial transactions as are necessary to provide sufficient
486 funds to achieve the purposes of this section.
487 e. The corporation may invest in any of the investments
488 authorized under s. 215.47.
489 f. There shall be no liability on the part of, and no cause
490 of action shall arise against, any board members or employees of
491 the corporation for any actions taken by them in the performance
492 of their duties under this paragraph.
493 3.a. In actions under chapter 75 to validate any bonds

494 issued by the corporation, the notice required by s. 75.06 shall
495 be published only in Leon County and in two newspapers of
496 general circulation in the state, and the complaint and order of
497 the court shall be served only on the State Attorney of the
498 Second Judicial Circuit.
499 b. The state hereby covenants with holders of bonds of the
500 corporation that the state will not repeal or abrogate the power
501 of the board to direct the Office of Insurance Regulation to
502 levy the assessments and to collect the proceeds of the revenues
503 pledged to the payment of such bonds as long as any such bonds
504 remain outstanding unless adequate provision has been made for
505 the payment of such bonds pursuant to the documents authorizing
506 the issuance of such bonds.
507 4. The bonds of the corporation are not a debt of the state
508 or of any political subdivision, and neither the state nor any
509 political subdivision is liable on such bonds. The corporation
510 does not have the power to pledge the credit, the revenues, or
511 the taxing power of the state or of any political subdivision.
512 The credit, revenues, or taxing power of the state or of any
513 political subdivision shall not be deemed to be pledged to the
514 payment of any bonds of the corporation.
515 5.a. The property, revenues, and other assets of the
516 corporation; the transactions and operations of the corporation
517 and the income from such transactions and operations; and all
518 bonds issued under this paragraph and interest on such bonds are
519 exempt from taxation by the state and any political subdivision,
520 including the intangibles tax under chapter 199 and the income
521 tax under chapter 220. This exemption does not apply to any tax
522 imposed by chapter 220 on interest, income, or profits on debt

523 obligations owned by corporations other than the State Board of
524 Administration ~~Florida Hurricane Catastrophe Fund~~ Finance
525 Corporation.
526 b. All bonds of the corporation shall be and constitute
527 legal investments without limitation for all public bodies of
528 this state; for all banks, trust companies, savings banks,
529 savings associations, savings and loan associations, and
530 investment companies; for all administrators, executors,
531 trustees, and other fiduciaries; for all insurance companies and
532 associations and other persons carrying on an insurance
533 business; and for all other persons who are now or may hereafter
534 be authorized to invest in bonds or other obligations of the
535 state and shall be and constitute eligible securities to be
536 deposited as collateral for the security of any state, county,
537 municipal, or other public funds. This sub-subparagraph shall be
538 considered as additional and supplemental authority and shall
539 not be limited without specific reference to this sub-
540 subparagraph.
541 6. The corporation and its corporate existence shall
542 continue until terminated by law; however, no such law shall
543 take effect as long as the corporation has bonds outstanding
544 unless adequate provision has been made for the payment of such
545 bonds pursuant to the documents authorizing the issuance of such
546 bonds. Upon termination of the existence of the corporation, all
547 of its rights and properties in excess of its obligations shall
548 pass to and be vested in the state.
549 7. The State Board of Administration Finance Corporation is
550 for all purposes the successor to the Florida Hurricane
551 Catastrophe Fund Finance Corporation.

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552 ~~(16) TEMPORARY EMERGENCY OPTIONS FOR ADDITIONAL COVERAGE.~~
553 ~~(a) *Findings and intent.*~~
554 ~~1. The Legislature finds that:~~
555 ~~a. Because of temporary disruptions in the market for~~
556 ~~catastrophic reinsurance, many property insurers were unable to~~
557 ~~procure reinsurance for the 2006 hurricane season with an~~
558 ~~attachment point below the insurers' respective Florida~~
559 ~~Hurricane Catastrophe Fund attachment points, were unable to~~
560 ~~procure sufficient amounts of such reinsurance, or were able to~~
561 ~~procure such reinsurance only by incurring substantially higher~~
562 ~~costs than in prior years.~~
563 ~~b. The reinsurance market problems were responsible, at~~
564 ~~least in part, for substantial premium increases to many~~
565 ~~consumers and increases in the number of policies issued by the~~
566 ~~Citizens Property Insurance Corporation.~~
567 ~~c. It is likely that the reinsurance market disruptions~~
568 ~~will not significantly abate prior to the 2007 hurricane season.~~
569 ~~2. It is the intent of the Legislature to create a~~
570 ~~temporary emergency program, applicable to the 2007, 2008, and~~
571 ~~2009 hurricane seasons, to address these market disruptions and~~
572 ~~enable insurers, at their option, to procure additional coverage~~
573 ~~from the Florida Hurricane Catastrophe Fund.~~
574 ~~(b) *Applicability of other provisions of this section.*~~ All
575 ~~provisions of this section and the rules adopted under this~~
576 ~~section apply to the program created by this subsection unless~~
577 ~~specifically superseded by this subsection.~~
578 ~~(c) *Optional coverage.*~~ For the contract year commencing
579 ~~June 1, 2007, and ending May 31, 2008, the contract year~~
580 ~~commencing June 1, 2008, and ending May 31, 2009, and the~~

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581 ~~contract year commencing June 1, 2009, and ending May 31, 2010,~~
582 ~~the board shall offer for each of such years the optional~~
583 ~~coverage as provided in this subsection.~~
584 ~~(d) *Additional definitions.*—As used in this subsection, the~~
585 ~~term:~~
586 ~~1. "TEACO options" means the temporary emergency additional~~
587 ~~coverage options created under this subsection.~~
588 ~~2. "TEACO insurer" means an insurer that has opted to~~
589 ~~obtain coverage under the TEACO options in addition to the~~
590 ~~coverage provided to the insurer under its reimbursement~~
591 ~~contract.~~
592 ~~3. "TEACO reimbursement premium" means the premium charged~~
593 ~~by the fund for coverage provided under the TEACO options.~~
594 ~~4. "TEACO retention" means the amount of losses below which~~
595 ~~a TEACO insurer is not entitled to reimbursement from the fund~~
596 ~~under the TEACO option selected. A TEACO insurer's retention~~
597 ~~options shall be calculated as follows:~~
598 ~~a. The board shall calculate and report to each TEACO~~
599 ~~insurer the TEACO retention multiples. There shall be three~~
600 ~~TEACO retention multiples for defining coverage. Each multiple~~
601 ~~shall be calculated by dividing $3 billion, $4 billion, or $5~~
602 ~~billion by the total estimated mandatory FHCF reimbursement~~
603 ~~premium assuming all insurers selected the 90-percent coverage~~
604 ~~level.~~
605 ~~b. The TEACO retention multiples as determined under sub-~~
606 ~~subparagraph a. shall be adjusted to reflect the coverage level~~
607 ~~elected by the insurer. For insurers electing the 90-percent~~
608 ~~coverage level, the adjusted retention multiple is 100 percent~~
609 ~~of the amount determined under sub-subparagraph a. For insurers~~

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610 ~~electing the 75-percent coverage level, the retention multiple~~
611 ~~is 120 percent of the amount determined under sub-subparagraph~~
612 ~~a. For insurers electing the 45-percent coverage level, the~~
613 ~~adjusted retention multiple is 200 percent of the amount~~
614 ~~determined under sub-subparagraph a.~~
615 ~~c. An insurer shall determine its provisional TEACO~~
616 ~~retention by multiplying its estimated mandatory FHCF~~
617 ~~reimbursement premium by the applicable adjusted TEACO retention~~
618 ~~multiple and shall determine its actual TEACO retention by~~
619 ~~multiplying its actual mandatory FHCF reimbursement premium by~~
620 ~~the applicable adjusted TEACO retention multiple.~~
621 ~~d. For TEACO insurers who experience multiple covered~~
622 ~~events causing loss during the contract year, the insurer's full~~
623 ~~TEACO retention shall be applied to each of the covered events~~
624 ~~causing the two largest losses for that insurer. For other~~
625 ~~covered events resulting in losses, the TEACO option does not~~
626 ~~apply and the insurer's retention shall be one-third of the full~~
627 ~~retention as calculated under paragraph (2)(c).~~
628 ~~5. "TEACO addendum" means an addendum to the reimbursement~~
629 ~~contract reflecting the obligations of the fund and TEACO~~
630 ~~insurers under the program created by this subsection.~~
631 ~~6. "FHCF" means the Florida Hurricane Catastrophe Fund.~~
632 ~~(e) *TEACO addendum.*—~~
633 ~~1. The TEACO addendum shall provide for reimbursement of~~
634 ~~TEACO insurers for covered events occurring during the contract~~
635 ~~year, in exchange for the TEACO reimbursement premium paid into~~
636 ~~the fund under paragraph (f). Any insurer writing covered~~
637 ~~policies has the option of choosing to accept the TEACO addendum~~
638 ~~for any of the 3 contract years that the coverage is offered.~~

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639 ~~2. The TEACO addendum shall contain a promise by the board~~
640 ~~to reimburse the TEACO insurer for 45 percent, 75 percent, or 90~~
641 ~~percent of its losses from each covered event in excess of the~~
642 ~~insurer's TEACO retention, plus 5 percent of the reimbursed~~
643 ~~losses to cover loss adjustment expenses. The percentage shall~~
644 ~~be the same as the coverage level selected by the insurer under~~
645 ~~paragraph (4)(b).~~
646 ~~3. The TEACO addendum shall provide that reimbursement~~
647 ~~amounts shall not be reduced by reinsurance paid or payable to~~
648 ~~the insurer from other sources.~~
649 ~~4. The TEACO addendum shall also provide that the~~
650 ~~obligation of the board with respect to all TEACO addenda shall~~
651 ~~not exceed an amount equal to two times the difference between~~
652 ~~the industry retention level calculated under paragraph (2)(c)~~
653 ~~and the $3 billion, $4 billion, or $5 billion industry TEACO~~
654 ~~retention level options actually selected, but in no event may~~
655 ~~the board's obligation exceed the actual claims-paying capacity~~
656 ~~of the fund plus the additional capacity created in paragraph~~
657 ~~(g). If the actual claims-paying capacity and the additional~~
658 ~~capacity created under paragraph (g) fall short of the board's~~
659 ~~obligations under the reimbursement contract, each insurer's~~
660 ~~share of the fund's capacity shall be prorated based on the~~
661 ~~premium an insurer pays for its mandatory reimbursement coverage~~
662 ~~and the premium paid for its optional TEACO coverage as each~~
663 ~~such premium bears to the total premiums paid to the fund times~~
664 ~~the available capacity.~~
665 ~~5. The priorities, schedule, and method of reimbursements~~
666 ~~under the TEACO addendum shall be the same as provided under~~
667 ~~subsection (4).~~

668 ~~6. A TEACO insurer's maximum reimbursement for a single~~
669 ~~event shall be equal to the product of multiplying its mandatory~~
670 ~~FHCF premium by the difference between its FHCF retention~~
671 ~~multiple and its TEACO retention multiple under the TEACO option~~
672 ~~selected and by the coverage selected under paragraph (4)(b),~~
673 ~~plus an additional 5 percent for loss adjustment expenses. A~~
674 ~~TEACO insurer's maximum reimbursement under the TEACO option~~
675 ~~selected for a TEACO insurer's two largest events shall be twice~~
676 ~~its maximum reimbursement for a single event.~~
677 ~~(f) *TEACO reimbursement premiums.*~~
678 ~~1. Each TEACO insurer shall pay to the fund, in the manner~~
679 ~~and at the time provided in the reimbursement contract for~~
680 ~~payment of reimbursement premiums, a TEACO reimbursement premium~~
681 ~~calculated as specified in this paragraph.~~
682 ~~2. The insurer's TEACO reimbursement premium associated~~
683 ~~with the $3 billion retention option shall be equal to 85~~
684 ~~percent of a TEACO insurer's maximum reimbursement for a single~~
685 ~~event as calculated under subparagraph (c)6. The TEACO~~
686 ~~reimbursement premium associated with the $4 billion retention~~
687 ~~option shall be equal to 80 percent of a TEACO insurer's maximum~~
688 ~~reimbursement for a single event as calculated under~~
689 ~~subparagraph (c)6. The TEACO premium associated with the $5~~
690 ~~billion retention option shall be equal to 75 percent of a TEACO~~
691 ~~insurer's maximum reimbursement for a single event as calculated~~
692 ~~under subparagraph (c)6.~~
693 ~~(g) *Effect on claims paying capacity of the fund.* For the~~
694 ~~contract term commencing June 1, 2007, the contract year~~
695 ~~commencing June 1, 2008, and the contract term beginning June 1,~~
696 ~~2009, the program created by this subsection shall increase the~~

697 ~~claims-paying capacity of the fund as provided in subparagraph~~
698 ~~(4)(c)1. by an amount equal to two times the difference between~~
699 ~~the industry retention level calculated under paragraph (2)(c)~~
700 ~~and the $3 billion industry TEACO retention level specified in~~
701 ~~sub-subparagraph (d)4.a. The additional capacity shall apply~~
702 ~~only to the additional coverage provided by the TEACO option and~~
703 ~~shall not otherwise affect any insurer's reimbursement from the~~
704 ~~fund.~~
705 (16) ~~(17)~~ TEMPORARY INCREASE IN COVERAGE LIMIT OPTIONS.—
706 (a) *Findings and intent.*—
707 1. The Legislature finds that:
708 a. Because of temporary disruptions in the market for
709 catastrophic reinsurance, many property insurers were unable to
710 procure sufficient amounts of reinsurance for the 2006 hurricane
711 season or were able to procure such reinsurance only by
712 incurring substantially higher costs than in prior years.
713 b. The reinsurance market problems were responsible, at
714 least in part, for substantial premium increases to many
715 consumers and increases in the number of policies issued by
716 Citizens Property Insurance Corporation.
717 c. It is likely that the reinsurance market disruptions
718 will not significantly abate prior to the 2007 hurricane season.
719 2. It is the intent of the Legislature to create options
720 for insurers to purchase a temporary increased coverage limit
721 above the statutorily determined limit in subparagraph (4)(c)1.,
722 applicable for the 2007, 2008, 2009, 2010, 2011, and 2012~~, and~~
723 ~~2013~~ hurricane seasons, to address market disruptions and enable
724 insurers, at their option, to procure additional coverage from
725 the Florida Hurricane Catastrophe Fund.

726 (b) *Applicability of other provisions of this section.*—All
727 provisions of this section and the rules adopted under this
728 section apply to the coverage created by this subsection unless
729 specifically superseded by provisions in this subsection.
730 (c) *Optional coverage.*—For the 2009-2010, 2010-2011, 2011-
731 2012, and 2012-2013~~, and 2013-2014~~ contract years, the board
732 shall offer~~, for each of such years,~~ the optional coverage as
733 provided in this subsection.
734 (d) *Additional definitions.*—As used in this subsection, the
735 term:
736 1. "FHCF" means Florida Hurricane Catastrophe Fund.
737 2. "FHCF reimbursement premium" means the premium paid by
738 an insurer for its coverage as a mandatory participant in the
739 FHCF, but does not include additional premiums for optional
740 coverages.
741 3. "Payout multiple" means the number or multiple created
742 by dividing the statutorily defined claims-paying capacity as
743 determined in subparagraph (4)(c)1. by the aggregate
744 reimbursement premiums paid by all insurers estimated or
745 projected as of calendar year-end.
746 4. "TICL" means the temporary increase in coverage limit.
747 5. "TICL options" means the temporary increase in coverage
748 options created under this subsection.
749 6. "TICL insurer" means an insurer that has opted to obtain
750 coverage under the TICL options addendum in addition to the
751 coverage provided to the insurer under its FHCF reimbursement
752 contract.
753 7. "TICL reimbursement premium" means the premium charged
754 by the fund for coverage provided under the TICL option.

755 8. “TICL coverage multiple” means the coverage multiple
756 when multiplied by an insurer’s reimbursement premium that
757 defines the temporary increase in coverage limit.
758 9. “TICL coverage” means the coverage for an insurer’s
759 losses above the insurer’s statutorily determined claims-paying
760 capacity based on the claims-paying limit in subparagraph
761 (4)(c)1., which an insurer selects as its temporary increase in
762 coverage from the fund under the TICL options selected. A TICL
763 insurer’s increased coverage limit options shall be calculated
764 as follows:
765 ~~a. The board shall calculate and report to each TICL~~
766 ~~insurer the TICL coverage multiples based on 12 options for~~
767 ~~increasing the insurer’s FHCF coverage limit. Each TICL coverage~~
768 ~~multiple shall be calculated by dividing $1 billion, $2 billion,~~
769 ~~$3 billion, $4 billion, $5 billion, $6 billion, $7 billion, $8~~
770 ~~billion, $9 billion, $10 billion, $11 billion, or $12 billion by~~
771 ~~the total estimated aggregate FHCF reimbursement premiums for~~
772 ~~the 2007-2008 contract year, and the 2008-2009 contract year.~~
773 ~~b. For the 2009-2010 contract year, the board shall~~
774 ~~calculate and report to each TICL insurer the TICL coverage~~
775 ~~multiples based on 10 options for increasing the insurer’s FHCF~~
776 ~~coverage limit. Each TICL coverage multiple shall be calculated~~
777 ~~by dividing $1 billion, $2 billion, $3 billion, $4 billion, $5~~
778 ~~billion, $6 billion, $7 billion, $8 billion, $9 billion, and $10~~
779 ~~billion by the total estimated aggregate FHCF reimbursement~~
780 ~~premiums for the 2009-2010 contract year.~~
781 ~~c. For the 2010-2011 contract year, the board shall~~
782 ~~calculate and report to each TICL insurer the TICL coverage~~
783 ~~multiples based on eight options for increasing the insurer’s~~

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784 ~~FHCF coverage limit. Each TICL coverage multiple shall be~~
785 ~~calculated by dividing $1 billion, $2 billion, $3 billion, $4~~
786 ~~billion, $5 billion, $6 billion, $7 billion, and $8 billion by~~
787 ~~the total estimated aggregate FHCF reimbursement premiums for~~
788 ~~the contract year.~~
789 ~~d. For the 2011-2012 contract year, the board shall~~
790 ~~calculate and report to each TICL insurer the TICL coverage~~
791 ~~multiples based on six options for increasing the insurer’s FHCF~~
792 ~~coverage limit. Each TICL coverage multiple shall be calculated~~
793 ~~by dividing $1 billion, $2 billion, $3 billion, $4 billion, $5~~
794 ~~billion, and $6 billion by the total estimated aggregate FHCF~~
795 ~~reimbursement premiums for the 2011-2012 contract year.~~
796 a.~~c.~~ For the 2012-2013 contract year, the board shall
797 calculate and report to each TICL insurer the TICL coverage
798 multiples based on four options for increasing the insurer’s
799 FHCF coverage limit. Each TICL coverage multiple shall be
800 calculated by dividing $1 billion, $2 billion, $3 billion, and
801 $4 billion by the total estimated aggregate FHCF reimbursement
802 premiums for the 2012-2013 contract year.
803 ~~f. For the 2013-2014 contract year, the board shall~~
804 ~~calculate and report to each TICL insurer the TICL coverage~~
805 ~~multiples based on two options for increasing the insurer’s FHCF~~
806 ~~coverage limit. Each TICL coverage multiple shall be calculated~~
807 ~~by dividing $1 billion and $2 billion by the total estimated~~
808 ~~aggregate FHCF reimbursement premiums for the 2013-2014 contract~~
809 ~~year.~~
810 b.~~g.~~ The TICL insurer’s increased coverage shall be the
811 FHCF reimbursement premium multiplied by the TICL coverage
812 multiple. In order to determine an insurer’s total limit of

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813 coverage, an insurer shall add its TICL coverage multiple to its
814 payout multiple. The total shall represent a number that, when
815 multiplied by an insurer's FHCF reimbursement premium for a
816 given reimbursement contract year, defines an insurer's total
817 limit of FHCF reimbursement coverage for that reimbursement
818 contract year.
819 10. "TICL options addendum" means an addendum to the
820 reimbursement contract reflecting the obligations of the fund
821 and insurers selecting an option to increase an insurer's FHCF
822 coverage limit.
823 (e) *TICL options addendum.*—
824 1. The TICL options addendum shall provide for
825 reimbursement of TICL insurers for covered events occurring
826 during the ~~2009-2010, 2010-2011, 2011-2012,~~ 2012-2013~~, and 2013-~~
827 ~~2014~~ contract year ~~years~~ in exchange for the TICL reimbursement
828 premium paid into the fund under paragraph (f) based on the TICL
829 coverage available and selected for each respective contract
830 year. Any insurer writing covered policies has the option of
831 selecting an increased limit of coverage under the TICL options
832 addendum and shall select such coverage at the time that it
833 executes the FHCF reimbursement contract.
834 2. The TICL addendum shall contain a promise by the board
835 to reimburse the TICL insurer for 45 percent, 75 percent, or 90
836 percent of its losses from each covered event in excess of the
837 insurer's retention, plus 5 percent of the reimbursed losses to
838 cover loss adjustment expenses. The percentage shall be the same
839 as the coverage level selected by the insurer under paragraph
840 (4)(b).
841 3. The TICL addendum shall provide that reimbursement

842 amounts shall not be reduced by reinsurance paid or payable to
843 the insurer from other sources.
844 4. The priorities, schedule, and method of reimbursements
845 under the TICL addendum shall be the same as provided under
846 subsection (4).
847 (f) *TICL reimbursement premiums.*—Each TICL insurer shall
848 pay to the fund, in the manner and at the time provided in the
849 reimbursement contract for payment of reimbursement premiums, a
850 TICL reimbursement premium determined as specified in subsection
851 (5), except that a cash build-up factor does not apply to the
852 TICL reimbursement premiums. However, the TICL reimbursement
853 premium shall be increased in the ~~2009-2010 contract year by a~~
854 ~~factor of two, in the 2010-2011 contract year by a factor of~~
855 ~~three, in the 2011-2012 contract year by a factor of four, in~~
856 ~~the~~ 2012-2013 contract year by a factor of five~~, and in the~~
857 ~~2013-2014 contract year by a factor of six~~.
858 (g) *Effect on claims-paying capacity of the fund.*—For the
859 ~~2009-2010, 2010-2011, 2011-2012,~~ 2012-2013~~, and 2013-2014~~
860 contract year ~~years~~, the program created by this subsection
861 shall increase the claims-paying capacity of the fund as
862 provided in subparagraph (4)(c)1. by an amount not to exceed $4
863 ~~$12~~ billion and shall depend on the TICL coverage options
864 available and selected for the specified contract year and the
865 number of insurers that select the TICL optional coverage. The
866 additional capacity shall apply only to the additional coverage
867 provided under the TICL options and shall not otherwise affect
868 any insurer's reimbursement from the fund if the insurer chooses
869 not to select the temporary option to increase its limit of
870 coverage under the FHCF.

871 (17) ~~(18)~~ FACILITATION OF INSURERS' PRIVATE CONTRACT
872 NEGOTIATIONS BEFORE THE START OF THE HURRICANE SEASON.—
873 (a) In addition to the legislative findings and intent
874 provided elsewhere in this section, the Legislature finds that:
875 1.a. Because a regular session of the Legislature begins
876 approximately 3 months before the start of a contract year and
877 ends approximately 1 month before the start of a contract year,
878 participants in the fund always face the possibility that
879 legislative actions will change the coverage provided or offered
880 by the fund with only a few days or weeks of advance notice.
881 b. The timing issues described in sub-subparagraph a. can
882 create uncertainties and disadvantages for the residential
883 property insurers that are required to participate in the fund
884 when such insurers negotiate for the procurement of private
885 reinsurance or other sources of capital.
886 c. Providing participating insurers with a greater degree
887 of certainty regarding the coverage provided or offered by the
888 fund and more time to negotiate for the procurement of private
889 reinsurance or other sources of capital will enable the
890 residential property insurance market to operate with greater
891 stability.
892 d. Increased stability in the residential property
893 insurance market serves a primary purpose of the fund and
894 benefits Florida consumers by enabling insurers to operate more
895 economically. In years when reinsurance and capital markets are
896 experiencing a capital shortage, the last-minute rush by
897 insurers only weeks before the start of the hurricane season to
898 procure adequate coverage in order to meet their capital
899 requirements can result in higher costs that are passed on to

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900 Florida consumers. However, if more time is available,
901 residential property insurers should experience greater
902 competition for their business with a corresponding beneficial
903 effect for Florida consumers.
904 2. It is the intent of the Legislature to provide insurers
905 with the terms and conditions of the reimbursement contract well
906 in advance of the insurers' need to finalize their procurement
907 of private reinsurance or other sources of capital, and thereby
908 improve insurers' negotiating position with reinsurers and other
909 sources of capital.
910 3. It is also the intent of the Legislature that the board
911 publish the fund's maximum statutory limit of coverage and the
912 fund's total retention early enough that residential property
913 insurers can have the opportunity to better estimate their
914 coverage from the fund.
915 (b) The board shall adopt the reimbursement contract for a
916 particular contract year by February 1 of the immediately
917 preceding contract year. However, the reimbursement contract
918 shall be adopted as soon as possible in advance of the 2010-2011
919 contract year.
920 (c) Insurers writing covered policies shall execute the
921 reimbursement contract by March 1 of the immediately preceding
922 contract year, and the contract shall have an effective date as
923 defined in paragraph (2)(o).
924 (d) The board shall publish in the Florida Administrative
925 Weekly the maximum statutory adjusted capacity for the mandatory
926 coverage for a particular contract year, the maximum statutory
927 coverage for any optional coverage for the particular contract
928 year, and the aggregate fund retention used to calculate

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929 individual insurer's retention multiples for the particular
930 contract year no later than January 1 of the immediately
931 preceding contract year.
932 Section 2. Subsection (5) of section 627.0629, Florida
933 Statutes, is amended to read:
934 627.0629 Residential property insurance; rate filings.—
935 (5) In order to provide an appropriate transition period,
936 an insurer may implement an approved rate filing for residential
937 property insurance over a period of years. Such insurer must
938 provide an informational notice to the office setting out its
939 schedule for implementation of the phased-in rate filing. The
940 insurer may include in its rate the actual cost of private
941 market reinsurance that corresponds to available coverage of the
942 Temporary Increase in Coverage Limits, TICL, from the Florida
943 Hurricane Catastrophe Fund. The insurer may also include the
944 cost of reinsurance to replace the TICL reduction implemented
945 pursuant to s. 215.555(16)(d)9 ~~s. 215.555(17)(d)9~~. However, this
946 cost for reinsurance may not include any expense or profit load
947 or result in a total annual base rate increase in excess of 10
948 percent.
949 Section 3. This act shall take effect upon becoming a law.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/SB 1408

INTRODUCER: Budget Subcommittee on General Government Appropriations; Regulated Industries Committee and Senator Gardiner

SUBJECT: Timeshares

DATE: February 28, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Howard	DeLoach	BGA	**Fav/CS**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill requires the full and fair disclosure of terms, conditions, and services offered by timeshare resale service providers, which includes brokers and advertisers who offer unsolicited telemarketing, direct mail, or e-mail in connection with the offering of resale brokerage services or resale advertising services to consumer owners of timeshares who wish to sell their interest in a timeshare. It provides exceptions for sales by consumers and licensed real estate brokers.

The bill specifies the information that resale service providers must provide to the consumer timeshare resellers before engaging in resale brokerage services or resale advertising services, including a description of any fees or costs; a description of when such fees or costs are due; and the ratio or percentage of the number of timeshare resale interests sold or rented versus the number of timeshare resale interests listed for sale or rent by the timeshare resale broker for each of the previous two calendar years. Resale service providers may not engage in those activities of a real estate broker unless they are a licensed real estate broker.

The bill prohibits timeshare resale service providers from:

- Misrepresenting that they will provide any type of direct sales or resale brokerage services;
- Misrepresenting that another person has a preexisting interest in the timeshare without providing identifying information for that person;
- Representing that sales or rentals have been achieved or generated, unless the resale provider substantiates the statement at the time of representation;
- Representing that a specific number of sales or rentals have been sold or rented without providing the consumer with the ratio or percentage timeshare interests advertised that have actually resulted in a sale or rental for each of the previous two calendar years.
- Representing that a timeshare interest has a specific resale value;
- Collecting any payment that exceeds an aggregate of total of $75 or more in any 12-month period without first receiving a written contract; and
- Failing to honor a cancellation notice sent by the consumer timeshare reseller.

The bill specifies the information that must be included in a written contract for resale advertising services, which includes a conspicuous statement that the consumer has the right to cancel the contract for advertising services within 10 days after the date the contract is signed. The bill also requires that resale advertisers provide a full refund within 20 days of the consumer's cancellation of the agreement, or five days after the consumer's check has cleared, whichever is later.

If the contract for resale advertising services fails to comply with the provisions in the bill, the contract would be voidable at the option of the consumer for one year after the date it is executed by the consumer. If a violation of the provisions in the bill occurs during an offering of resale services, both the resale service provider and the person who actually commits the violation would be deemed to have violated this section.

The bill provides that persons who provide resale advertising services for timeshare interest have submitted to the jurisdiction of the state courts. The bill provides a civil penalty of $15,000 per violation in addition to the penalties and remedies provided in the Unfair and Deceptive Trade Practices Act in part II of ch. 501, F.S.

The bill provides an effective date of July 1, 2012.

This bill substantially amends sections 721.02, 721.05, and 721.20, Florida Statutes. The bill creates section 721.205, Florida Statutes.

II. Present Situation:

Timeshares

A timeshare interest is a form of ownership of real property. According to a report prepared by the American Resort Development Association (ARDA), Florida had 23 percent of the estimated 1,548 timeshare resorts in the United States in 2010.[1]

[1] ARDA International Foundation, *State of the Vacation Timeshare Industry: United States Study*, 2011 Edition, a copy of the report is available at: http://www.arda.org/uploadedFiles/ARDA/News_and_Information/Industry_Information/Industry_Media_Fact_Sheets/2011%20state%20of%20industry%20fact%20sheet.pdf (Last visited January 19, 2012).

In a timeshare, the real property is typically a condominium unit or a cooperative unit. A timeshare property is typically a resort in which multiple parties hold the right to use the property. Each owner of a timeshare interest is allotted a period of time (typically one week) in which they may use the property.

The Florida Vacation Plan and Timesharing Act, ch. 721, F.S., establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers and prospective purchasers.[2] Chapter 721, F.S., applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least three years in which the accommodations and facilities are located within this state or offered within this state.[3] A timeshare unit is an accommodation of a timeshare plan which is divided into timeshare periods or a condominium unit in which timeshare estates have been created.[4] A timeshare plan is any arrangement, plan, scheme, or similar device whereby a purchaser gives consideration for ownership rights in, or a right to use, any accommodations and facilities for less than a full year during any given year, but not necessarily for consecutive years.[5]

Section 721.05(34), F.S., defines a "timeshare estate" as "a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof." The term also includes an interest in a condominium unit, a cooperative unit, or a trust.

A timeshare plan developer must file a public offering statement and the required exhibits with the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation, prior to offering the timeshare plan to the public.[6]

For each timeshare plan, the developer must provide for a managing entity, which must be the developer, a separate manager or management firm, or an owners' association.[7]

Timeshare Resale Agreements

Section 721.06-721.12, F.S., provide the duties and rights of timeshare sales agreements. Section 721.10, F.S., provides purchasers of timeshare interests the right to cancel the purchase agreement within 10 days of it being signed by the consumer.

Section 721.065(2), F.S., specifies the disclosures that must be made in a resale purchase agreement. These disclosures are required to be made by the owner of a timeshare who acquires a timeshare interest for her or his own use and occupancy and later offers it for resale, or any agent of such person.[8]

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[2] Section 721.02(2) and (3), F.S.
[3] Section 721.03, F.S.
[4] *See* ss. 721.05(41) and 718.103(26), F.S.
[5] Section 721.05(39), F.S.
[6] Section 721.07, F.S.
[7] Section 721.13(1)(a), F.S. The duties of a managing entity are detailed in s. 721.13(3), F.S.,
[8] Section 721.065(1), F.S.

The disclosures in s. 721.065(2), F.S., may be made by the following persons or entities in lieu of the disclosures specified in ss. 721.06-721.12 and 721.20, F.S.:

- A managing entity, not otherwise a developer, that sells, or engages a third party to sell on its behalf, 50 or fewer timeshare interests in the timeshare plan which it manages in a given calendar year to persons who are not existing purchasers of that timeshare plan; and
- A managing entity, not otherwise a developer, that sells, or engages a third party to sell on its behalf, timeshare interests in the timeshare plan which it manages to persons who are existing purchasers of that timeshare plan.

There is a rebuttable presumption that an owner who has acquired more than seven timeshare interests did not acquire them for her or his own use and occupancy.[9]

The disclosures specified in s. 721.065(2), F.S., include identifying information of the timeshare plan and the managing entity of the timeshare plan, a conspicuous statement regarding the current year's assessments for common expenses, and a statement that provides that the contract may be cancelled without penalty within 10 days after it is signed.

The disclosures in s. 721.065(2), F.S., do not apply to an agreement for the advertisement of timeshare interest for resale or other timeshare resale services.

Timeshare Resale Service Provider
Most timeshare resale companies charge consumers approximately $300 to $500 to list or advertise a timeshare.[10]

Section 721.05(44), F.S., defines the term "resale service provider" to mean:

> any person who uses unsolicited telemarketing, direct mail, or e-mail in connection with the offering of resale brokerage or resale advertising services to owners of timeshare interests. The term does not include developers, managing entities, or exchange companies to the extent they offer resale brokerage or resale advertising services to owners of timeshare interests in their own timeshare plans or members of their own exchange programs.

Section 721.20(9), F.S., resale service providers are required to disclose the description of any fees or costs relating to advertising, listing or sale of the timeshare interest that must be paid to the resale service provider or third party, when the fee is due and the ratio or percentage of the number of listings of timeshare interests for sale versus the number of timeshare interests sold by the resale service provider for each of the previous two calendar years.

Failure to disclose this information in writing constitutes an unfair and deceptive trade practice pursuant to ch. 501, F.S.[11] Any contract that is entered into in violation of s. 721.20(9), F.S., is

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[9] *Id.*
[10] *See* Office of Attorney General Bill McCollum, How to Protect Yourself: Timeshare Sales & Resales, August 8, 2004. A copy of this news release is available at: http://www.myfloridalegal.com/NewsBrie.nsf/OnlineAlerts/982958C2786805568525703C006A0739 (Last visited January 21, 2012). This estimate of cost was confirmed by a representative for the American Resort Development Association.

void and the purchaser is entitled to a full refund of any money paid to the resale service provider.

Section 721.11, F.S., provides for the approval of the advertising materials used by developers. Section 721.20(9), F.S., which provides for the advertisement of a timeshare resale does not reference the advertising provisions in s. 721.11, F.S.

Deceptive and Unfair Trade Practices Act

Part II of ch. 501, F.S., provides the Deceptive and Unfair Trade Practices Act (DUTPA or act). This act addresses issues of consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices.[12] Violations of the act are enforced by the office of the state attorney if a violation occurs in or affects the judicial circuit under the office's jurisdiction. The Department of Legal Affairs is the enforcement authority if the violation occurs in or affects more than one judicial circuit or if the office of the state attorney defers to the department in writing, or fails to act upon a violation within 90 days after a written complaint has been filed with the state attorney.[13]

The enforcing authority may seek a declaratory judgment to determine whether an act or practice violate the act, file an action to enjoin any person who has violated, is violating, or is otherwise likely to violate the act, or take legal action on behalf of one or more consumers or governmental entities for the actual damages caused by an act or practice in violation of the act.[14]

The act provides for a civil penalty of no more than $10,000 for willful violations. The enforcing authority is also entitled to reasonable attorney's fees and costs if civil penalties are assessed in any litigation.[15]

Real Estate Broker

A person may not provide the services of a real estate broker without a valid and current license issued by the Florida Real Estate Commission within the Department of Business and Professional Regulation. Operating as a broker without a license is a felony of the third degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., or, if a corporation, as provided in s. 775.083., F.S.[16]

Section 475.01(1)(a), F.S., defines the term "broker" to mean:

> a person who, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefore, appraises, auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises

[11] Part II of ch. 501, F.S., may be cited as the "Florida Deceptive and Unfair Trade Practices Act."
[12] *See* s. 501.202, F.S.
[13] Section 501.202(2), F.S.
[14] Section 501.207(1), F.S.
[15] Section 501.2075, F.S.
[16] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not exceeding five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not exceeding $5,000.

> or business opportunities or any real property or any interest in or concerning the same, including mineral rights or leases, or who advertises or holds out to the public by any oral or printed solicitation or representation that she or he is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing, or renting business enterprises or business opportunities or real property of others or interests therein, including mineral rights, or who takes any part in the procuring of sellers, purchasers, lessors, or lessees of business enterprises or business opportunities or the real property of another, or leases, or interest therein, including mineral rights, or who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and who receives, expects, or is promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who advertise rental property information or lists. A broker renders a professional service and is a professional within the meaning of s. 95.11(4)(a). Where the term "appraise" or "appraising" appears in the definition of the term "broker," it specifically excludes those appraisal services which must be performed only by a state-licensed or state-certified appraiser, and those appraisal services which may be performed by a registered trainee appraiser as defined in part II. The term "broker" also includes any person who is a general partner, officer, or director of a partnership or corporation which acts as a broker. The term "broker" also includes any person or entity who undertakes to list or sell one or more timeshare periods per year in one or more timeshare plans on behalf of any number of persons, except as provided in ss. 475.011 and 721.20.

Consumer Complaints Regarding Timeshare Resale Advertisers

The Office of the Attorney General Pam Bondi (AG) received 8,700 consumer complaints in 2011 related to timeshare resale. According to the AG, the number of consumer complaints the office has received has significantly increased in recent years. The most common complaints relate to false claims that a specific buyer is ready to buy or rent the property once the consumer signs a contract, deceptive claims that the property will sell/rent within a certain time, failure to honor stated cancellation policies, including refunds of fees, and misrepresentations of the actual services provided to consumers.

In 2009, the Attorney General's Economic Crimes Division began a state-wide initiative to investigate timeshare resellers. More than 60 companies were investigated, and as of July 2010, the Economic Crimes Division had 48 active investigations. On July 20, 2010, Attorney General Bill McCollum filed three lawsuits against timeshare resale companies alleging deceptive and unfair trade practices, seeking restitution for affected consumers, and to prohibit the companies from engaging in further violations.[17] In 2009, the AG entered into an agreement with two timeshare resale companies to pay $190,483 in consumer restitution and the AG's fees and investigative costs.[18]

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[17] *See* Office of Attorney General Bill McCollum, *Attorney General Announces Additional Consumer Protection Efforts Against Timeshare Resale Scams*, July 20, 2010. A copy of this news release is available at: http://myfloridalegal.com/__852562220065EE67.nsf/0/EF554E6AF98D6BA8852577660051766F?Open&Highlight=0,timeshares (Last visited January 21, 2012).

[18] *See* Office of Attorney General Bill McCollum, South Florida Timeshare Companies to Pay Over $190,000 in Consumer Restitution, April 17, 2009. A copy of this news release is available at:

III. Effect of Proposed Changes:

Section 1. The bill amends section s. 721.02, F.S., to provide that a purpose of ch. 721, F.S., is to require the full and fair disclosure of terms, conditions, and services offered by resale services providers.

Section 2. The bill amends the definition of the term "resale service provider" in s. 721.05(44), F.S., to include resale advertisers, or other person or entity, including any agent or employee of such person, within the meaning of the term.

The conduct of a resale service provider is redefined to include offering or using telemarketing, or other means of communication. The bill deletes the provision that defines the communication as unsolicited. The bill replaces the term "owners of timeshare interests" with the term "consumer timeshare resellers."

The bill exempts resale brokers from the definition of "resale service provider" to the extent that they offer resale advertising services in connection with resale brokerage services and do not collect an advance fee for the advertising service. It exempts consumer timeshare resellers who acquire a timeshare interest or timeshare interests for his or her use and occupancy and who later offers the timeshare interest or interests for rent. It also exempts the resale of seven or fewer timeshare interests within a given calendar year when the interest was acquired for the use and occupancy of the consumer timeshare reseller. The bill also deletes members of a timeshare exchange program from the definition of "resale service provider."

The bill also amends s.721.05, F.S., to define several terms. It defines the terms "consumer resale timeshare interest," "consumer timeshare reseller, "real estate brokerage services," and "resale advertising service."

It defines the term "resale broker" to a person, or an agent or employee of such person, who is a licensed real estate broker under ch. 475, F.S., and offers or provides resale brokerage services to consumers for compensation or valuable consideration.

The bill defines the term "resale advertiser" to mean persons who offer, personally or through an agent, to resale advertising services to consumer timeshare resellers for compensation or valuable consideration. This applies to offers made in person, by mail, by telephone, through the internet, or other medium of communication. The bill exempts the following persons to the extent that they offer resale advertising services:

- Resale brokers if the advertising service is in connection with timeshare resale brokerage services and no advance fee is collected;
- Developers and managing entities if the advertising service is limited to their own timeshare plans; or
- Newspaper, periodicals, or website owners, operators, or publishers, unless they derive more than 10 percent of its gross revenue from providing resale advertising services.

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http://myfloridalegal.com/__852562220065EE67.nsf/0/7DE48692137A1F468525759B0057B498?Open&Highlight=0,timeshares (Last visited January 21, 2012).

The percentage of gross revenue is based on the gross revenue derived from providing resale advertising services from any affiliate, parent, agent, and subsidiary of the newspaper, periodical, or website owner, operator, or publisher, so long as the resulting percentage of gross revenue is not decreased by the inclusion of such affiliate, parent, subsidiary, or agent in the calculation.

Section 3. The bill repeals s. 721.20(9), F.S., which provides the current disclosure requirements and penalties for resale service providers.

Section 4. The bill creates s. 721.205, F.S., to provide disclosure requirements for resale service providers.

Section 721.205(1), F.S., specifies the information that resale service providers must provide to the consumer timeshare resellers before engaging in resale brokerage services or resale advertising services. Resale service providers must provide:

- A description of any fees or costs; and
- A description of when such fees or costs are due.

Section 721.205(1)(b), F.S., provides that a resale service provider may not engage in those activities described in s. 475.01(1)(a), F.S., which define the activities that require a real estate broker's license under ch. 475, F.S., without being the holder of a valid and current active license in accordance with ch. 475, F.S.

Section 721.205(2), F.S., specifies the conduct that resale service providers are prohibited from engaging in during the course of offering resale advertising services. Resale advertiser may not:

- Represent that he or she will provide or assist in providing any type of direct sales or resale brokerage services other than the advertising of the consumer resale timeshare interest for sale or rent;
- Represent that another person has a preexisting interest in the timeshare without providing identifying information for that person;
- Represent that sales or rentals have been achieved or generated, unless the resale provider gives the consumer, at the time of making the representation, documentation to substantiate the statement;
- Represent that a specific number of sales or rentals have been sold or rented without providing the consumer with the ratio or percentage timeshare interests advertised that have actually resulted in a sale or rental for each of the previous two calendar years.
- Represent that a timeshare interest has a specific resale value;
- Collect any payment that exceeds an aggregate of total of $75 or more in any 12-month period without first receiving a written contract that complies with the s. 721.205(2)(d), F.S., or;
- Engage in any resale advertising services for compensation or valuable consideration without first obtaining a written contract signed by the consumer timeshare reseller;
- Make or submit a charge to a consumer's account, an electronic transfer of consumer funds, or collect payment form a consumer that exceeds an aggregate of total of $75 or more in any

12-month period without first receiving a written contract unless the consumer has been given a copy of the terms and conditions specified in contract required by s. 721.205(2)(f), F.S., and the consumer has agreed to such term and conditions by mail or electronic transmission; and
- Fail to honor a cancelation notice sent by the consumer timeshare reseller.

Section 721.205(2)(d), F.S., specifies the information that must be included in a written contract for resale advertising services. The contract must be printed in at least 12-point type and must contain the following information:
- Identifying information to which a contract cancellation notice may be delivered by the consumer at his or her election.
- A complete description of all resale advertising services to be provided, the itemized cost to the consumer, and a statement of the total cost to the consumer;
- A statement printed in at least 12-point boldfaced type that advises the consumer of their right to cancel the contract for advertising services within ten days after the date the contract is signed;
- A statement that the consumer will receive a full refund within 20 days after the resale provider receives the notice of cancellation or five days after the consumer's check has cleared, whichever is later.
- A statement that any resale contract entered into must comply in all respects with s. 721.065, F.S., including the 10-day cancellation period for the prospective consumer resale purchaser.

Section 721.205(2)(g), F.S., requires that resale advertisers honor any cancellation notice that was received within 10 days after the date the contract for resale advertising services is signed.

Regarding the refund, s. 721.205(2)(h), F.S., requires that resale advertisers provide a full refund of all money paid by a consumer within 20 days after the resale provider receives the notice of cancellation of the contract or five days after the consumer's check has cleared, whichever is later.

Section 721.205(3), F.S., provides that a contract for resale advertising services that fails to comply with s. 721.205(2), F.S., shall be voidable at the option of the consumer for one year after the date it is executed by the consumer.

Section 721.205(4), F.S., imposes a duty on resale service providers to supervise, manage, and control all aspects of the offering of resale brokerage services or resale advertising services by any agent or employee of the resale service provider. If a violation of s. 721.205, F.S., occurs during an offering of resale services, both the resale service provider and the person who actually commits the violation would be deemed to have violated this section.

Section 721.205(5), F.S., provides that persons who provide resale advertising services with respect to the resale of a consumer resale timeshare interest in a property located in Florida, has submitted to the jurisdiction of the state courts for the purposes of s. 48.193(1), F.S., which enumerates the acts which submit persons to the jurisdiction of the courts of this state.

Section 721.205 (6), F.S., provides that the use of any unfair or deceptive act or practice by any person in connection with resale advertising services is a violation of s. 721.205, F.S.

Section 721.205(7), F.S., provides a civil penalty of not more than $15,000 per violation of s. 721.205, F.S. Such civil penalty is in addition to the penalties and remedies provided in part II of ch. 501, F.S., for unfair and deceptive trade practice as prohibited by s. 501.204, F.S.

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Budget Subcommittee on General Government Appropriations on February 28, 2012:
The committee substitute for committee substitute (CS/CS) does not amend s. 721.05(44), F.S., to include resale brokers within the meaning of the term "resale service provider." It also deletes members of a timeshare exchange program from the definition of "resale service provider."

The CS/CS also deletes exchange companies from s. 721.05(49)(b), the exemption to the definition of the term "resale advertiser" in regards to the exception from the term for developers and managing entities.

The CS/CS does not provide in s. 721.205(2)(c), F.S., that a resale advertiser must providing the consumer with the ratio or percentage timeshare interests advertised that have actually resulted in a sale or rental for each of the previous two calendar years if the resale advertiser represents that a specific number of sales or rentals have been sold or rented.

The CS/CS amends s. 721.205(2)(e), F.S., to prohibit a resale advertiser from collecting any payment that exceeds an aggregate of total of $75 or more in any 12-month period without first receiving a written contract.

The CS/CS amends s. 721.205(2)(g), F.S., to prohibit a resale advertiser from making or submitting a charge to a consumer's account, an electronic transfer of consumer funds, or collect payment from a consumer that exceeds an aggregate of total of $75 or more in any 12-month period without first receiving a written contract unless the consumer has been given a copy of the terms and conditions specified in contract required by s. 721.205(2)(f), F.S., and the consumer has agreed to such terms and conditions by mail or electronic transmission.

CS by Regulated Industries on January 26, 2012:
The committee substitute (CS) amends the definition of "resale service provider" in s. 721.05(44), F.S., resale brokers to the extent that they offer resale advertising services in connection with resale brokerage services and do not collect an advance fee for the advertising service.

The CS does not create s. 721.205(1), F.S., to require timeshare resale service providers to provide to consumers the ratio or percentage of the number of timeshare resale interests sold or rented versus the number of timeshare resale interests listed for sale or rent by the timeshare resale broker for each of the previous two calendar years.

The CS does not create s. 721.205(2)(b), F.S., to require that, when a timeshare resale service provider represents that it has been successful in identifying buyers and renters, the resale service provider must document the responses to its advertisements and, before any payment is collected, provide the consumer with the ratio or percentage of the timeshare interests advertised for sale that have resulted in a sale, or rent if advertised for rent, for each of the previous two calendar years.

The CS creates s. 721.205(2)(c), F.S., to require that when a timeshare resale provider represents that sales or rentals have been achieved or generated, the resale provider must give the consumer, at the time of making the representation, documentation to substantiate the statement.

The CS creates s. 721.205(2)(c), F.S., to require that, when a timeshare resale service provider represents that he or she has sold or rented a specific number of timeshare interests, the resale provider must give the consumer the ratio or percentage timeshare interests advertised that have actually resulted in a sale or rental for each of the previous two years.

The CS creates s. 721.205(2)(d), F.S., to prohibit timeshare resale service providers from stating or implying that a timeshare interest has a specific resale value.

The CS revises the written notice provided in s. 721.205(2)(f), F.S., to reference a right to cancel an agreement for resale advertising services within 10 days after the consumer signs the of the agreement instead of within 7 days.

The CS revises the cancellation period in s. 721.205(2)(h), F.S., to extend the cancellation period from seven days to 10 days after the consumer signs the agreement for resale advertising services.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Benacquisto) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Subsection (5) of section 721.02, Florida
6 Statutes, is renumbered as subsection (6), and a new subsection
7 (5) is added to that section to read:
8 721.02 Purposes.—The purposes of this chapter are to:
9 (5) Require full and fair disclosure of terms, conditions,
10 and services by resale service providers acting on behalf of
11 consumer timeshare resellers or on behalf of prospective
12 consumer resale purchasers, regardless of the business model

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13 employed by the resale service provider.
14 Section 2. Subsection (44) of section 721.05, Florida
15 Statutes, is amended, and subsections (45) through (50) are
16 added to that section, to read:
17 721.05 Definitions.—As used in this chapter, the term:
18 (44) "Resale service provider" means any resale advertiser,
19 or other person or entity, including any agent or employee of
20 such person or entity, who offers or uses ~~unsolicited~~
21 telemarketing, direct mail, ~~or~~ e-mail, or any other means of
22 communication in connection with the offering of resale
23 brokerage or resale advertising services to consumer ~~owners of~~
24 timeshare resellers ~~interests~~. The term does not include
25 developers or~~,~~ managing entities~~, or exchange companies~~ to the
26 extent they offer resale brokerage or resale advertising
27 services to owners of timeshare interests in their own timeshare
28 plans; resale brokers to the extent that resale advertising
29 services are offered in connection with resale brokerage
30 services and no fee for the advertising service is collected in
31 advance; or a consumer timeshare reseller who acquires a
32 timeshare interest or timeshare interests for his or her own use
33 and occupancy and who later offers the timeshare interest or
34 timeshare interests for rent or offers for resale in a given
35 calendar year seven or fewer of the timeshare interests that he
36 or she acquired for his or her own use and occupancy ~~or members~~
37 ~~of their own exchange programs~~.
38 (45) "Consumer resale timeshare interest" means:
39 (a) A timeshare interest owned by a purchaser;
40 (b) One or more reserved occupancy rights relating to a
41 timeshare interest owned by a purchaser; or

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42 (c) One or more reserved occupancy rights relating to, or
43 arranged through, an exchange program in which a purchaser is a
44 member.
45 (46) "Consumer timeshare reseller" means a purchaser who
46 acquires a timeshare interest for his or her own use and
47 occupancy and later offers the timeshare interest for resale or
48 rental.
49 (47) "Resale broker" means any person, or any agent or
50 employee of such person, who is licensed pursuant to chapter 475
51 and who offers or provides resale brokerage services to consumer
52 timeshare resellers for compensation or valuable consideration,
53 regardless of whether the offer is made in person, by mail, by
54 telephone, through the Internet, or by any other medium of
55 communication.
56 (48) "Resale brokerage services" means, with respect to a
57 consumer resale timeshare interest in a timeshare property
58 located or offered within this state, any activity that directly
59 or indirectly consists of any of activities described in s.
60 475.01(1)(a).
61 (49) "Resale advertiser" means any person who offers,
62 personally or through an agent, resale advertising services to
63 consumer timeshare resellers for compensation or valuable
64 consideration, regardless of whether the offer is made in
65 person, by mail, by telephone, through the Internet, or by any
66 other medium of communication. The term does not include:
67 (a) A resale broker to the extent that resale advertising
68 services are offered in connection with timeshare resale
69 brokerage services and no fee for the resale advertising service
70 is collected in advance;

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71 (b) A developer or managing entity to the extent that
72 either of them offers resale advertising services to owners of
73 timeshare interests in their own timeshare plans; or
74 (c) A newspaper, periodical, or website owner, operator, or
75 publisher, unless the newspaper, periodical, or website owner,
76 operator, or publisher derives more than 10 percent of its gross
77 revenue from providing resale advertising services. For purposes
78 of this paragraph, the calculation of gross revenue derived from
79 providing resale advertising services includes revenue of any
80 affiliate, parent, agent, and subsidiary of the newspaper,
81 periodical, or website owner, operator, or publisher, so long as
82 the resulting percentage of gross revenue is not decreased by
83 the inclusion of such affiliate, parent, subsidiary, or agent in
84 the calculation.
85 (50) "Resale advertising service" means any good or service
86 relating to, or a promise of assistance in connection with,
87 advertising or promoting the resale or rental of a consumer
88 resale timeshare interest located or offered within this state,
89 including any offer to advertise or promote the sale or purchase
90 of any such interest.
91 Section 3. Subsection (9) of section 721.20, Florida
92 Statutes, is amended to read:
93 721.20 Licensing requirements; suspension or revocation of
94 license; exceptions to applicability; collection of advance fees
95 for listings unlawful.—
96 ~~(9)(a) Prior to listing or advertising a timeshare interest~~
97 ~~for resale, a resale service provider shall provide to the~~
98 ~~timeshare interest owner a description of any fees or costs~~
99 ~~relating to the advertising, listing, or sale of the timeshare~~

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100 ~~interest that the timeshare interest owner, or any other person,~~
101 ~~must pay to the resale service provider or any third party, when~~
102 ~~such fees or costs are due, and the ratio or percentage of the~~
103 ~~number of listings of timeshare interests for sale versus the~~
104 ~~number of timeshare interests sold by the resale service~~
105 ~~provider for each of the previous 2 calendar years.~~
106 ~~(b) Failure to disclose this information in writing~~
107 ~~constitutes an unfair and deceptive trade practice pursuant to~~
108 ~~chapter 501. Any contract entered into in violation of this~~
109 ~~subsection is void and the purchaser is entitled to a full~~
110 ~~refund of any moneys paid to the resale service provider.~~
111 Section 4. Section 721.205, Florida Statutes, is created to
112 read:
113 721.205 Resale service providers; disclosure obligations.—
114 (1)(a) Before engaging in resale advertising services, a
115 resale service provider must provide to the consumer timeshare
116 reseller:
117 1. A description of any fees or costs related to such
118 services that the consumer timeshare reseller, or any other
119 person, is required pay to the resale service provider or to any
120 third party.
121 2. A description of when such fees or costs are due.
122 (b) A resale service provider may not engage in those
123 activities described in s. 475.01(1)(a) without being the holder
124 of a valid and current active license in accordance with chapter
125 475.
126 (2) In the course of offering resale advertising services,
127 a resale advertiser may not:
128 (a) State or imply that the resale advertiser will provide

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129 or assist in providing any type of direct sales or resale
130 brokerage services other than the advertising of the consumer
131 resale timeshare interest for sale or rent by the consumer
132 timeshare reseller.
133 (b) State or imply to a consumer timeshare reseller,
134 directly or indirectly, that the resale advertiser has
135 identified a person interested in buying or renting the
136 timeshare resale interest without providing the name, address,
137 and telephone number of such represented interested resale
138 purchaser.
139 (c) State or imply to a consumer timeshare reseller,
140 directly or indirectly, that sales or rentals have been achieved
141 or generated as a result of its advertising services unless the
142 resale advertiser, at the time of making such representation,
143 possesses and is able to provide documentation to substantiate
144 the statement or implication made to the consumer timeshare
145 reseller. In addition, to the extent that a resale advertiser
146 states or implies to a consumer timeshare reseller that the
147 resale advertiser has sold or rented any specific number of
148 timeshare interests, the resale advertiser must also provide the
149 consumer timeshare reseller the ratio or percentage of all the
150 timeshare interests that have resulted in a sale versus the
151 number of timeshare interests advertised for sale by the resale
152 advertiser for each of the previous 2 calendar years if the
153 statement or implication is about a sale or sales, or the ratio
154 or percentage of all the timeshare interests that have actually
155 resulted in a rental versus the number of timeshare interests
156 advertised for rental by the resale advertiser for each of the
157 previous 2 calendar years if the statement or implication is

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158 about a rental or rentals.
159 (d) State or imply to a consumer timeshare reseller that
160 the timeshare interest has a specific resale value.
161 (e) Make or submit any charge to a consumer timeshare
162 reseller's credit card account; make or cause to be made any
163 electronic transfer of consumer timeshare reseller funds; or
164 collect any payment from a consumer timeshare reseller that
165 exceeds an aggregate total amount of $75 or more in any 12-month
166 period until after the resale advertiser has received a written
167 contract complying in all respects with paragraph (f) that has
168 been signed by the consumer timeshare reseller.
169 (f) Engage in any resale advertising services for
170 compensation or valuable consideration without first obtaining a
171 written contract to provide such services signed by the consumer
172 timeshare reseller. Notwithstanding any other law, the contract
173 must be printed in at least 12-point type and must contain the
174 following information:
175 1. The name, address, telephone number, and web address, if
176 any, of the resale advertiser and a mailing address and e-mail
177 address to which a contract cancellation notice may be delivered
178 at the consumer timeshare reseller's election.
179 2. A complete description of all resale advertising
180 services to be provided, including, but not limited to, details
181 regarding the publications, Internet sites, and other media in
182 or on which the consumer resale timeshare interest will be
183 advertised, the dates or time intervals for such advertising or
184 the minimum number of times such advertising will be run in each
185 specific medium, the itemized cost to the consumer timeshare
186 reseller of each resale advertising service to be provided, and

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187 a statement of the total cost to the consumer timeshare reseller
188 of all resale advertising services to be provided.
189 3. A statement printed in at least 12-point boldfaced type
190 immediately preceding the space in the contract provided for the
191 consumer timeshare reseller's signature in substantially the
192 following form:
193
194 TIMESHARE OWNER'S RIGHT OF CANCELLATION
195
196 ...(Name of resale advertiser)... will provide resale
197 advertising services pursuant to this contract. If
198 ...(name of resale advertiser)... represents that
199 ...(name of resale advertiser)... has identified a
200 person who is interested in purchasing or renting your
201 timeshare interest, then ...(name of resale
202 advertiser)... must provide you with the name,
203 address, and telephone number of such represented
204 interested resale purchaser.
205
206 You have an unwaivable right to cancel this contract
207 for any reason within 10 days after the date you sign
208 this contract. If you decide to cancel this contract,
209 you must notify ...(name of resale advertiser)... in
210 writing of your intent to cancel. Your notice of
211 cancellation shall be effective upon the date sent and
212 shall be sent to ...(resale advertiser's physical
213 address)... or to ...(resale advertiser's e-mail
214 address).... Your refund will be made within 20 days
215 after receipt of notice of cancellation or within 5

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216 days after receipt of funds from your cleared check,
217 whichever is later.
218
219 You are not obligated to pay ...(name of resale
220 advertiser)... any money unless you sign this contract
221 and return it to ...(name of resale advertiser)....
222
223 IMPORTANT: Before signing this contract, you should
224 carefully review your original timeshare purchase
225 contract and other project documents to determine
226 whether the developer has reserved a right of first
227 refusal or other option to purchase your timeshare
228 interest or to determine whether there are any
229 restrictions or special conditions applicable to the
230 resale or rental of your timeshare interest.
231
232 4. A statement that any resale contract entered into by or
233 on behalf of the consumer timeshare reseller must comply in all
234 respects with s. 721.065, including the provision of a 10-day
235 cancellation period for the prospective consumer resale
236 purchaser.
237 (g) Make or submit any charge to a consumer timeshare
238 reseller's credit card account; make or cause to be made any
239 electronic transfer of consumer timeshare reseller funds; or
240 collect any payment from a consumer timeshare reseller in an
241 aggregate amount totaling less than $75 in any 12-month period
242 unless the consumer timeshare reseller has been provided a copy
243 of the terms and conditions of the contract provided for in
244 paragraph (f) and the consumer timeshare reseller has agreed to

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245 such terms and conditions by mail or electronic transmission.
246 (h) Fail to honor any cancellation notice sent by the
247 consumer timeshare reseller within 10 days after the date the
248 consumer timeshare reseller signs the contract for resale
249 advertising services in compliance with subparagraph (f)3.
250 (i) Fail to provide a full refund of all money paid by a
251 consumer timeshare reseller within 20 days after receipt of
252 notice of cancellation or within 5 days after receipt of funds
253 from a cleared check, whichever is later.
254 (3) If a resale service provider uses a contract for resale
255 advertising services that fails to comply with subsection (2),
256 such contract shall be voidable at the option of the consumer
257 timeshare reseller for a period of 1 year after the date it is
258 executed by the consumer timeshare reseller.
259 (4) Notwithstanding obligations placed upon any other
260 persons by this section, it is the duty of a resale service
261 provider to supervise, manage, and control all aspects of the
262 offering of resale advertising services by any agent or employee
263 of the resale service provider. Any violation of this section
264 that occurs during such offering shall be deemed a violation by
265 the resale service provider as well as by the person actually
266 committing the violation.
267 (5) Providing resale advertising services with respect to a
268 consumer resale timeshare interest in a timeshare property
269 located or offered within this state, or in a multisite
270 timeshare plan registered or required to be registered to be
271 offered in this state, including acting as an agent or third-
272 party service provider for a resale service provider,
273 constitutes operating, conducting, engaging in, or carrying on a

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274 business or business venture in this state for the purposes of
275 s. 48.193(1).
276 (6) The use of any unfair or deceptive act or practice by
277 any person in connection with resale advertising services is a
278 violation of this section.
279 (7) Notwithstanding any other penalties provided for in
280 this section, any violation of this section is subject to a
281 civil penalty of not more than $15,000 per violation. In
282 addition, a person who violates any provision of this section
283 commits an unfair and deceptive trade practice as prohibited by
284 s. 501.204 and is subject to the penalties and remedies provided
285 in part II of chapter 501.
286 Section 5. This act shall take effect July 1, 2012.
287
288 ========== T I T L E A M E N D M E N T ==========
289 And the title is amended as follows:
290 Delete everything before the enacting clause
291 and insert:
292 A bill to be entitled
293 An act relating to timeshares; amending s. 721.02,
294 F.S.; revising purposes of the chapter to include the
295 provision of certain disclosure; amending s. 721.05,
296 F.S.; revising the definition of the term "resale
297 service provider"; defining the terms "consumer resale
298 timeshare interest," "consumer timeshare reseller,"
299 "resale broker," "resale brokerage services," "resale
300 advertiser," and "resale advertising service";
301 amending s. 721.20, F.S.; deleting a provision
302 requiring resale service providers to provide certain

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303 fee or cost and listing information to timeshare
304 interest owners; creating s. 721.205, F.S.; specifying
305 information a resale service provider must provide to
306 the consumer timeshare reseller; prohibiting
307 unlicensed resale service providers from engaging in
308 certain activities; prohibiting certain services
309 related to the offering of resale advertising by
310 resale advertisers; providing certain restrictions on
311 the offering of resale advertising services by resale
312 advertisers; providing voidability of certain
313 contracts; providing duties of a resale service
314 provider; providing that the provision of resale
315 advertising services in this state constitutes
316 operating, conducting, engaging in, or carrying on a
317 business or business venture for purposes relating to
318 jurisdiction of the courts of this state; providing
319 penalties; providing an effective date.

874460

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Braynon) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 187 - 193
4 and insert:
5 (e) Make or submit any charge of more than $75 to a
6 consumer timeshare reseller's credit card account, make or cause
7 to be made any electronic transfer of consumer timeshare
8 reseller funds of more than $75, or collect any payment of more
9 than $75 from a consumer timeshare reseller until after the
10 resale advertiser has received a written contract complying in
11 all respects with paragraph (d) which has been signed by the
12 consumer timeshare reseller.

By the Committee on Regulated Industries; and Senator Gardiner

580-02432-12 20121408c1

A bill to be entitled

An act relating to timeshares; amending s. 721.02, F.S.; revising purposes of ch. 721, F.S., to include the provision of certain disclosure; amending s. 721.05, F.S.; revising the definition of the term "resale service provider"; defining the terms "consumer resale timeshare interest," "consumer timeshare reseller," "resale broker," "resale brokerage services," "resale advertiser," and "resale advertising service"; amending s. 721.20, F.S.; deleting a provision requiring resale service providers to provide certain fee or cost and listing information to timeshare interest owners; creating s. 721.205, F.S.; specifying information that a resale service provider must provide to the consumer timeshare reseller; prohibiting unlicensed resale service providers from engaging in certain activities; prohibiting certain services related to the offering of resale advertising by resale advertisers; providing certain restrictions on the offering of resale advertising services by resale advertisers; providing voidability of certain contracts; providing duties of a resale service provider; providing that the provision of resale advertising services in this state constitutes operating, conducting, engaging in, or carrying on a business or business venture for purposes relating to jurisdiction of the courts of this state; providing penalties; providing an effective date.

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

580-02432-12 20121408c1

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

Section 1. Subsection (5) of section 721.02, Florida Statutes, is redesignated as subsection (6), and a new subsection (5) is added to that section to read:

721.02 Purposes.—The purposes of this chapter are to:

(5) Require full and fair disclosure of terms, conditions, and services by resale service providers acting on behalf of consumer timeshare resellers or on behalf of prospective consumer resale purchasers, regardless of the business model employed by the resale service provider.

Section 2. Subsection (44) of section 721.05, Florida Statutes, is amended, and subsections (45) through (50) are added to that section, to read:

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

(44) "Resale service provider" means any resale broker, resale advertiser, or other person or entity, including any agent or employee of such person or entity, who offers or uses ~~unsolicited~~ telemarketing, direct mail, ~~or~~ e-mail, or any other means of communication in connection with the offering of resale brokerage services or resale advertising services to consumer ~~owners of~~ timeshare resellers ~~interests~~. The term does not include developers, managing entities, or exchange companies to the extent they offer resale brokerage services or resale advertising services to owners of timeshare interests in their own timeshare plans or members of their own exchange programs, or a resale broker to the extent that resale advertising services are offered in connection with resale brokerage

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59 services and no fee for the advertising service is collected in
60 advance. The term also does not include a consumer timeshare
61 reseller who acquires a timeshare interest or timeshare
62 interests for his or her own use and occupancy and who later
63 offers the timeshare interest or timeshare interests for rent or
64 offers for resale in a given calendar year seven or fewer of the
65 timeshare interests that he or she acquired for his or her own
66 use and occupancy.
67 (45) "Consumer resale timeshare interest" means:
68 (a) A timeshare interest owned by a purchaser;
69 (b) One or more reserved occupancy rights relating to a
70 timeshare interest owned by a purchaser; or
71 (c) One or more reserved occupancy rights relating to, or
72 arranged through, an exchange program in which a purchaser is a
73 member.
74 (46) "Consumer timeshare reseller" means a purchaser who
75 acquires a timeshare interest for his or her own use and
76 occupancy and later offers the timeshare interest for resale or
77 rental.
78 (47) "Resale broker" means any person, or any agent or
79 employee of such person, who is licensed pursuant to chapter 475
80 and who offers or provides resale brokerage services to consumer
81 timeshare resellers for compensation or valuable consideration,
82 regardless of whether the offer is made in person, by mail, by
83 telephone, through the Internet, or by any other medium of
84 communication.
85 (48) "Resale brokerage services" means, with respect to a
86 consumer resale timeshare interest in a timeshare property
87 located or offered within this state, any activity that directly

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88 or indirectly consists of any of activities described in s.
89 475.01(1)(a).
90 (49) "Resale advertiser" means any person who offers,
91 personally or through an agent, resale advertising services to
92 consumer timeshare resellers for compensation or valuable
93 consideration, regardless of whether the offer is made in
94 person, by mail, by telephone, through the Internet, or by any
95 other medium of communication. The term does not include:
96 (a) A resale broker to the extent that resale advertising
97 services are offered in connection with timeshare resale
98 brokerage services and no fee for the resale advertising service
99 is collected in advance;
100 (b) A developer, managing entity, or exchange company to
101 the extent that any of them offers resale advertising services
102 to owners of timeshare interests in their own timeshare plans or
103 members of their own exchange programs; or
104 (c) A newspaper, periodical, or website owner, operator, or
105 publisher, unless the newspaper, periodical, or website owner,
106 operator, or publisher derives more than 10 percent of its gross
107 revenue from providing resale advertising services. For purposes
108 of this paragraph, the calculation of gross revenue derived from
109 providing resale advertising services includes revenue of any
110 affiliate, parent, agent, and subsidiary of the newspaper,
111 periodical, or website owner, operator, or publisher, so long as
112 the resulting percentage of gross revenue is not decreased by
113 the inclusion of such affiliate, parent, subsidiary, or agent in
114 the calculation.
115 (50) "Resale advertising service" means any good or service
116 relating to, or a promise of assistance in connection with,

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117 advertising or promoting the resale or rental of a consumer
118 resale timeshare interest located or offered within this state,
119 including any offer to advertise or promote the sale or purchase
120 of any such interest.
121 Section 3. Subsection (9) of section 721.20, Florida
122 Statutes, is amended to read:
123 721.20 Licensing requirements; suspension or revocation of
124 license; exceptions to applicability; collection of advance fees
125 for listings unlawful.—
126 ~~(9)(a) Prior to listing or advertising a timeshare interest~~
127 ~~for resale, a resale service provider shall provide to the~~
128 ~~timeshare interest owner a description of any fees or costs~~
129 ~~relating to the advertising, listing, or sale of the timeshare~~
130 ~~interest that the timeshare interest owner, or any other person,~~
131 ~~must pay to the resale service provider or any third party, when~~
132 ~~such fees or costs are due, and the ratio or percentage of the~~
133 ~~number of listings of timeshare interests for sale versus the~~
134 ~~number of timeshare interests sold by the resale service~~
135 ~~provider for each of the previous 2 calendar years.~~
136 ~~(b) Failure to disclose this information in writing~~
137 ~~constitutes an unfair and deceptive trade practice pursuant to~~
138 ~~chapter 501. Any contract entered into in violation of this~~
139 ~~subsection is void and the purchaser is entitled to a full~~
140 ~~refund of any moneys paid to the resale service provider.~~
141 Section 4. Section 721.205, Florida Statutes, is created to
142 read:
143 721.205 Resale service providers; disclosure obligations.—
144 (1)(a) Before engaging in resale advertising services, a
145 resale service provider must provide to the consumer timeshare

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146 reseller:
147 1. A description of any fees or costs related to such
148 services that the consumer timeshare reseller, or any other
149 person, is required pay to the resale service provider or to any
150 third party.
151 2. A description of when such fees or costs are due.
152 (b) A resale service provider may not engage in those
153 activities described in s. 475.01(1)(a) without being the holder
154 of a valid and current active license in accordance with chapter
155 475.
156 (2) In the course of offering resale advertising services,
157 a resale advertiser may not:
158 (a) State or imply that the resale advertiser will provide
159 or assist in providing any type of direct sales or resale
160 brokerage services other than the advertising of the consumer
161 resale timeshare interest for sale or rent by the consumer
162 timeshare reseller.
163 (b) State or imply to a consumer timeshare reseller,
164 directly or indirectly, that the resale advertiser has
165 identified a person interested in buying or renting the
166 timeshare resale interest without providing the name, address,
167 and telephone number of such represented interested resale
168 purchaser.
169 (c) State or imply to a consumer timeshare reseller,
170 directly or indirectly, that sales or rentals have been achieved
171 or generated as a result of its advertising services unless the
172 resale advertiser, at the time of making such representation,
173 possesses and is able to provide documentation to substantiate
174 the statement or implication made to the consumer timeshare

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175 reseller. In addition, to the extent that a resale advertiser
176 states or implies to a consumer timeshare reseller that the
177 resale advertiser has sold or rented any specific number of
178 timeshare interests, the resale advertiser must also provide the
179 consumer timeshare reseller the ratio or percentage of either
180 the timeshare interests advertised for sale by the resale
181 advertiser which have actually resulted in a sale, or the ratio
182 or percentage of all timeshare interests advertised for rental
183 which have actually resulted in a rental, for each of the
184 previous 2 calendar years.
185 (d) State or imply to a consumer timeshare reseller that
186 the timeshare interest has a specific resale value.
187 (e) Make or submit any charge to a consumer timeshare
188 reseller's credit card account, make or cause to be made any
189 electronic transfer of consumer timeshare reseller funds, or
190 collect any payment from a consumer timeshare reseller until
191 after the resale advertiser has received a written contract
192 complying in all respects with paragraph (d) which has been
193 signed by the consumer timeshare reseller.
194 (f) Engage in any resale advertising services for
195 compensation or valuable consideration without first obtaining a
196 written contract to provide such services signed by the consumer
197 timeshare reseller. Notwithstanding any other law, the contract
198 must be printed in at least 12-point type and must contain the
199 following information:
200 1. The name, address, telephone number, and web address, if
201 any, of the resale advertiser and a mailing address and e-mail
202 address to which a contract cancellation notice may be delivered
203 at the consumer timeshare reseller's election.

204 2. A complete description of all resale advertising
205 services to be provided, including, but not limited to, details
206 regarding the publications, Internet sites, and other media in
207 or on which the consumer resale timeshare interest will be
208 advertised, the dates or time intervals for such advertising or
209 the minimum number of times such advertising will be run in each
210 specific medium, the itemized cost to the consumer timeshare
211 reseller of each resale advertising service to be provided, and
212 a statement of the total cost to the consumer timeshare reseller
213 of all resale advertising services to be provided.
214 3. A statement printed in at least 12-point boldfaced type
215 immediately preceding the space in the contract provided for the
216 consumer timeshare reseller's signature in substantially the
217 following form:
218
219 TIMESHARE OWNER'S RIGHT OF CANCELLATION
220
221 ...(Name of resale advertiser)... will provide resale
222 advertising services pursuant to this contract. If ...(name of
223 resale advertiser)... represents that ...(name of resale
224 advertiser)... has identified a person who is interested in
225 purchasing or renting your timeshare interest, then ...(name of
226 resale advertiser)... must provide you with the name, address,
227 and telephone number of such represented interested resale
228 purchaser.
229
230 You have an unwaivable right to cancel this contract for
231 any reason within 10 days after the date you sign this contract.
232 If you decide to cancel this contract, you must notify ...(name

233 of resale advertiser)... in writing of your intent to cancel.
234 Your notice of cancellation shall be effective upon the date
235 sent and shall be sent to ...(resale advertiser's physical
236 address)... or to ...(resale advertiser's e-mail address)....
237 Your refund will be made within 20 days after receipt of notice
238 of cancellation or within 5 days after receipt of funds from
239 your cleared check, whichever is later.
240
241 You are not obligated to pay ...(name of resale
242 advertiser)... any money unless you sign this contract and
243 return it to ...(name of resale advertiser)....
244
245 IMPORTANT: Before signing this contract, you should
246 carefully review your original timeshare purchase contract and
247 other project documents to determine whether the developer has
248 reserved a right of first refusal or other option to purchase
249 your timeshare interest or to determine whether there are any
250 restrictions or special conditions applicable to the resale or
251 rental of your timeshare interest.
252
253 4. A statement that any resale contract entered into by or
254 on behalf of the consumer timeshare reseller must comply in all
255 respects with s. 721.065, including the provision of a 10-day
256 cancellation period for the prospective consumer resale
257 purchaser.
258 (g) Fail to honor any cancellation notice received from the
259 consumer timeshare reseller within 10 days after the date the
260 consumer timeshare reseller signs the contract for resale
261 advertising services in compliance with subparagraph (f)3.

262 (h) Fail to provide a full refund of all money paid by a
263 consumer timeshare reseller within 20 days after receipt of
264 notice of cancellation or within 5 days after receipt of funds
265 from a cleared check, whichever is later.
266 (3) If a resale service provider uses a contract for resale
267 advertising services which fails to comply with subsection (2),
268 such contract shall be voidable at the option of the consumer
269 timeshare reseller for a period of 1 year after the date it is
270 executed by the consumer timeshare reseller.
271 (4) Notwithstanding obligations placed upon any other
272 persons by this section, it is the duty of a resale service
273 provider to supervise, manage, and control all aspects of the
274 offering of resale brokerage services or resale advertising
275 services by any agent or employee of the resale service
276 provider. Any violation of this section which occurs during such
277 offering shall be deemed a violation by the resale service
278 provider as well as by the person actually committing the
279 violation.
280 (5) Providing resale advertising services with respect to a
281 consumer resale timeshare interest in a timeshare property
282 located or offered in this state, or in a multisite timeshare
283 plan registered or required to be registered to be offered
284 within this state, including acting as an agent or third-party
285 service provider for a resale service provider, constitutes
286 operating, conducting, engaging in, or carrying on a business or
287 business venture in this state for the purposes of s. 48.193(1).
288 (6) The use of any unfair or deceptive act or practice by
289 any person in connection with resale advertising services is a
290 violation of this section.

291 (7) Notwithstanding any other penalties provided for in
292 this section, any violation of this section is subject to a
293 civil penalty of not more than $15,000 per violation. In
294 addition, a person who violates any provision of this section
295 commits an unfair and deceptive trade practice as prohibited by
296 s. 501.204 and is subject to the penalties and remedies provided
297 in part II of chapter 501.
298 Section 5. This act shall take effect July 1, 2012.

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THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

28 Feb 12
Date

1408
Bill Number

Barcode

Name CHARLES Milsted

Phone 850 577 5190

Address 200 West College Avenue
Street

Tallahassee FL 32301
City State Zip

E-mail cmilsted@aarp.org

Job Title Assoc. STATE DIR

Speaking: [✓] For [ ] Against [ ] Information

Appearing at request of Chair [ ]

Subject Time shares

Representing AARP

Lobbyist registered with Legislature: [✓] Yes [ ] No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/28/12
Date

1408
Bill Number

Barcode

For Information

Name Mark Hamilton

Address PL-01 The Capitol
Street

City State Zip

Phone (850) 414-3300

E-mail mark.hamilton@myflorida legal.com

Job Title Bureau Chief

Speaking: ☐ For ☐ Against ☒ Information

Appearing at request of Chair ☐

Subject Timeshares

Representing Office of Attorney General

Lobbyist registered with Legislature: ☐ Yes ☑ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2-28-12
Date

1408
Bill Number

Barcode

Name Kimberly Case

Phone 850-245-0155

Address PL-01, Capitol
Street

E-mail kimberly.case@myflorida legal.com

Tallahassee FL 32312
City State Zip

Job Title Legislative Affairs Director

Speaking: [✓] For [ ] Against [ ] Information

Appearing at request of Chair [ ]

Subject Timeshare Resale

Representing Attorney General Bondi

Lobbyist registered with Legislature: [✓] Yes [ ] No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Communications, Energy, and Public Utilities, *Chair*
Budget - Subcommittee on Finance and Tax
Judiciary
Reapportionment
Rules

SENATOR ANDY GARDINER
Majority Leader
9th District

February 1, 2012

The Honorable Alan Hays, Chair
Budget Subcommittee on General Government Appropriations
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Hays,

Senate Bill 1408 Timeshares has been referred to your committee. This legislation prohibits unlicensed timeshare resale service providers from engaging in certain activities. I respectfully request that Senate Bill 1408 be heard before your committee.

If you have any questions regarding this request, please do not hesitate to call my office. Thank you for your time and consideration of this matter.

Sincerely,

Senator Andy Gardiner

AG:gh

Cc: Jamie DeLoach, Staff Director
Lisa Waddell, Committee Administrative Assistant

SENATE APPROPRIATIONS
RECEIVED
12 JAN 33 AM 10: 18
SENT TO: CHAIRMAN ____
STAFF DIR. ____ STAFF ____

REPLY TO:
☐ 1013 East Michigan Street, Orlando, Florida 32806 (407) 428-5800
☐ 330 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5047

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/SB 1428

INTRODUCER: Budget Subcommittee on General Government Appropriations; Banking and Insurance Committee and Senator Smith

SUBJECT: Renewal of a Commercial Lines Insurance Policy

DATE: February 28, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Burgess	Burgess	BI	**Fav/CS**
2.	Betta	DeLoach	BGA	**Fav/CS**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill provides that upon the expiration of the term of a commercial lines insurance policy, the insurer may transfer the policy to another authorized insurer that is a member of the same group or owned by the same holding company. This type of transfer would be treated as a renewal of the policy, rather than a cancellation or nonrenewal. The insurer is required to provide at least 45 days' notice of its intent to transfer, along with the financial rating of the insurer to which the policy is being transferred. The notice may be provided in the notice of renewal premium.

The bill explicitly provides that it does not apply to residential property insurance, except for farmowners insurance and general liability policies that provide farm coverage or commercial property policies that provide farm coverage.

The bill eliminates the mandatory onsite premium audits of policyholders if a workers' compensation insurer meets certain financial requirements. This change will provide insurers with flexibility to implement risk-based audits.

The bill authorizes the Office of Insurance Regulation (OIR) to expend funds within existing resources for professional development of its employees.

This bill substantially amends the following section of the Florida Statutes: 627.4133.

II. Present Situation:

Commercial Lines Insurance

Commercial lines insurance is designed for and purchased by businesses to cover losses sustained by the business.[1] The specific type of commercial lines insurance that a business purchases may depend, in part, on the business type and industry. Major types of commercial insurance are:

- Boiler and machinery;
- Business income;
- Commercial automobile;
- Comprehensive general liability;
- Directors and officers liability;
- Medical malpractice liability;
- Product liability;
- Professional liability; and
- Workers' compensation.

Notice of Cancellation, Nonrenewal, or Renewal Premium

The requirements for an insurer to give notice of cancellation, nonrenewal, or renewal premium are provided in s. 627.4133, F.S. The specific notice depends on the type of insurance being provided and the particular circumstances of the subject policy. For workers' compensation, employer's liability insurance, property (except personal lines and commercial lines residential), casualty except mortgage guaranty, surety, or marine insurance, other than motor vehicle, must give the insured at least 45 days' written notice of cancellation, nonrenewal, or the renewal premium.[2] For motor vehicle policies, the general requirement is also 45 days notice for nonrenewal or cancellation, but there exist several exceptions, depending on the circumstance.[3] For personal lines or commercial lines residential property insurance:

- Generally, an insurer must give the insured 100 days written notice of nonrenewal or cancellation, and must give 45 days' notice of the renewal premium;[4]
- For any nonrenewal or cancellation that would be effective between June 1 and November 30 (hurricane season), an insurer must give notice by June 1, or 100 days, whichever is earlier;[5]
- If the nonrenewal or cancellation would be effective between June 1 and November 30, but the reason is a revision in sinkhole coverage, the insurer must give the insured 100 days written notice of nonrenewal;[6]

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[1] http:/www2.iii.org/glossary/ "commercial lines" definition. Last visited 1/23/2012.
[2] Section 627.4133(1)(a) and (b), F.S.
[3] Section 627.728(3) and (4), F.S.
[4] Section 627.4133(2)(a) and (b), F.S.
[5] Section 627.4133(2)(b), F.S.

- If the nonrenewal or cancellation would be effective between June 1 and November 30, but the policy is to be nonrenewed by Citizens pursuant to an approved assumption plan by an authorized insurer, Citizens must give the insured 45 days written notice of nonrenewal;[7]
- If the insured structure has been insured by the insurer or an affiliate for at least five years, the insurer must give 120 days' notice of nonrenewal or cancellation;[8]
- If the cancellation is for nonpayment of premium, the insurer must give 10 days' notice of cancellation accompanied by the reason for the cancellation;[9]
- If the Office of Insurance Regulation finds that the early cancellation is necessary to protect the best interests of the public or policyholders, the insurer must give the insured 45 days written notice of cancellation or nonrenewal.[10]

Section 627.728(4)(d), F.S.

Currently, s. 627.728(4)(d), F.S., allows an insurance company to transfer a motor vehicle insurance policy to a new insurer under the same ownership or management of first insurer, instead of canceling and nonrenewing the policies at the expiration of the policy term, by giving the insured 45 days' advance notice the intent to transfer.

Insurer Audits

All insurance companies licensed in the State of Florida are required to cooperate and undergo audits by the OIR. Companies are required to reimburse the OIR for the cost of audits performed.

III. Effect of Proposed Changes:

The bill provides that upon the expiration of the term of a commercial lines insurance policy, the insurer may transfer the policy to another authorized insurer that is a member of the same group or owned by the same holding company. This type of transfer would be treated as a renewal of the policy, rather than a cancellation or nonrenewal. The insurer is required to provide at least 45 days' notice of its intent to transfer, along with the financial rating of the insurer to which the policy is being transferred. The notice may be provided in the notice of renewal premium.

The bill explicitly provides that it does not apply to residential property insurance, except for farmowners insurance and general liability policies that provide farm coverage or commercial property policies that provide farm coverage.

The bill eliminates the mandatory onsite premium audits of policyholders if a workers' compensation insurer has surplus of at least $200 million or insurers within an insurer group that has at least $400 million in surplus.

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[6] Section 627.4133(2)(b)1., F.S.
[7] Section 627.4133(2)(b)4.b., F.S.
[8] Section 627.4133(2)(b)1., F.S.
[9] Section 627.4133(1)(b)1., F.S.
[10] Section 627.4133(2)(b)5., F.S.

The bill authorizes the Office of Insurance Regulation to expend funds within existing resources for professional development of its employees.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Allowing policies to be transferred between affiliated insurers, rather than requiring policies to be nonrenewed by the original insurer and reissued by an affiliated insurer, allows insurers to more easily manage their book of business, and insurers believe it will eliminate confusion among policyholders associated with policy nonrenewal and subsequent reissuance.

Eliminates the mandatory onsite premium audits of policyholders if a workers' compensation insurer meets certain financial requirements. This will save insurers money by performing audits that are more risk-based.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Budget Subcommittee on General Government Appropriations on February 28, 2012:
The CS eliminates mandatory onsite premium audits of policyholders if a workers' compensation insurer has a surplus of at least $200 million or insurers within a group that has a surplus of at least $400 million.

The CS also authorizes the Office of Insurance Regulation to expend funds within existing resources for professional development of its employees.

CS by Banking and Insurance on February 2, 2012:

The CS provides that upon the expiration of the term of a commercial lines insurance policy, the insurer may transfer the policy to another authorized insurer that is a member of the same group or owned by the same holding company, whereas the original bill allowed a transfer to an authorized insurer under the "same direct or indirect ownership, management, or control" as the original insurer.

The CS adds the requirement that the insurer must provide at least 45 days' notice of its intent to transfer, along with the financial rating of the insurer to which the policy is being transferred. The CS allows the insurer to provide the notice of its intent to transfer within the notice of renewal premium.

The CS explicitly provides that it does not apply to residential property insurance, except for farmowners insurance and general liability policies that provide farm coverage or commercial property policies that provide farm coverage.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
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	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Braynon) recommended the following:

Senate Amendment (with title amendment)

Between lines 31 and 32
insert:
Section 2. Subsection (2) of section 627.442, Florida Statutes, is amended to read:
627.442 Insurance contracts.—
(2) Notwithstanding s. 440.381(3), an insurer having at least $200 million in surplus, or an insurer within an insurer group that has at least $400 million in surplus, as reflected in the combined annual statement filed by the insurer group with the office, is not required to perform physical onsite premium

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13 audits ~~are not required~~ for workers' compensation coverage,
14 other than an audit required by ~~the insurance policy or~~ an order
15 of the office, or ~~at least once each policy period,~~ if requested
16 by the insured.
17
18 ========== T I T L E A M E N D M E N T ==========
19 And the title is amended as follows:
20 Delete line 8
21 and insert:
22 policies such transfer provisions apply to; amending
23 s. 627.442, F.S.; exempting certain insurers from
24 performing onsite premium audits for workers'
25 compensation insurance; providing

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Braynon) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Between lines 12 and 13
4 insert:
5 Section 1. Subsections (7) and (8) of section 624.307,
6 Florida Statutes, are renumbered as subsections (8) and (9),
7 respectively, and a new subsection (7) is added to that section,
8 to read:
9 624.307 General powers; duties.—
10 (7) The office, within existing resources, may expend funds
11 for the professional development of its employees, including,
12 but not limited to, professional dues for employees who are

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13 required to be members of professional organizations;
14 examinations leading to professional designations required for
15 employment with the office; training courses and examinations
16 provided through, and to ensure compliance with, the National
17 Association of Insurance Commissioners; or other training
18 courses related to the regulation of insurance.
19
20 ========== T I T L E A M E N D M E N T ==========
21 And the title is amended as follows:
22 Delete lines 2 - 3
23 and insert:
24 An act relating to insurance; amending s. 624.307,
25 F.S.; authorizing the Office of Insurance Regulation
26 to expend funds for the professional development of
27 its employees; amending s. 627.4133, F.S.;

By the Committee on Banking and Insurance; and Senator Smith

A bill to be entitled

An act relating to the renewal of a commercial lines insurance policy; amending s. 627.4133, F.S.; providing that the transfer of a policy to certain other insurers is considered a renewal of the policy rather than a cancellation or nonrenewal; requiring notice of such transfer; specifying which types of policies such transfer provisions apply to; providing an effective date.

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

Section 1. Subsection (8) is added to section 627.4133, Florida Statutes, to read:

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

(8) Upon expiration of the policy term, an insurer may transfer a commercial lines policy to another authorized insurer that is a member of the same group or owned by the same holding company as the transferring insurer. The transfer constitutes a renewal of the policy and may not be treated as a cancellation or a nonrenewal of the policy. The insurer must provide notice of its intent to transfer the policy at least 45 days before the effective date of the transfer along with the financial rating of the authorized insurer to which the policy is being transferred. Such notice may be provided in the notice of renewal premium. This subsection does not apply to a policy providing residential property insurance coverage, except for farmowners insurance and commercial general liability policies

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

providing farm coverage or commercial property policies providing farm coverage.

Section 2. This act shall take effect upon becoming a law.

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

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2/28
Date

1428
Bill Number

Barcode

Name DONOVAN BROWN

Phone

Address
Street

E-mail

City State Zip

Job Title

Speaking: [✓] For [ ] Against [ ] Information

Appearing at request of Chair [ ]

Subject

Representing PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA

Lobbyist registered with Legislature: [✓] Yes [ ] No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from ____ ___.m. to ____ ___.m.

S-001 (04/14/10)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2-28-2012
Date

SB 1428
Bill Number

Barcode

Name Meredith Snowden

Phone 577-0398

Address 201 S Monroe St.
Street

E-mail msnowden@cfhw.com

Tall FL 32301
City *State* *Zip*

Job Title consultant

Speaking: [✓] For [ ] Against [ ] Information

Appearing at request of Chair [ ]

Subject commercial lines policy transfer

Representing FCCI insurance group

Lobbyist registered with Legislature: [✓] Yes [ ] No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

The Florida Senate

Committee Agenda Request

To: Senator D. Alan Hays, Chair
Committee on General Government Appropriations

Subject: Committee Agenda Request

Date: February 14, 2012

I respectfully request that **Senate Bill #1428**, relating to Commercial Lines Insurance Policy, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Christopher L. "Chris" Smith
Florida Senate, District 29

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: SB 1518

INTRODUCER: Senator Hays

SUBJECT: Property and Casualty Insurance

DATE: February 27, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	**Favorable**
2.	Betta	DeLoach	BGA	**Pre-meeting**
3.				
4.				
5.				
6.				

I. Summary:

The bill repeals s. 627.3519, F.S., which requires the Financial Services Commission to provide to the Legislature an annual report on probable maximum losses, financing options, and potential assessments for the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation.

This bill repeals the following section of the Florida Statutes: 627.3519.

II. Present Situation:

In 2006[1] the Legislature enacted s. 627.3519, F.S., which requires the Financial Services Commission (FSC) to provide the Legislature, by February 1st each year, a report on the probable maximum losses for the Florida Hurricane Catastrophe Fund (Fund) and Citizens Property Insurance Corporation (Citizens), resulting from a 50-year, 100-year, and 250-year storm. The report must lay out financing options for the Fund and Citizens, including the need for assessments. Additionally, the report is to include analysis of all reasonable financing strategies for each such event, including the amount and term of debt instruments; specification of the percentage assessments that would be needed to support each of the financing strategies; and calculations of the aggregate assessment burden on Florida property and casualty policyholders for each event.

The Office of Insurance Regulation (OIR) prepares the report on behalf of the FSC. The OIR does not compute or generate the information required to be reported. Much of the information

[1] s. 20, ch. 2006-12 L.O.F.

needed in the report is already computed by the Fund and by Citizens and provided to various stakeholders, such as potential bond investors, rating agencies, public policymakers, and the advisory and governing boards of the Fund and Citizens. Thus, the information contained in the report is readily available from other resources.

III. Effect of Proposed Changes:

Section 1 repeals s. 627.3519, F.S., relating to an annual report of aggregate net probable maximum losses, financing options, and potential assessments.

Section 2 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of Insurance Regulation staff will no longer have to compile a duplicative report that is currently available through other sources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Budget Subcommittee on General Government Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Between lines 13 and 14
insert:

Section 1. Section 627.215, Florida Statutes, is amended to read:

627.215 Excessive profits for ~~workers' compensation, employer's liability,~~ commercial property~~,~~ and commercial casualty insurance prohibited.—

(1)(a) Each insurer group writing ~~workers' compensation and employer's liability insurance as defined in s. 624.605(1)(c),~~ commercial property insurance as defined in s. 627.0625,

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13 commercial umbrella liability insurance as defined in s.
14 627.0625, or commercial casualty insurance as defined in s.
15 627.0625 shall annually file with the office before ~~prior to~~
16 July 1 ~~of each year~~, on a form prescribed by the commission, the
17 following data for the component types of such insurance as
18 provided in the form:
19 1. Calendar-year earned premium.
20 2. Accident-year incurred losses and loss adjustment
21 expenses.
22 3. The administrative and selling expenses incurred in this
23 state or allocated to this state for the calendar year.
24 4. Policyholder dividends applicable to the calendar year.
25
26 This paragraph does not ~~Nothing herein is intended to~~ prohibit
27 an insurer from filing on a calendar-year basis.
28 (b) The data filed for the group shall be a consolidation
29 of the data of the individual insurers of the group. However, an
30 insurer may elect to ~~either~~ consolidate commercial umbrella
31 liability insurance data with commercial casualty insurance data
32 or to separately file data for commercial umbrella liability
33 insurance. Each insurer shall elect its method of filing
34 commercial umbrella liability insurance at the time of filing
35 data for accident year 1987 and shall thereafter continue filing
36 under the same method. In the case of commercial umbrella
37 liability insurance data reported separately, a separate
38 excessive profits test shall be applied and the test period
39 shall be 10 years. ~~In the case of workers' compensation and~~
40 ~~employer's liability insurance, the final report for the test~~
41 ~~period including accident years 1984, 1985, and 1986 must be~~

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42 ~~filed prior to July 1, 1988. In the case of commercial property~~
43 ~~and commercial casualty insurance, the final report for the test~~
44 ~~period including accident years 1987, 1988, and 1989 must be~~
45 ~~filed prior to July 1, 1991.~~
46 ~~(2) Each insurer group writing workers' compensation and~~
47 ~~employer's liability insurance shall also file a schedule of~~
48 ~~Florida loss and loss adjustment experience for each of the 3~~
49 ~~years previous to the most recent accident year. The incurred~~
50 ~~losses and loss adjustment expenses shall be valued as of~~
51 ~~December 31 of the first year following the latest accident year~~
52 ~~to be reported, developed to an ultimate basis, and at two 12-~~
53 ~~month intervals thereafter, each developed to an ultimate basis,~~
54 ~~so that a total of three evaluations will be provided for each~~
55 ~~accident year. The first year to be so reported shall be~~
56 ~~accident year 1984, so that the reporting of 3 accident years~~
57 ~~under this revised evaluation will not take place until accident~~
58 ~~years 1985 and 1986 have become available. For reporting~~
59 ~~purposes unrelated to determining excessive profits, the loss~~
60 ~~and loss adjustment experience of each accident year shall~~
61 ~~continue to be reported until each accident year has been~~
62 ~~reported at eight stages of development.~~
63 (2) ~~(3)~~ (a) Each insurer group writing commercial property
64 insurance or commercial casualty insurance shall also file a
65 schedule of Florida loss and loss adjustment experience for each
66 of the 3 years previous to the most recent accident year. The
67 incurred losses and loss adjustment expenses shall be valued as
68 of December 31 of the first year following the latest accident
69 year, developed to an ultimate basis, and at two 12-month
70 intervals thereafter, each developed to an ultimate basis, so

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71 that a total of three ~~3~~ evaluations are ~~will be~~ provided for
72 each accident year. ~~The first year to be so reported shall be~~
73 ~~accident year 1987, which shall first be reported on or before~~
74 ~~July 1, 1989, and the reporting of 3 accident years will not~~
75 ~~take place until accident years 1988 and 1989 have become~~
76 ~~available. For medical malpractice insurance, the first year to~~
77 ~~be so reported shall be accident year 1990, which shall first be~~
78 ~~reported on or before July 1, 1992, and the reporting of 3~~
79 ~~accident years for full inclusion of medical malpractice~~
80 ~~experience in commercial casualty insurance will not take place~~
81 ~~until accident years 1991 and 1992 become available.~~
82 ~~Accordingly, no medical malpractice insured shall be eligible~~
83 ~~for refunds or credits until the reporting period ending with~~
84 ~~calendar-accident year 1992.~~ For reporting purposes unrelated to
85 determining excess profits, the loss and loss adjustment
86 experience of each accident year shall continue to be reported
87 until each accident year has been reported at eight stages of
88 development.
89 (b) Each insurer group writing commercial umbrella
90 liability insurance which elects to file separate data for such
91 insurance shall also file a schedule of Florida loss and loss
92 adjustment experience for each of the 10 years previous to the
93 most recent accident year. The incurred losses and loss
94 adjustment expenses shall be valued as of December 31 of the
95 first year following the latest accident year, developed to an
96 ultimate basis, and at nine 12-month intervals thereafter, each
97 developed to an ultimate basis, so that a total of 10
98 evaluations will be provided for each accident year. ~~The first~~
99 ~~year to be so reported shall be accident year 1987, which shall~~

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100 ~~first be reported on or before October 1, 1989, and the~~
101 ~~reporting of 10 accident years will not take place until~~
102 ~~accident year 1996 data is reported.~~
103 (3) ~~(4)~~ Each insurer group's underwriting gain or loss for
104 each calendar-accident year shall be computed as follows: The
105 sum of the accident-year incurred losses and loss adjustment
106 expenses as of December 31 of the year, developed to an ultimate
107 basis, plus the administrative and selling expenses incurred in
108 the calendar year, plus policyholder dividends applicable to the
109 calendar year, shall be subtracted from the calendar-year earned
110 premium to determine the underwriting gain or loss.
111 (4) ~~(5)~~ For the 3 most recent calendar-accident years for
112 which data is to be filed under this section, the underwriting
113 gain or loss shall be compared to the anticipated underwriting
114 profit, except in the case of separately reported commercial
115 umbrella liability insurance for which such comparison shall be
116 made for the 10 most recent calendar-accident years.
117 ~~(6) For those insurer groups writing workers' compensation~~
118 ~~and employer's liability insurance during the years 1984, 1985,~~
119 ~~1986, 1987, and 1988, an excessive profit has been realized if~~
120 ~~underwriting gain is greater than the anticipated underwriting~~
121 ~~profit plus 5 percent of earned premiums for the 3 most recent~~
122 ~~calendar years for which data is to be filed under this section.~~
123 ~~Any excess profit of an insurance company offering workers'~~
124 ~~compensation or employer's liability insurance during this~~
125 ~~period of time, shall be returned to policyholders in the form~~
126 ~~of a cash refund or a credit toward future purchase of~~
127 ~~insurance. The excessive amount shall be refunded on a pro rata~~
128 ~~basis in relation to the final compilation year earned premiums~~

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129 ~~to the workers' compensation policyholders of record of the~~
130 ~~insurer group on December 31 of the final compilation year.~~
131 (5) ~~(7)~~(a) With respect to the ~~Beginning with the July 1,~~
132 ~~1991,~~ report for ~~workers' compensation insurance, employer's~~
133 ~~liability insurance,~~ commercial property insurance~~,~~ and
134 commercial casualty insurance, an excessive profit has been
135 realized if the combined net aggregate underwriting gain for ~~all~~
136 these lines ~~combined~~ is greater than the net aggregate
137 anticipated underwriting profit for these lines plus 5 percent
138 of earned premiums for the 3 most recent calendar years for
139 which data is to be filed under this section. For calculation
140 purposes commercial property insurance and commercial casualty
141 insurance shall be broken down into sublines in order to
142 ascertain the anticipated underwriting profit factor versus the
143 actual underwriting gain for the given subline.
144 (b) Beginning with the July 1, 1998, report for commercial
145 umbrella liability insurance, if an insurer has elected to file
146 data separately for such insurance, an excessive profit has been
147 realized if the underwriting gain for such insurance is greater
148 than the anticipated underwriting profit for such insurance plus
149 5 percent of earned premiums for the 10 most recent calendar
150 years for which data is to be filed under this section.
151 (6) ~~(8)~~ As used in this section with respect to any 3-year
152 period, or with respect to any 10-year period in the case of
153 commercial umbrella liability insurance, "anticipated
154 underwriting profit" means the sum of the dollar amounts
155 obtained by multiplying, for each rate filing of the insurer
156 group in effect during such period, the earned premiums
157 applicable to such rate filing during such period by the

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158 percentage factor included in such rate filing for profit and
159 contingencies, such percentage factor having been determined
160 with due recognition to investment income from funds generated
161 by Florida business, except that the anticipated underwriting
162 profit for the purposes of this section shall be calculated
163 using a profit and contingencies factor that is not less than
164 zero. Separate calculations need not be made for consecutive
165 rate filings containing the same percentage factor for profits
166 and contingencies.
167 (7) ~~(9)~~ If the insurer group has realized an excessive
168 profit, the office shall order a return of the excessive amounts
169 after affording the insurer group an opportunity for hearing and
170 otherwise complying with the requirements of chapter 120. Such
171 excessive amounts shall be refunded in all instances unless the
172 insurer group affirmatively demonstrates to the office that the
173 refund of the excessive amounts will render a member of the
174 insurer group financially impaired or will render it insolvent
175 under the ~~provisions of the~~ Florida Insurance Code.
176 (8) ~~(10)~~ Any excess profit of an insurance company ~~as~~
177 ~~determined on July 1, 1991, and thereafter~~ shall be returned to
178 policyholders in the form of a cash refund or a credit toward
179 the future purchase of insurance. The excessive amount shall be
180 refunded on a pro rata basis in relation to the final
181 compilation year earned premiums to the policyholders of record
182 of the insurer group on December 31 of the final compilation
183 year.
184 (9) ~~(11)~~(a) Cash refunds to policyholders may be rounded to
185 the nearest dollar.
186 (b) Data in required reports to the office may be rounded

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187 to the nearest dollar.
188 (c) Rounding, if elected by the insurer, must ~~shall~~ be
189 applied consistently.
190 (10) ~~(12)~~(a) Refunds shall be completed in one of the
191 following ways:
192 1. If the insurer group elects to make a cash refund, the
193 refund must ~~shall~~ be completed within 60 days after ~~of~~ entry of
194 a final order indicating that excessive profits have been
195 realized.
196 2. If the insurer group elects to make refunds in the form
197 of a credit to renewal policies, such credits must ~~shall~~ be
198 applied to policy renewal premium notices that ~~which~~ are
199 forwarded to insureds more than 60 calendar days after entry of
200 a final order indicating that excessive profits have been
201 realized. If an insurer group has made this election but an
202 insured thereafter cancels her or his policy or otherwise allows
203 the policy to terminate, the insurer group must ~~shall~~ make a
204 cash refund within ~~not later than~~ 60 days after termination of
205 such coverage.
206 (b) Upon completion of the renewal credits or refund
207 payments, the insurer group shall immediately certify to the
208 office that the refunds have been made.
209 (11) ~~(13)~~ Any refund or renewal credit made pursuant to this
210 section shall be treated as a policyholder dividend applicable
211 to the year immediately succeeding the compilation period giving
212 rise to the refund or credit, for purposes of reporting under
213 this section for subsequent years.
214 (12) ~~(14)~~ The application of this law to commercial property
215 and commercial casualty insurance, which includes commercial

552038

216 umbrella liability insurance, ceases on January 1, 1997.
217 Section 2. Subsection (4) of section 628.6017, Florida
218 Statutes, is amended to read:
219 628.6017 Converting assessable mutual insurer.—
220 (4) An assessable mutual insurer becoming a stock insurer
221 or a nonassessable mutual insurer is ~~shall~~ not ~~be~~ subject to s.
222 627.215 or s. 627.351(5) for 5 years following authorization of
223 the conversion by the office. However, the converted stock
224 insurer or nonassessable mutual insurer shall file all necessary
225 data required by s. 627.215. Such amounts otherwise subject to
226 s. 627.215(8) ~~627.215(10)~~ shall be maintained as surplus as to
227 policyholders and not be available for dividends for ~~a period of~~
228 5 years.
229
230 ========== T I T L E A M E N D M E N T ==========
231 And the title is amended as follows:
232 Between lines 2 and 3
233 insert:
234 amending s. 627.215, F.S.; deleting the prohibition
235 against excessive profits for workers' compensation
236 and employer's liability insurance; deleting obsolete
237 provisions; amending s. 628.6017, F.S.; conforming a
238 cross-reference;

By Senator Hays

20-01456-12 20121518__

A bill to be entitled

An act relating to property and casualty insurance; repealing s. 627.3519, F.S.; deleting a requirement that the Financial Services Commission provide an annual report to the Legislature consisting of specified data and analysis related to the aggregate net probable maximum losses, financing options, and potential assessments of the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation; providing an effective date.

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

Section 1. Section 627.3519, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2012.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/SB 1586

INTRODUCER: Banking and Insurance Committee and Senator Thrasher

SUBJECT: Money Services Businesses

DATE: February 27, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	**Fav/CS**
2.	Howard	DeLoach	BGA	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

Money services businesses (MSBs), also known as money transmitters, offer financial services, such as check cashing, money transmittals (wire transfers), sales of monetary instruments, and currency exchange outside the traditional banking environment. The Office of Financial Regulation (OFR) is responsible for the regulation of money services businesses.

In August 2007, the Supreme Court of Florida ordered the empanelment of a statewide grand jury to investigate various criminal offenses, including activities relating to check cashers. In 2008, the grand jury issued its report: *Check Cashers: A Call for Enforcement*. In 2008, the Legislature enacted major reforms recommended in the report to provide greater regulatory and enforcement tools for the OFR.

In 2011, the Chief Financial Officer formed the Money Service Business Facilitated Workers' Compensation Work Group (work group) to study the issue of workers' compensation insurance premium fraud facilitated by check cashers. Currently, legitimate contractors are placed at a significant competitive disadvantage by unscrupulous contractors avoiding the payment of workers' compensation insurance as well as state and federal employment taxes. The bill incorporates the following consensus recommendations of the work group to provide increased

regulatory oversight of MSBs that are designed to provide greater prevention, detection, and prosecution of workers' compensation premium fraud:

- Authorizes the OFR to create an integrated statewide database to maintain information from check cashers for check transactions exceeding $1,000. Check cashers will be required to enter this information into the database. This database will allow regulators and law enforcement to identify and target individuals who are engaging in criminal activity as these crimes are occurring instead of attempting to reconstruct the records and activities of defunct shell companies.
- Requires the Financial Services Commission to adopt rules requiring licensees to remit to the OFR a transaction fee, not to exceed $3 per transaction, which would be used to support the statewide database.
- Eliminates the requirement that the OFR conduct examinations within the first six months of a check casher's licensure. The elimination of this requirement will provide the OFR with greater flexibility in the use of resources for purposes of enforcement.
- Requires licensees to maintain and deposit all checks accepted into a bank account in its own name and to report the termination of bank accounts to the OFR within five business days. This change will enhance the audit trail necessary to assist regulators, law enforcement, and prosecutors.
- Prohibits any money services business, its authorized vendor, or affiliated party to possess any fraudulent identification paraphernalia, or for someone other than the person who is presenting the check for payment to provide the customer's personal identification information to the check casher. A person who willfully violates these provisions commits a felony of the third degree.
- Authorizes the OFR to issue a cease and desist order; issue a removal order; the denial, suspension, or revocation of a license or any other action permitted by ch. 560, F.S., for noncompliance with the following: maintaining a federally insured depository account; depositing all checks accepted into its depository account; or submitting transactional information to the office.
- Requires a licensee to suspend its check cashing operations immediately if there is any interruption in its depository relationship and prohibits the resumption of check cashing operations until the licensee has secured a new depository relationship.

This bill substantially amends the following sections of the Florida Statutes: 560.103, 560.109, 560.111, 560.114, 560.126, 560.309, and 560.310.

The bill creates the following section of the Florida Statutes. 560.311

II. Present Situation:

Regulation of Check Cashers

The Office of Financial Regulation (OFR) is responsible for safeguarding the private financial interests of the public by licensing, examining, and regulating depository and nondepository financial institutions and financial service companies in the State. Among its responsibilities, the OFR regulates money service businesses, which are subject to the provisions of ch. 560, F.S.

Licensure of Check Cashers

Money service businesses are licensed under two license categories. Money transmitters and payment instrument issuers are licensed under part II of ch. 560, F.S., while check cashers and foreign currency exchangers are licensed under part III. Current law provides that the requirement for licensure does not apply to a person cashing payment instruments that have an aggregate face value of less than $2,000 per person, per day and that are incidental to the retail sale of goods or services, within certain parameters.[1]

Check Cashing Fees

Check cashers are limited in the fees they may charge. By law, a check casher may not charge fees:

- In excess of 5 percent of the face amount of the payment instrument, or $5, whichever is greater.
- In excess of 3 percent of the face amount of the payment instrument, or $5, whichever is greater, if the payment instrument is any kind of state public assistance or federal social security benefit.
- For personal checks or money orders in excess of 10 percent of the face amount of those payment instruments, or $5, whichever is greater.[2]

In addition, check cashers are authorized to collect a fee linked to the direct costs of verifying a customer's identity or employment. That fee, established by rule,[3] may not exceed $5. Rule 69V-560.801, F.A.C., provides:

- In addition to the fees established in Section 560.309(8), F.S., a check casher or deferred presentment provider may collect the direct costs associated with verifying a payment instrument holder's identity, residence, employment, credit history, account status, or other necessary information, including the verification of a drawer's status on the Office administered database for deferred presentment transactions prior to cashing the payment instrument or accepting a personal check in connection with a deferred presentment transaction. Such verification fee shall be collected only when verification is conducted and shall not exceed $5 per transaction. For example, a check casher shall not charge a drawer more than one (1) verification fee per diem, regardless of whether the check casher is cashing or has cashed more than one (1) of the drawer's payment instruments that day.
- For purposes of Section 560.309(8), F.S., and this rule, the "direct costs of verification" shall mean those costs that are allocated by the provider to a particular function or are readily ascertainable based upon standard commercial practices and include internal staff and infrastructure costs incurred by the provider in performing the verification function and payments to third party vendors who provide verification related services.

[1] Section 560.304, F.S.
[2] Section 560.309(8), F.S.
[3] Id.

Examinations and Investigations

Section 560.109, F.S., authorizes the OFR to examine each licensee as often is warranted but at least once every five years. Generally, the OFR is required to provide licensees with at least 15 days advance notice of an examination. However, if the OFR "suspects that the money services business, authorized vendor, or affiliated party has violated or is about to violate any provisions of ch. 560, F.S., or any criminal laws of the state of Florida or of the U.S., the OFR is not required to provide advance notice of an examination or investigation. The OFR is also required to examine a licensee within 6 months of licensure.

Recordkeeping Requirements

Section 560.1105, F.S., requires each licensee and its authorized vendors to maintain specified records for a minimum of five years. In additions, s. 560.310, F.S., requires check casher licensees to maintain customer files for those who cash corporate or third party instruments exceeding $1,000. Rule 69V-560.704, F.A.C., requires licensees to affix customer thumbprints to the original of each payment instrument exceeding $1,000, as well as maintain a copy of the original payment instrument, a copy of the customer's personal identification presented at the time of acceptance, and maintain customer files for those cashing corporate and third party payment instruments, which includes documentation from the Secretary of State verifying the corporate registration, articles of incorporation, information from the Department of Financial Services Compliance Proof of Coverage Query Page, and documentation of those authorized to negotiate payment instruments on the corporation of fictitious entity's behalf. Customer files must be updated annually.

Further, Rule 69V-560.704, F.A.C., requires that for payment instruments of $1,000 or more, the check casher must maintain an electronic log of payment instruments accepted, which includes, at a minimum, the following information:

- Transaction date,
- Payor name,
- Payee name,
- Conductor name, if other than the payee,
- Amount of payment instrument,
- Amount of currency provided,
- Type of payment instrument (personal, payroll, government, corporate, third-party, or other),
- Fee charged for the cashing of the payment instrument,
- Branch/location where instrument was accepted,
- Identification type presented by customer, and
- Identification number presented by customer.

Licensees must maintain this information in an electronic format that is "readily retrievable and capable of being exported to most widely available software applications including Microsoft EXCEL." The maintenance of this information has been intended to be used in the audit process. While this can be useful, it does not allow regulators and law enforcement to analyze information

in a “real time” format through a central database, for the purpose of identifying and targeting persons engaged in violations of ch. 560, F.S., or other unlawful activity.

A check casher is required to deposit all checks into a commercial account with a financial institution or sell the payment instruments within five business days after acceptance, pursuant to s. 560.309(3), F.S. When money service businesses do not properly negotiate, endorse, or deposit checks, it may be difficult for the OFR to detect potential illegal activities.

Workers’ Compensation Insurance Fraud

In recent years, unscrupulous contractors and check cashiers have colluded on a scheme that allows these contractors to hide their payroll and obtain workers’ compensation coverage without purchasing such coverage. In addition to the workers’ compensation fraud, these contractors are avoiding the payment of state and federal taxes. For their participation and risk, the check cashers may receive a fee of seven percent of the value of the check or more for cashing the checks, which exceeds the statutory limit check cashers are allowed to charge.[4]

A 2008 Statewide Grand Jury described a typical scheme.[5] First, a "shell" company is formed in the name of a nominee owner, often a temporary resident of the U.S. This company has no real operations or employees. This shell company will then buy a minimum premium policy to procure the certificate of insurance that the contractor needs to document proof of workers’ compensation insurance coverage. A certificate of insurance does not show the amount of coverage because the number and class code of employees can vary throughout the year. The contractor then writes checks to this shell company playing the part of the phony subcontractor. According to the statewide grand jury, one indicted Miami check casher created mobile check cashing units that would provide check cashing at the contractor's construction site. In reality, the contractor is actually cashing the check that he or she has just written to the phony company and taking the cash back to pay his employees without maintaining any documentation regarding the actual payroll. On paper, however, it appears that the contractor is paying another company for their work on the project. According to the statewide grand jury, the amount of these checks is usually over the $10,000 limit and must be reported on a Currency Transaction Report (CTR) to the federal government.[6] The check casher actively participates in this scheme by either falsifying the CTR, claiming to have paid the money out to the phony subcontractor, or, in some cases, dispensing with the CTR altogether. Both of these actions are 3rd degree felonies.

The dollar magnitude of this fraud is tremendous. For example, the Division of Insurance Fraud of the Department of Financial Services collaborated with the North Florida High Intensity Drug Trafficking Area (HIDTA) Task Force last year on a case that targeted individuals who were

[4] *Check Cashers: A Call for Enforcement*, Eighteenth Statewide Grand Jury, Case No. SC 07-1128, Second Interim Report of the Statewide Grand Jury, March 2008.
[5] *Id.*
[6] The U.S. Department of Treasury has adopted regulations to implement the provisions of the Bank Secrecy Act under 31 C.F.R. s. 103, which requires MSBs to maintain certain records and report certain currency transactions and suspicious activities. For example, cash transaction reports (CTRs) are required to be filed for cash transactions involving more than $10,000. Section 560.1235, F.S., requires MSBs to comply with all state and federal laws relating to the detection and prevention of money laundering.

running a shell company scheme using undocumented foreign national laborers to avoid paying workers‟ compensation insurance premiums and federal and state taxes. The suspects were documented to have cashed checks totaling approximately $4 million at a check-cashing store to pay the workers under the table. The suspects were arrested; three vehicles and $67 thousand in cash were seized.

Typically, the insurance company will attempt to conduct a premium audit of an insured, such as the shell company, after the end of the policy year. However, by this time, the shell company has ceased operating and the nominee owner has disappeared, having usually gone back to his home country. If any workers' compensation claims occur, the insurer is forced to try to offset such costs by increasing rates on legitimate contractors who secure adequate coverage.

III. Effect of Proposed Changes:

Section 1 amends s. 560.103, F.S., to create definitions.

Section 2 amends s. 560.109, F.S., to eliminate the general requirement to provide 15-days advance notice to a licensee regarding an examination or investigation by the OFR. Under current law, the OFR is authorized to conduct an examination or investigation unannounced if the OFR suspects the entity has violated or will violate ch. 560, F.S., or any criminal laws of Florida or any state or of the U.S. Additionally, this section eliminates the requirement for the OFR to conduct an examination of a business within six months of licensure. The bill retains the requirement for the OFR to examine each licensee at least once every five years.

Section 3 amends s. 560.111, F.S., to make it unlawful for any money services business, its authorized vendor, or affiliated party to possess any fraudulent identification paraphernalia, or for someone other than the person who is presenting the check for payment to provide the customer's personal identification information to the check casher. A person who willfully violates these provisions commits a felony of the third degree.

Section 4 amends s. 560.114, F.S., to provide the OFR the authority to issue a cease and desist order; issue a removal order; the denial, suspension, or revocation of a license or any other action permitted by the statute for the following:

1. Failure to maintain a federally insured depository account;
2. Failure to deposit all checks accepted into its depository account, or
3. Failure to submit transactional information to the office.

Additionally, this section provides that failure to maintain the required bank account or to submit transactional data to the statewide database would constitute an immediate harm, thereby allowing the OFR to suspend immediately the license of the check casher until the licensee can resolve these issues.

Section 5 amends s. 560.126, F.S., to require a licensee to provide notice to the OFR within five business days after the cessation of its depository banking account. Prior to resuming operations, the check casher must reestablish such account and notify the OFR of the account.

Section 6 amends s. 560.309, F.S., to require a licensee to suspend its check cashing operations immediately if the licensee ceases to have a depository account. The licensee may not resume check-cashing operations until it has secured a new depository relationship. Additionally, this section provides that a licensee may not cash payment instruments from any person who is not the original payee (including authorized individuals if the payee is a legal entity).

The bill also places a cap of $5 on the verification fee that is currently authorized under s. 560.309(8), F.S. Under current law, a check casher may collect, in addition to fees established under s. 560.309, F.S., the direct costs of verification. The statute currently does not contain a cap on the amount of the verification fee. The Financial Services Commission has adopted Rule 69V-560.801, F.A.C., which provides that the direct costs of verification, which include verifying a customer's identity, employment, etc., may not exceed $5 per transaction. The bill codifies this requirement.

Section 7 clarifies recordkeeping requirements under s. 560.310, F.S. The bill eliminates the requirement for an electronic payment instrument log for checks that exceed $1,000. This provision is being replaced with the requirement for submission of the transaction information to a statewide database created in Section 8 of the bill. The bill eliminates the authority of check cashers to cash third party checks and eliminates the requirement that a corporate check in any amount must be reported. Instead, the reporting triggered by the check exceeding a threshold amount of $1,000.

Section 8 creates s. 560.311, F.S., which establishes a statewide transactional database for all checks cashed by a licensed business that exceed $1,000. The new section specifies the data elements to be collected, the authority of the OFR to administer the database, the power of the commission to make rules regarding the database, and requires the OFR to interface this information with existing databases maintained by the Division of Workers' Compensation in the Department of Financial Service and the Department of State (Sunbiz).

The Financial Services Commission is required to adopt rules requiring a licensee to remit to the OFR a transaction fee, as part of the direct costs of the verification fee, not to exceed $3 per transaction.

Section 9 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Check cashers may incur additional costs in connection with reporting the required data to the statewide database. In order to establish and maintain the database required under the bill, the bill requires a licensee to remit to the OFR a transaction fee not to exceed $3, as part of the direct costs of verification, on checks exceeding $1,000 that are cashed. It is unclear whether the check casher would incur this fee or pass it on to the customer.

According to the OFR, as of February 3, 2012, there were 1,508 licensees reporting under part III of ch. 560, F.S.; of which 1,065 have authority to engage in check cashing. Currently, approximately 90 percent of all licensees do not charge a verification fee. Approximately 4 percent of the checks cashed had a verification fee imposed.

B. Private Sector Impact:

It is unclear how many licensees will absorb the transaction fee not to exceed $3 or pass this fee onto the customers. Presently, the OFR does not capture transactional data that would indicate the number of checks presented that exceed $1,000, and that are assessed a fee by the check casher.

For checks cashed in excess of $1,000, check cashers will need to report certain data to a statewide database. Currently, this data must be maintained by the check casher in an electronic format (i.e., excel spreadsheet) and made available to the OFR during the examination process. The database may reduce some administrative burden for licensees.

Elimination of the competitive advantage resulting from use of subcontractors without obtaining adequate workers' compensation insurance would create a more level playing field for law-abiding contractors.

C. Government Sector Impact:

The bill provides the OFR, law enforcement, and prosecutors with additional enforcement tools to detect and prosecute workers' compensation insurance fraud.

The OFR plans to use a third party administrator to establish and maintain the database similar to the procedure that was used to establish the deferred presentment database under s. 560.404(23), F.S. For the deferred presentment database, the vendor agreed to bear all of the initial development costs. Once the database was established, the OFR paid the vendor a portion of the transaction fees collected on each transaction to compensate the vendor for establishing, maintaining, and administering the database. Because of the uncertainty of the number of transactions, the contract provided for a review after the first year of operation to adjust the reimbursement rate if necessary.

The OFR will not require additional resources to administer the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Banking and Insurance on January 7, 2012:

The CS makes the following changes:

- Eliminates the authority of check cashers to cash third party payment instruments.
- Eliminates the requirement that a corporate check in any amount must be reported.
- Requires check casher to report checks that exceeds $1,000.
- Provides technical and conforming changes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

673830

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Hays) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete line 283
4 and insert:
5 Section 8. Effective July 1, 2013, section 560.311, Florida
6 Statutes, is created to
7
8 Delete line 335
9 and insert:
10 Section 9. Except as otherwise expressly provided in this
11 act, this act shall take effect July 1, 2012.
12

673830

13 ========== T I T L E A M E N D M E N T ==========
14 And the title is amended as follows:
15 Delete line 55
16 and insert:
17 security of the database; providing effective dates.

By the Committee on Banking and Insurance; and Senator Thrasher

597-03058-12 20121586c1

A bill to be entitled

An act relating to money services businesses; amending s. 560.103, F.S.; defining terms for purposes of provisions regulating money services businesses; amending s. 560.109, F.S.; revising the frequency and notice requirements for examinations and investigations by the Office of Financial Regulation of money services business licensees; amending s. 560.111, F.S.; prohibiting money services businesses, authorized vendors, and affiliated parties from knowingly possessing certain paraphernalia used or intended or designed for use in misrepresenting a customer's identity, for which penalties apply; prohibiting certain persons from providing a customer's personal identification information to a money services business licensee and providing penalties; reenacting s. 560.114(1)(h), F.S., relating to penalties for certain prohibited acts by money services businesses, to incorporate the amendment made by the act to s. 560.111, F.S., in a reference thereto; amending s. 560.114, F.S.; prohibiting certain acts by money services businesses, authorized vendors, and affiliated parties, for which penalties apply; revising the conditions for which a money services business license may be suspended; amending ss. 560.126 and 560.309, F.S.; requiring a money services business licensee to maintain its own federally insured depository account and deposit into the account any payment instruments cashed; requiring

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597-03058-12 20121586c1

a licensee to notify the office and cease to cash payment instruments if the licensee ceases to maintain the account; prohibiting a licensee from accepting or cashing a payment instrument from a conductor who is not the original payee; authorizing a licensee to accept or cash a corporate payment instrument from certain conductors; establishing a limit on the amount of fees that licensees may charge for the direct costs of verification of payment instruments cashed; amending s. 560.310, F.S.; revising requirements for the records that a money services business licensee must maintain related to the payment instruments cashed; creating s. 560.311, F.S.; requiring money services business licensees to submit certain transaction information to the Office of Financial Regulation related to the payment instruments cashed; requiring the office to maintain the transaction information in a centralized database; authorizing the Financial Services Commission to prescribe the time, format, and manner for licensees to submit the transaction information; requiring that the database be designed to interface with certain other state databases; providing a transaction fee for the submission of transaction information; authorizing the commission to adopt rules for the operation and security of the database; providing an effective date.

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

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

59 Section 1. Subsections (9) and (10) of section 560.103,
60 Florida Statutes, are renumbered as subsections (11) and (12),
61 respectively, present subsections (11) through (14) are
62 renumbered as subsections (14) through (17), respectively,
63 present subsections (15) through (27) are renumbered as
64 subsections (19) through (31), respectively, present subsections
65 (28) through (30) are renumbered as subsections (33) through
66 (35), respectively, and new subsections (9), (10), (13), (18),
67 and (32), are added to that section, to read:
68 560.103 Definitions.—As used in this chapter, the term:
69 (9) "Conductor" means a natural person who presents himself
70 or herself to a licensee for purposes of cashing a payment
71 instrument.
72 (10) "Corporate payment instrument" means a payment
73 instrument on which the payee named on the instrument's face is
74 other than a natural person.
75 (13) "Department" means the Department of Financial
76 Services.
77 (18) "Fraudulent identification paraphernalia" means all
78 equipment, products, or materials of any kind that are used,
79 intended for use, or designed for use in the misrepresentation
80 of a customer's identity. The term includes, but is not limited
81 to:
82 (a) A signature stamp, thumbprint stamp, or other tool or
83 device used to forge a customer's personal identification
84 information.
85 (b) An original of any type of personal identification
86 listed in s. 560.310(2)(b) which is blank, stolen, or unlawfully
87 issued.

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

88 (c) A blank, forged, fictitious, or counterfeit instrument
89 in the similitude of any type of personal identification listed
90 in s. 560.310(2)(b) which would in context lead a reasonably
91 prudent person to believe that such instrument is an authentic
92 original of such personal identification.
93 (d) Counterfeit, fictitious, or fabricated information in
94 the similitude of a customer's personal identification
95 information that, although not authentic, would in context lead
96 a reasonably prudent person to credit its authenticity.
97 (32) "Personal identification information" means a
98 customer's name that, alone or together with any of the
99 following information, may be used to identify that specific
100 customer:
101 (a) Customer's signature.
102 (b) Photograph, digital image, or other likeness of the
103 customer.
104 (c) Unique biometric data, such as the customer's
105 thumbprint or fingerprint, voice print, retina or iris image, or
106 other unique physical representation of the customer.
107 Section 2. Subsections (1) and (7) of section 560.109,
108 Florida Statutes, are amended to read:
109 560.109 Examinations and investigations.—The office may
110 conduct examinations and investigations, within or outside this
111 state to determine whether a person has violated any provision
112 of this chapter and related rules, or of any practice or conduct
113 that creates the likelihood of material loss, insolvency, or
114 dissipation of the assets of a money services business or
115 otherwise materially prejudices the interests of their
116 customers.

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

(1) The office may, without advance notice, examine or investigate each licensee as often as is warranted for the protection of customers and in the public interest. However, the office must examine each licensee~~, but~~ at least once every 5 years. ~~A new licensee shall be examined within 6 months after the issuance of the license. The office shall provide at least 15 days' notice to a money services business, its authorized vendor, or license applicant before conducting an examination or investigation. However,~~ The office may, without advance notice, examine ~~conduct an examination~~ or investigate ~~investigation of~~ a money services business, authorized vendor, ~~or~~ affiliated party, or license applicant at any time ~~and without advance notice~~ if the office suspects that the money services business, authorized vendor, ~~or~~ affiliated party, or license applicant has violated or is about to violate any provision ~~provisions~~ of this chapter or any criminal law ~~laws~~ of this state or of the United States.

(7) Reasonable and necessary costs incurred by the office or third parties authorized by the office in connection with examinations or investigations may be assessed against any person subject to this chapter on the basis of actual costs incurred. Assessable expenses include, but are not limited to, expenses for: interpreters; certified translations of documents into the English language required by this chapter or related rules; communications; legal representation; economic, legal, or other research, analyses, and testimony; and fees and expenses for witnesses. The failure to reimburse the office is a ground for denial of a license application, denial of a license renewal, or for revocation of any approval thereof. Except for examinations authorized under this section ~~s. 560.109~~, costs may

not be assessed against a person unless the office determines that the person has operated or is operating in violation of this chapter.

Section 3. Paragraph (g) is added to subsection (1) of section 560.111, Florida Statutes, subsection (3) is renumbered as subsection (4), present subsection (4) is renumbered as subsection (5) and amended, and a new subsection (3) is added to that section, to read:

560.111 Prohibited acts.—

(1) A money services business, authorized vendor, or affiliated party may not:

(g) Knowingly possess any fraudulent identification paraphernalia. This paragraph does not prohibit the maintenance and retention of any records required by this chapter.

(3) A person other than the conductor of a payment instrument may not provide a licensee engaged in cashing the payment instrument with the customer's personal identification information.

(5) ~~(4)~~ Any person who willfully violates any provision of s. 560.311(1), s. 560.403, s. 560.404, or s. 560.405 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Paragraph (h) of subsection (1) of section 560.114, Florida Statutes, is reenacted, paragraphs (aa), (bb), and (cc) are added to that subsection, and subsection (2) of that section is amended, to read:

560.114 Disciplinary actions; penalties.—

(1) The following actions by a money services business, authorized vendor, or affiliated party constitute grounds for

175 the issuance of a cease and desist order; the issuance of a
176 removal order; the denial, suspension, or revocation of a
177 license; or taking any other action within the authority of the
178 office pursuant to this chapter:
179 (h) Engaging in an act prohibited under s. 560.111.
180 (aa) Failure of a check casher to maintain a federally
181 insured depository account as required by s. 560.309.
182 (bb) Failure of a check casher to deposit into its own
183 federally insured depository account any payment instrument
184 cashed as required by s. 560.309.
185 (cc) Failure to submit transaction information to the
186 office as required by s. 560.311 for any payment instrument
187 cashed.
188 (2) The office may immediately suspend the license of any
189 money services business if the money services business fails to:
190 (a) Provide to the office, upon written request, any of the
191 records required by s. ~~ss.~~ 560.123, s. 560.1235, s. 560.211, or
192 s. ~~and~~ 560.310 or any rule adopted under those sections. The
193 suspension may be rescinded if the licensee submits the
194 requested records to the office.
195 (b) Maintain a federally insured depository account as
196 required by s. 560.309.
197 (c) Submit transaction information to the office as
198 required by s. 560.311 for any payment instrument cashed.
199
200 For purposes of s. 120.60(6), failure to perform ~~provide~~ any of
201 the acts specified in this subsection ~~above-mentioned records~~
202 constitutes immediate and serious danger to the public health,
203 safety, and welfare.

204 Section 5. Subsection (4) is added to section 560.126,
205 Florida Statutes, to read:
206 560.126 Required notice by licensee.—
207 (4) A licensee that engages in check cashing must notify
208 the office within 5 business days after the licensee ceases to
209 maintain a federally insured depository account as required by
210 s. 560.309(3) and, before resuming check cashing, must
211 reestablish such an account and notify the office of the
212 account.
213 Section 6. Subsections (3), (4), and (8) of section
214 560.309, Florida Statutes, are amended to read:
215 560.309 Conduct of business.—
216 (3) A licensee under this part must maintain and deposit
217 payment instruments into its own ~~a~~ commercial account at a
218 federally insured financial institution. If a licensee ceases to
219 maintain such a depository account, the licensee must not engage
220 in check cashing until the licensee reestablishes such an
221 account and notifies the office of the account as required by s.
222 560.126(4) ~~or sell payment instruments within 5 business days~~
223 ~~after the acceptance of the payment instrument~~.
224 (4) A licensee may not accept or cash a ~~multiple~~ payment
225 instrument ~~instruments~~ from a conductor ~~person~~ who is not the
226 original payee~~, unless the person is licensed to cash payment~~
227 ~~instruments pursuant to this part and all payment instruments~~
228 ~~accepted are endorsed with the legal name of the person~~.
229 However, this subsection does not prohibit a licensee from
230 accepting or cashing a corporate payment instrument from a
231 conductor who is an authorized officer of the corporate payee
232 named on the instrument's face.

(8) Exclusive of the direct costs of verification, which shall be established by rule not to exceed $5, a check casher may not:

(a) Charge fees, except as otherwise provided by this part, in excess of 5 percent of the face amount of the payment instrument, or $5, whichever is greater;

(b) Charge fees in excess of 3 percent of the face amount of the payment instrument, or $5, whichever is greater, if such payment instrument is the payment of any kind of state public assistance or federal social security benefit payable to the bearer of the payment instrument; or

(c) Charge fees for personal checks or money orders in excess of 10 percent of the face amount of those payment instruments, or $5, whichever is greater.

Section 7. Section 560.310, Florida Statutes, is amended to read:

560.310 Records of check cashers and foreign currency exchangers.—

(1) ~~In addition to the record retention requirements specified in s. 560.1105,~~ A licensee engaged in check cashing must maintain for the period specified in s. 560.1105 a copy of each payment instrument cashed.

(2) If the payment instrument exceeds $1,000, the following additional information must be maintained ~~the following~~:

(a) Customer files, as prescribed by rule, on all customers who cash corporate ~~or third party~~ payment instruments that exceed ~~exceeding~~ $1,000.

(b) ~~For any payment instrument accepted having a face value of $1,000 or more:~~

~~1.~~ A copy of the personal identification that bears a photograph of the customer used as identification and presented by the customer. Acceptable personal identification is limited to a valid driver ~~driver's~~ license; a state identification card issued by any state of the United States or its territories or the District of Columbia, and showing a photograph and signature; a United States Government Resident Alien Identification Card; a passport; or a United States Military identification card.

(c)~~2.~~ A thumbprint of the customer taken by the licensee when the payment instrument is presented for negotiation or payment.

~~(c) A payment instrument log that must be maintained electronically as prescribed by rule. For purposes of this paragraph, multiple payment instruments accepted from any one person on any given day which total $1,000 or more must be aggregated and reported on the log.~~

(3)~~(2)~~ A licensee under this part may engage the services of a third party that is not a depository institution for the maintenance and storage of records required by this section if all the requirements of this section are met.

Section 8. Section 560.311, Florida Statutes, is created to read:

560.311 Reporting of payment instruments cashed; database of payment instrument transactions.—

(1) A licensee that cashes a payment instrument that exceeds $1,000 must submit the following transaction information about the payment instrument to the office within the time and in the format and manner prescribed by commission rule:

291 (a) Transaction date.
292 (b) Payor name.
293 (c) Payee name.
294 (d) Conductor name, if different from the payee name.
295 (e) Amount of the payment instrument.
296 (f) Amount of the currency provided.
297 (g) Type of payment instrument, which may include, as
298 prescribed by commission rule, but is not limited to, a personal
299 check, payroll check, government check, corporate check, or
300 third-party check.
301 (h) Location or branch where the payment instrument is
302 accepted.
303 (i) Payee's workers' compensation policy number, if the
304 payment instrument is a corporate payment instrument.
305 (j) Any other transaction information that may be required
306 by commission rule.
307
308 Multiple payment instruments accepted from any one conductor on
309 any given day that exceeds $1,000 must be aggregated and
310 reported to the office through the payment instrument database.
311 (2)(a) The office shall establish and administer a
312 centralized database that maintains and provides real-time
313 access to the transaction information submitted to the office
314 under subsection (1). The commission may require licensees to
315 submit the transaction information through the Internet or by
316 other electronic means that provide for inclusion of the
317 submitted information in the database.
318 (b) The office shall design and administer the database to
319 interface with other government databases, including, but not

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

320 limited to:
321 1. The department's workers' compensation proof of coverage
322 database.
323 2. The Department of State's database of corporations,
324 partnerships, limited liability companies, corporations not for
325 profit, trusts, associations, cooperatives, and other business
326 organizations registered with the Department of State.
327 (3) The commission shall adopt rules requiring a licensee
328 to remit to the office a transaction fee, as part of the direct
329 costs of verification authorized under s. 560.309(8), not to
330 exceed $3 per transaction submitted under subsection (1)to
331 establish and administer the database required by this section.
332 (4) The commission may adopt rules to administer this
333 section, including, but not limited to, rules governing the
334 operation and security of the database.
335 Section 9. This act shall take effect July 1, 2012.

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THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2-28-12
Date

1586
Bill Number

Barcode

Name SLATER BATLISS

Phone 850 222 8668

Address 215 S. MONROE ST #602
Street

E-mail sculo@gardenspartners.com

TALLAHASSEE FL 32301
City *State* *Zip*

Job Title

Speaking: [X] For [ ] Against [ ] Information

Appearing at request of Chair [ ]

Subject MONEY SERVICES BUSINESS

Representing THE FLORIDA CARPENTERS COUNCIL

Lobbyist registered with Legislature: [X] Yes [ ] No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

2.28.12
Date

1586
Bill Number

Barcode

Name Ashley Hayes

Phone 413-2863

Address Capitol PL-11
Street

E-mail ashley.hayes@myfloridacfo.com

Tallahassee FL
City State Zip

Job Title CFO LAD

Speaking: ☒ For ☐ Against ☐ Information

Appearing at request of Chair ☐

Subject work comp fraud

Representing DFS

Lobbyist registered with Legislature: ☒ Yes ☐ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___ .m. to _____ ___ .m.

S-001 (04/14/10)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/SB 1656

INTRODUCER: Regulated Industries Committee and Senator Latvala

SUBJECT: Public Accounting

DATE: February 27, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Howard	DeLoach	BGA	**Favorable**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill deletes the requirement that the one year of work experience that is required for a license as a certified public accountant (CPA) must be under the supervision of a licensed CPA. The bill requires that the applicant's work must be verified by a licensed CPA.

The bill provides an alternative method for licensure by endorsement for out-of-state applicants who are licensed. The bill would permit a CPA who has been licensed in another state or territory to become licensed in Florida if they have been licensed in another state for at least 10 years before the date of application and meet the Florida requirements for good moral character.

The bill provides a process for reactivation of licenses that have become inactive due to failure to complete the continuing education requirements. If a person's license has become inactive due to a failure to complete continuing education requirements, the person is able to complete 120 hours of education if that person applies for reactivation between June 30, 2012, and December 31, 2012. The process would require the inactive licensee to pay a fee as determined by the department and to submit proof of satisfactorily completing the continuing education requirement. The inactive licensee must also submit the completed application for reactivation to the board by March 15 immediately following the inactive period.

The bill requires the Board of Accountancy, upon the approval of the board, to complete a report on the potential cost savings for privatization of the division or its functions as outlined in s. 455.32, F.S. The CS also requires that the report must be submitted to the presiding officers of the Senate and the House of Representatives no later than November 30, 2012.

The bill provides an effective date of July 1, 2012.

This bill substantially amends sections 473.308, and 473.313, Florida Statutes. The bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

The Board of Accountancy (board) within the Department of Business and Professional Regulation (department) is the agency charged with regulating the practice of public accountancy.[1] The Division of Certified Public Accounting performs for the board all services concerning the enforcement of ch. 473, F.S., including, but not limited to, recordkeeping services, examination services, legal services, and investigative services, and those services in ch. 455, F.S., necessary to perform the board's duties under the chapter. The offices of the division are located in Gainesville.[2]

Section 473.302(4), F.S., defines a "certified public accountant" to mean a person who holds a license to practice public accounting in this state under the authority of ch. 473, F.S.

Section 473.302(8), F.S., defines the "practice of," "practicing public accountancy," or "public accounting" to mean:

> (a) Offering to perform or performing for the public one or more types of services involving the expression of an opinion on financial statements, the attestation as an expert in accountancy to the reliability or fairness of presentation of financial information, the utilization of any form of opinion or financial statements that provide a level of assurance, the utilization of any form of disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed, or the expression of an opinion on the reliability of an assertion by one party for the use by a third party;
>
> (b) Offering to perform or performing for the public one or more types of services involving the use of accounting skills, or one or more types of tax, management advisory, or consulting services, by any person who is a certified public accountant who holds an active license, including the performance of such services by a certified public accountant in the employ of a person or firm; or
>
> (c) Offering to perform or performing for the public one or more types of service involving the preparation of financial statements not included within paragraph

[1] Section 473.303, F.S.
[2] *See* s. 20.165(2)(c)2., F.S.

> (a), by a certified public accountant who holds an active license, a firm of certified public accountants, or a firm in which a certified public accountant has an ownership interest, including the performance of such services in the employ of another person. The board shall adopt rules establishing standards of practice for such reports and financial statements; provided, however, that nothing in this paragraph shall be construed to permit the board to adopt rules that have the result of prohibiting licensees employed by unlicensed firms from preparing financial statements as authorized by this paragraph.
>
> However, these terms [of practice] shall not include services provided by the American Institute of Certified Public Accountants or the Florida Institute of Certified Public Accountants, or any full service association of certified public accounting firms whose plans of administration have been approved by the board, to their members or services performed by these entities in reviewing the services provided to the public by members of these entities.

Section 473.302(5), F.S., defines the term "firm" to mean "any entity that is engaged in the practice of public accounting."

Section 473.3101(1)(a), F.S., requires that firms must hold a license if the firm:

- Uses the title "CPA," "CPA firm," or any other title, designation, words, letters, abbreviations, or device tending to indicate that the firm practices public accounting; or
- Does not have an office in this state but performs the services described in s. 473.3141(4), F.S.,[3] for a client having its home office in this state, as defined by rule of the board.

Section 473.308(4)(a), F.S., requires an applicant for licensure as a CPA to demonstrate work experience. The work experience must have been attained under the supervision of a licensed CPA.

Section 473.308(7), F.S., provides for the licensure by endorsement if an applicant holds a valid license to practice from another jurisdiction if the requirements for licensure were substantially equivalent to Florida's requirements at the time the license was issued.

If not licensed in another state or territory, the person must:

- Meet the Florida requirement for education, work experience, and good moral character;
- Have passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306, F.S.; and
- Have completed, during the two years immediately preceding her or his application for licensure by endorsement, the continuing education courses as the board deems appropriate for each applicable two year period, provided that such courses are equivalent to the continuing education requirements for a Florida certified public accountant licensed in this state;

[3] Section 473.3141, F.S., provides the practice requirements for CPA's from out-of-state.

Alternatively, a person may be licensed by endorsement if the person holds a valid license in another state or territory of the United States and the criteria for that license is substantially equivalent to the licensure criteria that existed in this state at the time the license was issued.

If the criteria in the other state or territory is not substantially equivalent to the criteria in Florida, the applicant may be licensed if he or she meets the Florida requirement for education, work experience, and good moral character, passed a licensing examination that is substantially equivalent to the examination required under Florida law, and has completed continuing education courses that are equivalent to those required in Florida during the two years immediately preceding her or his application for licensure by endorsement.

Inactive Licenses

Section 473.313(1), F.S., permits Florida-licensed CPA's to request that their license be placed on inactive status. Section 473.313(2), F.S., authorizes the board to provide that the minimum requirements for placing a license on inactive status, renewing an inactive license, and reactivating the inactive license.

The minimum continuing education requirements are those required by board rule, the most recent biennium reporting period, and one-half of the requirements under s. 473.312, F.S.[4]

Section 473.303(2), F.S., provided a reduced number of hours for applicants to reactivate an inactive license if the license was inactive on June 30, 2009. To reactivate, the person must have complete 120 hours of continuing education, including at least 30 hours in accounting-related and auditing-related subjects, not more than 30 hours in behavioral subjects, and a minimum of eight hours in ethics subjects approved by the board. To reactivate, the CPA must also have notified the board by December 31, 2009, of his or her intention to reactivate such a license and have completed such reactivation by June 30, 2011.

The department noted that the last time amnesty was offered in 2009, the division notified approximately 2,900 inactive licensees of the amnesty provision. Five hundred and twenty-nine licensees submitted letters of intent to reactivate under the amnesty program and only 214 actually completed the reactivation process under that provision.

Rule 61H1-33.006, F.A.C., provides that licenses that have been inactive for no more than two reporting periods may be reactivated upon the completion of the most recent two year continuing education requirement plus a minimum of 120 hours of continuing education. The required additional continuing education hours increase to 200 hours if the CPA has been inactive for three or more reporting periods.

Peer Review

Florida does not require that firms participate in a peer review program. It also does not have a peer review oversight committee or other oversight process for peer review. According to the Florida Institute of Certified Public Accountants (FICPA), 48 states have a peer review

[4] Section 473.312(1), F.S., requires that at least 48, but not more than 80 hours must be completed within 2 years prior to the application for renewal.

requirement. Also according to FICPA, Florida and Delaware are the only states without a peer review requirement.

Further, according to the FICPA, the goal of a peer review is to help CPA firms improve their work, if needed, or to show that the CPA's work meets professional auditing standards.

The Florida Institute of Certified Public Accountants has represented that Florida CPA firms that perform one or more audits, reviews, compilations, or any other agreed-upon attestation engagement, and are members of the American Institute of Certified Public Accountants are currently required to perform work under the Yellow Book standards[5] and public company audits which require that they enroll in a peer review program and undergo a peer review at least once every three years.

The American Institute of Certified Public Accountants Peer Review Board has approved 42 state CPA societies or groups of societies as "administering entities" to administer the peer review program for 55 licensing jurisdictions.[6]

The board has unanimously approved the concept of peer review as a requirement for firm license renewal.[7]

Section 473.308(4)(a), F.S., requires an applicant for licensure as a CPA to demonstrate work experience. The work experience must have been attained under the supervision of a licensed CPA.

Management Privatization Act

Section 455.32, F.S., provides the model for the privatization of the regulation of professionals under the department. It provides that, at the request of any board, the department may establish and contract with a nonprofit corporation to provide administrative, investigative, and prosecutorial services to any board created with the department.

Section 455.32(4), F.S., requires that the board's privatization request must contain a business case that includes a needs assessment and financial feasibility study with specific performance standards and measurable outcomes. The term "business case" means a needs assessment, financial feasibility study, and corporate financial model as specified in s. 455.32(4), F.S.[8] The term "performance standards and measurable outcomes" is defined to include, but not be limited to, timeliness and quantitative criteria for activities specified in s. 455.32(6)(o), F.S.[9]

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[5] The "Yellow Book" provides the government auditing standards.

[6] *Peer Review Program, Annual Report on Oversight,* American Institute of Certified Public Accountants, January 12, 2012. A copy is located at: http://www.aicpa.org/interestareas/peerreview/resources/transparency/downloadabledocuments/annrptoversight2011.pdf (Last visited February 4, 2011).

[7] *See* correspondence from David C. Tipton, CPA, Chairman, Florida Board of Accountancy, to the Florida Institute of Certified Public Accountants, dated December 7, 2010, which is on file with the Senate Committee on Regulated Industries.

[8] Section 455.32(3)(e), F.S.

[9] Section 455.32(3)(f), F.S.

Section 455.32(4), F.S., requires that the feasibility study must evaluate the department's current and projected performance standards in regard to those standards. The financial model must include projected costs and expenses for the first two years of operation and specific performance standards and measurable outcomes. The business case must be approved by the Executive Office of the Governor and the Legislature pursuant to s. 216.023, F.S., which requires state agencies to submit legislative budget requests to the Governor and the Legislature.

III. Effect of Proposed Changes:

Licensure by Endorsement
The bill amends s. 473.308(4)(a), F.S., to provide that applicants for licensure must submit proof of experience verified by a licensed CPA. It deletes the requirement that the work experience must be under the CPA who supervised the applicant.

The bill also amends s. s. 473.308(7), F.S., to provide an alternative method for licensure by endorsement for out-of-state applicants who are licensed. The bill would permit a CPA who has been licensed in another state or territory to become licensed in Florida if they have been licensed in another state for at least 10 years before the date of application. They must also meet the requirements for good moral character as provided in s. 473.308, F.S.

Inactive Licenses
The bill amends s. 473.313(2), F.S., to provide CPAs who hold an inactive license due to failure to complete the continuing education requirements in s. 473.312, F.S., may be reactivated under s. 473.311, F.S.,[10] upon application to the department.

Section 473.313(3), permits a license that has become inactive due to failure to meet the continuing education requirements to be renewed upon the licensee applying to the department with payment of a fee as determined by the department.[11] The applicant must submit proof of satisfactorily completing the continuing education requirement. The applicant must also submit the completed application to the board by March 15 immediately following the inactive period.

Privatization Report
The bill creates an unnumbered section of the Florida Statutes to require the Board of Accountancy, upon the approval of the board, to complete a report on the potential cost savings for privatization of the division or its functions as outlined in s. 455.32, F.S. The CS also requires that the report must be submitted to the presiding officers of the Senate and the House of Representatives no later than November 30, 2012.

Effective Date
The bill provides an effective date of July 1, 2012.

---

[10] Section 473.311, F.S., provides for the renewal of licenses upon the satisfaction of continuing education requirements.
[11] Section 473.305, F.S., authorizes the board to establish, by rule, a reactivation fee, and a delinquency fee not to exceed $50 for continuing professional education reporting forms. This section also provides that the board must "establish fees which are adequate to ensure the continued operation of the board and to fund the proportionate expenses incurred by the department which are allocated to the regulation of public accountants." The fees established by the board must be based on department estimates of the revenue required to implement ch. 473, F.S., and the provisions of law with respect to the regulation of certified public accountants.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Upon approval of the Board of Accountancy, the board shall complete a report on the potential cost savings for privatization of the Division of Certified Public Accounting. The report can be completed using existing resources.

Incidental indeterminate costs associated with rulemaking, increased calls to the call center, and changes to computer applications can also be absorbed with existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on February 7, 2012:
The committee substitute (CS) does not amend s. 473.3035(3), F.S., to require the Department of Business and Professional Regulation (department), upon the approval of

the Board of Accountancy (board), to conduct a feasibility study, in accordance with the Management Privatization Act, to assess the privatization of the Division of Certified Public Accounting (division). Instead, the CS creates an unnumbered section of the Florida Statutes to require the department, upon the approval of the board, to complete a report on the potential cost savings for privatization of the division or its functions as outlined in s. 455.32, F.S. The CS also requires that the report must be submitted to the presiding officers of the Senate and the House of Representatives no later than November 30, 2012.

The CS does not amend s. s. 473.308(7), F.S., to permit a CPA who is licensed in another state or territory to become licensed in Florida if they have completed a license exam substantially equivalent to Florida's exam at least 10 years before filing their application. Instead, the CS amends this subsection to permit a CPA who has been licensed in another state or territory to become licensed in Florida if they have been licensed in another state for at least 10 years before the date of application.

The CS does not amend s. 473.311, F.S., relating to the renewal of the license for a firm upon certification by the board that it is enrolled in a peer review program.

The CS does not create s. 473.3125, F.S, relating to peer review.

B. Amendments:

None.

By the Committee on Regulated Industries; and Senator Latvala

580-03068-12 20121656c1

A bill to be entitled

An act relating to public accountancy; amending s. 473.308, F.S.; revising and updating education and work experience requirements for applicants for licensure as a certified public accountant; revising provisions governing licensure by endorsement; amending s. 473.313, F.S.; revising requirements for reactivation of an inactive license as a certified public accountant; requiring the Board of Accountancy to conduct a study to assess the privatization of the Division of Certified Public Accounting; providing a deadline for completion of the study; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) and paragraph (b) of subsection (7) of section 473.308, Florida Statutes, are amended to read:

473.308 Licensure.—

(4)(a) An applicant for licensure after December 31, 2008, must show that he or she has had 1 year of work experience. This experience shall include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills, all of which must be verified by a certified public accountant who is licensed by a state or territory of the United States ~~and who has supervised the applicant~~. This experience is acceptable if it was gained through employment in government, industry,

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580-03068-12 20121656c1

academia, or public practice; constituted a substantial part of the applicant's duties; and was verified by ~~under the supervision of~~ a certified public accountant licensed by a state or territory of the United States. The board shall adopt rules specifying standards and providing for the review and approval of the work experience required by this section.

(7) The board shall certify as qualified for a license by endorsement an applicant who:

(b)1.a. Holds a valid license to practice public accounting issued by another state or territory of the United States, if the criteria for issuance of such license were substantially equivalent to the licensure criteria that existed in this state at the time the license was issued; ~~or~~

b. Holds a valid license to practice public accounting issued by another state or territory of the United States but the criteria for issuance of such license did not meet the requirements of sub-subparagraph a.; has met the requirements of this section for education, work experience, and good moral character; and has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; or ~~and~~

c. Holds a valid license to practice public accounting issued by another state or territory of the United States for at least 10 years before the date of application; has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; and has met the requirements of this section for good moral character; and

2. Has completed continuing education courses that are

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

59 equivalent to the continuing education requirements for a
60 Florida certified public accountant licensed in this state
61 during the 2 years immediately preceding her or his application
62 for licensure by endorsement.
63 Section 2. Subsections (3) and (4) of section 473.313,
64 Florida Statutes, are redesignated as subsections (4) and (5),
65 respectively, a new subsection (3) is added to that section, and
66 subsection (2) of that section is amended, to read:
67 473.313 Inactive status.—
68 (2) A license that has become inactive under subsection (1)
69 or for failure to complete the requirements in s. 473.312 may be
70 reactivated under s. 473.311 upon application to the department.
71 The board may prescribe by rule continuing education
72 requirements as a condition of reactivating a license. The
73 minimum continuing education requirements for reactivating a
74 license shall be those prescribed by board rule and those of the
75 most recent biennium plus one-half of the requirements in s.
76 473.312. Notwithstanding any other provision of this section,
77 the continuing education requirements are 120 hours, including
78 at least 30 hours in accounting-related and auditing-related
79 subjects, not more than 30 hours in behavioral subjects, and a
80 minimum of 8 hours in ethics subjects approved by the board, for
81 the reactivation of a license that is inactive or delinquent on
82 June 30, 2012 ~~2009~~, if the Florida certified public accountant
83 notifies the Board of Accountancy by December 31, 2012 ~~2009~~, of
84 an intention to reactivate such a license and completes such
85 reactivation by June 30, 2014 ~~2011~~.
86 (3) A license that has become delinquent for failure to
87 report completion of the requirements in s. 473.312 may be

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

88 reactivated under s. 473.311 upon application to the department.
89 Reactivation requires the payment of an application fee as
90 determined by the board and certification by the Florida
91 certified public accountant that the applicant satisfactorily
92 completed the continuing education requirements set forth under
93 s. 473.311. If the license is delinquent on December 31 because
94 of failure to report completed continuing education
95 requirements, the applicant must submit a complete application
96 to the board by March 15 immediately after the delinquent
97 period.
98 Section 3. Upon approval of the Board of Accountancy, the
99 board shall complete a report on the potential cost savings for
100 privatization of the Division of Certified Public Accounting or
101 its functions as outlined in s. 455.32, Florida Statutes. This
102 report must be completed and submitted to the President of the
103 Senate and the Speaker of the House of Representatives no later
104 than November 30, 2012.
105 Section 4. This act shall take effect July 1, 2012.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/28/12
Meeting Date

Topic: Accountancy

Bill Number: 1656 *(if applicable)*

Name: Deborah Curry

Amendment Barcode: *(if applicable)*

Job Title: CEO - FICPA

Address: 325 W. College Ave
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: 850 224 2727

E-mail: CurryD@FICPA.org

Speaking: [X] For [ ] Against [ ] Information

Representing: FICPA

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/28/12
Meeting Date

Topic: Accountancy

Bill Number: 1656 *(if applicable)*

Name: Jennifer Green

Amendment Barcode: *(if applicable)*

Job Title: Lobbyist

Address: 113 E. College Ave
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: 850 - 528 - 8809

E-mail: Jennifer@libertypartnersfl.com

Speaking: [X] For [ ] Against [ ] Information

Representing: FICPA

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

Tallahassee, Florida 32399-1100

COMMITTEES:
Transportation, *Chair*
Budget - Subcommittee on General Government Appropriations
Budget - Subcommittee on Transportation, Tourism, and Economic Development Appropriations
Children, Families, and Elder Affairs
Environmental Preservation and Conservation
Governmental Oversight and Accountability
Reapportionment

SENATOR JACK LATVALA
16th District

February 13, 2012

The Honorable Senator Alan Hays, Chair
Senate Budget Subcommittee on General Government Appropriations
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Hays:

I respectfully request consideration of Senate Bill 1656 regarding Public Accounting at your earliest convenience.

This bill makes several changes to the Statutes governing the licensure and certification of public accountants in the state of Florida. I would greatly appreciate the opportunity to present this legislation to the Subcommittee on General Government Appropriations as soon as possible.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

Jack Latvala
State Senator
District 16

JL: JW

cc: Jamie Deloach, Staff Director; Lisa Waddell, Administrative Assistant

REPLY TO:
☐ 12425 28th Street North, Suite 102, St. Petersburg, Florida 33716 (727) 556-6500
☐ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5075

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: SB 1794

INTRODUCER: Senator Hays

SUBJECT: Continuing Education Advisory Board

DATE: February 27, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	**Favorable**
2.	Betta	DeLoach	BGA	**Pre-meeting**
3.				
4.				
5.				
6.				

I. Summary:

The bill repeals s. 626.2815(6), F.S., which created the Continuing Education Advisory Board for insurance agents. The purpose of the Board was to advise the Department of Insurance (DOI)[1] on establishing a continuing education program for insurance agents. The Board has not been active in over ten years, and with the breakup of DOI, the Insurance Commissioner and the Chief Financial Officer (CFO) have not appointed any members. The bill simply repeals this section of the Florida Statutes to conform to current practice.

This bill repeals the following section of the Florida Statutes: 626.2815(6).

II. Present Situation:

In 1989[2], the Florida Legislature enacted s. 626.2815(6), F.S., creating the Continuing Education Advisory Board. The purpose of the board was to advise the Department of Insurance (DOI) on establishing a continuing education program for insurance agents. The board was originally intended to sunset on June 30, 1992.

In 1996[3], the Legislature reestablished the board so its members could assist the DOI in creating evaluation standards by which continuing education courses could be categorized (basic, intermediate, or advanced). As a result, administrative rules establishing new education standards

[1] DOI was replaced by the Office of Insurance Regulation (OIR) and the Department of Financial Services (DFS).
[2] ss. 1, 2, ch. 89-210 L.O.F.
[3] s. 1, ch. 96-377 L.O.F.

were promulgated by the DOI in 2001.[4] Since the adoption of the new standards back in 2001, the Board has no longer been active.

III. Effect of Proposed Changes:

Section 1 repeals s. 626.2815(6), F.S., which created the Continuing Education Advisory Board for insurance agents.

Section 2 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[4] 69B-228, F.A.C.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Hays

20-01211-12 20121794__

A bill to be entitled

An act relating to the continuing education advisory board; repealing s. 626.2815(6), F.S.; deleting authority for the creation of the continuing education advisory board whose purpose is to advise the Department of Financial Services in determining standards by which courses for certain persons licensed to solicit or sell insurance may be evaluated and categorized; deleting all requirements and procedures with respect to the board; providing an effective date.

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

Section 1. Subsection (6) of section 626.2815, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2012.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/SB 1844

INTRODUCER: Banking and Insurance Committee and Senator Latvala

SUBJECT: Alien Insurers

DATE: February 27, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	**Fav/CS**
2.	Betta	DeLoach	BGA	**Favorable**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The Office of Insurance Regulation (OIR) regulates and licenses insurers and other risk-bearing entities.[1] Regulatory oversight includes licensure, approval of rates and policy forms, market conduct and financial exams, solvency oversight, and administrative supervision, as provided in the insurance code or ch. 636, F.S.[2]

In 2011, the Legislature created an exemption from the requirement to obtain a certificate of authority (COA) for any insurer domiciled outside the U.S. (alien insurer) and insuring only persons who, at the time of issuance or renewal, are nonresidents of the U.S., if the alien insurer met certain conditions. The law also provides that the alien insurer, or any affiliated person, may not solicit, sell, or accept application for any insurance policy or contract to be delivered or issued to any person in the U.S.[3] The bill revises the current exemption provisions relating to such alien insurers in the following manner:

- Deletes the reference to affiliated persons from the prohibition on insurers soliciting or selling policies, or accepting applications for any person in the United States. Thus, an insurer who has an affiliate would not be disqualified from obtaining an exemption.

[1] Risk-bearing entities include, but are not limited to multiple-employer welfare arrangements, commercial self-insurance funds, warranty associations, health maintenance organizations, prepaid limited health service organizations, prepaid health clinics, and continuing care facilities.
[2] Section 20.121(3)(a)2., F.S.
[3] s.4, Ch. 2011-174, L.O.F.

- Expands the definition of nonresident to include a trust or other entity organized and domiciled under the laws of a country other than the United States.

The bill also creates an exemption from the COA requirements for an alien insurer issuing life insurance or annuity contracts covering only persons who are not residents of the U.S., if the insurer meets the following requirements:

- The insurer is an authorized insurer in its domiciliary country in the kinds of insurance proposed to be offered in this state; and:
    - Has been an insurer for at least the last three consecutive years; or
    - Is the wholly owned subsidiary of an authorized insurer; or is the wholly owned subsidiary of an already eligible authorized insurer as to the kind of insurance proposed to be issued in this state for a period of not less than the immediately preceding three years.
- Prior to the OIR granting eligibility to an alien insurer to issue policies and contracts in Florida, the insurer is required to meet the following requirements:
    - Submit a copy of its annual financial statement to the OIR in English and with all monetary values expressed in U.S. dollars.
    - Maintain a surplus of at least $15 million in eligible investments for like funds of like domestic insurers or by investments permitted by the domiciliary regulator, if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of domestic insurers under part II of ch. 625, F.S.
    - Have a good reputation for providing service and paying claims.
    - Furnish to the OIR with annual and quarterly financial statements.
    - Provide certain disclosures to policy or contract applicants, such as the date the insurer was organized; the identity and rating assigned by each rating organization that has rated the insurer; the insurer does not hold a COA; the OIR does not exercise regulatory oversight over the insurer; the policy or contract is not covered by a guaranty association, and the identity and address of the regulatory authority exercising oversight of the insurer.

This bill substantially amends the following section of the Florida Statutes: 624.402.

II. Present Situation:

Regulation of Insurance in Florida

The Florida Insurance Code contains many provisions designed to prevent insurers from becoming insolvent and to protect and provide recovery for policyholders in the event of insolvency. These provisions include minimum capital and surplus requirements[4] and financial reporting requirements.[5] In addition, five guaranty funds are established under ch. 631, F.S., to ensure that policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding covered claims, up to limits provided by law. Generally, entities subject to regulation under the insurance code are subject to assessments of the applicable guaranty association.

[4] Section 624.4095, F.S.
[5] Section 624.424, F.S.

Section 624.401, F.S., requires insurers and other risk-bearing entities to obtain a certificate of authority from the OIR prior to engaging in insurance transactions unless specifically exempted. Section 624.402(8), F.S., provides an exemption from the requirement to obtain a COA for any insurer domiciled outside the U.S. and insuring only persons who, at the time of issuance or renewal, are nonresidents of the U.S.[6] A "nonresident" is defined as a person who resides in and maintains a physical place of domicile in a country other than the U.S., and intends to maintain such place of domicile as her or his permanent residence. For purposes of this subsection, a U.S. resident is a person who has:

- Had her or his principal place of domicile in the United States for 180 days or more in the 365 days prior to issuance or renewal of the policy;
- Registered to vote in any state;
- Made a statement of domicile in any state; or,
- Filed for homestead tax exemption on property in any state.

To be eligible for the exemption from the COA requirements, the insurer must:

- Not solicit, sell, or accept application for any insurance policy or contract for issue or delivery to U.S. residents. The prohibition also applies to any affiliated person of the insurer. Under current law, if a holding company wants to establish a Florida office for their alien affiliate, they are prohibited if the holding company owns another entity already licensed in Florida.
- Register with the OIR.
- Provide a disclosure on all certificates, contracts, and policies issued in Florida stating that the policy has not been approved by the OIR.
- Provide the following information to the OIR on an annual basis:
    - Name of the insurer and the country of domicile;
    - Names of the owners, officers, and directors and the number of employees;
    - Lines of insurance and types of products offered;
    - A statement from the applicable regulatory body of the insurer's domicile certifying that the insurer is licensed or registered in that domicile; and
    - A copy of filings required by the insurer's domicile.

III. Effect of Proposed Changes:

Section 1 revises the current exemption from the COA requirements for an insurer domiciled outside the U.S. covering nonresidents of the U.S. at the time of issuance or renewal. Under current law, the alien insurer, or any affiliated person, may not solicit, sell, or accept application for any insurance policy or contract to be delivered or issued to any person in the U.S. The bill makes the following changes:

- Only the alien insurer is prohibited from soliciting, selling, or accepting application for any policy or contract to be delivered or issued for delivery in the U.S. The affiliated person is removed from this restriction.
- The definition of nonresident is revised to include a trust or other entity organized and domiciled under the laws of a country other than the U.S.

[6] Ch. 2011-174, L.O.F.

New Exemption from the COA Requirements

The bill creates s. 624.402(9), F.S., which provides an exemption from the COA requirements for insurers domiciled outside the U.S. selling life and annuity coverage to persons in Florida who, at the time of issuance, are not U.S. residents if the following conditions are met:

- The insurer is an authorized insurer in its domiciliary country in the kinds of insurance proposed to be offered in this state; and:
    - Has been an insurer for at least the last three consecutive years; or
    - Is the wholly owned subsidiary of an authorized insurer; or is the wholly owned subsidiary of an already eligible authorized insurer as to the kind of insurance proposed to be issued in this state for a period of not less than the immediately preceding three years.

- Prior to the OIR granting an alien eligibility to issue policies and contracts in Florida, the insurer is required to meet the following requirements:
    - Submit a copy of its annual financial statement to the OIR in English and with all monetary values expressed in U.S. dollars.
    - Maintain a surplus of at least $15 million in eligible investments for like funds of like domestic insurers or by investments permitted by the domiciliary regulator, if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of domestic insurers under part II of ch. 625, F.S.
    - Have a good reputation for providing service and paying claims.
    - Furnish the OIR with annual and quarterly financial statements.
    - Allow access to the insurer's books and records pertaining to its operations in Florida, at the request of the OIR.
    - Provide certain disclosures to policy or contract applicants, such as the identity and rating assigned by each rating organization that has rated the insurer. Also the insurer must disclose that the OIR does not exercise regulatory oversight over the insurer; the policy or contract is not covered by a guaranty association, and the identity and address of the regulatory authority exercising oversight of the insurer.

The OIR may waive the three year operating requirement if the insurer has "operated successfully" for at least one year prior and has a surplus of at least $25 million. The bill also provides that these provisions do not impose upon the OIR any duty or responsibility to determine the actual financial condition or claims practices of an unauthorized insurer, and the status of eligibility, if granted, indicates only that the insurer appears to be financially sound and that the OIR has no credible evidence to the contrary. The bill provides that if the OIR has reason to believe that such an insurer is insolvent or is in unsound financial condition, or is no longer eligible to issue policies or contracts subject to the conditions of this subsection, the OIR may conduct an investigation or examination and may withdraw eligibility of the insurer.

The definition of nonresident is provided by a cross-reference to s. 624.402(8), F.S.

Eligible insurers issuing policies or contracts pursuant to this subsection are subject to part IX of ch. 626, F.S., and the OIR may take action against such insurers for violations of the Unfair Trade Practices Act. Insurers violating provisions of this new subsection are also subject to the penalties provided in ss. 624.15 and 626.910, F.S.

All single-premium life insurance policies and single-premium annuity contracts issued to persons who are not residents of the United States and are not nonresidents illegally residing in the United States are subject to ch. 896, F.S., Offenses Related to Financial Transactions.

This subsection does not create an exception to the agent licensure requirements of ch. 626, F.S. An insurer issuing policies or contracts are required to appoint the agents the insurer uses to sell such policies or contracts as provided in ch. 626, F.S.

Policies and contracts issued pursuant to this subsection are not subject to the premium tax specified in s. 624.509, F.S.

Section 2 provides that this act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By expanding the exemptions from the COA requirements to insurers domiciled outside of the U.S., and selling life insurance policies and annuity contracts to nonresidents of the U.S., the bill will allow for an increase in the lines and types of insurance offerings. The bill will reduce the regulatory burden for these insurers while preserving regulatory oversight on insurers selling policies and contracts to U.S. residents. Nonresidents could benefit from such coverage.

The definition of "nonresident" is expanded under s. 624.402(8), F.S., to include a trust or other entity organized and domiciled under the laws of a country other than the United States. This will allow life insurance trusts and other entities to obtain coverage under these non-regulated policies.

C. Government Sector Impact:

Prior to the repeal of the existing exemption from the COA requirements for alien insurers selling life insurance and annuity contracts to nonresidents in 2011,[7] the OIR reported that there were three insurers that had met the eligibility requirements for an exemption. This number had not changed in recent years and is not expected to be much different moving forward.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on February 2, 2012:

The CS provides the following changes:

- Provides that an alien insurer issuing life insurance policies or annuity contracts in Florida is subject to the fines prescribed in s. 626.910, F.S., if the insurer fails to comply with the provisions of s. 624.402(9), F.S.
- Reinstates the prohibition on renewing policies to residents as a requirement for alien insurers subject to the provisions of s. 624.402(8), F.S.
- Revises the effective date of the bill.
- Provides technical and conforming changes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

[7] Ch. 2011-174, L.O.F.

By the Committee on Banking and Insurance; and Senator Latvala

597-02858-12 20121844c1

A bill to be entitled

An act relating to alien insurers; amending s. 624.402, F.S.; revising a provision exempting alien insurers from the requirement to obtain a certificate of authority; revising the definition of the term "nonresident"; providing that a life insurance policy and annuity contract may be issued by an insurer domiciled outside the United States under certain conditions; specifying the terms and conditions that must be satisfied before an alien insurer may issue a policy or contract; authorizing the Office of Insurance Regulation to conduct an examination of an alien insurer if the office has reason to believe that the insurer is insolvent or is in unsound financial condition; providing that an alien insurer issuing policies or contracts in this state is subject to part IX of ch. 626, F.S., relating to unfair insurance trade practices; authorizing the office to enforce part IX of ch. 626, F.S.; providing that policies and contracts issued pursuant to the act are not subject to the premium tax; requiring that an application for a life insurance policy or an annuity contract contain certain specified statements to protect consumers; providing an effective date.

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

Section 1. Subsection (8) of section 624.402, Florida Statutes, is amended, and subsection (9) is added to that

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597-02858-12 20121844c1

section, to read:

624.402 Exceptions, certificate of authority required.—A certificate of authority shall not be required of an insurer with respect to:

(8)(a) An insurer domiciled outside the United States covering only persons who, at the time of issuance or renewal, are nonresidents of the United States if:

1. The insurer ~~or any affiliated person as defined in s. 624.04 under common ownership or control with the insurer~~ does not solicit, sell, or accept application for any insurance policy or contract to be delivered or issued for delivery to any person in any state;

2. The insurer registers with the office via a letter of notification upon commencing business from this state;

3. The insurer provides the following information, in English, to the office annually by March 1:

a. The name of the insurer; the country of domicile; the address of the insurer's principal office and office in this state; the names of the owners of the insurer and their percentage of ownership; the names of the officers and directors of the insurer; the name, e-mail, and telephone number of a contact person for the insurer; and the number of individuals who are employed by the insurer or its affiliates in this state;

b. The lines of insurance and types of products offered by the insurer;

c. A statement from the applicable regulatory body of the insurer's domicile certifying that the insurer is licensed or registered for those lines of insurance and types of products in that domicile; and

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59 d. A copy of the filings required by the applicable
60 regulatory body of the insurer's country of domicile in that
61 country's official language or in English, if available;
62 4. All certificates, policies, or contracts issued in this
63 state showing coverage under the insurer's policy include the
64 following statement in a contrasting color and at least 10-point
65 type: "The policy providing your coverage and the insurer
66 providing this policy have not been approved by the Florida
67 Office of Insurance Regulation"; and
68 5. If ~~In the event~~ the insurer ceases to do business from
69 this state, the insurer will provide written notification to the
70 office within 30 days after cessation.
71 (b) For purposes of this subsection, "nonresident" means a
72 trust or other entity organized and domiciled under the laws of
73 a country other than the United States or a person who resides
74 in and maintains a physical place of domicile in a country other
75 than the United States, which he or she recognizes as and
76 intends to maintain as his or her permanent home. A nonresident
77 does not include an unauthorized immigrant present in the United
78 States. Notwithstanding any other ~~provision of~~ law, it is
79 conclusively presumed, for purposes of this subsection, that a
80 person is a resident of the United States if the ~~such~~ person
81 has:
82 1. Had his or her principal place of domicile in the United
83 States for 180 days or more in the 365 days before ~~prior to~~
84 issuance or renewal of the policy;
85 2. Registered to vote in any state;
86 3. Made a statement of domicile in any state; or
87 4. Filed for homestead tax exemption on property in any

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88 state.
89 (c) Subject to the limitations provided in this subsection,
90 services, including those listed in s. 624.10, may be provided
91 by the insurer or an affiliated person as defined in s. 624.04
92 under common ownership or control with the insurer.
93 (d) An alien insurer transacting insurance in this state
94 without complying with this subsection is ~~shall~~ be in violation
95 of this chapter and subject to the penalties provided in s.
96 624.15.
97 (9)(a) Life insurance policies or annuity contracts may be
98 solicited, sold, or issued in this state by an insurer domiciled
99 outside the United States, covering only persons who, at the
100 time of issuance are nonresidents of the United States, provided
101 that:
102 1. The insurer is currently an authorized insurer in his or
103 her country of domicile as to the kind or kinds of insurance
104 proposed to be offered and must have been such an insurer for
105 not fewer than the immediately preceding 3 years, or must be the
106 wholly owned subsidiary of such authorized insurer or must be
107 the wholly owned subsidiary of an already eligible authorized
108 insurer as to the kind or kinds of insurance proposed for a
109 period of not fewer than the immediately preceding 3 years.
110 However, the office may waive the 3-year requirement if the
111 insurer has operated successfully for a period of at least the
112 immediately preceding year and has capital and surplus of not
113 less than $25 million.
114 2. Before the office may grant eligibility, the requesting
115 insurer furnishes the office with a duly authenticated copy of
116 its current annual financial statement, in English, and with all

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117 monetary values therein expressed in United States dollars, at
118 an exchange rate then-current and shown in the statement, in the
119 case of statements originally made in the currencies of other
120 countries, and with such additional information relative to the
121 insurer as the office may request.
122 3. The insurer has and maintains surplus as to
123 policyholders of not less than $15 million. Any such surplus as
124 to policyholders shall be represented by investments consisting
125 of eligible investments for like funds of like domestic insurers
126 under part II of chapter 625; however, any such surplus as to
127 policyholders may be represented by investments permitted by the
128 domestic regulator of such alien insurance company if such
129 investments are substantially similar in terms of quality,
130 liquidity, and security to eligible investments for like funds
131 of like domestic insurers under part II of chapter 625.
132 4. The insurer has of good reputation as to providing
133 service to its policyholders and the payment of losses and
134 claims.
135 5. To maintain eligibility, the insurer furnishes the
136 office within the time period specified in s. 624.424(1), a duly
137 authenticated copy of its current annual and quarterly financial
138 statements, in English, and with all monetary values therein
139 expressed in United States dollars, at an exchange rate then-
140 current and shown in the statement, in the case of statements
141 originally made in the currencies of other countries, and with
142 such additional information relative to the insurer as the
143 office may request.
144 6. An insurer receiving eligibility under this subsection
145 agrees to make its books and records pertaining to its

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146 operations in this state available for inspection during normal
147 business hours upon request of the office.
148 7. The insurer notifies the applicant in clear and
149 conspicuous language:
150 a. The date of organization of the insurer.
151 b. The identity of and rating assigned by each recognized
152 insurance company rating organization that has rated the insurer
153 or, if applicable, that the insurer is unrated.
154 c. That the insurer does not hold a certificate of
155 authority issued in this state and that the office does not
156 exercise regulatory oversight over the insurer.
157 d. The identity and address of the regulatory authority
158 exercising oversight of the insurer. This paragraph does not
159 impose upon the office any duty or responsibility to determine
160 the actual financial condition or claims practices of any
161 unauthorized insurer, and the status of eligibility, if granted
162 by the office, indicates only that the insurer appears to be
163 financially sound and to have satisfactory claims practices and
164 that the office has no credible evidence to the contrary.
165 (b) If the office has reason to believe that an insurer
166 issuing policies or contracts pursuant to this subsection is
167 insolvent or is in unsound financial condition, does not make
168 reasonable prompt payment of benefits, or is no longer eligible
169 under the conditions specified in this subsection, the office
170 may conduct an examination or investigation in accordance with
171 s. 624.316, s. 624.3161, or s. 624.320 and, if the findings of
172 the examination or investigation warrant, may withdraw the
173 eligibility of the insurer to issue policies or contracts
174 pursuant to this subsection without having a certificate of

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175 authority issued by the office.
176 (c) This subsection does not provide an exception to the
177 agent licensure requirements of chapter 626. A insurer issuing
178 policies or contracts pursuant to this subsection shall appoint
179 the agents that the insurer uses to sell such policies or
180 contracts as provided in chapter 626.
181 (d) An insurer issuing policies or contracts pursuant to
182 this subsection is subject to part IX of chapter 626, the Unfair
183 Insurance Trade Practices Act, and the office may take such
184 actions against the insurer for a violation as are provided in
185 that part.
186 (e) Policies and contracts issued pursuant to this
187 subsection are not subject to the premium tax specified in s.
188 624.509.
189 (f) Applications for life insurance coverage offered under
190 this subsection must contain, in contrasting color and not less
191 than 12-point type, the following statement on the same page as
192 the applicant's signature:
193
194 This policy is primarily governed by the laws of a
195 foreign country. As a result, all of the rating and
196 underwriting laws applicable to policies filed in this
197 state do not apply to this coverage, which may result
198 in your premiums being higher than would be
199 permissible under a Florida-approved policy. A
200 purchase of individual life insurance should be
201 considered carefully, as future medical conditions may
202 make it impossible to qualify for another individual
203 life policy. If the insurer issuing your policy

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204 becomes insolvent, this policy is not covered by the
205 Florida Life and Health Insurance Guaranty
206 Association. For information concerning individual
207 life coverage under a Florida-approved policy, consult
208 your agent or the Florida Department of Financial
209 Services.
210
211 (g) All life insurance policies and annuity contracts
212 issued pursuant to this subsection must contain on the first
213 page of the policy or contract, in contrasting color and not
214 less than 10-point type, the following statement:
215
216 The benefits of the policy providing your coverage are
217 governed primarily by the law of a country other than
218 the United States.
219
220 (h) All single-premium life insurance policies and single-
221 premium annuity contracts issued to persons who are not
222 residents of the United States and are not nonresidents
223 illegally residing in the United States pursuant to this
224 subsection are subject to chapter 896.
225 (i) For purposes of this subsection, the term "nonresident"
226 means a trust or other entity or person as defined in subsection
227 624.402(8).
228 (j) An alien insurer transacting insurance in this state
229 without complying with this subsection is in violation of this
230 chapter and subject to the penalties provided in s. 624.15, and
231 must also pay the fine required for each violation as prescribed
232 by s. 626.910.

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233 Section 2. This act shall take effect upon becoming a law.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/SB 1858

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Altman

SUBJECT: Water Storage and Water Quality Improvements

DATE: February 27, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	**Fav/CS**
2.	Weidenbenner	Buford	AG	**Favorable**
3.	Pigott	DeLoach	BGA	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill specifies legislative intent to encourage public-private partnerships for water storage and water quality improvements on agricultural lands throughout the state. The bill specifies that any agreement must include a baseline condition to determine the extent of wetlands and other surface waters on a property. Lastly, the bill specifies that during and after expiration of any agreement the extent of the wetlands and other surface waters on the property is the original baseline condition.

This bill creates s. 373.4591 of the Florida Statutes.

II. Present Situation:

Dispersed Water Storage

Section 373.4595(1)(n), F.S., encourages and supports the development of creative public-private partnerships and programs, including opportunities for water storage and quality improvement on private lands and water quality credit trading, to facilitate or further the restoration of the surface water resources of the Lake Okeechobee watershed, the

Caloosahatchee River watershed and the St. Lucie River watershed. During periods of abnormally high rainfall, agricultural lands in normal production can provide temporary water storage that protects urban areas from flooding. In many regions of South Florida, significant areas of agricultural lands lie fallow during a large part of the wet season. In these areas, the fields alleviate flood conditions. Also, ranch areas containing both improved and unimproved pasture lands may provide flood protection to urban areas by retaining water on these lands as part of normal farming operations. The ability to hold floodwaters on agricultural lands for longer periods than water can be held in an urban setting also assists the overall hydrologic system in maintaining recharge rates over more extended periods of time and limiting runoff.

Since 2005, the South Florida Water Management District (SFWMD) has been working with a number of agencies, environmental organizations and private land holders to store excess surface water on private, public and tribal lands.[1] The Dispersed Water Management Program encourages property owners to retain water on their lands rather than drain it, accept and detain regional runoff, or do both. Management of the water reduces the amount of water delivered into Lake Okeechobee during the wet season and discharged to coastal estuaries for flood protection. The SFWMD defines "dispersed water" as shallow water distributed across parcel landscapes using simple structures.[2] Private landowner involvement typically includes cost-share cooperative projects, easements or payment for environmental services. However, owners of agricultural lands are hesitant to provide their lands for water storage or water quality improvements that create wetlands or other surface waters on their property due to the fear that once the agreement expires they may be required to mitigate impacts to these created wetlands or surface waters, or that they may be precluded altogether from carrying out other activities on their lands in the future that may impact these created wetlands or surface waters.

As of October 2011, 131,500 acre-feet of water retention or storage has been made available through a combination of public and private projects. There are more than 100 participating landowners providing water retention or storage ranging from 1 acre-foot to 30,000 acre-feet. An additional 230,000 acre-feet of storage has been assessed for planned dispersed water projects.[3]

There are many benefits to dispersed water storage. Nutrients, especially phosphorous, are polluting Lake Okeechobee and the Everglades. Dispersed storage retains more water on the land during the wet season to avoid agricultural runoff containing heavy nutrient loads from entering sensitive water bodies. In addition, it limits large volumes of water from being discharged into Lake Okeechobee and subsequent discharges to downstream estuaries. Lastly, by allowing more natural hydrology, dispersed storage enhances aquifer recharge and rehydrates former wetlands.[4]

Wetland Delineation in Florida

Wetlands are lands that are neither dry nor covered by open water but continually influenced by water. At times wetlands may be dry for months or even years, or they may be covered with

[1] South Florida Water Management District, *Dispersed Water Management Program* (Oct. 2011), *available at* http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd_repository_pdf/jtf_dispersed_water_mgmt.pdf (last visited Jan. 25, 2012).
[2] *Id*.
[3] *Id.*
[4] *Id*.

water the majority of the time, only drying out for short periods.[5] They can be difficult to identify and delineate due to their varying nature. The delineation of wetlands is governed by s. 373.421, F.S., and rule 62-340.300 of the Florida Administrative Code (F.A.C.).

Trained professionals can identify and delineate wetlands from uplands by looking for unique traits found only in wetlands. Certain plants and plant adaptations, surface and subsurface soil characteristics and physical markings in the environment, such as water staining, are all indicators of wetlands.[6] The methodology and vegetation list outlined in rule 62-340.300, F.A.C., are used by all state and local government entities in Florida.[7]

III. Effect of Proposed Changes:

Section 1 creates s. 373.4591, F.S., encouraging public-private partnerships to accomplish water storage and water quality improvements on private agricultural lands throughout the state. The bill directs that when agreements are entered into between the DEP or a WMD and a private entity, a baseline condition of the extent of wetlands and other surface waters prior to any constructed improvements must be included in the agreement. The baseline condition determination must be completed pursuant to s. 373.421, F.S., relating to the delineation of wetlands. During and at the expiration of an agreement, the baseline condition contained in the agreement is the extent of the wetlands or other surface waters for the purpose of regulation.

Section 2 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

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[5] Dep't of Environmental Protection, *Florida State of the Environment – Wetlands: A Guide to Living with Florida's Wetlands*, *available at* http://www.dep.state.fl.us/water/wetlands/docs/erp/fsewet.pdf (last visited Jan. 25, 2012).
[6] *Id.* at 1-2.
[7] Rule 62-340, F.A.C., was ratified by the Florida legislature in 1994 as s. 373.4211, F.S., to ensure all statewide agencies could use this method.

B. Private Sector Impact:

The bill may allow agricultural landowners to increase water storage and enhance water quality on their lands without incurring additional wetland regulation. In addition, some landowners may be paid for the environmental services they are providing to the state for the environmental benefits that come from holding more water on the land.

C. Government Sector Impact:

Environmental restoration is extremely expensive. The least costly method to achieve environmental benefits is prevention. By encouraging private land owners to store water, the bill may result in significant savings to agencies responsible for environmental protection and restoration by limiting fresh water discharges and pollutants contained in runoff. In addition, dispersed water storage results in increased shallow groundwater recharge which may minimize the need for costly alternative water supply development projects in some areas. The total impact of the bill is dependent on how many additional acre-feet of water storage are created. Therefore, the impact is indeterminate but may be significant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on January 30, 2012:

- Authorizes the program statewide instead of only in the Lake Okeechobee watershed;
- Clarifies the DEP and WMDs are the entities that may contract with private landowners; and
- Specifies the baseline condition applies during and after expiration of an agreement.

B. Amendments:

None.

By the Committee on Environmental Preservation and Conservation; and Senator Altman

592-02642-12 20121858c1

A bill to be entitled

An act relating to water storage and water quality improvements; creating s. 373.4591, F.S.; requiring a specified determination as a condition of an agreement for water storage and water quality improvements on private agricultural lands; providing a methodology for such determination; providing for regulation of such lands for the duration of the agreement and after its expiration; providing an effective date.

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

Section 1. Section 373.4591, Florida Statutes, is created to read:

373.4591 Improvements on private agricultural lands.—The Legislature encourages public-private partnerships to accomplish water storage and water quality improvements on private agricultural lands. When an agreement is entered into between a water management district or the department and a private landowner to establish such a partnership, a baseline condition determining the extent of wetlands and other surface waters on the property shall be established and documented in the agreement before improvements are constructed. The determination for the baseline condition shall be conducted using the methods set forth in the rules adopted pursuant to s. 373.421. The baseline condition documented in the agreement shall be considered the extent of wetlands and other surface waters on the property for the purpose of regulation under this chapter for the duration of the agreement and after its expiration.

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592-02642-12 20121858c1

Section 2. This act shall take effect July 1, 2012.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military Affairs, Space, and Domestic Security, *Chair*
Budget - Subcommittee on Finance and Tax, *Vice Chair*
Budget
Budget - Subcommittee on Higher Education Appropriations
Communications, Energy, and Public Utilities
Health Regulation
Regulated Industries

SENATOR THAD ALTMAN
24th District

February 22, 2012

The Honorable Alan Hays, Chair
Senate Budget Subcommittee on
General Governmental Appropriations
324 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Hays:

I respectfully request that SB 1858, related to *Water Storage and Water Quality Improvements,* be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

Thad Altman

Thad Altman
TA/vc

CC: Jamie DeLoach, Staff Director, 201 Capitol Building

REPLY TO:
☐ 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
☐ 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5053

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

CourtSmart Tag Report

Room: SB 401 **Case:** **Type:**
Caption: Budget Subcommittee on General Government Appropriations **Judge:**

Started: 2/28/2012 11:57:52 AM
Ends: 2/28/2012 1:30:10 PM **Length: 01:32:19**

11:57:54 AM Meeting called to order
11:58:18 AM Chmn. Hays opening comments
11:59:12 AM SB 1568 by Sen. Gaetz
12:00:27 PM SB 1568
12:01:28 PM Nick Iarossi, Safety Net Hospital Alliance
12:02:27 PM SB 888 by Sen. Flores
12:03:10 PM Grace Lovett, Dept. of Agriculture and Consumer Services
12:03:40 PM SB 438 by Sen. Bennett
12:04:07 PM James Harold Thompson, Florida Financial Services Assoc.
12:04:44 PM SB 716 by Sen. Bennett
12:05:15 PM Noah Valenstein, Everglades Foundation; Stephanie Kunkel, Clean Water Action; Mary Jean Yon, Audubon Florida
12:06:47 PM SB 1042 by Sen. Bennett
12:07:05 PM Becki Edmonston (Verizon), Paul Mateo (AT&T), Jim Smith (Century Link)
12:07:46 PM SB 802 by Sen. Dean
12:08:47 PM Jay Liles (Fl Wildlife Federation), Jackie Fauls, FWC
12:10:20 PM SB 1586 by Sen. Thrasher
12:11:51 PM Slater Bayliss (Fl. Carpenters Council), Ashley Mayer, DFS
12:12:45 PM SB 1254 by Sen. Siplin
12:13:35 PM Grace Lovett (DACS)
12:14:34 PM SB 1372 by Sen. Alexander (presented by Caitlin Murray) Bill TPd
12:16:28 PM SB 1620 by Sen. Richter
12:19:25 PM Josh Aubuchon (State Farm), Ivette Arango (Beacon Council)
12:21:08 PM Beth Vecchioli (Beacon Council), Donovan Brown (Property Casualty Insurers Assoc. of America)
12:22:16 PM SB 1358 by Sen. Hays (TP)
12:22:45 PM SB 626 by Sen. Richter
12:24:55 PM SB 624 by Sen. Richter
12:25:48 PM SB 540 by Sen. Smith
12:27:29 PM Frank Messersmith (Fl Sheriffs Assoc), Sarah Busk (Ocala), Jim Magill (Fl Recyclers/Trademark Metals), Alan Hill (Hillsborough Co. Sheriffs Ofc.), Jim Morgan (Fl Sheriffs Assoc), Jim Stelling (419 Metal & Auto Recycling Center)
12:28:29 PM SB 676 by Sen. Smith
12:30:17 PM SB 1428 by Sen. Smith
12:31:35 PM Donovan Brown (Property Casualty Insurers Assoc. of America), Meredith Snowden (FCCI Insurance group)
12:32:29 PM SB 602 by Sen. Storms
12:33:47 PM Scott Dudley, Fl. League of Cities
12:34:35 PM SB 1342 by Sen. Storms
12:34:58 PM SB 1342 (presented by Hannah Hodge)
12:36:51 PM SB 1146 by Sen. Simmons (presented by Diane Suddes)
12:38:54 PM Martha Edenfield (Florida Bar)
12:42:11 PM SB 1358 by Sen. Hays
12:44:11 PM Kathy Pogas, Ron Bilbao (ACLU of Fl), Rich Templin (AFL-CIO), Larry Garcia, Marcus Davis, Mark Merlucci, Eulala Abbey, Vivian Garner, Joseph Petrick, Guy Masters
12:51:28 PM SB 1120 by Sen. Jones
12:54:42 PM Tim Nungesser (DBPR)
12:55:30 PM SB 1408 by Sen. Gardiner
12:58:41 PM Charles Milstead (AARP), Mark Hamilton (Ofc of Attorney General), Kimberly Case (Atty. General)
12:59:34 PM SB 738 by Sen. Altman (presented by Kari Janzen)
1:01:01 PM Jon Steverson (DEP)
1:02:53 PM SB 1252 by Sen. Jones
1:05:27 PM Tim Nungesser (DBRP), David Shepp (Fl. Assoc. of Wholesale Distributors)

1:06:11 PM SB 1656 by Sen. Latvala
1:06:39 PM Deborah Curry (FICPA), Jennifer Green, (FICPA)
1:07:14 PM SB 1844 by Sen. Latvala
1:09:29 PM SB 1262 by Sen. Oelrich (presented by Daniel Bruno)
1:10:15 PM SB 762 by Sen. Hays
1:11:40 PM Travis Moore, Community Assoc. Leadership Lobby & Community Associations Institute
1:19:00 PM Tim Nungesser (DBPR), Mark Anderson (Mgmt Companies), Anthony Kalliche (Continential Group), Juhan Mixon (Fla Vet Med. Assoc),
1:21:52 PM SB 1178
1:22:02 PM SB 1178 by Sen. Hays
1:22:37 PM Steven Minnis (Suwannee River Water Management District), Diane Salz (Peace River Manasota Real Water Authority), Suzanne Goss (JEA), Doug Mann (Am-water Works Ass.)
1:23:40 PM SB 1244 by Sen. Hays
1:25:20 PM SB 852 by Sen. Siplin
1:26:06 PM Kathleen Pollack (Junior League of Greater Orlando)
1:26:51 PM SB 956 by Sen. Hays
1:29:43 PM SB 1086 by Sen. Garcia (David Marin presenting) - TIME EXPIRED