CS/SB 156 by **CA, Detert**; (Compare to CS/H 0737) Swimming Pools and Spas

CS/CS/SB 242 by **GO, BI, Hukill**; (Similar to CS/CS/H 0383) Interstate Insurance Product Regulation Compact

SB 410 by **Bean**; (Similar to CS/CS/H 0217) Money Services Businesses

329332	D		S	RCS	AGG, Bradley	Delete everything after	04/17 03:38 PM

CS/SB 1046 by **BI, Brandes**; (Compare to CS/H 0157) Insurance

CS/SB 1080 by **GO, Evers**; (Identical to CS/CS/H 0269) Public Construction Projects

CS/SB 1416 by **EP, Evers**; Rehabilitation Projects for Petroleum Contamination Sites

203334	D		S	RCS	AGG, Simpson	Delete everything after	04/17 03:46 PM

CS/SB 1684 by **EP, Altman**; (Compare to H 0199) Environmental Regulation

736210	D		S	L	RCS	AGG, Simpson	Delete everything after	04/17 03:49 PM
439954	AA		S	L	WD	AGG, Soto	Delete L.361 - 366.	04/17 03:49 PM
815726	AA		S	L	RCS	AGG, Latvala	Delete L.259 - 262:	04/17 03:49 PM
331970	AA		S	L	RCS	AGG, Latvala	Delete L.328 - 354:	04/17 03:49 PM
738182	AA		S	L	RCS	AGG, Simpson	btw L.756 - 757:	04/17 03:49 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT
Senator Hays, Chair
Senator Thompson, Vice Chair

MEETING DATE: Wednesday, April 17, 2013
TIME: 11:00 a.m.—1:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Hays, Chair; Senator Thompson, Vice Chair; Senators Bradley, Braynon, Bullard, Dean, Detert, Joyner, Latvala, Legg, Simpson, Soto, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 156** Community Affairs / Detert (Compare CS/H 737)	Swimming Pools and Spas; Providing an exemption from licensure requirements for an owner or operator maintaining a swimming pool or spa for the purpose of water treatment; revising the definition of the terms "contractor," "commercial pool/spa contractor," "residential pool/spa contractor," and "swimming pool/spa servicing contractor" to include the cleaning, maintenance, and water treatment of swimming pools and spas; revising eligibility requirements to take the swimming pool/spa servicing contractors' examination, etc. CA 03/07/2013 Fav/CS RI 04/09/2013 Fav/1 Amendment AGG 04/17/2013 Favorable AP	Favorable Yeas 12 Nays 0
2	**CS/CS/SB 242** Governmental Oversight and Accountability / Banking and Insurance / Hukill (Similar CS/CS/H 383)	Interstate Insurance Product Regulation Compact; Providing for establishment of an Interstate Insurance Product Regulation Commission; specifying the commission as an instrumentality of the compacting states; designating the Commissioner of Insurance Regulation as the representative of the state on the commission; providing for qualified immunity, defense, and indemnification of members, officers, employees, and representatives of the commission; exempting the commission from all taxation, except as otherwise provided, etc. BI 03/20/2013 Not Considered BI 04/02/2013 Fav/CS GO 04/09/2013 Fav/CS AGG 04/17/2013 Favorable AP	Favorable Yeas 11 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 410** Bean (Similar CS/CS/H 217, Compare CS/H 7135, Link CS/S 1868)	Money Services Businesses; Authorizing the Financial Services Commission to use a portion of the fees that licensees may charge for the direct costs of verification of payment instruments cashed for certain purposes; requiring licensees engaged in check cashing 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; providing liability protection for licensees relying on database information, etc. BI 04/02/2013 Favorable AGG 04/17/2013 Fav/CS AP	Fav/CS Yeas 12 Nays 0
4	**CS/SB 1046** Banking and Insurance / Brandes (Compare CS/H 157, CS/H 509, CS/CS/H 635, CS/H 1191, CS/H 7125, H 7155, CS/S 262, S 356, CS/S 1408, CS/S 1458, S 1842)	Insurance; Authorizing a uniform motor vehicle proof-of-insurance card to be in an electronic format; authorizing specified insurers to contract with an authorized inspection agency for boiler inspections; requiring each insurance agency to be under the control of an agent licensed to transact certain lines of insurance; requiring the Office of Insurance Regulation to use certain models or straight averages of certain models to estimate hurricane losses when determining whether the rates in a rate filing are excessive, inadequate, or unfairly discriminatory, etc. BI 03/20/2013 Not Considered BI 04/02/2013 Fav/CS AGG 04/17/2013 Favorable AP	Favorable Yeas 12 Nays 0
5	**CS/SB 1080** Governmental Oversight and Accountability / Evers (Identical CS/CS/H 269)	Public Construction Projects; Requiring governmental entities to specify certain products associated with public works projects; requiring state agencies to use certain building rating systems and building codes for each new construction and renovation project, etc. GO 04/09/2013 Fav/CS CA 04/16/2013 Fav/1 Amendment AGG 04/17/2013 Favorable AP	Favorable Yeas 12 Nays 0
6	**CS/SB 1416** Environmental Preservation and Conservation / Evers	Rehabilitation Projects for Petroleum Contamination Sites; Deleting provisions requiring the Department of Environmental Protection to preapprove costs or use performance-based contracts for site rehabilitation projects, etc. EP 03/21/2013 Fav/CS AGG 04/17/2013 Fav/CS AP	Fav/CS Yeas 8 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**CS/SB 1684** Environmental Preservation and Conservation / Altman (Compare H 199, CS/CS/H 999, CS/H 1063, CS/H 7105, CS/H 7127, S 588, CS/S 948, S 1470, S 1828)	Environmental Regulation; Authorizing the Department of Environmental Protection to adopt rules requiring or incentivizing the electronic submission of forms, documents, fees, and reports required for certain permits; revising provisions for the duration of leases and letters of consent issued by the Board of Trustees of the Internal Improvement Trust Fund for special events; requiring the cooperation of utility companies, private landowners, water consumers, and the Department of Agriculture and Consumer Services; requiring the Department of Agriculture and Consumer Services to establish an agricultural water supply planning program, etc. EP 04/02/2013 Fav/CS AG 04/08/2013 Favorable AGG 04/17/2013 Fav/CS AP	Fav/CS Yeas 12 Nays 0

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 Appropriations Subcommittee on General Government

BILL:	CS/SB 156
INTRODUCER:	Community Affairs Committee and Senator Detert
SUBJECT:	Swimming Pools and Spas
DATE:	April 10, 2013 REVISED: 04/17/13

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	**Fav/CS**
2.	Kraemer	Imhof	RI	**Fav/1 amendment**
3.	Davis	DeLoach	AGG	**Favorable**
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 156 creates a new, mandatory licensing requirement for residential pool cleaning in Florida.

According to the Department of Business and Professional Regulation (DBPR), the new, mandatory licensing for water treatment service providers and the reduction in eligibility requirements for the swimming pool/spa servicing contractors' examination in CS/SB 156 will produce an estimated $5.2 million net increase in revenue to the Professional Regulation Trust Fund in Fiscal Year 2013-2014, a net loss of revenue to the Professional Regulation Trust Fund in Fiscal Year 2014-2015, and a $3.7 million net increase in revenue for the Professional Regulation Trust Fund in Fiscal Year 2015-2016. These impacts include the DBPR's estimated administrative costs necessary to handle the additional workload associated with processing new license and renewal license applications and responding to consumer inquiries. Those estimated administrative costs in Fiscal Year 2013-2014 are $296,747, five full-time-equivalent positions and two Other Personal Services (OPS) positions. The traveling amendment adopted in the Regulated Industries Committee (Barcode 269142) removes those impacts and has an indeterminate, but likely insignificant fiscal impact. See Section V.

The bill:

- Revises the definition of the term "contractor," adds "maintenance for water treatment" to the definition of a contractor, and includes cleaning, maintenance, and water treatment of swimming pools and spas within the licensure scope for commercial pool/spa contractors, residential pool/spa contractors, and swimming pool/spa servicing contractors.
- Removes current licensure exemptions for individuals and businesses that provide only pool and spa cleaning, maintenance and water treatment services.
- Removes the one year experience requirement for swimming pool/spa service contractors and instead requires 20 hours of in-field, hands-on instruction.
- Provides an exemption from licensure requirements for owners or operators, or their direct employees, who maintain a public swimming pool or spa for the purpose of water treatment.

This bill substantially amends sections 489.103, 489.105 and 489.111, Florida Statutes.

II. Present Situation:

Pool Cleaning in Florida

Currently, the practice of pool contracting is regulated by DBPR under the auspices of the Construction Industry Licensing Board (CILB). Pursuant to ss. 489.105(3)(j), (k) and (l), F.S., mandatory licensure is required for commercial pool/spa contractors, residential pool/spa contractors, and swimming pool/spa servicing contractors respectively to construct or repair pools. Contractors must maintain one of these licenses to contract for the installation, repair, or servicing of commercial or residential pools, spas and hot tubs. However, each of these categories specifically exempts persons who offer only cleaning, maintenance and water treatment of pools, spas and hot tubs from mandatory licensing, so long as the work contracted does not affect the structural integrity of the pool, spa or hot tub or require installation, modification or replacement of its permanently attached equipment. This exemption was added by the legislature in 1996.[1]

While DBPR does not currently require licensure for persons offering only pool cleaning services, the Florida Department of Health (DOH) has responsibility under s. 514.075, F.S., to certify public pool service technicians. Public pool service technicians must demonstrate knowledge of pool maintenance and water treatment by passing a 16-hour course approved by DOH. Persons holding a current commercial pool/spa contractor, residential pool/spa contractor, and/or swimming pool/spa servicing contractor license from DBPR are exempt from certification under s. 514.075, F.S.

The DOH estimates there are approximately 37,000 public pools in Florida that use the services of 12,000 certified pool service technicians.[2] According to the DOH's estimate, there are currently 14,000 certified pool servicing technicians.[3] Pool service technicians may or may not be direct employees of an owner or operator of a public pool.

[1] Ch. 96-365, L.O.F.
[2] *2013 Legislative Analysis for SB 156*, Department of Health, dated January 7, 2013.
[3] *2013 Legislative Analysis for CS/SB 156 as amended*, Department of Health, dated March 7, 2013.

Currently, applicants for commercial swimming pool/spa contractor and/or residential pool/spa contractor license are eligible to sit for the state certification examination if he or she has at least four years of experience in the required licensure category. Applicants may substitute up to three years of college credits in lieu of years of experience but must have at least one year of experience as a foreman in the license category sought. Pursuant to s. 489.111(2)(c)6.d., F.S., a person is qualified to sit for the swimming pool/spa servicing contractor's examination if they possess one year of experience in swimming pool service work and complete 60 hours of instruction in course work approved by the Construction Industry Licensing Board. All applicants must also establish that they are 18 years of age, of good moral character, and meet minimum financial stability requirements.

III. Effect of Proposed Changes:

Section 1 exempts an owner or operator of public swimming pools[4] and spas permitted by the Department of Health, or his or her direct employees, who undertake to maintain the swimming pool or spa for the purpose of water treatment from the licensing requirement of the bill. Pool service technicians for public swimming pools who are employed by or associated with subsidiary entities or third party contractors are not exempted from the licensing requirement.

Section 2 amends s. 489.105(3)(j)-(l), F.S., to add the phrase "maintain for purposes of water treatment" to the definition of contracting, specifically including such work within the mandatory licensure requirements of commercial pool/spa contractors, residential pool/spa contractors, and swimming pool/spa servicing contractors. The bill removes the current exemption for businesses and individuals who engage only in pool/spa cleaning, maintenance and water treatment services from s. 489.105(3)(j)-(l), F.S., requiring any businesses or individuals who provide such services to obtain either a commercial pool/spa contractor, residential pool/spa contractor, or swimming pool/spa servicing contractor license.

Section 3 reduces the experience requirements for the swimming pool/spa service contractor's license under s. 489.111(2)(c)6.d., F.S., from one year of verifiable experience in swimming pool/spa service work to 20 hours of infield, hands-on instruction. However, all applicants for state certification would be required to pass the certification examination prior to licensure. In addition, all applicants for licensure would be required to meet all other licensure requirements, including the requirements to be at least 18 years old, be of good moral character, and meet biennial renewal requirements.

Section 4 provides an effective date of October 1, 2013.

[4] Section 514.011(2), F.S., defines a public swimming pool as a watertight structure . . . located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment . . .[including] a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.

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:

The DOH estimates there are approximately 37,000 public pools in Florida that use the services of 12,000 certified pool service technicians.[5] According to the DOH's estimate, there are currently 14,000 certified pool servicing technicians.[6] All those pool service technicians that are not direct employees of an owner or operator of a public pool will not be exempt from the licensing requirement.

According to the DBPR, it is estimated that the bill could generate 18,000 new licensees. The associated initial license fee, application fee, and exam fee would be approximately $236 per licensee.

B. Private Sector Impact:

According to the DBPR, the current licensure scope for commercial pool/spa contractor, residential pool/spa contractor, and swimming pool/spa servicing contractor includes many activities that exceed the normal work of a pool/spa cleaner, and those that have difficulty in passing the state examination due to the extensive nature of the subject matter will not be permitted to engage in the pool cleaning profession and will be placed out of business.[7]

C. Government Sector Impact:

Under the bill, the DBPR will see an increase in license applications resulting in additional fees for examination, initial licensure and biennial renewals. The number of new licensees is indeterminate; however, DBPR estimates that 18,000 new licensees who are not familiar with DBPR's licensure requirements could be generated. The increase in calls and additional tasks is estimated by DBPR to require a total of two additional Full

[5] *See supra* note 2.
[6] *See supra* note 3.
[7] *2013 Legislative Analysis for CS/SB 156*, Department of Business and Professional Regulation, dated March 20, 2013.

Time Equivalent (FTE)[8] positions and two Other-Personal-Services (OPS) positions, in the Division of Service Operations, including, one additional FTE and two OPS positions[9] (Regulatory Specialist II) in the Bureau of Central Intake and Licensure to process new licensure and renewal applications, and one additional FTE (Regulatory Specialist II) position in the Customer Contact Center to handle increased call volume. The two OPS positions will be staffed for a six month period to process initial license applications. The Division of Regulation will require three additional FTE positions to accommodate the additional workload.

According to the DBPR, the following chart summarizes the impact of CS/SB 156:

REVENUE (PROFESSIONAL REGULATION TRUST FUND)			
	FY 2013-14	FY 2014-15	FY 2015-16
Exam Fees	1,503,000	83,500	83,500
Application Fees:	720,000	40,000	40,000
Initial License Fees:	3,600,000	100,000	200,000
License Renewal - Individual	0	0	3,800,000
Unlicensed Activity	90,000	5,000	5,000
Unlicensed Activity - Renewal	0	0	95,000
Building Commission Fee	72,000	4,000	4,000
Building Commission Fee -Renewal	0	0	76,000
TOTAL:	5,985,000	232,500	4,303,500

EXPENDITURES – FUNDING SOURCE (PROFESSIONAL REGULATION TRUST FUND)			
Recurring Budget	FY 2013-14	FY 2014-15	FY 2015-16
Salaries/Benefits # of FTE's (5 FTE's)	171,165	228,220	228,220
Salary Rate	157,173	157,173	157,173
Other Personal Services	0	0	0
Expenses	24,272	31,867	31,867
Contract Services	0	0	0
Examination and Testing Services (BET 100106)	25,000	20,000	20,000
Transfer to DMS – HR Services	1,328	1,770	1,770
Subtotal	221,765	281,857	281,857

EXPENDITURES – FUNDING SOURCE (PROFESSIONAL REGULATION TRUST FUND)			
Non-Recurring Budget	FY 2013-14	FY 2014-15	FY 2015-16
Other Personal Services	29,694	0	0
Expense	36,052	0	0
Operating Capital Outlay	0	0	0
Examination and Testing Services (BET 100106)	9,000	0	0
Transfer to DMS – HR Services OPS	236		
Subtotal	74,982	0	0

Non-Operating Expenditures	FY 2013-14	FY 2014-15	FY 2015-16
Service Charge to GR (8% of revenue)	478,800	18,600	344,280

[8] FTE, an acronym for full-time equivalent**,** is a unit that indicates the workload of an employee for comparison purposes.
[9] The period of staffing the two OPS positions

Indirect Costs (DBPR Administrative Overhead)	0	0	0
Other/Transfers	0	0	0
Subtotal	478,800	18,600	344,280

Net Revenue Over/(Under) Expenditures	**$5,209,453**	**($67,957)**	**$3,677,363**

The traveling amendment adopted in the Regulated Industries Committee (Barcode 269142) removes those impacts and has an indeterminate, but likely insignificant fiscal impact. The number of applicants who apply to DBPR to be licensed as swimming pool/spa servicing contractors may increase. However, DBPR indicates that any workload increase can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Consideration of the factors outlined in s. 11.62, F.S., (the Sunrise Act) may be appropriate for regulation of the occupation of pool maintenance and cleaning which is currently exempt from licensing. A Sunrise Act review has not been conducted.

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 Community Affairs on March 7, 2013:
Exempts owner or operator of public swimming pools and spas, or his or her direct employees, from the licensing requirement of the bill. Provides the Department of Business and Professional Regulation with the authority to adopt rules, rather than the Construction Industry Licensing Board. Changed the effective date to October 1, 2013.

B. Amendments:

Barcode 269142 by the Regulated Industries Committee on April 9, 2013:
The traveling amendment deletes the requirement that persons engaged in water treatment, cleaning or maintenance of swimming pools and spas must be licensed as contractors under the provisions of s. 489.105(3)(j), (k), or (l), F.S. The amendment requires that in order to be eligible to take the swimming pool/spa servicing contractors' examination, an applicant may not have engaged in activities reserved to commercial pool/spa contractors, residential pool/spa contractors and swimming pool/spa servicing contractors, without being properly licensed. Section 489.1131, F.S., is created to provide that persons who clean a pool or spa in a way that affects the structural integrity of the pool or spa or its associated equipment without being properly licensed is subject to the provisions of s. 489.127, F.S. In addition, the effective date is changed from October 1, 2013 to October 1, 2014.

This traveling amendment has an indeterminate, but likely insignificant fiscal impact. There may be an increase in the number of applicants who apply to DBPR to be licensed as swimming pool/spa servicing contractors. However, DBPR indicates this increase can be absorbed with existing resources.

By the Committee on Community Affairs; and Senator Detert

578-02024-13 2013156c1

A bill to be entitled

An act relating to swimming pools and spas; amending s. 489.103, F.S.; providing an exemption from licensure requirements for an owner or operator maintaining a swimming pool or spa for the purpose of water treatment; amending s. 489.105, F.S.; revising the definition of the terms "contractor," "commercial pool/spa contractor," "residential pool/spa contractor," and "swimming pool/spa servicing contractor" to include the cleaning, maintenance, and water treatment of swimming pools and spas; conforming provisions to changes made by the act; amending s. 489.111, F.S.; revising eligibility requirements to take the swimming pool/spa servicing contractors' examination; providing the Department of Business and Professional Regulation with the authority to adopt rules; providing an effective date.

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

Section 1. Subsection (23) is added to section 489.103, Florida Statutes, to read:

489.103 Exemptions.—This part does not apply to:

(23) An owner or operator of a public swimming pool or spa permitted under s. 514.031, or his or her direct employee, who undertakes to maintain the swimming pool or spa for the purpose of water treatment.

Section 2. Subsection (3) of section 489.105, Florida Statutes, is amended to read:

578-02024-13 2013156c1

489.105 Definitions.—As used in this part:

(3) "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, maintain for purposes of water treatment, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height; and all buildings or residences. For purposes of regulation under this part, the phrase "maintain for purposes of water treatment" applies only to cleaning, maintenance, and water treatment of swimming pools and spas. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

(a) "General contractor" means a contractor whose services are unlimited as to the type of work which he or she may do, who may contract for any activity requiring licensure under this part, and who may perform any work requiring licensure under this part, except as otherwise expressly provided in s. 489.113.

(b) "Building contractor" means a contractor whose services are limited to construction of commercial buildings and single-

dwelling or multiple-dwelling residential buildings, which do not exceed three stories in height, and accessory use structures in connection therewith or a contractor whose services are limited to remodeling, repair, or improvement of any size building if the services do not affect the structural members of the building.

(c) "Residential contractor" means a contractor whose services are limited to construction, remodeling, repair, or improvement of one-family, two-family, or three-family residences not exceeding two habitable stories above no more than one uninhabitable story and accessory use structures in connection therewith.

(d) "Sheet metal contractor" means a contractor whose services are unlimited in the sheet metal trade and who has the experience, knowledge, and skill necessary for the manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, insulation, alteration, repair, servicing, or design, if not prohibited by law, of ferrous or nonferrous metal work of U.S. No. 10 gauge or its equivalent or lighter gauge and of other materials, including, but not limited to, fiberglass, used in lieu thereof and of air-handling systems, including the setting of air-handling equipment and reinforcement of same, the balancing of air-handling systems, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system.

(e) "Roofing contractor" means a contractor whose services are unlimited in the roofing trade and who has the experience, knowledge, and skill to install, maintain, repair, alter, extend, or design, if not prohibited by law, and use materials

and items used in the installation, maintenance, extension, and alteration of all kinds of roofing, waterproofing, and coating, except when coating is not represented to protect, repair, waterproof, stop leaks, or extend the life of the roof. The scope of work of a roofing contractor also includes skylights and any related work, required roof-deck attachments, and any repair or replacement of wood roof sheathing or fascia as needed during roof repair or replacement and any related work.

(f) "Class A air-conditioning contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if such duct work is performed by the contractor as necessary to complete an air-distribution system, boiler and unfired pressure vessel systems, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, and pneumatic control piping; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved

disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring. A Class A air-conditioning contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

(g) "Class B air-conditioning contractor" means a contractor whose services are limited to 25 tons of cooling and 500,000 Btu of heating in any one system in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system only to the extent such duct work is performed by the contractor as necessary to complete an air-distribution system being installed under this classification, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping and insulation of pipes, vessels, and ducts; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical

disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring. A Class B air-conditioning contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

(h) "Class C air-conditioning contractor" means a contractor whose business is limited to the servicing of air-conditioning, heating, or refrigeration systems, including any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system, and whose certification or registration, issued pursuant to this part, was valid on October 1, 1988. Only a person who was registered or certified as a Class C air-conditioning contractor as of October 1, 1988, shall be so registered or certified after October 1, 1988. However, the board shall continue to license and regulate those Class C air-conditioning contractors who held Class C licenses before October 1, 1988.

(i) "Mechanical contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if such duct work is performed by the contractor as necessary to complete an air-distribution system, boiler and unfired pressure vessel systems, lift station equipment and piping, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, pneumatic control piping, gasoline tanks and pump installations and piping for same, standpipes, air piping, vacuum line piping, oxygen lines, nitrous oxide piping, ink and chemical lines, fuel transmission lines, liquefied petroleum gas lines within buildings, and natural gas fuel lines within buildings; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as potable water lines or

connections thereto, sanitary sewer lines, swimming pool piping and filters, or electrical power wiring. A mechanical contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

(j) "Commercial pool/spa contractor" means a contractor whose scope of work involves, but is not limited to, the construction, repair, water treatment, maintenance, and servicing of any swimming pool, or hot tub or spa, whether public, private, or otherwise, regardless of use. The scope of work includes the installation, repair, or replacement of existing equipment, ~~any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and~~ the installation of new pool/spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. ~~The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, or replacement of such equipment. Water treatment that does not require such~~

~~equipment does not require a license. In addition, a license is not required for the cleaning of the pool or spa in a way that does not affect the structural integrity of the pool or spa or its associated equipment.~~

(k) "Residential pool/spa contractor" means a contractor whose scope of work involves, but is not limited to, the construction, repair, water treatment, maintenance, and servicing of a residential swimming pool, or hot tub or spa, regardless of use. The scope of work includes the installation, repair, or replacement of existing equipment, ~~any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and~~ the installation of new pool/spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. ~~The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license is not required for the cleaning of the pool or spa in a way that does not affect the structural integrity of the pool~~

~~or spa or its associated equipment.~~

(l) "Swimming pool/spa servicing contractor" means a contractor whose scope of work involves, but is not limited to, the repair, water treatment, maintenance, and servicing of a swimming pool, or hot tub or spa, whether public or private, or otherwise, regardless of use. The scope of work includes the repair or replacement of existing equipment, any sanitation, chemical balancing, routine maintenance or cleaning, ~~cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and~~ the installation of new pool/spa equipment, interior refinishing, the reinstallation or addition of pool heaters, the repair or replacement of all perimeter piping and filter piping, the repair of equipment rooms or housing for pool/spa equipment, and the substantial or complete draining of a swimming pool, or hot tub or spa, for the purpose of repair, ~~or~~ renovation, or water treatment. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. ~~The installation, construction, modification, substantial or complete disassembly, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, substantial or complete disassembly, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license is not required for the cleaning of the pool or spa in a way that does not affect the~~

~~structural integrity of the pool or spa or its associated equipment.~~

(m) "Plumbing contractor" means a contractor whose services are unlimited in the plumbing trade and includes contracting business consisting of the execution of contracts requiring the experience, financial means, knowledge, and skill to install, maintain, repair, alter, extend, or, if not prohibited by law, design plumbing. A plumbing contractor may install, maintain, repair, alter, extend, or, if not prohibited by law, design the following without obtaining an additional local regulatory license, certificate, or registration: sanitary drainage or storm drainage facilities, water and sewer plants and substations, venting systems, public or private water supply systems, septic tanks, drainage and supply wells, swimming pool piping, irrigation systems, and solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas, liquefied petroleum gas and related venting, and storm and sanitary sewer lines. The scope of work of the plumbing contractor also includes the design, if not prohibited by law, and installation, maintenance, repair, alteration, or extension of air-piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers if authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in a manner that complies with all plans, specifications, codes, laws, and regulations applicable. The

scope of work of the plumbing contractor applies to private property and public property, including any excavation work incidental thereto, and includes the work of the specialty plumbing contractor. Such contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to the work but which is specified as being the work of a trade other than that of a plumbing contractor. This definition does not limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6), and does not require certification or registration under this part of any authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater. A plumbing contractor may perform drain cleaning and clearing and install or repair rainwater catchment systems; however, a mandatory licensing requirement is not established for the performance of these specific services.

(n) "Underground utility and excavation contractor" means a contractor whose services are limited to the construction, installation, and repair, on public or private property, whether accomplished through open excavations or through other means, including, but not limited to, directional drilling, auger boring, jacking and boring, trenchless technologies, wet and dry taps, grouting, and slip lining, of main sanitary sewer collection systems, main water distribution systems, storm sewer collection systems, and the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer

collection systems at property line on residential or single-occupancy commercial properties, or on multioccupancy properties at manhole or wye lateral extended to an invert elevation as engineered to accommodate future building sewers, water distribution systems, or storm sewer collection systems at storm sewer structures. However, an underground utility and excavation contractor may install empty underground conduits in rights-of-way, easements, platted rights-of-way in new site development, and sleeves for parking lot crossings no smaller than 2 inches in diameter if each conduit system installed is designed by a licensed professional engineer or an authorized employee of a municipality, county, or public utility and the installation of such conduit does not include installation of any conductor wiring or connection to an energized electrical system. An underground utility and excavation contractor may not install piping that is an integral part of a fire protection system as defined in s. 633.021 beginning at the point where the piping is used exclusively for such system.

(o) "Solar contractor" means a contractor whose services consist of the installation, alteration, repair, maintenance, relocation, or replacement of solar panels for potable solar water heating systems, swimming pool solar heating systems, and photovoltaic systems and any appurtenances, apparatus, or equipment used in connection therewith, whether public, private, or otherwise, regardless of use. A contractor, certified or registered pursuant to this chapter, is not required to become a certified or registered solar contractor or to contract with a solar contractor in order to provide services enumerated in this paragraph that are within the scope of the services such

contractors may render under this part.

(p) "Pollutant storage systems contractor" means a contractor whose services are limited to, and who has the experience, knowledge, and skill to install, maintain, repair, alter, extend, or design, if not prohibited by law, and use materials and items used in the installation, maintenance, extension, and alteration of, pollutant storage tanks. Any person installing a pollutant storage tank shall perform such installation in accordance with the standards adopted pursuant to s. 376.303.

(q) "Specialty contractor" means a contractor whose scope of work and responsibility is limited to a particular phase of construction established in a category adopted by board rule and whose scope is limited to a subset of the activities described in one of the paragraphs of this subsection.

Section 3. Subsection (2) of section 489.111, Florida Statutes, is amended to read:

489.111 Licensure by examination.—

(2) A person shall be eligible for licensure by examination if the person:

(a) Is 18 years of age;

(b) Is of good moral character; and

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

1. Has received a baccalaureate degree from an accredited 4-year college in the appropriate field of engineering, architecture, or building construction and has 1 year of proven experience in the category in which the person seeks to qualify. For the purpose of this part, a minimum of 2,000 person-hours

shall be used in determining full-time equivalency.

2. Has a total of at least 4 years of active experience as a worker who has learned the trade by serving an apprenticeship as a skilled worker who is able to command the rate of a mechanic in the particular trade or as a foreman who is in charge of a group of workers and usually is responsible to a superintendent or a contractor or his or her equivalent, provided, however, that at least 1 year of active experience shall be as a foreman.

3. Has a combination of not less than 1 year of experience as a foreman and not less than 3 years of credits for any accredited college-level courses; has a combination of not less than 1 year of experience as a skilled worker, 1 year of experience as a foreman, and not less than 2 years of credits for any accredited college-level courses; or has a combination of not less than 2 years of experience as a skilled worker, 1 year of experience as a foreman, and not less than 1 year of credits for any accredited college-level courses. All junior college or community college-level courses shall be considered accredited college-level courses.

4.a. An active certified residential contractor is eligible to take the building contractors' examination if he or she possesses a minimum of 3 years of proven experience in the classification in which he or she is certified.

b. An active certified residential contractor is eligible to take the general contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

c. An active certified building contractor is eligible to

take the general contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

5.a. An active certified air-conditioning Class C contractor is eligible to take the air-conditioning Class B contractors' examination if he or she possesses a minimum of 3 years of proven experience in the classification in which he or she is certified.

b. An active certified air-conditioning Class C contractor is eligible to take the air-conditioning Class A contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

c. An active certified air-conditioning Class B contractor is eligible to take the air-conditioning Class A contractors' examination if he or she possesses a minimum of 1 year of proven experience in the classification in which he or she is certified.

6.a. An active certified swimming pool servicing contractor is eligible to take the residential swimming pool contractors' examination if he or she possesses a minimum of 3 years of proven experience in the classification in which he or she is certified.

b. An active certified swimming pool servicing contractor is eligible to take the swimming pool commercial contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

c. An active certified residential swimming pool contractor

is eligible to take the commercial swimming pool contractors' examination if he or she possesses a minimum of 1 year of proven experience in the classification in which he or she is certified.

d. An applicant is eligible to take the swimming pool/spa servicing contractors' examination if he or she has satisfactorily completed 60 hours of instruction in courses and 20 hours of field hands-on instruction related to the scope of work covered by that license and approved by the department ~~Construction Industry Licensing Board~~ by rule ~~and has at least 1 year of proven experience related to the scope of work of such a contractor~~.

Section 4. This act shall take effect October 1, 2013.

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/10/2013	.	
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	.	

The Committee on Regulated Industries (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (c) of subsection (2) of section 489.111, Florida Statutes, is amended to read:

489.111 Licensure by examination.—

(2) A person shall be eligible for licensure by examination if the person:

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

1. Has received a baccalaureate degree from an accredited

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4-year college in the appropriate field of engineering, architecture, or building construction and has 1 year of proven experience in the category in which the person seeks to qualify. For the purpose of this part, a minimum of 2,000 person-hours shall be used in determining full-time equivalency.

2. Has a total of at least 4 years of active experience as a worker who has learned the trade by serving an apprenticeship as a skilled worker who is able to command the rate of a mechanic in the particular trade or as a foreman who is in charge of a group of workers and usually is responsible to a superintendent or a contractor or his or her equivalent, provided, however, that at least 1 year of active experience shall be as a foreman.

3. Has a combination of not less than 1 year of experience as a foreman and not less than 3 years of credits for any accredited college-level courses; has a combination of not less than 1 year of experience as a skilled worker, 1 year of experience as a foreman, and not less than 2 years of credits for any accredited college-level courses; or has a combination of not less than 2 years of experience as a skilled worker, 1 year of experience as a foreman, and not less than 1 year of credits for any accredited college-level courses. All junior college or community college-level courses shall be considered accredited college-level courses.

4.a. An active certified residential contractor is eligible to take the building contractors' examination if he or she possesses a minimum of 3 years of proven experience in the classification in which he or she is certified.

b. An active certified residential contractor is eligible

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to take the general contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

c. An active certified building contractor is eligible to take the general contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

5.a. An active certified air-conditioning Class C contractor is eligible to take the air-conditioning Class B contractors' examination if he or she possesses a minimum of 3 years of proven experience in the classification in which he or she is certified.

b. An active certified air-conditioning Class C contractor is eligible to take the air-conditioning Class A contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

c. An active certified air-conditioning Class B contractor is eligible to take the air-conditioning Class A contractors' examination if he or she possesses a minimum of 1 year of proven experience in the classification in which he or she is certified.

6.a. An active certified swimming pool servicing contractor is eligible to take the residential swimming pool contractors' examination if he or she possesses a minimum of 3 years of proven experience in the classification in which he or she is certified.

b. An active certified swimming pool servicing contractor is eligible to take the swimming pool commercial contractors'

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examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

c. An active certified residential swimming pool contractor is eligible to take the commercial swimming pool contractors' examination if he or she possesses a minimum of 1 year of proven experience in the classification in which he or she is certified.

d. An applicant is eligible to take the swimming pool/spa servicing contractors' examination if he or she has satisfactorily completed 60 hours of instruction in courses and 20 hours of in-field, hands-on instruction related to the scope of work covered by that license and approved by the Construction Industry Licensing Board by rule, and has not previously engaged in any scope of work described in ss. 489.105(3)(j),(k) or (l) reserved to commercial pool/spa contractors, residential pool/spa contractors and swimming pool/spa servicing contractors, respectively without being properly licensed to engage in same ~~and has at least 1 year of proven experience related to the scope of work of such a contractor~~.

Section 2. Section 489.1131, Florida Statutes, is created to read:

489.1131 Pool/Spa Cleaning.— Any person who cleans a pool or spa in a way that affects the structural integrity of the pool or spa or its associated equipment without being properly licensed as required by this part is subject to the provisions of s. 489.127.

Section 3. This act shall take effect October 1, 2014.

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101 ================ T I T L E A M E N D M E N T ================
102 And the title is amended as follows:
103 Delete everything before the enacting clause
104 and insert:
105 A bill to be entitled
106 An act relating to swimming pool and spa contracting;
107 amending s. 489.111, F.S.; revising eligibility
108 requirements for taking the swimming pool/spa
109 servicing contractor’s licensure examination; creating
110 s. 489.1131, F.S.; providing penalties for
111 unauthorized contracting by providers of cleaning
112 services; providing an effective date.

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 Appropriations Subcommittee on General Government

BILL:	CS/CS/SB 242
INTRODUCER:	Governmental Oversight and Accountability Committee; Banking and Insurance Committee; and Senator Hukill
SUBJECT:	Interstate Insurance Product Regulation Compact
DATE:	April 11, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	**Fav/CS**
2.	Naf	McVaney	GO	**Fav/CS**
3.	Betta	DeLoach	AGG	**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:

CS/CS/SB 242 enacts the Interstate Insurance Product Regulation Compact (Compact). The Compact is intended to help states join together to regulate designated insurance products. There is no fiscal impact to the state.

Specifically, the Compact applies to the following asset-based insurance products:

- Life insurance;
- Annuities;
- Disability income insurance; and
- Long-term care insurance, though the state is prospectively opting out of all uniform standards for Long-term care insurance in the Compact.

Upon joining the Compact, Florida will become a member of the Interstate Insurance Product Regulation Commission (Commission). The primary duties of the Commission are to:

- Develop uniform standards for product lines;
- Receive and promptly review products; and
- Approve product filings that satisfy applicable uniform standards.

The bill has an effective date of October 1, 2013.

This bill creates undesignated sections of the Florida Statutes.

II. Present Situation:

The Interstate Insurance Product Regulation Compact

The Interstate Insurance Product Regulation Compact (Compact) is an agreement among the member states to uniform standards for the regulation of four insurance product lines:

- Life insurance,
- Annuities,
- Disability income, and
- Long-term care insurance.

The Compact is implemented through the Interstate Insurance Product Regulation Commission (Commission).[1] Each member state is represented by one member, who is that state's representative to the Commission. All Compact members[2] receive one vote under the Compact. The adoption of a uniform standard requires a two-thirds vote of Commission members. Bylaws require a majority vote of members. The Commission is governed by a 14-member management committee. The Management Committee members currently include the seven largest member states according to premium volume,[3] four mid-sized states with at least 2 percent of the national premium volume[4] and one additional state from each of four regional zones[5]

The primary duties of the Commission are to:

- Develop uniform standards for product lines;
- Receive and promptly review products;
- Approve product filings that satisfy applicable uniform standards.

If Florida joins the Compact, any product whose product line is governed by the Compact and is submitted to the Commission, if approved, will be approved to be offered for sale in Florida[6] if it complies with the requirements of the Compact. The model laws and regulations of the Compact will govern and generally preempt the application of conflicting Florida law governing the

[1] The Commission is a multi-state joint public entity that came into existence in March 2004 upon the legislative enactment of two states, Colorado and Utah, respectively. The Commission did not become operational for purposes of adopting uniform product standards until it May 2006, when it met the requirement set by the terms of the Compact. The Commission has 41 Member States representing approximately two-thirds of the premium volume nationwide.
[2] The other Compact members are Alabama, Alaska, Colorado, Georgia, Hawaii, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina, Tennessee, Utah, Vermont, West Virginia and Wyoming
[3] Illinois, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania and Texas.
[4] Maryland, Missouri, Virginia, and Wisconsin
[5] Kansas, Mississippi, New Hampshire and Washington
[6] If the insurer is authorized to transact business in Florida.

product.[7] A state may opt out of a uniform standard via legislation or rule either at the time the state enacts the Compact or prior to the enactment of a new standard or rule approved by the Commission. Florida will opt out of Commission standards for long-term care insurance and join the Compact for life insurance, annuities, and disability income insurance under CS/CS/SB 242.

The Florida Legislature has in the past enacted laws containing greater consumer protections than are generally available in other states. For instance, in Florida, the suitability of an annuity—the appropriateness of a particular annuity product relative to the consumer's age, investment objectives, and current and future financial needs—has been a primary concern with regard to transactions involving consumers, particularly senior consumers. In 2004, the Florida Legislature enacted a model law on annuities, the Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (NAIC) in s. 627.4554, F.S.[8] The 2008 Legislature, however, subsequently passed the John and Patricia Seibel Act, which strengthened Florida's annuity standards and procedures.[9] Those standards were further strengthened by the 2010 Legislature.[10]

To date, the Commission has adopted uniform standards for the following individual product lines: term and whole life insurance, variable and non-variable adjustable life insurance, variable and non-variable annuities, long-term care insurance, and disability income insurance. The Commission has also promulgated standards relating to the applications for the various individual lines of insurance, the benefit features of individual life policies, the benefit features of individual annuities, and for changes to mortality tables used for individual life insurance. Standards for group term life insurance have also been adopted. The Commission is in the process of developing uniform standards for group annuities and standards for specific benefits offered in group term life insurance policies.

Life Insurance

Life insurance is insurance of human lives.[11] Life insurance provides survivor benefits for designated beneficiaries upon the death of the insured. The three most common types of life insurance are whole life, term life, and universal life. Whole life insurance provides a fixed amount of life insurance coverage while building cash value. The premium remains the same until the maturity date (usually age 100). Benefits are payable upon the death of the insured or on the maturity date. The cash value of the policy increases as premiums are paid and allow loans to be made on the policy for up to the amount of the cash value. Term life insurance is purchased for a specific time period and pays a death benefit only if the insured dies during the specified time period. Term insurance does not build cash value. Term life insurance policies may contain provisions allowing the insured to renew the policy after expiration of the term or convert the

[7] All lawful actions of the Commission, including all uniform standards, rules, and operating procedures, are binding on compacting states. The Compact prevents the enforcement of any other law of a compacting state, except that the Commission may not abrogate or restrict the access to state courts; remedies related to breach of contract, tort, or other laws not specifically directed to the content of the product; state law relating to the construction of insurance contracts; or the authority of the state Attorney General.
[8] Section 146, ch. 2004-390, L.O.F.
[9] Section 9, ch. 2008-237, L.O.F.
[10] Section 52, ch. 2010-175, L.O.F.
[11] Section 624.602, F.S.

policy to a whole life policy. Universal life insurance is a combination of a term life policy and the ability to accumulate cash value.

Annuities

An annuity is a form of life insurance transaction involving a contract between a customer and an insurer wherein the customer makes a lump sum payment or series of payments to an insurer that in return agrees to make periodic payments back to the annuitant at a future date, either for the annuitant's life or a specified period. Annuities can be obtained in either immediate or deferred form. In an immediate annuity, the annuity company is typically given a lump sum payment in exchange for immediate and regular periodic payments, which may be for as long as the contract owner lives. For a deferred annuity, premiums are usually either paid in a lump sum or by a series of payments, and the annuity is subject to an *accumulation phase*, when those payments experience tax-deferred growth, followed by the *annuitization* or *payout phase*, when the annuity provides a regular stream of periodic payments to the consumer. Annuities are often used for retirement planning because they provide a guaranteed source of income for future years.

Disability Income Insurance

Disability income insurance pays a weekly or monthly income for a specific period if the insured suffers a disability and cannot continue working or obtain work. The disability may involve sickness, injury, or a combination of the two. Disability policies often contain an elimination period, which is a specified time period after the date of disability that must pass before the insured may receive benefits. Most disability insurance plans coordinate benefits with Social Security benefits and workers' compensation to eliminate duplication of coverage.

Long-Term Care Insurance

Long-term care insurance policies provide benefits for a broad range of supportive medical, personal and social services needed by people who are unable to meet their basic living needs for an extended period of time for services not covered by a regular health insurance, Medicare or Medicare supplement insurance policy. The need for long-term care insurance may be caused by accident, illness or frailty. Such conditions include the inability to move about, dress, bathe, eat, use a toilet, medicate and avoid incontinence. Also, care may be needed to help the disabled with household cleaning, preparing meals, shopping, paying bills, visiting the doctor, answering the phone and taking medications. Additional long-term care disabilities are due to cognitive impairment from stroke, depression, dementia, Alzheimer's disease, Parkinson's disease and other medical conditions that affect the brain.

Florida law establishes requirements for long-term care policies in the Long-Term Care Insurance Act.[12] The act specifies filing requirements, disclosure, advertising, and performance standards for such policies, minimum standards for home health care benefits, mandatory offers, cancellation requirements, and standards for benefit triggers for receiving benefits under the policy. The act also provides consumers grace periods for late payment and notice of cancellation.[13]

[12] Part XVIII of chapter 627, F.S.
[13] Section 627.94073, F.S.

III. Effect of Proposed Changes:

CS/CS/SB 242 enacts the Interstate Insurance Product Regulation Compact. The Compact is intended to help states join together to regulate designated insurance products, specifically, the following asset-based insurance products:

- Life insurance;
- Annuities;
- Disability income insurance; and
- Long-term care insurance, though the state is prospectively opting out of all uniform standards for long-term care insurance in the Compact.

Legislative Findings and Declaration of Intent

Section 1 creates an undesignated section of statute stating that Florida intends to join the Interstate Insurance Product Regulation Compact (Compact) and become a member of the Interstate Insurance Product Regulation Commission (Commission). The Legislature finds that the Compact will, through a single source for filing new products and a uniform set of product standards that provide a high level of consumer protection, address the increased mobility of the populace and significant changes in the financial services marketplace that have resulted in asset-based insurance products competing directly with other retirement and estate planning instruments sold by banks and securities firms. The Legislature also declares that it is adopting the compact under the understanding that no uniform standards long-term care insurance rate increase filings will be developed.

Enactment of the Compact and Membership in the Commission

Section 2 makes the state a compacting state under the Compact and a member of the Commission, whose purposes are to protect consumer interests, develop uniform standards for insurance products, establish a clearinghouse to promptly review insurance products and related advertisements, give regulatory approval to product filings and advertisements that satisfy the applicable uniform standard, coordinate regulatory resources among states, create the Commission, and perform these and other related functions.

Commission Membership, Voting, and Bylaws

Each compacting state has one member of the Commission, who is entitled to one vote. The Commission is governed by a management committee of up to 14 members consisting of:

- One member each from the four compacting states with the largest premium volume for individual and group annuities, life, disability income, and long-term care insurance products.
- One member from the four compacting states with at least 2 percent of the market described above selected on a rotating basis, other than from the six states with the largest premium volume.
- One member from four compacting states with less than 2 percent of the market described above, with one selecting from each of the four zone regions of the NAIC.

The Commission annually elects officers from the management committee and is authorized to select an executive director who serves as secretary to the Commission but may not be a Commission member.

The Compact requires the establishment of legislative and advisory committees. The legislative committee consists of state legislators and monitors and makes recommendations to the Commission. The management committee must consult with the legislative committee prior to adopting any uniform standard, change in Commission bylaws, annual budget or other significant matter. Two advisory committees must be established, one comprising independent consumer representatives and another composed of insurance industry representatives. Additional advisory committees may be established. Adoption of bylaws requires a majority vote of members.

Amendments to the Compact

Amendments to the Compact may be proposed by the Commission for enactment by the compacting states. An amendment is adopted only if unanimously enacted into law by all of the compacting states.

Powers of the Commission

The bill establishes the Interstate Insurance Product Regulation Commission. The Commission may:

- Develop uniform standards for product lines;
- Receive and promptly review products;
- Approve product filings that satisfy applicable uniform standards.

Uniform Standards

The Commission has authority to adopt uniform standards by rule. A "uniform standard" is a commission standard for a product line, plus subsequent amendments that use a substantially consistent methodology. A uniform standard includes all product requirements in the aggregate. A uniform standard must be construed to prohibit the use of inconsistent, misleading, or ambiguous provisions in a product. The uniform standard must also ensure that the form of any product made available to the public is not unfair, inequitable, or against public policy as determined by the Commission. Adoption of a uniform standard requires a two-thirds vote of Commission members.

For purposes of this act, Florida is adopting all uniform standards that the Commission has adopted as of March 1, 2013, other than for long-term care insurance. The bill states that the Office of Insurance Regulation (OIR) shall opt out of any new uniform standard or amendment to a standard that substantially changes it that is adopted by the Commission after March 1, 2013. The bill directs the OIR to opt out of the uniform standard and authorizes the state Financial Services Commission to adopt rules to opt out of any new uniform standards or substantial amendments until such standards or amendments are approved by the Legislature.

Commission Receipt, Review, and Approval of Products

The Commission also has authority to receive and review products filed with the Commission and rate filings for disability income and long-term care insurance products (Florida is opting out of all uniform standards involving long-term care). Products and disability income insurance rates that satisfy the appropriate uniform standard may be approved. Commission approval has the force and effect of law and is binding on compacting states.

A product is the policy form or contract and includes any application, endorsement, or related form that is attached to and part of the policy or contract. The term also includes any evidence of coverage or certificate for an individual or group annuity, life insurance, disability income, or long-term care insurance product that an insurer is authorized to issue.

The Commission may designate certain products and advertisements that may self-certify compliance with uniform standards and commission rules and are not required to obtain prior approval from the Commission. The Commission may issue subpoenas requiring the testimony of witnesses and production of evidence and may also bring and prosecute legal proceedings if the standing of any state insurance department to sue or be sued is not affected. The Commission has the power to adopt rules that have the force and effect of law and are binding in the compacting states. Such rules include uniform standards for product and related advertisements that are filed with the Commission.

To obtain approval of a product, the insurer must file the Product with the Commission and pay applicable fees. Any product approved by the Commission may be sold or otherwise issued in any compacting state in which the insurer is authorized to do business. An insurer may alternatively file its product with a state insurance department, and such filing will be subject to the laws of that state.

Review of Commission Decisions Regarding Filings

A disapproved product or advertisement may be appealed to a review panel appointed by the Commission within 30 days of the Commission's determination. An allegation that the Commission disapproved a product or advertisement arbitrarily, capriciously, abused its discretion, or otherwise acted not accordance with law is subject to judicial review. Judicial proceedings must be brought in a court where the principal office of the Commission is located (Washington, DC).

Rulemaking by the Commission and State Opt-Out Procedure

The rulemaking process must conform to the Model State Administrative Procedure Act of 1981, as amended. Prior to adopting a uniform standard, the Commission must give written notice to the relevant state legislative committees in each compacting state. In adopting a uniform standard, the Commission must consider all submitted materials and issue a concise explanation of its decision. Uniform standards are effective 90 days after their adoption by the Commission. Judicial review of Commission rules (including uniform standards) or operating procedures is available but limited by the Compact. Any person may petition for judicial review, but the

petition does not stay or prevent the rule or operating procedure from becoming effective unless the court finds the petitioner has a substantial likelihood of success. The court may not find a Commission rule or operating procedure unlawful if it represents a reasonable exercise of the Commission's authority

A state may opt out of a uniform standard via legislation or rule. Florida is prospectively opting out of all uniform standards involving long-term care insurance products, as allowed by the terms of the Compact. Opting out of a uniform standard via rule requires the state to give the Commission written notice within 10 business days after the uniform standard is adopted and find that the uniform standard does not provide reasonable protections to the consumers of that state. The OIR Commissioner must make specific findings of fact and conclusions of law detailing the facts that warrant departure of the uniform standards and that those facts outweigh the Legislature's intent to join the compact and a presumption that the uniform standard provides reasonable consumer protections.

Compliance Enforcement

The Commission monitors compacting states for compliance with Commission bylaws, rules, uniform standards, and operation procedures, and provides written notice to a state that is in noncompliance.

The state insurance commissioner retains authority to oversee the market regulation of the activities of insurers in that state. An insurance product or advertisement that has been approved or certified by the Commission, however, does not violate the provisions, standards, or requirements of the Compact unless the Commission holds a hearing and issues a final order finding a violation. If an advertisement has not been approved or certified to the Commission, the state insurance commissioner may only bring an action for violating a standard of the Compact if the Commission first authorizes the action.

Withdrawing From or Dissolving the Compact; State Default, Suspension and Termination

A state may withdraw from the Compact by repealing the law that enacted the Compact. Withdrawal from the Compact does not affect product filings approved or self certified, or approved advertisements, except by mutual agreement of the Commission and the withdrawing state, unless the state formally rescinds approval in the same manner as provided by the laws of that state for disapproving products or advertisements previously approved under state law. The compact is dissolved once there is only one compact member.

The Commission may suspend a state that is determined to have defaulted in the performance of its obligations or duties under the Compact or the bylaws, rules, or operating procedures of the Compact. The Commission must notify a defaulting state in writing and provide a time period within which the state may cure the default. The state will be terminated from the Compact if the default is not timely cured. Products and advertisements approved by the Commission, or self-certified, remain in force in the same manner as though the state had withdrawn voluntarily. Reinstatement following termination requires reenacting the Compact.

Actions of Commission are Binding on States; Conflict of Laws; Advisory Opinions

All lawful actions of the Commission, including all rules and operating procedures, are binding on compacting states. Agreements between the Commission and compacting states are binding in accordance with their terms. The Compact prevents the enforcement of any other law of a compacting state, except that the Commission may not abrogate or restrict the access to state courts; remedies related to breach of contract, tort, or other laws not specifically directed to the content of the product; state law relating to the construction of insurance contracts; or the authority of the state Attorney General. A Compact provision is ineffective as to a state, however, if it exceeds the constitutional limits imposed on the Legislature of a state. If an insurance product is filed with an individual state, it is subject to the law of that state.

If requested by a party to a conflict over the meaning or interpretation of Commission actions and approved by a majority vote of the compacting states, the Commission may issue advisory opinions regarding the meaning or interpretation in dispute.

Inspection of Commission Records

The Commission must adopt rules creating conditions and procedures for the public inspection and copying of information and official records, except for records involving the privacy of individuals and insurers' trade secrets. The Commission may also adopt additional rules allowing it make available otherwise exempt records and information to federal and state agencies, including law enforcement. All public requests to inspect or copy records, data, or information of the Commission that is in the possession of the OIR, insurance commissioner, or commissioner's designee, are subject to Chapter 119, Florida Statutes.

Commission Funding and Expenses

The Commission covers the cost of its operations and activities through the collection of filing fees. The annual budget may not be approved until it has been subject to the required notice and comment period. The Commission is exempt from all taxation by compacting states. The Commission may not pledge the credit of any compacting state except with the legal authorization of the compacting state. Complete and accurate accounts of Commission financial records must be kept and shall be audited annually by an independent certified public accountant. At least every 3 years, the audit must include a management and performance audit of the Commission.

Severability Clause

The Compact provisions are severable from provisions that are deemed unenforceable.

Adoption of All Commission Uniform Standards; State Opt-Out of All Future Uniform Standards and All Long-Term Care Insurance Product Standards

Section 3 provides that all uniform standards of the Commission as of March 1, 2013, other than for long-term care insurance, are adopted as the law of this state. The state also prospectively opts out of all uniform standards involving long-term care insurance products.

The Office of Insurance Regulation (OIR) must, however, opt out of all new uniform standards that the Commission adopts after March 1, 2013, that substantially alter or add to existing Commission uniform standards that the state adopted pursuant to this bill until the state enacts legislation to adopt or opt out of the new uniform standards or amendments to uniform standards. The OIR must immediately notify the Legislature of any new uniform standard or amendment to an existing standard.

The bill grants rulemaking authority to the Financial Services Commission to implement the compact. The rulemaking authority must be used to opt out of any new uniform standards or amendments of the commission until such standards are legislatively approved.

Unemployment and Reemployment Taxes

Section 4 imposes state unemployment and reemployment taxes under ch. 443, F.S., on any Commission employees who perform services within this state. The Commission is also subject to state taxation for any business or activity conducted or performed in the state.

Public Requests for Inspection and Copying of Information, Data, or Records

Section 5 specifies that notwithstanding the provisions of the Compact governing public inspection and copying of records (Article VIII, sections 1 and 2); product filing information (Article X, section 2); and documents and information related to Commission finances or internal audits (Article XII, section 6), a request by a Florida resident for public inspection and copying of information, data, or official records that include:

- Insurer trade secrets will be referred to the Commissioner of the OIR who will respond to the request in accordance with s. 624.4213, F.S.
- Matters of privacy of individuals will be referred to the Commissioner of the OIR who will respond to the request in accordance with s. 119.071, F.S.

The section also specifies that nothing in the act abrogates a person's right to access information consistent with the Constitution and laws of Florida.

Rulemaking

Section 6 grants rulemaking authority to the Financial Services Commission to implement the act, which may use that authority to opt out of new uniform standards adopted after October 1, 2013, until such standards are approved by the Legislature.

Effective Date

Section 7 provides that the effective date of the act is October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

Non-Delegation Doctrine

Statutory authorization to compact or enter reciprocal agreements with other states potentially implicates the "nondelegation doctrine." Article III, Section 1 of the Florida Constitution states that "[t]he legislative power of the state shall be vested in a legislature of the State of Florida." The Florida Supreme Court has held that this constitutional provision requires application of a "strict separation of powers doctrine...which encompasses two fundamental prohibitions'."[14] No branch of Government may delegate its constitutionally assigned powers to another branch.[15]

The Legislature may constitutionally transfer subordinate functions to "permit administration of legislative policy by an agency with the expertise and flexibility to deal with complex and fluid conditions."[16] However, the Legislature "may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law."[17] Further, the nondelegation doctrine precludes the Legislature from delegating its powers "absent ascertainable minimal standards and guidelines."[18] When the Legislature delegates power to another body, it "must clearly announce adequate standards to guide in the execution of the powers delegated."[19]

The CS/CS attempts to comply with the nondelegation doctrine by expressing that it is state policy to prospectively opt-out of all uniform standards and new substantial amendments to such standards that are adopted by the Commission after March 1, 2013.

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[14] *Fla. Dep't of State, Div. of Elections v. Martin,* 916 So.2d 763, 769 (Fla. 2005) (quoting *State v. Cotton,* 769 So.2d 345, 353 (Fla. 2000), and *Chiles,* 589 So.2d at 264).
[15] *Chiles,* 589 So.2d at 264.
[16] *Microtel v. Fla. Pub. Serv. Comm'n,* 464 So.2d 1189, 1191 (Fla.1985) (citing *State, Dep't of Citrus v. Griffin,* 239 So.2d 577 (Fla.1970)).
[17] *Sims v. State,* 754 So.2d 657, 668 (Fla. 2000).
[18] *Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones,* 474 So.2d 359, 361 (Fla. 1st DCA 1985).
[19] *Martin, 916 So.2d at 770.*

The bill directs the Office of Insurance Regulation to opt out all such uniform standards and new substantial amendments. The Financial Services Commission must use its rulemaking authority under the bill to opt out of uniform standards and substantial amendments until they are approved by the Legislature.

Inspection and Copying of Public Records

Section VIII of the Compact requires the Commission to adopt rules establishing conditions and procedures for the inspection of its information and official records. This implicates Florida's constitutional and statutory laws which provide a broad grant of authority to the public to inspect or copy any public record.

Article I, s. 24 of the State Constitution, provides that "[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution."

In addition to the State Constitution, the Public Records Act, which pre-dates the public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency. Section 119.07(1)(a), F.S., states that, "[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record." Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean, "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

Only the Legislature is authorized to create exemptions to open government requirements. Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

The Compact specifies that the Commission rules must allow for the public inspection and copying of its information and official records, except information and records involving the privacy of individuals and trade secrets. Under the CS/CS, a request for public inspection and copying information involving individual privacy will be referred to the state insurance commissioner who will handle it in accordance with s. 119.071, F.S. Similarly, a request for public inspection and copying of potential insurer trade

secret information will be referred to the state insurance commissioner who will handle it in accordance with s. 624.4213, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Representatives from the Florida Department of Revenue state that, "[e]ven though Article XII of the Compact exempts the Commission from all taxation, if the Commission employs persons who work in Florida, it will be subject to the labor laws of Florida in ch. 443, F.S. Federal law (26 U.S.C. 3309) requires states to make nonprofit entities and governmental entities liable for reemployment tax. Certain employers are allowed to elect to reimburse Florida for reemployment benefits (not a tax) paid to any of its employees instead of paying the Florida reemployment tax. The Commission, as a non-profit entity, would be permitted to elect to be a reimbursing employer in Florida. If the Commission does not make such election for any Florida employees, the Commission would be required to pay the reemployment tax."

The CS/CS specifies that the Commission is subject to state unemployment or reemployment taxes imposed pursuant to ch. 443, F.S., in compliance with the Federal Unemployment Tax Act, for any persons employed by the Commission who perform services for it within the state. The bill also specifies that the Commission is subject to taxation for any commission business or activity conducted or performed in Florida.

B. Private Sector Impact:

Representatives from the Office of Insurance Regulation indicate that the state's membership in the Compact could potentially reduce the cost of filing and obtaining approval of asset-based insurance products.

C. Government Sector Impact:

If Florida becomes a member of the Compact, the Office of Insurance Regulation may experience a reduction in its workload for those functions now performed by the Commission. That reduction in workload could result in decreased appropriation needs. Representatives from the OIR indicate that the office will not incur a fiscal impact if Florida adopts the Compact.

VI. Technical Deficiencies:

Lines 113-116 of the bill require public records requests that include matters of privacy of individuals to be handled in accordance with s. 119.071, F.S., which provides general agency public records exemptions. It is suggested that the reference be amended to instead refer to s. 119.07(1), F.S., which governs compliance with a public records request. Although s. 119.071, F.S., includes general public records exemptions relating to certain agency personnel, specifying that provision could be interpreted to exclude other, more specific applicable public records exemptions.

VII. Related Issues:

Other Comments: Department of Financial Services

The Department of Financial Services states that certain compact provisions relating to annuity investments by seniors, such as s. 2, Art. 8 of the compact, provide less protection than do the provisions currently found in s. 627.4554, F.S. For example, the DFS states that the compact provisions do not limit surrender/withdrawal charges to 10 percent or charge period duration to 10 years for purchasers age 65 or older, as is currently required by state law.[20]

It is unclear whether such compact provisions comply with state law. If not, such compact provisions, to the extent they are in conflict with state law, would supersede the relevant state provisions. Adoption of the compact provisions relating to annuity investments by seniors appears to be required for participation in the compact.

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 Governmental Oversight and Accountability on April 9, 2013:
The CS/CS amends a requirement that certain public records requests be handled in accordance with s. 119.071, F.S., to instead require such requests to be handled in accordance with s. 119.07(1), F.S.

CS by Banking and Insurance on April 2, 2013:
The CS adds the following provisions to the bill:

- Standards clarifying the extent of immunity from liability granted to the Commission executive director, members, officers, employees, and representatives.
- Specifies that the OIR must opt-out of all uniform standards and amendments to such standards adopted by the Commission after March 1, 2013, and that the Financial Services Commission must adopt rules making the opt-out effective until the Legislature approves the new uniform standard or amendment.
- Specifies that the Compact may not violate provisions of the State Constitution and law relating to public inspection and copying of documents and information and requires the insurance commissioner to handle such requests related to matters of privacy of individuals and insurer trade secrets.
- Specifies that the Commission is subject to state unemployment taxes, state reemployment taxes, and taxation for business or activity conducted or performed in Florida.

[20] *SB 242 Bill Analysis,* Department of Financial Services, March 21, 2013 (on file with the Governmental Oversight and Accountability Committee).

B. Amendments:

None.

By the Committees on Governmental Oversight and Accountability; and Banking and Insurance; and Senator Hukill

585-04025-13 2013242c2

A bill to be entitled

An act relating to the Interstate Insurance Product Regulation Compact; providing legislative findings and intent; providing purposes; providing definitions; providing for the establishment of an Interstate Insurance Product Regulation Commission; providing responsibilities of the commission; specifying the commission as an instrumentality of the compacting states; providing for venue; specifying the commission as a separate, not-for-profit entity; providing powers of the commission; providing for organization of the commission; providing for membership, voting, and bylaws; designating the Commissioner of Insurance Regulation as the representative of the state on the commission; allowing the commissioner to designate a person to represent the state on the commission, as is necessary, to fulfill the duties of being a member of the commission; providing for a management committee, officers, and personnel of the commission; providing authority of the management committee; providing for legislative and advisory committees; providing for qualified immunity, defense, and indemnification of members, officers, employees, and representatives of the commission; providing for meetings and acts of the commission; providing rules and operating procedures; providing rulemaking functions of the commission; providing for opting out of uniform standards; providing procedures and requirements; providing for commission records and enforcement; authorizing the

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commission to adopt rules; providing for disclosure of certain information; specifying that certain records, data, or information of the commission, wherever received, by and in possession of the Office of Insurance Regulation is subject to ch. 119, F.S.; requiring the commission to monitor for compliance; providing for dispute resolution; providing for product filing and approval; requiring the commission to establish filing and review processes and procedures; providing for review of commission decisions regarding filings; providing for finance of commission activities; providing for payment of expenses; authorizing the commission to collect filing fees for certain purposes; providing for approval of a commission budget; exempting the commission from all taxation, except as otherwise provided; prohibiting the commission from pledging the credit of any compacting states without authority; requiring the commission to keep complete accurate accounts, provide for audits, and make annual reports to the Governors and Legislatures of compacting states; providing for amendment of the compact; providing for withdrawal from the compact, default by compacting states, and dissolution of the compact; providing severability and construction; providing for binding effect of this compact and other laws; prospectively opting out of all uniform standards adopted by the commission involving long-term care insurance products; adopting all other existing uniform standards that have been

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

adopted by the commission; providing a procedure for adoption of any new uniform standards or amendments to existing uniform standards of the commission; requiring the office to notify the Legislature of any new uniform standards or amendments to existing uniform standards of the commission; providing that any new uniform standards or amendments to existing uniform standards of the commission may only be adopted via legislation; authorizing the Financial Services Commission to adopt rules to implement this act and opt out of certain uniform standards; providing an effective date.

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

Section 1. Legislative findings; intent.—

(1) The Legislature finds that the financial services marketplace has changed significantly in recent years and that asset-based insurance products, which include life insurance, annuities, disability income insurance, and long-term care insurance, now compete directly with other retirement and estate planning instruments that are sold by banks and securities firms.

(2) The Legislature further finds that the increased mobility of the population and the risks borne by these asset-based products are not local in nature.

(3) The Legislature further finds that the Interstate Insurance Product Regulation Compact Model adopted by the National Association of Insurance Commissioners and endorsed by

the National Conference of Insurance Legislators and the National Conference of State Legislatures is designed to address these market changes by providing a uniform set of product standards and a single source for filing of new products.

(4) The Legislature further finds that the product standards that have been developed provide a high level of consumer protection. Further, it is noted that the Interstate Insurance Product Regulation Compact Model includes a mechanism for opting out of any product standard that the state determines would not reasonably protect its citizens. With respect to long-term care insurance, the Legislature understands that the compact does not intend to develop a uniform standard for rate increase filings, thereby leaving the authority over long-term care rate increases with the state. The state relies on that understanding in adopting this legislation. The state, pursuant to the terms and conditions of this act, seeks to join with other states and establish the Interstate Insurance Product Regulation Compact, and thus become a member of the Interstate Insurance Product Regulation Commission. The Commissioner of Insurance Regulation is hereby designated to serve as the representative of this state on the commission. The commissioner may designate a person to represent this state on the commission, as is necessary, in order to fulfill the duties of being a member of the commission.

Section 2. Interstate Insurance Product Regulation Compact.—The Interstate Insurance Product Regulation Compact is hereby enacted into law and entered into by this state with all states legally joining therein in the form substantially as follows:

Interstate Insurance Product Regulation Compact

Preamble

This compact is intended to help states join together to establish an interstate compact to regulate designated insurance products. Pursuant to the terms and conditions of this compact, this state seeks to join with other states and establish the Interstate Insurance Product Regulation Compact and thus become a member of the Interstate Insurance Product Regulation Commission.

Article I

PURPOSES.—The purposes of this compact are, through means of joint and cooperative action among the compacting states, to:

(1) Promote and protect the interest of consumers of individual and group annuity, life insurance, disability income, and long-term care insurance products.

(2) Develop uniform standards for insurance products covered under the compact.

(3) Establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more compacting states.

(4) Give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform

standard.

(5) Improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact.

(6) Create the Interstate Insurance Product Regulation Commission.

(7) Perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

Article II

DEFINITIONS.—For purposes of this compact, the term:

(1) "Advertisement" means any material designed to create public interest in a product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace, or retain a policy, as more specifically defined in the rules and operating procedures of the commission adopted as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent.

(2) "Bylaws" means those bylaws adopted by the commission as of March 1, 2013, for its governance or for directing or controlling the commission's actions or conduct.

(3) "Compacting state" means any state which has enacted this compact legislation and has not withdrawn pursuant to subsection (1) of Article XIV of this compact or been terminated pursuant to subsection (2) of Article XIV of this compact.

(4) "Commission" means the "Interstate Insurance Product

Regulation Commission" established by this compact.

(5) "Commissioner" means the chief insurance regulatory official of a state, including, but not limited to, the commissioner, superintendent, director, or administrator. For purposes of this compact, the Commissioner of Insurance Regulation is the chief insurance regulatory official of this state.

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry.

(7) "Insurer" means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by this compact.

(8) "Member" means the person chosen by a compacting state as its representative to the commission, or his or her designee.

(9) "Noncompacting state" means any state which is not at the time a compacting state.

(10) "Office" means the Office of Insurance Regulation of the Financial Services Commission.

(11) "Operating procedures" means procedures adopted by the commission as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent, implementing a rule, uniform standard, or provision of this compact.

(12) "Product" means the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income, or long-term care

insurance product that an insurer is authorized to issue.

(13) "Rule" means a statement of general or particular applicability and future effect adopted by the commission as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent, including a uniform standard developed pursuant to Article VII of this compact, designed to implement, interpret, or prescribe law or policy or describe the organization, procedure, or practice requirements of the commission, which shall have the force and effect of law in the compacting states.

(14) "State" means any state, district, or territory of the United States.

(15) "Third-party filer" means an entity that submits a product filing to the commission on behalf of an insurer.

(16) "Uniform standard" means a standard adopted by the commission as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent, for a product line pursuant to Article VII of this compact and shall include all of the product requirements in aggregate; provided, each uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading, or ambiguous provisions in a product and the form of the product made available to the public shall not be unfair, inequitable, or against public policy as determined by the commission.

Article III

COMMISSION; ESTABLISHMENT; VENUE.—

(1) The compacting states hereby create and establish a

joint public agency known as the Interstate Insurance Product Regulation Commission. Pursuant to Article IV of this compact, the commission has the power to develop uniform standards for product lines, receive and provide prompt review of products filed with the commission, and give approval to those product filings satisfying applicable uniform standards; provided, it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. Nothing in this article shall prohibit any insurer from filing its product in any state in which the insurer is licensed to conduct the business of insurance and any such filing shall be subject to the laws of the state where filed.

(2) The commission is a body corporate and politic and an instrumentality of the compacting states.

(3) The commission is solely responsible for its liabilities, except as otherwise specifically provided in this compact.

(4) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located.

(5) The commission is a not-for-profit entity, separate and distinct from the individual compacting states.

Article IV

POWERS.—The commission shall have the following powers to:

(1) Adopt rules, pursuant to Article VII, which shall have the force and effect of law and shall be binding in the

compacting states to the extent and in the manner provided in this compact.

(2) Exercise its rulemaking authority and establish reasonable uniform standards for products covered under the compact, and advertisement related thereto, which shall have the force and effect of law and shall be binding in the compacting states, but only for those products filed with the commission; provided a compacting state shall have the right to opt out of such uniform standard pursuant to Article VII to the extent and in the manner provided in this compact and any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall provide at least, those protections set forth in the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act or Long-Term Care Insurance Model Regulation adopted by the National Association of Insurance Commissioners require amending of the uniform standards established by the commission for long-term care insurance products.

(3) Receive and review in an expeditious manner products filed with the commission and rate filings for disability income and long-term care insurance products and give approval of those products and rate filings that satisfy the applicable uniform standard, and such approval shall have the force and effect of law and be binding on the compacting states to the extent and in

the manner provided in the compact.

(4) Receive and review in an expeditious manner advertisement relating to long-term care insurance products for which uniform standards have been adopted by the commission, and give approval to all advertisement that satisfies the applicable uniform standard. For any product covered under this compact, other than long-term care insurance products, the commission shall have the authority to require an insurer to submit all or any part of its advertisement with respect to that product for review or approval prior to use, if the commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the commission as provided in this subsection shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in the compact.

(5) Exercise its rulemaking authority and designate products and advertisement that may be subject to a self-certification process without the need for prior approval by the commission.

(6) Adopt operating procedures, pursuant to Article VII, which shall be binding in the compacting states to the extent and in the manner provided in this compact.

(7) Bring and prosecute legal proceedings or actions in its name as the commission; provided the standing of any state insurance department to sue or be sued under applicable law shall not be affected.

(8) Issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.

(9) Establish and maintain offices.

(10) Purchase and maintain insurance and bonds.

(11) Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a compacting state. Any action under this subsection concerning employees of this state may only be taken upon the express written consent of the state.

(12) Hire employees, professionals, or specialists; elect or appoint officers and fix their compensation, define their duties, give them appropriate authority to carry out the purposes of the compact, and determine their qualifications; and establish the commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

(13) Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services and to receive, use, and dispose of the same; provided at all times the commission shall avoid any appearance of impropriety.

(14) Lease, purchase, and accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed; provided at all times the commission shall avoid any appearance of impropriety.

(15) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(16) Remit filing fees to compacting states as may be set forth in the bylaws, rules, or operating procedures.

(17) Enforce compliance by compacting states with rules, uniform standards, operating procedures, and bylaws.

(18) Provide for dispute resolution among compacting states.

(19) Advise compacting states on issues relating to insurers domiciled or doing business in noncompacting jurisdictions, consistent with the purposes of this compact.

(20) Provide advice and training to those personnel in state insurance departments responsible for product review and to be a resource for state insurance departments.

(21) Establish a budget and make expenditures.

(22) Borrow money, provided that this power does not, in any manner, obligate the financial resources of the State of Florida.

(23) Appoint committees, including advisory committees, comprising members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the bylaws.

(24) Provide and receive information from and to cooperate with law enforcement agencies.

(25) Adopt and use a corporate seal.

(26) Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance.

Article V

ORGANIZATION.—

(1) Membership; voting; bylaws.—

(a)1. Each compacting state shall have and be limited to

one member. Each member shall be qualified to serve in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which he or she is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state in which the vacancy exists. Nothing in this article shall be construed to affect the manner in which a compacting state determines the election or appointment and qualification of its own commissioner. However, the commissioner may designate a person to represent this state on the commission, as is necessary, in order to fulfill the duties of being a member of the commission.

2. The Commissioner of Insurance Regulation is hereby designated to serve as the representative of this state on the commission. However, the commissioner may designate a person to represent this state on the commission, as is necessary, in order to fulfill the duties of being a member of the commission.

(b) Each member shall be entitled to one vote and shall have an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any other provision of this article, no action of the commission with respect to the adoption of a uniform standard shall be effective unless two-thirds of the members vote in favor of such action.

(c) The commission shall, by a majority of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including, but not limited to:

1. Establishing the fiscal year of the commission.

2. Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the management committee.

3. Providing reasonable standards and procedures:

a. For the establishment and meetings of other committees.

b. Governing any general or specific delegation of any authority or function of the commission.

4. Providing reasonable procedures for calling and conducting meetings of the commission that consist of a majority of commission members, ensuring reasonable advance notice of each such meeting, and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including, but not limited to, trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting in total or in part. The commissioner of this state, or the commissioner's designee, may attend, or otherwise participate in, a meeting or executive session that is closed in total or part to the extent such attendance or participation is consistent with Florida law. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and votes taken during such meeting. All notices of commission meetings, including instructions for public participation, provided to the office, the commissioner, or the commissioner's designee shall be published in the Florida Administrative Register.

5. Establishing the titles, duties, and authority and

reasonable procedures for the election of the officers of the commission.

6. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission.

7. Adopting a code of ethics to address permissible and prohibited activities of commission members and employees. This code does not supersede or otherwise limit the obligations and duties of this state's commissioner or the commissioner's designee under ethics laws or rules of the State of Florida. To the extent there is any inconsistency between the standards imposed by this code and the standards imposed under this state's ethics laws or rules, the commissioner or the commissioner's designee must adhere to the stricter standard of conduct.

8. Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment or reserving of all debts and obligations of the commission.

(d) The commission shall publish its bylaws in a convenient form and file a copy of such bylaws and a copy of any amendment to such bylaws, with the appropriate agency or officer in each of the compacting states.

(2) Management committee, officers, and personnel.—

(a) A management committee comprising no more than 14 members shall be established as follows:

1. One member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income, and long-term care insurance products, determined from the records of the National Association of Insurance Commissioners for the prior year.

2. Four members from those compacting states with at least 2 percent of the market based on the premium volume described above, other than the six compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws.

3. Four members from those compacting states with less than 2 percent of the market, based on the premium volume described above, with one selected from each of the four zone regions of the National Association of Insurance Commissioners as provided in the bylaws.

(b) The management committee shall have such authority and duties as may be set forth in the bylaws, including, but not limited to:

1. Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission.

2. Establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard; provided a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds of

the members of the management committee.

3. Overseeing the offices of the commission.

4. Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the commission.

(c) The commission shall elect annually officers from the management committee, with each having such authority and duties as may be specified in the bylaws.

(d) The management committee may, subject to the approval of the commission, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to the commission but shall not be a member of the commission. The executive director shall hire and supervise such other staff as may be authorized by the commission.

(3) Legislative and advisory committees.—

(a) A legislative committee comprised of state legislators or their designees shall be established to monitor the operations of and make recommendations to the commission, including the management committee; provided the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee.

(b) The commission shall establish two advisory committees, one comprising consumer representatives independent of the

insurance industry and the other comprising insurance industry representatives.

(c) The commission may establish additional advisory committees as the bylaws may provide for the carrying out of commission functions.

(4) Corporate records of the commission.—The commission shall maintain its corporate books and records in accordance with the bylaws.

(5) Qualified immunity, defense and indemnification.—

(a) The members, officers, executive director, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that person.

(b) The liability of the members, officers, executive director, employees, and representatives of the commission acting within the scope of such persons' employment or duties, for acts, errors, or omissions occurring within this state, may not exceed the limits of liability set forth under the constitution and laws of this state for state officials, employees, and agents. The commission is an instrumentality of

the state for the purposes of any such action. This subsection does not protect such persons from suit or liability for damage, loss, injury, or liability caused by a criminal act or the intentional or willful and wanton misconduct of such person.

(c) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or where the person against whom the claim is made has a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities if the actual or alleged act, error, or omission did not result from that person's intentional or willful and wanton misconduct. This article does not prohibit that person from retaining his or her own counsel.

(d) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided the actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

Article VI

MEETINGS; ACTS.—

(1) The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

(2) Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

(3) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

Article VII

RULES AND OPERATING PROCEDURES; RULEMAKING FUNCTIONS OF THE COMMISSION; OPTING OUT OF UNIFORM STANDARDS.—

(1) Rulemaking authority.—The commission shall adopt reasonable rules, including uniform standards, and operating procedures in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding such requirement, if the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact or the powers granted under this compact, such action by the commission shall be invalid and have no force and effect.

(2) Rulemaking procedure.—Rules and operating procedures shall be made pursuant to a rulemaking process that conforms to

the Model State Administrative Procedure Act of 1981, as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committees in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The commission in adopting a uniform standard shall consider fully all submitted materials and issue a concise explanation of its decision.

(3) Effective date and opt out of a uniform standard.—A uniform standard shall become effective 90 days after its adoption by the commission or such later date as the commission may determine; provided a compacting state may opt out of a uniform standard as provided in this act. The term "opt out" means any action by a compacting state to decline to adopt or participate in an adopted uniform standard. All other rules and operating procedures, and amendments thereto, shall become effective as of the date specified in each rule, operating procedure, or amendment.

(4) Opt out procedure.—

(a) A compacting state may opt out of a uniform standard by legislation or regulation adopted by the compacting state under such state's Administrative Procedure Act. If a compacting state elects to opt out of a uniform standard by regulation, such state must:

1. Give written notice to the commission no later than 10 business days after the uniform standard is adopted, or at the time the state becomes a compacting state.

2. Find that the uniform standard does not provide

reasonable protections to the citizens of the state, given the conditions in the state.

(b) The commissioner of a compacting state other than this state shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state which warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner must consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh:

1. The intent of the Legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this compact.

2. The presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product.

Notwithstanding this subsection, a compacting state may, at the time of its enactment of this compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for such opt out in the enacted compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any state to participate in this compact. Such an opt out shall be effective at the time of enactment of this compact by the compacting state and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently adopted.

(5) Effect of opting out.—If a compacting state elects to opt out of a uniform standard, the uniform standard shall remain applicable in the compacting state electing to opt out until such time as the opt out legislation is enacted into law or the regulation opting out becomes effective. Once the opt out of a uniform standard by a compacting state becomes effective as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt out shall have the same prospective effect as provided under Article XIV for withdrawals.

(6) Stay of uniform standard.—If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opt out is pending, the compacting state may petition the commission, at least 15 days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The commission may grant a stay if the commission determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the commission, the stay or extension thereof may postpone the effective date by up to 90 days, unless affirmatively extended by the commission; provided a stay may not be permitted to remain in effect for more than 1 year unless the compacting state can show extraordinary circumstances which warrant a continuance of the stay, including, but not limited

to, the existence of a legal challenge which prevents the compacting state from opting out. A stay may be terminated by the commission upon notice that the rulemaking process has been terminated.

(7) Judicial review.—Within 30 days after a rule or operating procedure is adopted, any person may file a petition for judicial review of the rule or operating procedure; provided the filing of such a petition shall not stay or otherwise prevent the rule or operating procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the commission consistent with applicable law and shall not find the rule or operating procedure to be unlawful if the rule or operating procedure represents a reasonable exercise of the commission's authority.

Article VIII

COMMISSION RECORDS AND ENFORCEMENT.—

(1) The commission shall adopt rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurers' trade secrets. The commission may adopt additional rules under which the commission may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality

provisions.

(2) Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the duty to disclose any relevant records, data, or information to the commission; provided disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality requirement; and further provided, except as otherwise expressly provided in this compact, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any commissioner; however, all requests from the public to inspect or copy records, data, or information of the commission, wherever received, by and in the possession of the office, commissioner, or the commissioner's designee shall be subject to chapter 119, Florida Statutes.

(3) The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, uniform standards, and operating procedures. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws, rules, or operating procedures. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in Article XIV of this compact.

(4) The commissioner of any state in which an insurer is authorized to do business or is conducting the business of

insurance shall continue to exercise his or her authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state's law. The commissioner's enforcement of compliance with the compact is governed by the following provisions:

(a) With respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the commission, the content of the product or advertisement shall not constitute a violation of the provisions, standards, or requirements of the compact except upon a final order of the commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the commission.

(b) Before a commissioner may bring an action for violation of any provision, standard, or requirement of the compact relating to the content of an advertisement not approved or certified to the commission, the commission, or an authorized commission officer or employee, must authorize the action. However, authorization pursuant to this paragraph does not require notice to the insurer, opportunity for hearing, or disclosure of requests for authorization or records of the commission's action on such requests.

Article IX

DISPUTE RESOLUTION.—The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two or more compacting states, or between compacting states and

noncompacting states, and the commission shall adopt an operating procedure providing for resolution of such disputes.

Article X

PRODUCT FILING AND APPROVAL.—

(1) Insurers and third-party filers seeking to have a product approved by the commission shall file the product with and pay applicable filing fees to the commission. Nothing in this compact shall be construed to restrict or otherwise prevent an insurer from filing its product with the insurance department in any state in which the insurer is licensed to conduct the business of insurance and such filing shall be subject to the laws of the states where filed.

(2) The commission shall establish appropriate filing and review processes and procedures pursuant to commission rules and operating procedures. Notwithstanding any provision of this article, the commission shall adopt rules to establish conditions and procedures under which the commission will provide public access to product filing information. In establishing such rules, the commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a product filing or supporting information.

(3) Any product approved by the commission may be sold or otherwise issued in those compacting states for which the insurer is legally authorized to do business.

Article XI

REVIEW OF COMMISSION DECISIONS REGARDING FILINGS.—

(1) Within 30 days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third-party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with subsection (4) of Article III.

(2) The commission shall have authority to monitor, review, and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. Where appropriate, the commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in subsection (1).

Article XII

FINANCE.—

(1) The commission shall pay or provide for the payment of the reasonable expenses of the commission's establishment and organization. To fund the cost of the commission's initial operations, the commission may accept contributions and other

forms of funding from the National Association of Insurance Commissioners, compacting states, and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the commission concerning the performance of commission duties shall not be compromised.

(2) The commission shall collect a filing fee from each insurer and third-party filer filing a product with the commission to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

(3) The commission's budget for a fiscal year shall not be approved until the budget has been subject to notice and comment as set forth in Article VII.

(4) The commission shall be exempt from all taxation in and by the compacting states.

(5) The commission shall not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.

(6) The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports including the system of internal controls and procedures of the commission shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every 3 years, the review of the independent auditor shall

include a management and performance audit of the commission. The commission shall make an annual report to the Governor and the presiding officers of the Legislature of the compacting states, which shall include a report of the independent audit. The commission's internal accounts shall not be confidential and such materials may be shared with the commissioner of any compacting state upon request; provided any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

(7) No compacting state shall have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.

Article XIII

COMPACTING STATES, EFFECTIVE DATE, AMENDMENT.—

(1) Any state is eligible to become a compacting state.

(2) The compact shall become effective and binding upon legislative enactment of the compact into law by two compacting states; provided the commission shall become effective for purposes of adopting uniform standards for, reviewing, and giving approval or disapproval of, products filed with the commission that satisfy applicable uniform standards only after 26 states are compacting states or, alternatively, by states representing greater than 40 percent of the premium volume for life insurance, annuity, disability income, and long-term care insurance products, based on records of the National Association

of Insurance Commissioners for the prior year. Thereafter, the compact shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state.

(3) Amendments to the compact may be proposed by the commission for enactment by the compacting states. No amendment shall become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.

Article XIV

WITHDRAWAL; DEFAULT; DISSOLUTION.—

(1) Withdrawal.—

(a) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided a compacting state may withdraw from the compact by enacting a law specifically repealing the law which enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repealing law. However, the withdrawal shall not apply to any product filings approved or self-certified, or any advertisement of such products, on the date the repealing law becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the withdrawing state as provided in paragraph (e).

(c) The commissioner of the withdrawing state shall immediately notify the management committee in writing upon the introduction of legislation repealing this compact in the

withdrawing state.

(d) The commission shall notify the other compacting states of the introduction of such legislation within 10 days after the commission's receipt of notice of such legislation.

(e) The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective disapproval of products or advertisement previously approved under state law.

(f) Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the compact.

(2) Default.—

(a) If the commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws, or duly adopted rules or operating procedures, after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this compact on the defaulting state shall be suspended from the effective date of default as fixed by the commission. The grounds for default include, but are not limited

to, failure of a compacting state to perform its obligations or responsibilities, and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

(b) Product approvals by the commission or product self-certifications, or any advertisement in connection with such product that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to subsection (1).

(c) Reinstatement following termination of any compacting state requires a reenactment of the compact.

(3) Dissolution of compact.—

(a) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to a single compacting state.

(b) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect and the business and affairs of the commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

Article XV

SEVERABILITY; CONSTRUCTION.—

(1) The provisions of this compact are severable and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(2) The provisions of this compact shall be liberally construed to effectuate its purposes.

Article XVI

BINDING EFFECT OF COMPACT AND OTHER LAWS.—

(1) Binding effect of this compact.—

(a) All lawful actions of the commission, including all rules and operating procedures adopted by the commission, are binding upon the compacting states.

(b) All agreements between the commission and the compacting states are binding in accordance with their terms.

(c) Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute.

(d) If any provision of this compact exceeds the constitutional limits imposed on the Legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the commission shall be ineffective as to that compacting state and those obligations, duties, powers, or jurisdiction shall remain

in the compacting state and shall be exercised by the agency of such state to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

(2) Other laws.—

(a) Nothing in this compact prevents the enforcement of any other law of a compacting state, except as provided in paragraph (b).

(b) For any product approved or certified to the commission, the rules, uniform standards, and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval, and certification of such products. For advertisement that is subject to the commission's authority, any rule, uniform standard, or other requirement of the commission which governs the content of the advertisement shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. Notwithstanding this paragraph, no action taken by the commission shall abrogate or restrict:

1. The access of any person to state courts;

2. Remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the product;

3. State law relating to the construction of insurance contracts; or

4. The authority of the attorney general of the state, including, but not limited to, maintaining any actions or proceedings, as authorized by law.

(c) All insurance products filed with individual states

shall be subject to the laws of those states.

Section 3. Election to opt out of all uniform standards adopted by the commission involving long-term care insurance products; adoption of existing uniform standards of the commission; procedure for adoption of new or amended uniform standards; notification of new or amended uniform standards:

(1) Pursuant to Article VII of the compact, authorized in this act, the State of Florida prospectively opts out of all uniform standards adopted by the commission involving long-term care insurance products, and such opt out shall not be treated as a material variance in the offer or acceptance of this state to participate in the compact.

(2) Except as provided in subsection (1), all uniform standards adopted by the commission as of March 1, 2013 are adopted by this state.

(3) Notwithstanding subsections (3), (4), (5), and (6) of Article VII, as a participant in this compact, it is the policy of the State of Florida to opt out, and the office shall opt out, of any new uniform standard adopted by the commission after March 1, 2013 or amendments to existing uniform standards adopted by the commission after March 1, 2013 where such amendments substantially alter or add to existing uniform standards adopted by this state in subsection (2) until such time as this state enacts legislation to adopt or opt out of new uniform standards or such amendments to uniform standards adopted by the commission after March 1, 2013.

(4) The Financial Services Commission may adopt rules to implement this act. It is the policy of the State of Florida that this state's participation in new uniform standards or

amendments to uniform standards adopted after March 1, 2013 as set out in subsection (3) that have not been legislatively approved by this state may not reasonably protect the citizens of this state based on Article XVI(1)(d) of this act. The Financial Services Commission shall use the rulemaking authority granted in this subsection to opt out of any new uniform standards or amendments to existing uniform standards where such amendments substantially alter or add to existing uniform standards adopted by the State of Florida in subsection (2) until such uniform standards are legislatively approved by this state.

(5) After enactment of this section, if the commission adopts any new uniform standard or amendment to uniform standards as set out in subsection (3), the office shall immediately notify the legislature of such new uniform standard or amendment to existing uniform standard. If the office or a court of competent jurisdiction finds that the procedure set out in subsection(3) has not been followed, notice shall be given to the legislature, and reasonable and prompt measures shall be taken to opt out of a uniform standard that has not been legislatively approved by the State of Florida.

Section 4. Notwithstanding subsection (4) of Article XII, the commission is subject to:

(1) State unemployment or reemployment taxes imposed pursuant to chapter 443, Florida Statutes, in compliance with the Federal Unemployment Tax Act, for any persons employed by the commission who perform services for it within this state.

(2) Taxation for any commission business or activity conducted or performed in the State of Florida.

Section 5. Notwithstanding subsections (1) and (2) of Article VIII, subsection (2) of Article X, and subsection (6) of Article XII of this act, a request by a resident of this state for public inspection and copying of information, data, or official records that includes:

(1) Insurer's trade secrets shall be referred to the commissioner who shall respond to the request, with the cooperation and assistance of the commission, in accordance with section 624.4213, Florida Statutes; or

(2) Matters of privacy of individuals shall be referred to the commissioner who shall respond to the request, with the cooperation and assistance of the commission, in accordance with s. 119.07(1), Florida Statutes.

(3) Nothing in this act abrogates a person's right to access information consistent with the Constitution and laws of the State of Florida.

Section 6. The Financial Services Commission may adopt rules to implement this act. The Financial Services Commission may use the rulemaking authority granted in this section to opt out of any new uniform standards adopted after October 1, 2013, pursuant to Article VII, until such standards are approved by the Legislature.

Section 7. This act shall take effect October 1, 2013.

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 Appropriations Subcommittee on General Government

BILL:	CS/SB 410
INTRODUCER:	Appropriations Subcommittee on General Government and Senator Bean
SUBJECT:	Money Services Businesses
DATE:	April 17, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	**Favorable**
2.	Davis	DeLoach	AGG	**Fav/CS**
3.			AP	
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 410 provides for the establishment of a check-cashing database within the Office of Financial Regulation (OFR) for regulators and law enforcement to access in order to target and identify persons involved in workers' compensation insurance premium fraud and other criminal activities documented in a statewide grand jury report and a subsequent Chief Financial Officer Work Group. The OFR regulates money services businesses (MSBs) that offer financial services, such as check cashing, money transmittals (wire transfers), sales of monetary instruments, and currency exchange outside the traditional banking environment. Currently, licensed check cashers are required to maintain specified records, such as copies of all checks cashed, and for checks exceeding $1,000, certain transactional data in an electronic log. These records are reviewed as part of OFR's examination authority under ch. 560, F.S.

The bill authorizes the OFR to issue a competitive solicitation for a statewide, real time, on-line check cashing database. The bill requires that check cashers, after implementation of the new check cashing database, to enter specified transactional information into the database.
After completion of the competitive solicitation for the database, the OFR may include a request for funding in their FY 2014-2015 Legislative Budget Request. The bill has no fiscal impact on state government for the 2013-2014 fiscal year.

This bill amends section 560.310, Florida Statutes.

II. Present Situation:

The Office of Financial Regulation (OFR) is responsible for safeguarding the financial interests of the public by licensing, examining, and regulating depository institutions and other entities, such as 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] Deferred presentment providers (DPPs; commonly known as payday lenders) are subject to regulation under part II or part III and part IV of chapter 560, F.S.[2] As of February 27, 2013, OFR indicated there were 159 companies in Florida that had filed a notice of intent with OFR to engage in deferred presentment transactions. In addition, 1,115 companies were licensed to conduct check-cashing transactions.[3]

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.[4]

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,[5] may not exceed $5. Rule 69V-560.801, F.A.C., provides:

- In addition to the fees established in s. 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 OFR's

[1] Section 560.304, F.S.
[2] Section 560.403, F.S., provides a DPP is required to be licensed under part II or part III of chapter 560, F.S., and have on file with the OFR a declaration of intent to engage in deferred presentment transactions.
[3] Information provided by OFR on March 29, 2013, and on file with Banking and Insurance Committee Staff.
[4] Section 560.309(8), F.S.
[5] Id.

administered database for DPP transactions prior to cashing the payment instrument or accepting a personal check in connection with a DPP transaction. Such verification fee shall be collected only when verification is conducted and shall not exceed $5 per transaction. For example, a check casher may not charge a drawer more than one (1) verification fee per day, 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 s. 560.309(8), F.S., and this rule, the "direct costs of verification" are the 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.

Section 560.1105, F.S., requires each licensee and its authorized vendors to maintain specified records for a minimum of five years. In addition, s. 560.310, F.S., requires check casher licensees to maintain customer files on all customers cashing corporate instruments exceeding $1,000. Rule 69V-560.704, F.A.C., requires licensees to maintain a copy of the original payment instrument, a copy of the customer's personal identification presented at the time of acceptance, and customer files for those cashing corporate and third party payment instruments. Further, the rule 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,
- Location where instrument was accepted, and
- Identification type and 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." This information was intended to be reviewed during OFR's examination 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.

Workers' Compensation Insurance Fraud

In recent years, unscrupulous contractors and check cashers have colluded on a scheme allowing 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 7 percent of the value of the check or more for cashing the checks,

which exceeds the statutory limit check cashers are allowed to charge.[6]

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*. The Statewide Grand Jury report described a typical scheme.[7] First, a "shell" company is formed in the name of a nominee owner, often a temporary resident of the United States. 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 report, 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 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.[8] 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 third degree felonies. In 2008, the Legislature enacted major reforms recommended in the report to provide greater regulatory and enforcement tools for the OFR. However, the fraud continues.

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 in 2011 on a case that targeted individuals who were 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 $67,000 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

[6] *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.
[7] *Id.*
[8] 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.

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.

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. Subsequently, in 2012, legislation[9] was enacted that incorporated consensus recommendations of the work group. These changes increase the regulatory oversight of MSBs and provide greater prevention, detection, and prosecution of workers' compensation premium fraud by:

- Requiring 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.
- Prohibiting any money services business, its authorized vendor, or affiliated party from possessing 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.
- Authorizing the OFR to issue a cease and desist order, to issue a removal order, to deny, suspend, or revoke a license, or to take any other action permitted by ch. 560, F.S., for failing to maintain a federally insured depository account, deposit all checks accepted into a depository account or submit transactional information to the office.
- Requiring a licensee to suspend its check cashing operations immediately if there is any interruption in its depository relationship and to prohibit the resumption of check cashing operations until the licensee has secured a new depository relationship.

The work group also recommended the establishment of a statewide database for regulators and law enforcement to access for the detection of workers' compensation insurance fraud.

Deferred Presentment Provider Database

Part IV of chapter 560, F.S., regulates deferred presentment providers (DPPs). Section 560.404, F.S., requires payday lenders to access a database that is maintained by an OFR service provider. This database allows DPPs to comply with s. 560.404(19), F.S., which prohibits a DPP from entering into a deferred presentment agreement with a customer if the customer already has an outstanding deferred presentment agreement, or terminated an agreement within the previous 24 hours. Section 560.404(23), F.S., specifies that DPPs can charge $1 for each transaction, which partly supports the operation and maintenance of the database and partly supports the OFR's regulatory functions.

III. Effect of Proposed Changes:

The bill authorizes the OFR to issue a competitive solicitation for a statewide, real time, on-line check cashing database. Upon implementation of the database, check cashers are required to enter specified transactional information into the real-time, online database for payment instruments exceeding $1,000. The transactional information is substantially similar to what

[9] Ch. 2012-85, L.O.F.

check cashers are currently required to maintain in electronic logs, with the addition of a payee's workers' compensation insurance policy or exemption certificate number and any additional information required by rule. In addition, the bill requires the OFR to ensure that the database would interface with databases maintained by the DFS, for purposes of determining proof of coverage for workers' compensation and by the Secretary of State for purposes of verifying corporate registration and articles of incorporation.

The bill provides that after completing the competitive solicitation, but prior to execution of any contract, the OFR may request funds in the Fiscal Year 2014-2015 Legislative Budget Request and submit any necessary draft legislation needed to implement the act.

The bill also grants rulemaking authority to the Financial Services Commission to administer the section, to require additional information to be submitted into the database, and to ensure that licensees are using the database in accordance with the section.

The act will take effect July 1, 2013.

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 database will aid in the detection and deterrence of unscrupulous contractors committing workers' compensation insurance fraud, thereby creating a more level playing field for legitimate contractors. The database may also reduce some administrative burden for licensees.

C. Government Sector Impact:

The bill will provide regulators and law enforcement with additional enforcement tools to detect and prosecute workers' compensation insurance fraud and other criminal activities.

The bill has no fiscal impact on state or local government.

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.)

Recommended CS by Appropriations Subcommittee on General Government on April 17, 2013:

- Authorizes the OFR to issue a competitive solicitation for a statewide, real time, on-line check cashing database.
- Lists requirements for the types of data to be input into the database upon implementation.
- Authorizes the Financial Services Commission to adopt rules to administer this section of law.
- Deletes the term "database" and its definition.
- Deletes authority of the Financial Services Commission to use up to $0.25 of an existing fee authorized for the operation of the deferred presentment database for the use of implementing and operating the check-cashing database.
- Deletes language that is substantially similar to language in current statute under s. 560.404(23), F.S., regarding a DPP's reliance on database information and the right of a DPP to enforce deferred presentment agreements. This language is inapplicable to the check-cashing context.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2013	.	
	.	
	.	
	.	

Appropriations Subcommittee on General Government (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 560.310, Florida Statutes, is amended to read:

560.310 Records of check cashers and foreign currency exchangers.—

(1) 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

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additional information must be maintained or submitted:

(a) Customer files, as prescribed by rule, on all customers who cash corporate payment instruments that exceed $1,000.

(b) 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 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) A thumbprint of the customer taken by the licensee when the payment instrument is presented for negotiation or payment.

(d) The office shall, at a minimum, require licensees to submit the following information to the check cashing database or electronic log, before entering into each check cashing transaction for each ~~A~~ payment instrument being cashed, in such format as required ~~log that must be maintained electronically as prescribed~~ by rule:

1. Transaction date.

2. Payor name as displayed on the payment instrument.

3. Payee name as displayed on the payment instrument.

4. Conductor name, if different from the payee name.

5. Amount of the payment instrument.

6. Amount of currency provided.

7. Type of payment instrument, which may include personal, payroll, government, corporate, third-party, or another type of instrument.

8. Amount of the fee charged for cashing of the payment

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instrument.

9. Branch or location where the payment instrument was accepted.

10. The type of identification and identification number presented by the payee or conductor.

11. Payee's workers' compensation insurance policy number or exemption certificate number, if the payee is a business.

12. Such additional information as required by rule.

For purposes of this subsection ~~paragraph~~, multiple payment instruments accepted from any one person on any given day which total $1,000 or more must be aggregated and reported in ~~on~~ the check cashing database or on the log.

(3) 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.

(4) The office shall issue a competitive solicitation as provided in s. 287.057 for a statewide, real time, online check cashing database to combat fraudulent check cashing activity. After completing the competitive solicitation process, but before executing a contract, the office may request funds in its 2014-2015 fiscal year legislative budget request and submit necessary draft conforming legislation, if needed, to implement this act.

(5) The office shall ensure that the check cashing database:

(a) Provides an interface with the Secretary of State's database for purposes of verifying corporate registration and

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articles of incorporation pursuant to this section.

(b) Provides an interface with the Department of Financial Services' database for purposes of determining proof of coverage for workers' compensation.

(6) The commission may adopt rules to administer this section, require that additional information be submitted to the check cashing database, and ensure that the database is used by the licensee in accordance with this section.

Section 2. This act shall take effect July 1, 2013.

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

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to money services businesses; amending s. 560.310, F.S.; requiring licensees engaged in check cashing 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 check cashing database; requiring the office to issue a competitive solicitation for a database to maintain certain transaction information relating to check cashing; authorizing the office to request funds and to submit draft legislation after certain requirements are met; authorizing the Financial Services Commission to adopt rules; providing an effective date.

By Senator Bean

4-00749-13 2013410__

A bill to be entitled

An act relating to money services businesses; amending s. 560.103, F.S.; providing a definition; amending s. 560.309, F.S.; authorizing the Financial Services Commission to use a portion of the fees that licensees may charge for the direct costs of verification of payment instruments cashed for certain purposes; amending s. 560.310, F.S.; requiring licensees engaged in check cashing 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; providing liability protection for licensees relying on database information; providing rulemaking authority; providing an effective date.

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

Section 1. Present subsections (12) through (35) of section 560.103, Florida Statutes, are renumbered as subsections (13) through (36), respectively, and a new subsection (12) is added to that section, to read:

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

(12) "Database" means the common database implemented pursuant to s. 560.404(23).

Section 2. Subsection (8) of section 560.309, Florida Statutes, is amended, present subsections (9) and (10) of that section are renumbered as subsections (10) and (11),

4-00749-13 2013410__

respectively, and a new subsection (9) is added to that section, to read:

560.309 Conduct of business.—

(8) Exclusive of the direct costs of verification and database submission, 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.

(9) The commission may, by rule, use up to $0.25 of an existing fee authorized under s. 560.404(23) for data that must be submitted by a licensee for purposes of the operation and maintenance of the database.

Section 3. Section 560.310, Florida Statutes, is amended to read:

560.310 Records of check cashers and foreign currency exchangers.—

(1) 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:

(a) Customer files, as prescribed by rule, on all customers who cash corporate payment instruments that exceed $1,000.

(b) 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 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) A thumbprint of the customer taken by the licensee when the payment instrument is presented for negotiation or payment.

(d) 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.

(e) The office shall require licensees to submit the following information to the database, which must be accessible to the office and the licensee in order to submit all transactional check cashing data, before entering into each check cashing transaction for all checks being cashed in such format as required by rule:

1. Transaction date.

2. Payor name.

3. Payee name.

4. Customer name, if different from the payee name.

5. Amount of the payment instrument.

6. Amount of currency provided.

7. Type of payment instrument, which may include personal, payroll, government, corporate, third-party, or another type of instrument.

8. Amount of the fee charged for cashing the payment instrument.

9. Branch or location where the payment instrument was accepted.

10. The type of identification and identification number presented by the payee or customer.

11. Payee's workers' compensation insurance policy number, if the payee is a business.

(3) 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.

(4) The office shall ensure that the database:

(a) Provides an interface with the Secretary of State's database for purposes of verifying corporate registration and articles of incorporation pursuant to this section.

(b) Provides an interface with the Department of Financial Services' database for purposes of determining proof of coverage for workers' compensation.

(c) Maintains an electronic log of the sale or issuance of payment instruments pursuant to this section.

(5) A licensee may rely on the information contained in the database as accurate, and such licensee is not subject to any administrative penalty or civil liability due to relying on inaccurate information contained in the database.

(6) This section does not affect the rights of the licensee to enforce the contractual provisions of the money service business agreements through any civil action allowed by law. The office may adopt rules to administer this section, require that additional information be submitted to the database, and ensure that the database is used by the licensee in accordance with this section.

Section 4. This act shall take effect July 1, 2013.

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 Appropriations Subcommittee on General Government

BILL:	CS/SB 1046
INTRODUCER:	Banking and Insurance Committee and Senator Brandes
SUBJECT:	Insurance
DATE:	April 8, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	**Fav/CS**
2.	Betta	DeLoach	AGG	**Favorable**
3.			AP	
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 1046 makes numerous changes to the insurance laws.

The bill will have an indeterminate fiscal impact relating to citations issued for no proof of motor vehicle insurance. According to the Annual Uniform Traffic Citation statistics, for 2011, there were 353,703 citations issued for no proof of motor vehicle insurance." The Department of Highway Safety and Motor Vehicles indicates that the use of electronic cards may reduce the number of such citations.

The bill:

- Authorizes motor vehicle proof of insurance cards to be issued in electronic form.
- Revises the criteria for being authorized to inspect boilers.
- Extends the examination period for licensing foreign or alien insurers.
- Exempts from insurance agency licensure, a licensed agent who is a sole-practitioner and conducts business in his or her own name.
- Exempts from insurance agency licensure branch agencies that transact business under the same name as a licensed insurance agency.
- Revises insurance agency licensure application requirements.

- Includes employees within the scope of limited licenses to transact motor vehicle rental insurance that are issued to a business entity that offers motor vehicle for rent or lease.
- Allows an insurance agency license to continue in force until cancelled, suspended, revoked or terminated.
- Provides the Department of Financial Services (DFS) with additional authority to regulate mediators and neutral evaluators under the alternative dispute resolution programs run by the DFS for property, motor vehicle, and sinkhole claims.
- Revises the application for a certificate of authority to be an insurance administrator.
- Allows an insurer to use a qualified third party to conduct required reviews of an insurance administrator.
- Allows annual financial statements of insurance administrators to cover the prior fiscal year.
- Repeals the requirement that surplus lines agents file an affidavit with the Florida Surplus Lines Service Office (FSLSO).
- Includes using a straight average of hurricane model results or output ranges as factors the Office of Insurance Regulation (OIR) must consider in a rate filing.
- Increases from 60 days to 180 days the time an insurer is not required to use the newest version of an approved hurricane model.
- Allows workers' compensation insurance retrospective rating plans that provide for negotiation of rating factors between the insurer and employer in specified instances.
- Repeals an annual report to the Legislature detailing the aggregate net probable maximum losses, financing options, and potential assessments of the Florida Hurricane Catastrophe Fund (FHCF) and Citizens Property Insurance Corporation (Citizens).
- Establishes a uniform 120 day advance written notice of nonrenewal, cancellation, or termination for personal or commercial lines residential property insurance policies.
- Authorizes a licensed company adjuster to provide the sworn statement of liability insurance coverage required by current law.
- Allows a policyholder to elect electronic delivery of policy documents.
- Allows a Notice of Change in Policy Terms to be sent separately from the Notice of Renewal Premium.
- Requires dissolution of the Florida Comprehensive Health Association.
- Effective July 1, 2014, eliminates the requirement that an insurer must offer a $500 deductible applicable to losses not caused by a hurricane prior to issuing a personal lines residential policy. Instead, the insurer must offer a $750 deductible and a 1 percent deductible. Effective January 1, 2019, the $750 deductible will be adjusted for inflation in $50 increments every five years.
- Creates conflict of interest standards for appraisers in residential property insurance claims.
- Clarifies that the annual update to the Personal Injury Protection medical fee schedule applies until the last day of February in the following year.
- Allows application of premium finance company charges for a payment that is declined to debit, credit, and electronic funds transfers.
- Deletes a bond requirement on non-resident licensed risk retention and purchasing group insurance agents.
- Allows a financial guaranty insurance corporation to be organized and licensed as a mutual property and casualty insurer.
- Exempts captive insurers from the statutory trust deposit required under s. 624.411, F.S.

- Expands the risks industrial insured captive insurance companies may insure.
- Allows pure captive insurers to develop risk management control standards and submit them to the OIR for approval.
- Provides exceptions to certain financial requirements applicable to service warranty associations.

Except as otherwise provided, the bill is effective upon becoming a law.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 316.646, 320.02, 554.1021, 554.107, 554.109, 624.413, 626.0428, 626.112, 626.172, 626.321, 626.382, 626.601, 626.747, 626.8411, 626.8805, 626.8817, 626.882, 626.883, 626.884, 626.931, 626.932, 626.935, 626.936, 627.062, 627.0628, 627.072, 627.281, 627.3519, 627.4133, 627.4137, 627.421, 627.43141, 627.648, 627.6482, 627.6484, 627.6486, 627.6488, 627.6489, 627.64872, 627.649, 627.6492, 627.6494, 627.6496, 627.6498, 627.6499, 627.701, 627.7015, 627.70151, 627.706, 627.7074, 627.736, 627.745, 627.841, 627.952, 627.971, 627.972, 628.901, 628.905, 628.907, 628.909, 628.9142, 628.915, 628.917, 628.919, and 634.406.

II. Present Situation:

Proof of Financial Responsibility

Every owner or operator of a motor vehicle that is required to be registered in Florida must:

- Maintain security to meet required levels of personal injury protection specified by the Florida Motor Vehicle No-Fault Law.[1]
- Demonstrate financial responsibility to cover up to $10,000 of property damage resulting from the use of the motor vehicle.[2]
- For individuals who have been found guilty or entered a plea of nolo contendre to driving under the influence must demonstrate financial responsibility to cover up to:[3]
  - $100,000 for death or injury to any one person;
  - $300,000 for death or injury to two or more people; and
  - $50,000 for property damage in any one crash.

Section 316.646, F.S., specifies how proof of the financial security described above must be maintained. The statute requires that a person must have in his or her immediate possession at all times while operating a motor vehicle:

[1] Sections 627.730 – 627.405, F.S., comprise the "Florida Motor Vehicle No-Fault Law." Section 627.733, F.S., requires that every owner or operator of a motor vehicle that is required to be registered in Florida must maintain security to meet required levels of personal injury protection specified by the Florida Motor Vehicle No-Fault Law. Section 627.736, F.S., requires that coverage of $10,000 for medical and disability benefits and $5,000 for death benefits must be purchased to cover: the named insured, relatives residing in the same household, persons operating the motor vehicle, passengers, and other people struck by the vehicle who are not in another vehicle at the time. Section 627.736, F.S., specifies that the provisions contained in ch. 324, F.S., for maintaining proof of financial responsibility also apply to the Florida Motor Vehicle No-Fault Law.
[2] See s. 324.022, F.S.
[3] See s. 324.023, F.S.

- A uniform proof-of-insurance card in a form prescribed by the Department of Highway Safety and Motor Vehicles;
- A valid insurance policy;
- An insurance policy binder;
- A certificate of insurance; or
- Such other proof as may be prescribed by the department.

Motor Vehicle Registration

Every person who owns a motor vehicle that is operated on Florida roads is required to register that vehicle with Department of Highway Safety and Motor Vehicles.[4] In order to register a vehicle, the owner must provide proof that the coverages required under s. 324.022, F.S., s. 324.023, F.S., and s. 627.733, F.S., have been purchased. Section 320.02(5), F.S., specifies that the proof this coverage can be satisfied by a number of alternative documents, one of which is a proof-of-purchase card. The statute requires that an insurer providing the required coverage must issue to its policyholder a uniform proof-of-purchase card in a form prescribed by the department that contains:

- The name of the insurance company;
- The coverage identification number;
- The make, year, and vehicle identification number of the vehicle; and
- A statement notifying the applicant of the penalty specified in s. 316.646(4), F.S.

Boiler Safety Inspections

A boiler is a closed vessel in which water or other liquid is heated, steam or vapor is generated, steam is superheated, under pressure or vacuum, for use external to itself, by the direct application of energy. The Boiler Safety Act (Chapter 554, F.S.) requires all boilers placed in use after October 1, 1987, to submit the A.S.M.E. (American Society of Mechanical Engineers) manufacturers date report to the chief boiler inspector of the state. All boilers located in public assembly locations must be inspected for compliance with the State Boiler Code, which is based on standards for boilers and other pressure vessels promulgated by the A.S.M.E. The inspection must be conducted by the chief inspector (appointed by the state Chief Financial Officer), a deputy inspector (employed by the Department of Financial Services), or special inspectors (a qualified inspector employed by an insurer licensed to insure boilers in this state).

Regulation of Branch Insurance Agencies

The DFS is the state agency responsible for licensing insurance agencies in accordance with s. 626.172, F.S. In Florida, insurance agents who are sole proprietors and do not employ other insurance agents must be licensed as both an insurance agent and an insurance agency. According to the DFS, no other state requires licensure of an insurance agency when the licensed insurance agent is the sole proprietor of the agency.

[4] Section 320.02(1), F.S.

Current law also requires each insurance agency location be licensed. Other states do not have a similar licensing requirement for branch locations of agencies. Licenses for an insurance agency expire every three years under current law.

According to DFS, when the agency licensing law was created, some existing agencies were given the opportunity to register the agency in lieu of licensing the agency. The primary benefit of registration over licensing is that registrations do not expire whereas licenses expire every three years. DFS indicates Florida is the only state that registers insurance agencies in lieu of licensing them. Thus, insurance agencies registered in Florida cannot be recognized in other states because the states only recognize licensed agencies. As a result, insurance agencies have been turning in their registrations to the DFS and applying for a Florida agency license. This allows the agency to also obtain an agency license in other states. The DFS asserts the number of registered agencies is steadily declining. Over the past four years an average of 27 registered agencies per month have canceled their registrations. Currently, there are over two times as many licensed insurance agencies as registered ones, with over 38,000 licensed agencies and over 13,000 registered ones.

Foreign or Alien Insurer Application for Certificate

A foreign insurer is defined as being formed under the laws of any state, district, territory, or commonwealth of the United States other than Florida.[5] A domestic insurer is defined as being formed under the laws of Florida.[6] An alien insurer is defined as an insurer other than a foreign or domestic insurer.[7] When a foreign or alien insurer applies for a certificate of authority in Florida, it must submit a report of its most recent examination certified by the insurance official in its state of domicile or of entry into the United States. The end of the most recent year covered by the examination must be within the three-year period preceding the date of application.[8] In lieu of the certified examination report, the OIR can accept an audited certified public accountant's report prepared on a basis consistent with the insurance laws of the insurer's state of domicile, certified by the insurance official in its state of domicile or of entry into the United States.

Limited Agent 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;

[5] S. 624.06(2), F.S.
[6] S. 624.06(1), F.S.
[7] S. 624.06(3), F.S.
[8] S. 624.413(1)(f), F.S.

- 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 motor vehicle rental insurance, the licensee may sell coverage only when the coverage is offered or sold incidental to the rental or lease of a motor vehicle, the lease or rental period is for no more than 60 days, and the coverage is limited to only those risks specified in statute. Further, the license may be issued only to an employee of a licensed general lines agent or to a business entity that offers motor vehicles for lease or rent. A limited license that is issued to such a business entity encompasses each office or place of business that uses the entity's name to offer the specified coverage.

Inquiries into Improper Conduct

Current law provides that the DFS and the OIR are authorized to inquire into any alleged improper conduct of any licensed, approved, or certified insurance agency, agent, adjuster, service representative, managing general agent, customer representative, title insurance agent, title insurance agency, mediator, neutral evaluator, continuing education course provider, instructor, school official, or monitor group under the insurance code.[9] The DFS or the OIR may then initiate an investigation if it has reasonable cause to believe there has been a violation of the code.

Insurance Administrators

An insurance administrator is any person who directly or indirectly solicits or effects coverage of, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with an insurance policy. To operate as an insurance administrator, a person must obtain a certificate of authority to act as an administrator from the Office of Insurance Regulation.[10] An insurer who utilizes an insurance administrator must at least semiannually conduct a review of the operations of an administrator that administers more than 100 certificateholders of that insurer.[11] An administrator must have a written agreement between itself and each insurer for which it performs administrative functions.[12] Administrators must also file an annual financial statement with the OIR containing the administrator's financial condition, transactions, and affairs no later than March 1 of each year.[13]

Hurricane Loss Projection Models

The Florida Commission on Hurricane Loss Projection Methodology (Commission) was established by the Legislature to serve as an independent body to provide expert evaluation of

[9] S. 626.601, F.S.
[10] S. 626.8805, F.S.
[11] S. 626.8817, F.S.
[12] S. 626.882, F.S.
[13] S. 626.89

computer models that project hurricane losses.[14] The Commission is assigned to the State Board of Administration. The Commission adopts findings on the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses. Members of the Commission include:[15]

- The Insurance Consumer Advocate;
- The person responsible for FHCF operations;
- The Executive Director of Citizens Property Insurance Corporation;
- The Director of Emergency Management;
- An actuary member from the FHCF Advisory Council;
- An actuary employed by the OIR;
- An appointment by the state Chief Financial Officer who is an actuary employed with a property and casualty insurer;
- An appointment by the state Chief Financial Officer who is an expert in insurance finance and who is a full-time faculty member in the State University System;
- An appointment by the state Chief Financial Officer who is an expert in statistics in meteorology and who is a full-time faculty member in the State University System; and
- An appointment by the state Chief Financial Officer who is an expert in computer system design and who is a full-time faculty member in the State University System.

The Commission sets standards for loss projection methodology and examines the methods employed in hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission's standards. Only hurricane loss models or methods that the Commission has found to be accurate can be used by insurers to estimate the hurricane losses that are used to set property insurance rates. After the Commission finds a model to be accurate, an insurer has 60 days to use the model to predict the insurer's probable maximum loss "with respect to a rate filing."[16]

Florida Comprehensive Health Care Association (FCHA)

The FCHA is Florida's high-risk pool for individuals who are unable to obtain health insurance, due to their health status. The FCHA, formerly named the State Comprehensive Health Association, was created in 1982.[17] About 7,500 individuals were insured with the FCHA in 1991, but due to increasing losses, legislation that year closed the FCHA to new enrollment, but allowed existing insureds to renew coverage. At the end of 2012, there were 176 individuals insured with the FCHA.

The FCHA is organized as a not-for-profit entity. All health insurers, as a condition of doing business, must be members of the association. The FCHA is governed by a three-member board of directors appointed by the Chief Financial Officer and regulatory oversight is provided by OIR.

[14] See s. 627.0628, F.S.
[15] S. 627.0628(2) (b), F.S.
[16] S. 627.0628(3) (d), F.S.
[17] SS. 627.648-627.6498, F.S. is cited as Florida Comprehensive Health Association Act.

The FCHA is funded through a combination of premiums paid by FCHA policyholders and an assessment on all health insurers and HMOs in the state to cover FCHA operating losses. The annual assessment on health insurers is based on the earned premiums of the insurers.[18] FCHA policyholder premiums are based on commercial standard risk rates as determined by OIR and are set at 200 percent, 225 percent and 250 percent of the individual market standard risk rate, depending on the level of risk.[19]

For 2012, premiums paid by FCHA members were $1,252,788 compared to claims of $1,700,473. The operating loss of the association and the related insurance industry assessment for 2012 was $810,539. The operating loss and the resulting insurance industry assessment for 2011 was $2,245,828.[20]

Retrospective Rating Plan in Workers' Compensation

Retrospective rating plans[21] may be used by workers' compensation insurance carriers to compete on price. Under a retrospective rating plan, the final premium paid by the employer is based on the actual loss experience of the employer during the policy, plus insurer expenses and an insurance charge. If the employer is able to limit the amount and the magnitude of claims, it will pay lower premiums. Before there were large deductible programs, retrospective rating plans were the dominant rating plan for large employers.

Notice of Cancellation or Nonrenewal

The requirements for an insurer to give notice of cancelling or nonrenewing a residential property insurance policy are contained in s. 627.4133(2), F.S. The specific notice depends on the particular circumstances of the policy being nonrenewed, as follows:

- Generally, an insurer must give the insured 100 days written notice of nonrenewal or cancellation;
- 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;
- 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;
- 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;
- If the insured structure has been insured by the insurer or an affiliate for at least 5 years, the insurer must give 120 days' notice of nonrenewal or cancellation;
- If the cancellation is for nonpayment of premium, the insurer must give 10 days' notice of cancellation accompanied by the reason for the cancellation;

[18] S. 627.6492, F.S.
[19] S. 627.6498, F.S.
[20] Florida Comprehensive Health Association data, on file in committee.
[21] See "2012 Workers' Compensation Annual Report" (December 2012) by the Florida Office of Insurance Regulation. Available at http://www.floir.com.

- If the OIR 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;
- If a policy covers both home and motor vehicle, the insurer must give the insured 100 days written notice of nonrenewal.

Required Disclosures by Liability Insurers

Under current law, a liability insurer must provide to a claimant a statement containing the following information within 30 days of a written request by the claimant:

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

Further, the above statement must be under oath by a corporate officer or the insurer's claims manager or superintendent.

Delivery of Insurance Policies

Part II of s. 627, F.S., generally applies to all insurance contracts except for those covering reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance.[22] Under this part, every insurance policy must be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect.[23]

In June 2000, Congress enacted the Electronic Signatures in Global and National Commerce Act (ESIGN) to facilitate the use of electronic records and signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically.[24] ESIGN provides that contracts formed using electronic signatures on electronic records will not be denied legal effect merely because they are electronic. ESIGN, however, requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under ESIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to the use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications. Insurance is specifically included in ESIGN. Section 668.50, F.S., Florida's Uniform Electronic Transaction Act (UETA), has provisions similar to the federal

[22] S. 627.401, F.S.
[23] S. 627.421, F.S.
[24] See Federal Trade Commission and Department Of Commerce publication: "Electronic Signatures in Global and National Commerce Act," published June 2001, available at http://www.ftc.gov/os/2001/06/esign7.htm.

ESIGN. UETA specifically applies to insurance and provides a requirement that information that must be delivered in writing to another person can be satisfied by delivering the information electronically if the parties have agreed to conduct a transaction by electronic means.

Notice of Change in Policy Terms

Section 627.43141, F.S., requires that when an insurer makes a change in the terms of an insurance policy upon the renewal of that policy, the insurer must give the named insured written notice of the change, and the notice must be enclosed with the written notice of renewal premium required by ss. 627.4133, F.S., and 627.728, F.S.

Personal Lines Residential Required Deductible Offering

Currently, s. 627.701(7), F.S., requires that for personal lines residential insurance, the insurer must offer a deductible of $500 applicable to losses from perils other than hurricanes. This offer must be made in a form approved by the OIR and must be made at least once every 3 years.

Alternative Procedure for Resolution of Disputed Property Insurance Claims

The DFS has established alternative dispute resolution programs for various types of insurance. The property insurance claim mediation program is authorized under s. 627.7015, F.S.; the automobile insurance claim mediation program is authorized under s. 627.745, F.S.; and the sinkhole claim neutral evaluation program is authorized under s. 627.7074, F.S.

The DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluation program for sinkhole insurance claims. To qualify as a mediator for the property or automobile mediation programs, a person must meet specific education or experience requirements set out in statute,[25] and must successfully complete a training program approved by the DFS. According to DFS, the required mediation training program is no longer available from outside vendors due to the low volume of DFS mediators. In order to ensure there is a training program available for those who want to be DFS mediators, for the past several years DFS has approved the mediator training program offered by the courts.

Insurance Contract Appraisal Process

Most insurance contracts contain an appraisal clause which establishes a procedure for resolving disputed amounts under a claim. Disputes over coverage are determined by the courts, but an appraisal process can be used to resolve disputed amounts. Generally, the appraisal process works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and reach an agreed amount of the damages.

[25] s. 627.745 (3)(b), F.S., requires a mediator to possess certain masters or doctorate degrees, be a member of the Florida Bar, be a licensed certified public accountant, or be a mediator for four years.

- If the appraisers cannot agree on the amount of damages, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both parties.
- If the two parties agree to the amount of the loss, that amount becomes the claim amount. If one of the parties does not agree, the case can still be litigated in court.

Current law does not address disqualification of an umpire due to impartiality. As a result, a party seeking to disqualify an umpire must go to Circuit Court and have a judge rule on the umpire's impartiality. There are no parameters in current law for a judge to rule on an umpire's impartiality.

Personal Injury Protection Insurance (PIP)

In 2012, the Legislature enacted HB 119,[26] making substantial changes to laws applying to Florida's PIP requirements. Among numerous other changes, the bill amended s. 627.736(5)(a) 2., F.S., by establishing the date on which changes to the Medicare fee schedule or payment limitation are effective. The new provision states, in part:

> [T]he applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered…and the applicable fee schedule or payment limitation applies throughout the remainder of that year….

The above language created uncertainty as to whether the Medicare fee schedule in place on March 1st applied just to the end of the calendar year or applied through the end of February of the following year. On November 6, 2012, the OIR issued Informational Memorandum OIR-12-06M,[27] stating that the plain language of the section requires the fee schedule in place on March 1, to apply throughout the following 365 days, or until March 1, of the following year.

Risk Retention Group Agents

A risk retention group is defined in s. 627.942(9), F.S., as a corporation or limited liability association whose primary activity consists of spreading the liability exposure of its group members. Within the definition, the statute imposes numerous requirements and limitations for operating a risk retention group.

Section 627.952 (1), F.S., establishes requirements for risk retention and purchasing group agents. The statute requires that any person selling, purchasing, or servicing an insurance contract for a purchasing group or risk retention group to a Florida resident must have an appointment to act general lines agent. In order to place business through a surplus lines carrier, a resident agent must be licensed and appointed as a surplus lines agent. If not a resident of Florida, the agent must be licensed and appointed as a surplus lines agent in her or his state of

[26] Ch. 2012-151, L.O.F.
[27] Available at http://www.floir.com/Sections/PandC/ProductReview/PIPInfo.aspx. Last visited March 16, 2013.

residence and must file and maintain a fidelity bond. The statute specifies the amount ($50,000) and the conditions that are required for the fidelity bond.

Financial Guaranty Insurance

Financial guaranty insurance is defined[28] as a surety bond, insurance policy, or similar guaranty, under which payment is made upon the occurrence of financial loss to an insured, as a result of:

- The failure of an obligor on a debt to make payments when due, if the failure is the result of a financial default or insolvency;
- Changes in the levels of interest rates;
- Changes in the rate of exchange of currency;
- Changes in the value of specific assets or commodities, or price levels in general; or
- Other events which the OIR determines are substantially similar to any of the foregoing.

Section 627.971, F.S., defines a financial guaranty insurance corporation as a stock insurer licensed to transact financial guaranty insurance business in this state. The definition makes no provision for mutual insurers. A stock insurer is defined as an incorporated insurer with its capital divided into shares and owned by its stockholders.[29] A mutual insurer is defined as an incorporated insurer without permanent capital stock, the governing body of which is elected in accordance with part I of ch. 628, F.S.[30]

Captive Insurance

A captive insurer is an insurance company that primarily or exclusively insures a business entity, or entities, that owns or is an affiliate of the captive insurer. The insured business entities pay premiums to the captive insurer for specified insurance coverages. Under current law, captive insurance is regulated by the Office of Insurance Regulation (OIR) under part V of ch. 628, F.S., which defines a "captive insurance company" as a domestic insurer established under part V, and includes a pure captive insurance company, a special purpose captive insurance company, or an industrial captive insurance company, with each of these formations also separately defined.

Each formation may vary in allowable corporate structure, capital and surplus, underwritten risks, and number of owners. Most captive insurance companies are formed as pure captives,[31] meaning that the captive is a wholly-owned subsidiary that insures the risks of its parent and affiliates.

Chapter 628, F.S., also defines "captive reinsurance company" as a stock corporation reinsurer formed under part V of ch. 628, F.S., that is wholly owned by a qualifying reinsurance parent company. A "qualifying reinsurance parent company" is defined as a reinsurer that:

- Holds a certificate of authority or a letter of eligibility; or

[28] S. 627.971(1) (a), F.S.
[29] S. 628.021, F.S.
[30] S. 628.031, F.S.
[31] Theriault, Patrick. Captive Insurance Companies (2008). Page 9. www.captive.com.

- Is an accredited or a satisfactory non-approved reinsurer in Florida and possesses consolidated GAAP net worth of at least $500 million and a consolidated debt to total capital ratio of not greater than 0.50.

Service Warranty Associations

A service warranty is generally defined as a contract to perform the repair or replacement of a consumer product for failure due to a defect.[32] A service warranty association is defined as any person, other than an authorized insurer, issuing service warranties.[33]

Section 634.406, F.S., establishes the financial requirements, ratios, and limitations on service warranty associations. A service warranty association can allow its premiums to exceed the ratio to net assets limitations of s. 634.406, F.S., only if the association meets all of the following:

- Maintains net assets of at least $750,000.
- Utilizes a contractual liability insurance policy approved by the office which reimburses the service warranty association for 100 percent of its claims liability.
- The insurer issuing the contractual liability insurance policy:
  - Maintains a policyholder surplus of at least $100 million.
  - Is rated "A" or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the OIR.
  - Is in no way affiliated with the warranty association.
  - Provides a statement certifying the gross written premiums is covered under the contractual liability policy, whether or not it has been reported.

The statute further requires that a contractual liability policy must insure 100 percent of an association's claims exposure under all of the association's service warranty contracts, unless numerous specified conditions are met.

III. Effect of Proposed Changes:

Proof of Motor Vehicle Insurance in Electronic Form

Sections 1 and 2 amend ss. 316.646 and 320.02, F.S., to authorize the uniform motor vehicle proof of insurance card to be issued in electronic form. A person who displays proof-of-insurance by presenting an electronic device to a law enforcement officer is not consenting to allow access to other information on the device. The law enforcement officer is not liable, however, for damage to the device. The bill grants the DHSMV rulemaking authority to implement s. 316.646, F.S.

Boiler Inspection

Sections 3 through 5 amend ss. 554.1021, 554.107, and 554.109, F.S., to allow boiler inspections to be done by an "authorized inspection agency" which is defined as:

[32] S. 634.401(13), F.S.
[33] S. 634.401(14), F.S.

- A county, city, town, or other governmental subdivision that has adopted and administers Section I of the A.S.M.E. (American Society of Mechanical Engineers) Boiler and Pressure Vessel Code and whose inspectors hold valid certificates of competency under s. 554.443, F.S.; or
- An insurance company licensed or registered in any state or Canadian province whose inspectors hold valid certificates of competency under s. 554.113, F.S.

This change will allow an insurer that does not write policies in Florida to serve as an "authorized inspection agency" of boilers if its inspectors hold valid certificates of competency.

Certificates of Authority Application Process for Foreign and Alien Insurers

Section 6 amends s. 624.413, F.S., to allow a foreign or alien insurer applying for a certificate of authority to submit a copy of the report of the most recent examination certified by the public official having supervision of insurance in its state of domicile or of entry into the United States that is up to 5 years old as of the date of the insurer's application. Under current law, the examination may be no greater than 3 years old.

Insurance Agent Supervision of Agencies and Branch Agencies

Section 7 creates s. 626.0428(4), F.S., regarding agency personnel powers, duties and limitations. The CS takes the branch agency requirements of s. 626.747, F.S., and places them in this section, with amendments. The subsection:

- Requires each place of business to be in the active, full time charge of a licensed and appointed agent holding the required agent licenses to transact the lines of insurance being handled at the location (currently in s. 626.747(1)(a), F.S.).
- Allows the licensed agent in charge of an insurance agency to be the agent in charge of additional branch office locations if insurance activities requiring licensure do not occur at the branch locations when the agent is not present (currently in s. 626.747(1)(b), F.S.).
- Requires an insurance agency and each branch place of business to designate an agent in charge. The agent in charge is responsible to supervise all individuals in the agency location and accountable for wrongful acts, misconduct, or violations of the insurance code committed by the agent or anyone the agent supervises. Criminal liability only attaches if the supervising agent knew or should have known of the act and facts that constitute the violation. The agent's name and license number and the physical address of the agency must be filed at a DFS website. Changes of the agent in charge are effective 30 days after the DFS is notified.

Section 13 repeals s. 626.747, F.S., which contains the current branch agency licensure requirements.

Section 14 amends s. 626.8411, F.S., to correct a cross-reference.

Exemptions from Insurance Agency Licensure – Certain Branch Agencies and Insurance Agents Who Own and Operate a Business in Their Own Name

Section 8 amends s. 626.112(7), F.S., to exempt from agency licensure requirements:

- An insurance agency that is owned and operated by a single licensed agent who conducts business in his or her individual name and does not employ, otherwise use, or appoint other licensees.
- A branch agency that is established by a licensed agency if the branch agency transacts business under the same name and federal tax identification number of the licensed agency that established it. The agency that established the branch agency must also designate a licensed agent in charge of the location under s. 626.0428, F.S. The registration and licensure requirements for such agencies are repealed.

Effective October 1, 2013, the DFS must convert the registration of an approved registered insurance agency to an insurance agency license.

Insurance Agency Licensure Applications

Section 9 amends s. 626.172, F.S., to require an applicant for agency licensure to provide a valid e-mail address of the insurance agency and the physical address of each branch agency including its name, e-mail address, and telephone number and the date the branch location began transacting business. The CS also adds a fingerprinting requirement for any person in control of insurance agency bank accounts.

Scope of Limited Licensure for Motor Vehicle Rental Insurance

Section 10 amends s. 626.321, F.S., to include employees within the scope of limited licenses to transact motor vehicle rental insurance that are issued to a business entity that offers motor vehicles for rent or lease.

Continuation of Insurance Agency Licensure

Section 11 amends s. 626.382, F.S., to allow an insurance agency license to continue in force until it is cancelled, suspended, revoked, or terminated. Under current law, the license is issued for a 3-year period and may be renewed.

Department of Financial Services Oversight of Mediators and Neutral Evaluators

Section 12 amends s. 626.601, F.S., to authorize the Department of Financial Services to inquire into alleged improper conduct of mediators and neutral evaluators and subsequently to initiate and conduct an investigation if reasonable cause exists of an insurance code violation.

Section 38 amends s. 627.7015(4)(b), F.S., to delete the requirement that the Department of Financial Services adopt rules that qualify mediators for the property insurance mediation program who are eligible pursuant to the Florida Rules of Certified and Court Appointed Mediators, or that the DFS determines have appropriate education, training, or expertise to serve

as a mediator. The bill retains current law that the DFS adopt rules specifying that mediators be qualified under the requirements of s. 627.745, F.S., but adds language specifying that s. 627.745, F.S., also governs the denial of application, suspension, revocation and other penalties for mediators in the program.

Section 40 amends s. 627.706(2)(c), F.S., to specify that a sinkhole neutral evaluator is a person who is not otherwise ineligible for certification as a neutral evaluator under s. 627.7074, F.S.

Section 41 amends s. 627.7074, F.S., to require the Department of Financial Services to adopt rules for certifying, denying certification, suspending certification, and revoking certification as a neutral evaluator. The rules must be based on the neutral evaluator qualifications contained in ss. 627.7074, 627.706, and s. 627.745(4), F.S.

Section 43 amends s. 627.745, F.S., to change the requirements for qualifying as a mediator under the motor vehicle insurance claim mediation program for personal injury claims of $10,000 or less, or for property damage claims of any amount. A mediator must possess an active certification as a Florida Circuit Court Mediator or be an appointed department mediator as of July 1, 2013, who has conducted at least one mediation on behalf of the DFS within 4 years prior to that date. The bill eliminates the 40-hour mediation training program and test that all mediators under the program currently must complete in order to be approved as a mediator under the program.

The bill also requires the DFS to deny an application or revoke its approval of a mediator or neutral evaluator for any of the following:

- Lack of one or more of the qualifications required for approval or certification.
- Material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain approval or certification.
- Demonstrated lack of fitness or trustworthiness to act as a mediator or neutral evaluator.
- Fraudulent or dishonest practices in the conduct of mediation or neutral evaluation or in conducting business in the financial services industry.
- Violation of any provision of the Florida Insurance Code; a lawful order or rule of the DFS; or aiding, instructing, or encouraging another party to commit such a violation.

The bill grants rulemaking authority to administer this requirement.

Insurance Administrators – Certificate of Authority Requirements

Section 15 amends s. 626.8805, F.S., changing the information that must be filed with the OIR or made available for OIR inspection as part of an application for a certificate of authority to act as an insurance administrator. The CS requires the applicant to provide the names, addresses, official positions and professional qualifications of individuals who are employed or retained by the administrator and who are responsible for the conduct of the affairs of the administrator. Current law contains a broader standard, requiring information of any person who exercises control or influence over the affairs of the administrator.

Insurance Administrators – Oversight Responsibilities of Insurers

Sections 16, 17, 18 and 19 amend ss. 626.8817, 626.882, 626.883, and 626.884, F.S., to allow an insurer who uses the services of an administrator to contract with a qualified third party to conduct the required semiannual review of an administrator that administers benefits for more than 100 certificateholders on behalf of the insurer.

The CS also specifies that the written agreement between an insurer and an administrator that details the responsibilities of the insurer and administrator governs the rights, duties, and obligations of the administrator and insurer. Any restrictions regarding the proprietary rights of the insurer and administrator related to continuing access to books and records maintained by the administrator are governed by the written agreement between the parties required under s. 626.8817, F.S.

Insurance Administrators – Annual Financial Statement

Section 20 amends s. 626.89, F.S., to change to April 1 the date by which an administrator must file an annual financial statement with the OIR. The CS also allows the financial statement to cover the previous fiscal year, rather than a calendar year, if the administrator's accounting is on a fiscal year basis.

Repeal of Surplus Lines Agent Affidavit Requirement

Section 21 amends s. 626.931, F.S., to eliminate the requirement that each surplus lines agent must, on or before the 45th day following each calendar quarter, file with the Florida Surplus Lines Service Office (FSLSO) an affidavit stating that all surplus lines insurance he or she transacted during that calendar has been submitted to the FSLSO and that includes efforts made to place coverage with authorized insurers and the results of those efforts.

Sections 22, 23, and 24 amend ss. 626.932, 626.935, and 626.936, F.S., to conform to the elimination of the affidavit requirement in s. 626.89, F.S.

Use of Hurricane Models in Rate Filings

Section 25 amends s. 627.062, F.S., to specify that the Office of Insurance Regulation, when reviewing a rate filing, must consider projections of hurricane losses that have been estimated using a straight average of model results or output ranges independently found acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology, and as further provided in s. 627.0628, F.S.[34]

Section 26 amends s. 627.0628, F.S., to increase from 60 days to 180 days the time an insurer is not required to use the newest version of a model approved by the Commission on Hurricane

[34] Section 627.0628, F.S., tasks the Florida Commission on Hurricane Loss Projection Methodology with considering actuarial methods, principles, standards, models, or output ranges that have the potential for improving the accuracy or reliability of hurricane loss projections used in rate filing and probable maximum loss levels. Insurers are prohibited from using in a rate filing a modified or adjusted model, actuarial method, principle, standard, or output range that the commission has found accurate or reliable.

Loss Projection Methodology. This section also specifies that an insurer is not prohibited from using a straight average of model results or output ranges or using straight averages in a rate filing.

Workers' Compensation Retrospective Rating Plans

Section 27 amends s. 627.072, F.S., to allow workers' compensation insurance retrospective rating plans that authorize the employer and insurer to negotiate and determine the retrospective rating factors used to calculate the employer's premium if the employer has exposure in more than one state and an estimated countrywide standard premium of $1 million or more for workers' compensation coverage.

Section 28 contains a technical, conforming change to s. 627.281, F.S.

Repeal of Financial Services Commission Report of Hurricane Risk

Section 29 repeals s. 627.3519, F.S., which requires the Financial Services Commission to annually provide the Legislature a report detailing the aggregate net probable maximum losses, financing options, and potential assessments of the HFCF and Citizens.

Notice of Non-Renewal for Residential Property Insurance Policies

Section 30 amends s. 627.4133, F.S., to reduce to 120 days the advance written notice of nonrenewal, cancellation, or termination an insurer must give the first-named insured of a personal lines or commercial residential property insurance policy.

Insurer Sworn Statement Detailing Liability Coverage and Alleged Defenses

Section 31 amends s. 627.4137, F.S., to authorize the licensed company adjuster of an insurer that provides liability insurance coverage to provide the sworn statement required by current law setting forth the name of the insurer, the name of each insured, the limits of liability coverage, a statement of each policy defense the insurer reasonably believes is available, and a copy of the policy. Current law allows the sworn statement to be provided by the insurer's claims manager or superintendent, or a corporate officer of the insurer.

Electronic Delivery of Personal Lines Insurance Policy Documents

Section 32 amends s. 627.421(1), F.S., to authorize an insurer to allow a policyholder of personal lines insurance to elect electronic delivery of policy documents, rather than delivery by mail. The bill does not alter the requirement that the insurer provide the policy no later than 60 days after the effectuation of coverage.

Notice of Change in Policy Terms Delivered Separately from Notice of Renewal Premium

Section 33 amends s. 627.43131(2), F.S., to allow the Notice of Change in Policy Terms to be sent separately from the Notice of Renewal Premium. If a separate notice is used, it must comply with the nonrenewal mailing time requirement for that particular line of business. Insurers must

also provide or make available electronically to the insured's insurance agent the Notice of Change in Policy Terms before or at the same time the notice is given to the insured.

Dissolution of the Florida Comprehensive Health Association

Sections 34, 35, and 36 require dissolution of the Florida Comprehensive Health Association (FCHA). Coverage for each FCHA policyholder would be terminated on June 30, 2014, or on the date that health insurance coverage is effective with another insurer, whichever is earlier. The FCHA would be required to assist each policyholder in obtaining health insurance coverage, including identification of insurers and HMOs offering coverage and other specified information. The FCHA would be required to provide a written notice to each policyholder by September 1, 2013, regarding termination of their coverage and information on how to obtain other coverage.

The bill specifies that by March 15, 2015, the FCHA must determine the final assessment to be collected from member insurers or, if surplus funds remain, the refund to be provided to insurers based on the same pro-rata formula. The bill specifies the actions the FCHA must take to dissolve the corporation by September 1, 2015, including transfer of all records to DFS as custodian. According to representatives of the FHCA, typical responsibilities would include providing copies of claims records to policyholders. The FCHA would be required to transfer any remaining funds (such as proceeds from the sale of assets) to the Chief Financial Officer for deposit in the General Revenue Fund.

All of the statutes that relate solely to the operations of the FHCA would be repealed, effective October 1, 2015, which is one month later than the September 1, 2015, date that the FCHA must be dissolved.

Mandatory Residential Property Insurance Non –Hurricane Deductibles

Section 37 amends s. 627.701(7), F.S., to require, effective January 1, 2014, each insurer that issues or renews a residential property insurance policy to offer deductibles for non-hurricane losses of $750 and 1 percent of the policy dwelling limits (if the 1 percent deductible is not less than $750).

Beginning July 1, 2018, and every 5 years thereafter, the OIR must calculate and publish an adjustment to the $750 deductible based on the average percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, all items, compiled by the United States Department of Labor. The adjustment to the deductible shall be rounded to the nearest $50 increment and take effect on the January 1 following the publication of the adjustment by the OIR. The first adjusted deductible will take effect for policies issued or renewed on or after January 1, 2019.

The section also deletes the requirement that each insurer notify the insured of the availability of the non-hurricane loss deductibles authorized by this section at least once every 3 years on a form approved by the OIR.

Conflict of Interest Standards for Residential Property Insurance Appraisal Umpires

Section 39 creates s. 627.70151, F.S., to provide conflict of interest standards for appraisers in residential property insurance claims. The insurer or policyholder may challenge impartiality and seek to disqualify the appraisal umpire only if:

- A familial relationship within the third degree exists between the umpire and a party or a representative of a party;
- The umpire previously represented any party or a representative of any party in a professional capacity in the same or a substantially related matter;
- The umpire has represented another person in a professional capacity on the same or a substantially related matter, including the claim, on the same property, or on an adjacent property and that other person's interests are materially adverse to the interests of any party; or
- The umpire has worked as an employer or employee of any party within the preceding 5 years.

Personal Injury Protection Medical Fee Schedule Clarification

Section 42 amends s. 627.736(5)(a), F.S., to clarify that the Personal Injury Protection medical fee schedule that is effective on March 1 of each year applies until the last day of the following February.

Premium Finance Company Return Charges

Section 44 amends s. 627.841, F.S., to specify that a premium finance company may apply the $15 charge for a payment that is declined or cannot be processed due to insufficient funds to debit, credit, and electronic funds transfers.

Non-Resident Risk Retention and Purchasing Group Agents

Section 45 amends s. 627.952, F.S., to delete the requirement that non-resident licensed risk retention and purchasing group insurance agents, in order to place business through Florida eligible surplus lines carriers, must file and maintain a fidelity bond of at least $50,000 in favor of the people of the State of Florida that is issued by an admitted surety company.

Allowing Financial Guaranty Insurance Corporations to Organize as Mutual Insurers

Sections 46 and 47 amend s. 627.972, F.S., to allow a financial guaranty insurance corporation to be organized and licensed as a mutual property and casualty insurer under the Florida Insurance Code. Current law only permits organization as a stock property and casualty insurer. The bill makes a conforming change to s. 627.971, F.S., revising the definition of "financial guaranty insurance corporation" to include a mutual insurer.

Statutory Deposit for Captive Insurers

Section 48 amends s. 628.901(13), F.S., to strike a reference to a satisfactory non-approved reinsurer in the definition of "qualifying reinsurer parent company" in part V of ch. 628, F.S., governing captive insurers.

Expansion of Risks Industrial Insured Captive Insurance Companies May Insure

Section 49 amends s. 628.905, F.S., to allow an industrial insured captive insurance company to insure risks of its stockholders or members, and affiliates thereof, or the stockholders or affiliates of the parent corporation of the captive insurer.

The CS also allows an industrial insured captive insurer with unencumbered capital and surplus of at least $20 million to be licensed to provide workers' compensation and employer's liability insurance in excess of $25 million in the annual aggregate. The captive insurer must maintain unencumbered capital and surplus of at least $20 million to continue writing excess workers' compensation insurance.

Repeal of Captive Insurer Trust Deposit Requirement

Section 51 amends s. 628.909, F.S., to exempt captive insurers from the statutory trust deposit required under s. 624.411, F.S., as a condition of obtaining a certificate of authority to transact insurance.

Sections 50, 52, 53, and 54 make technical amendments to ss. 628.907, 628.9142, 628.915, and 628.917, F.S., related to captive insurers.

Captive Insurers – Risk Management Control by Parent Company

Section 55 amends s. 628.919, F.S., to require a pure captive insurance company to submit to the OIR for approval its standards to ensure a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company. The CS deletes authorization for the Financial Services Commission to adopt rules establishing such standards.

Service Warranty Association Financial Requirements

Section 56 amends s. 634.406, F.S., to revise the requirement that if a service warranty association's premiums to exceed the statutorily required 7-to-1 ratio of gross written premium to net assets, it must maintain net assets of $750,000 and maintain a contractual liability insurance policy that reimburses the service warranty association for 100 percent of its claims liability and is approved by the office. Under the bill, the contractual liability policy may be issued by an affiliate of the warranty association. Additionally, the insurer issuing the policy must either maintain at least a $100 million policyholder surplus or maintain a policyholder

surplus of at least $200 million and issue a policy that complies with the provisions of subsection (3).[35]

Effective Date

Section 57 Except as otherwise expressly provided, 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.

D. Other Constitutional Issues:

Issuance of proof of motor vehicle insurance cards in electronic format implicates the "Plain View Doctrine" of the Fourth Amendment of the United States Constitution. The doctrine provides that when a person voluntarily grants access to an otherwise protected area, evidence discovered in the course of that search is admissible if the evidence discovered in the course of that search is in plain view; the officer discovers evidence, contraband, or a fruit or instrumentality of a crime; and the officer has probable cause to believe that the item is evidence, contraband, or a fruit or instrumentality of a crime.[36]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

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[35] Subsection (3) of s. 634.406, F.S., states that a warranty association need not establish an unearned premium reserve if it purchases contractual liability insurance that covers 100 percent of its claims liability from an authorized insurer. The terms of the policy must contain the following (a) the insurer will pay losses and unearned premium refunds directly to a person making a claim under the warranty association contract in the event the services warranty association does not do so; (b) the insurer must assume full responsibility for administering claims if the warranty association cannot do so; (c) 60 days written notice must be given to the OIR prior to policy cancellation; (4) the policy must insure all service warranty contracts issued while the policy was in effect whether or not the premium has been remitted to the insurer; (e) If the insurer is fulfilling the service warranty covered by the policy and the service warranty holder cancels the warranty, the insurer must fully refund unearned premium, subject to a cancellation fee under s. 634.414, F.S.; and (f) a warranty association may not use an unearned premium reserve and contractual liability insurance policy simultaneously. However, the warranty association may have contractual liability coverage on service warranties previously sold and sell new service warranties covered by the unearned premium reserve, and the converse. The warranty association must be able to distinguish how each individual service warranty is covered.

[36] See *Arizona v. Hicks*, 480 U.S. 321 (1987).

B. Private Sector Impact:

Representatives from the Department of Highway Safety and Motor Vehicles note that "according to the Department's Annual Uniform Traffic Citation statistics, in 2011 there were 353,703 citations issued for no proof of motor vehicle insurance." The use of electronic cards may reduce the number of such citations.

Replacing the mandatory offer of a $500 deductible for non-hurricane losses on a personal lines residential policy with an option for the insurance company to offer a $750 and 1 percent deductible on such losses may result in customers no longer being able to purchase a policy with a $500 deductible from many insurance carriers. Eliminating the requirement to offer a $500 deductible may create efficiencies for some insurers who write in multiple states and generally do not offer such a deductible to their policyholders in other states.

Life expectancy providers will no longer be required to register with the Office and send the Office an actuarial audit every three years.

C. Government Sector Impact:

Representatives from the Department of Highway Safety and Motor Vehicles note that "according to the Department's Annual Uniform Traffic Citation statistics, in 2011 there were 353,703 citations issued for no proof of motor vehicle insurance." The use of electronic cards may reduce the number of such citations.

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 April 2, 2013:
The Committee Substitute makes the following changes to the bill:

- Removes a provision that would prevent the expiration on May 31, 2013, of the exemption of medical malpractice insurance premiums from Florida Hurricane Catastrophe Fund Emergency Assessments;
- Removes a provision that would eliminate the registration requirements for viatical life expectancy providers;
- Revises the criteria for being authorized to inspect boilers;

- Exempts from insurance agency licensure, a licensed agent who is a sole-practitioner and conducts business in his or her own name;
- Exempts from insurance agency licensure branch agencies that transact business under the same name as a licensed insurance agency;
- Revises insurance agency licensure application requirements;
- Allows an insurance agency license to continue in force until cancelled, suspended, revoked or terminated;
- Revises the application for a certificate of authority to be an insurance administrator;
- Allows an insurer to use a qualified third party to conduct required reviews of an insurance administrator;
- Allows annual financial statements of insurance administrators to cover the prior fiscal year;
- Repeals the requirement that surplus lines agents file an affidavit with the Florida Surplus Lines Service Office (FSLSO);
- Includes using a straight average of hurricane model results or output ranges as factors the OIR must consider in a rate filing;
- Increases from 60 days to 180 days the time an insurer is not required to use the newest version of an approved hurricane model;
- Allows workers' compensation insurance retrospective rating plans that provide for negotiation of rating factors between the insurer and employer in specified instances;
- Establishes a uniform 120 day advance written notice of nonrenewal, cancellation, or termination for personal or commercial lines residential property insurance policies;
- Requires dissolution of the Florida Comprehensive Health Association;
- Effective July 1, 2014, eliminates the requirement that an insurer must offer a $500 deductible applicable to losses not caused by a hurricane prior to issuing a personal lines residential policy. Instead, the insurer must offer a $750 deductible and a 1 percent deductible. Effective January 1, 2019, the $750 deductible will be adjusted for inflation in $50 increments every 5 years;
- Removes a provision that would expand the use of separate sinkhole deductibles to all property insurance policies;
- Clarifies that the Personal Injury Protection medical fee schedule applies until the last day of February in the following year;
- Allows application of premium finance company charges for a payment that is declined to debit, credit, and electronic funds transfers;
- Expands the risks industrial insured captive insurance companies may insure; and
- Allows pure captive insurers to develop risk management control standards and submit them to the OIR for approval.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Brandes

597-03465-13 20131046c1

A bill to be entitled

An act relating to insurance; amending s. 316.646, F.S.; authorizing a uniform motor vehicle proof-of-insurance card to be in an electronic format; providing construction with respect to the parameters of a person's consent to access information on an electronic device presented to provide proof of insurance; providing immunity from liability to a law enforcement officer for damage to an electronic device presented to provide proof of insurance; authorizing the Department of Highway Safety and Motor Vehicles to adopt rules; amending s. 320.02, F.S.; authorizing insurers to furnish uniform proof-of-purchase cards in an electronic format for use by insureds to prove the purchase of required insurance coverage when registering a motor vehicle; amending s. 554.1021, F.S.; defining the term "authorized inspection agency"; amending s. 554.107, F.S.; requiring the chief inspector of the state boiler inspection program to issue a certificate of competency as a special inspector to certain individuals; specifying how long such certificate remains in effect; amending s. 554.109, F.S.; authorizing specified insurers to contract with an authorized inspection agency for boiler inspections; requiring such insurers to annually report the identity of contracted authorized inspection agencies to the Department of Financial Services; amending s. 624.413, F.S.; revising a specified time period applicable to a certified

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examination that must be filed by a foreign or alien insurer applying for a certificate of authority; amending s. 626.0428, F.S.; requiring each insurance agency to be under the control of an agent licensed to transact certain lines of insurance; authorizing an agent to be in charge of more than one branch office under certain circumstances; providing requirements relating to the designation of an agent in charge; prohibiting an insurance agency from conducting insurance business at a location without a designated agent in charge; providing a definition for the term "agent in charge"; providing that the designated agent in charge is liable for certain acts of misconduct; providing grounds for the Department of Financial Services to order operations to cease at certain insurance agency locations until an agent in charge is properly designated; amending s. 626.112, F.S.; providing licensure exemptions that allow specified individuals or entities to conduct insurance business at specified locations under certain circumstances; revising licensure requirements and penalties with respect to registered insurance agencies; providing that the registration of an approved registered insurance agency automatically converts to an insurance agency license on a specified date; amending s. 626.172, F.S.; revising requirements relating to applications for insurance agency licenses; conforming provisions to changes made by the act; amending s. 626.321, F.S.; providing that a limited license to

offer motor vehicle rental insurance issued to a business that rents or leases motor vehicles encompasses the employees of such business; amending s. 626.382, F.S.; providing that an insurance agency license continues in force until canceled, suspended, revoked, or terminated; amending s. 626.601, F.S.; revising terminology relating to investigations conducted by the Department of Financial Services and the Office of Insurance Regulation with respect to individuals and entities involved in the insurance industry; repealing s. 626.747, F.S., relating to branch agencies, agents in charge, and the payment of additional county tax under certain circumstances; amending s. 626.8411, F.S.; conforming a cross-reference; amending s. 626.8805, F.S.; revising insurance administrator application requirements; amending s. 626.8817, F.S.; authorizing an insurer's designee to provide certain coverage information to an insurance administrator; authorizing an insurer to subcontract the audit of an insurance administrator; amending s. 626.882, F.S.; prohibiting a person from acting as an insurance administrator without a specific written agreement; amending s. 626.883, F.S.; requiring insurance administrators to furnish fiduciary account records to an insurer's designee; providing that administrator withdrawals from a fiduciary account be made according to specific written agreements; providing that an insurer's designee may authorize payment of claims; amending s.

626.884, F.S.; revising an insurer's right of access to certain administrator records; amending s. 626.89, F.S.; revising the deadline for filing certain financial statements; amending s. 626.931, F.S.; deleting provisions requiring a surplus lines agent to file a quarterly affidavit with the Florida Surplus Lines Service Office; amending s. 626.932, F.S.; revising the due date of surplus lines tax; amending s. 626.935, F.S.; conforming provisions to changes made by the act; amending s. 626.936, F.S.; conforming provisions to changes made by the act; amending s. 627.062, F.S.; requiring the Office of Insurance Regulation to use certain models or straight averages of certain models to estimate hurricane losses when determining whether the rates in a rate filing are excessive, inadequate, or unfairly discriminatory; amending s. 627.0628, F.S.; increasing the length of time during which an insurer must adhere to certain findings made by the Commission on Hurricane Loss Projection Methodology with respect to certain methods, principles, standards, models, or output ranges used in a rate finding; providing that the requirement to adhere to such findings does not limit an insurer from using a straight average of results of certain models or output ranges under specified circumstances; amending s. 627.072, F.S.; authorizing retrospective rating plans relating to workers' compensation and employer's liability insurance to allow negotiations between certain employers and

insurers with respect to rating factors used to calculate premiums; amending s. 627.281, F.S.; conforming a cross-reference; repealing s. 627.3519, F.S., relating to an annual report from the Financial Services Commission to the Legislature of aggregate net probable maximum losses, financing options, and potential assessments of the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation; amending s. 627.4133, F.S.; increasing the amount of prior notice required with respect to the nonrenewal, cancellation, or termination of certain insurance policies; deleting certain provisions that require extended periods of prior notice with respect to the nonrenewal, cancellation, or termination of certain insurance policies; prohibiting the cancellation of certain policies that have been in effect for a specified amount of time except under certain circumstances; amending s. 627.4137, F.S.; adding licensed company adjusters to the list of persons who may respond to a claimant's written request for information relating to liability insurance coverage; amending s. 627.421, F.S.; authorizing the electronic delivery of certain insurance documents; amending s. 627.43141, F.S.; authorizing a notice of change in policy terms to be sent in a separate mailing to an insured under certain circumstances; requiring an insurer to provide such notice to the insured's insurance agent; amending s. 627.6484, F.S.; providing that coverage for each

policyholder of the Florida Comprehensive Health Association terminates on a specified date; requiring the association to provide assistance to policyholders; requiring the association to notify policyholders of termination of coverage and provide information concerning how to obtain other coverage; requiring the association to impose a final assessment or provide a refund to member insurers, sell or dispose of physical assets, perform a final accounting, legally dissolve the association, submit a required report, and transfer all records to the Office of Insurance Regulation; repealing s. 627.64872, F.S., relating to the Florida Health Insurance Plan; providing for the future repeal of ss. 627.648, 627.6482, 627.6484, 627.6486, 627.6488, 627.6489, 627.649, 627.6492, 627.6494, 627.6496, 627.6498, and 627.6499, F.S., relating to the Florida Comprehensive Health Association Act, definitions, termination of enrollment and availability of other coverage, eligibility, the Florida Comprehensive Health Association, the Disease Management Program, the administrator of the health insurance plan, participation of insurers, insurer assessments, deferment, and assessment limitations, issuing of policies, minimum benefits coverage and exclusions, premiums, and deductibles, and reporting by insurers and third-party administrators, respectively; amending s. 627.701, F.S.; revising requirements to issue or renew personal lines residential property insurance

after a certain date; increasing the deductible amount for losses from perils other than hurricane; amending s. 627.7015, F.S.; revising the rulemaking authority of the department with respect to qualifications and specified types of penalties covered under the property insurance mediation program; creating s. 627.70151, F.S.; providing criteria for an insurer or policyholder to challenge the impartiality of a loss appraisal umpire for purposes of disqualifying such umpire; amending s. 627.706, F.S.; revising the definition of the term "neutral evaluator"; amending s. 627.7074, F.S.; requiring the department to adopt rules relating to the certification of neutral evaluators; amending s. 627.736, F.S.; revising the time period for applicability of certain Medicare fee schedules or payment limitations; amending s. 627.745, F.S.; revising qualifications for approval as a mediator by the department; providing grounds for the department to deny an application, or suspend or revoke approval of a mediator or certification of a neutral evaluator; authorizing the department to adopt rules; amending s. 627.841, F.S.; providing that an insurance premium finance company may impose a fee for payments returned due to insufficient funds; amending s. 627.952, F.S.; providing that certain persons who are not residents of this state must be licensed and appointed as nonresident surplus lines agents in this state in order to engage in specified activities with respect to servicing insurance contracts,

certificates, or agreements for purchasing or risk retention groups; deleting a fidelity bond requirement applicable to certain nonresident agents who are licensed as surplus lines agents in another state; amending ss. 627.971 and 627.972, F.S.; including licensed mutual insurers in financial guaranty insurance corporations; amending s. 628.901, F.S.; revising the definition of terms applicable to captive insurers; amending s. 628.905, F.S.; authorizing an industrial insured captive insurance company to write workers compensation and employer liability insurance in excess of a certain amount under certain conditions; conforming provisions to changes made by the act; redesignating the Office of Insurance Regulation instead of the Insurance Commissioner as the collector of certain fees and issuer of licenses; amending s. 628.907, F.S.; conforming provisions to changes made by the act; amending s. 628.909, F.S.; providing for applicability of certain provisions of the Insurance Code to specified captive insurers; conforming provisions to changes made by the act; amending s. 628.9142, F.S.; conforming provisions to changes made by the act; amending s. 628.915, F.S.; conforming provisions to changes made by the act; amending s. 628.917, F.S.; conforming provisions to changes made by the act; amending s. 628.919, F.S.; requiring a pure captive insurance company to submit certain risk management standards to the Office of Insurance Regulation; amending s. 634.406, F.S.;

revising criteria authorizing premiums of certain service warranty associations to exceed their specified net assets limitations; revising requirements relating to contractual liability policies that insure warranty associations; providing an effective date.

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

Section 1. Subsection (1) of section 316.646, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

316.646 Security required; proof of security and display thereof; dismissal of cases.—

(1) A ~~Any~~ person required by s. 324.022 to maintain property damage liability security, required by s. 324.023 to maintain liability security for bodily injury or death, or required by s. 627.733 to maintain personal injury protection security on a motor vehicle shall have in his or her immediate possession at all times while operating such motor vehicle proper proof of maintenance of the required security. Such proof shall be a uniform proof-of-insurance card, in paper or electronic format, in a form prescribed by the department, a valid insurance policy, an insurance policy binder, a certificate of insurance, or such other proof as may be prescribed by the department. If a person presents an electronic device to a law enforcement officer for the purpose of displaying a proof-of-insurance card in an electronic format:

(a) The person presenting the device is not deemed to

consent to access to any information on the electronic device other than the displayed proof-of-insurance card.

(b) The law enforcement officer is not liable for damage to the electronic device.

(5) The department may adopt rules to implement this section.

Section 2. Paragraph (a) of subsection (5) of section 320.02, Florida Statutes, is amended to read:

320.02 Registration required; application for registration; forms.—

(5)(a) Proof that personal injury protection benefits have been purchased when required under s. 627.733, that property damage liability coverage has been purchased as required under s. 324.022, that bodily injury or death coverage has been purchased if required under s. 324.023, and that combined bodily liability insurance and property damage liability insurance have been purchased when required under s. 627.7415 shall be provided in the manner prescribed by law by the applicant at the time of application for registration of any motor vehicle that is subject to such requirements. The issuing agent shall refuse to issue registration if such proof of purchase is not provided. Insurers shall furnish uniform proof-of-purchase cards, in paper or electronic format, in a form prescribed by the department and shall include the name of the insured’s insurance company, the coverage identification number, and the make, year, and vehicle identification number of the vehicle insured. The card must ~~shall~~ contain a statement notifying the applicant of the penalty specified in s. 316.646(4). The card or insurance policy, insurance policy binder, or certificate of insurance or a

photocopy of any of these; an affidavit containing the name of the insured's insurance company, the insured's policy number, and the make and year of the vehicle insured; or such other proof as may be prescribed by the department constitutes ~~shall constitute~~ sufficient proof of purchase. If an affidavit is provided as proof, it must ~~shall~~ be in substantially the following form:

Under penalty of perjury, I ...(Name of insured)... do hereby certify that I have ...(Personal Injury Protection, Property Damage Liability, and, when required, Bodily Injury Liability)... Insurance currently in effect with ...(Name of insurance company)... under ...(policy number)... covering ...(make, year, and vehicle identification number of vehicle).... ...(Signature of Insured)...

Such affidavit shall include the following warning:

WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN A VEHICLE REGISTRATION CERTIFICATE IS A CRIMINAL OFFENSE UNDER FLORIDA LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT IS SUBJECT TO PROSECUTION.

When an application is made through a licensed motor vehicle dealer as required in s. 319.23, the original or a photostatic copy of such card, insurance policy, insurance policy binder, or certificate of insurance or the original affidavit from the insured shall be forwarded by the dealer to the tax collector of the county or the Department of Highway Safety and Motor

Vehicles for processing. By executing the aforesaid affidavit, no licensed motor vehicle dealer will be liable in damages for any inadequacy, insufficiency, or falsification of any statement contained therein. A card shall also indicate the existence of any bodily injury liability insurance voluntarily purchased.

Section 3. Subsection (8) is added to section 554.1021, Florida Statutes, to read:

554.1021 Definitions.—As used in ss. 554.1011-554.115:

(8) "Authorized inspection agency" means:

(a) A county, city, town, or other governmental subdivision that has adopted and administers, at a minimum, Section I of the A.S.M.E. Boiler and Pressure Vessel Code as a legal requirement and whose inspectors hold valid certificates of competency in accordance with s. 554.113; or

(b) An insurance company that is licensed or registered by an appropriate authority of any state of the United States or province of Canada and whose inspectors hold valid certificates of competency in accordance with s. 554.113.

Section 4. Section 554.107, Florida Statutes, is amended to read:

554.107 Special inspectors.—

(1) Upon application by ~~any~~ an authorized inspection agency ~~company licensed to insure boilers in this state~~, the chief inspector shall issue a certificate of competency as a special inspector to an ~~any~~ inspector employed by the agency if he or she ~~company, provided that such inspector~~ satisfies the competency requirements for inspectors as provided in s. 554.113.

(2) The certificate of competency of a special inspector

remains ~~shall remain~~ in effect only so long as the special inspector is employed by an authorized inspection agency ~~a company licensed to insure boilers in this state~~. Upon termination of employment with such agency ~~company~~, a special inspector shall, in writing, notify the chief inspector of such termination. Such notice shall be given within 15 days following the date of termination.

Section 5. Subsection (1) of section 554.109, Florida Statutes, is amended to read:

554.109 Exemptions.—

(1) An ~~Any~~ insurance company that insures ~~insuring~~ a boiler located in a public assembly location in this state shall inspect or contract with an authorized inspection agency to inspect such boiler ~~so insured,~~ and shall annually report to the department the identity of the authorized inspection agency that performs a required boiler inspection on behalf of the company. A ~~any~~ county, city, town, or other governmental subdivision that ~~which~~ has adopted into law the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers and the National Board Inspection Code for the construction, installation, inspection, maintenance, and repair of boilers, regulating such boilers in public assembly locations, shall inspect such boilers so regulated; provided that such inspection shall be conducted by a special inspector licensed pursuant to ss. 554.1011-554.115. Upon filing of a report of satisfactory inspection with the department, such boiler is exempt from inspection by the department.

Section 6. Paragraph (f) of subsection (1) of section 624.413, Florida Statutes, is amended to read:

624.413 Application for certificate of authority.—

(1) To apply for a certificate of authority, an insurer shall file its application therefor with the office, upon a form adopted by the commission and furnished by the office, showing its name; location of its home office and, if an alien insurer, its principal office in the United States; kinds of insurance to be transacted; state or country of domicile; and such additional information as the commission reasonably requires, together with the following documents:

(f) If a foreign or alien insurer, a copy of the report of the most recent examination of the insurer certified by the public official having supervision of insurance in its state of domicile or of entry into the United States. The end of the most recent year covered by the examination must be within the 5-year ~~3-year~~ period preceding the date of application. In lieu of the certified examination report, the office may accept an audited certified public accountant's report prepared on a basis consistent with the insurance laws of the insurer's state of domicile, certified by the public official having supervision of insurance in its state of domicile or of entry into the United States.

Section 7. Subsection (4) is added to section 626.0428, Florida Statutes, to read:

626.0428 Agency personnel powers, duties, and limitations.—

(4)(a) Each place of business established by an agent or agency, firm, corporation, or association must be in the active full-time charge of a licensed and appointed agent holding the required agent licenses to transact the lines of insurance being handled at the location.

(b) Notwithstanding paragraph (a), the licensed agent in charge of an insurance agency may also be the agent in charge of additional branch office locations of the agency if insurance activities requiring licensure as an insurance agent do not occur at any location when the agent is not physically present and unlicensed employees at the location do not engage in insurance activities requiring licensure as an insurance agent or customer representative.

(c) An insurance agency and each branch place of business of an insurance agency shall designate an agent in charge and file the name and license number of the agent in charge and the physical address of the insurance agency location with the department at the department's designated website. The designation of the agent in charge may be changed at the option of the agency. A change of the designated agent in charge is effective upon notification to the department, which shall be provided within 30 days after such change.

(d) For the purposes of this subsection, an "agent in charge" is the licensed and appointed agent who is responsible for the supervision of all individuals within an insurance agency location, regardless of whether such individuals deal with the general public in the solicitation or negotiation of insurance contracts or the collection or accounting of moneys.

(e) An agent in charge of an insurance agency is accountable for wrongful acts, misconduct, or violations of provisions of this code committed by the agent or by any person under his or her supervision while acting on behalf of the agency. This section may not be construed to render the agent in charge criminally liable for an act unless he or she personally

committed or knew or should have known of the act and of the facts constituting a violation of this chapter.

(f) An insurance agency location may not conduct the business of insurance unless the agency designates an agent in charge at all times. If the agency fails to update the designation of the agent in charge within 90 days after the date of a change in designation, the department shall automatically revoke the agency's license.

Section 8. Subsection (7) of section 626.112, Florida Statutes, is amended to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents.—

(7)(a) ~~Effective October 1, 2006,~~ No individual, firm, partnership, corporation, association, or any other entity shall act in its own name or under a trade name, directly or indirectly, as an insurance agency, unless it complies with s. 626.172 with respect to possessing an insurance agency license for each place of business at which it engages in an ~~any~~ activity that ~~which~~ may be performed only by a licensed insurance agent. However, an insurance agency that is owned and operated by a single licensed agent conducting business in his or her individual name and not employing or otherwise using the services of or appointing other licensees is exempt from the agency licensing requirements of this subsection. A branch place of business that is established by a licensed agency is considered a branch agency and is not required to be licensed so long as it transacts business under the same name and federal tax identification number as the licensed agency and has

designated a licensed agent in charge of the location as required by s. 626.0428 and the address and telephone number of the location have been submitted to the department for inclusion in the licensing record of the licensed agency within 30 days after insurance transactions begin at the location ~~Each agency engaged in business in this state before January 1, 2003, which is wholly owned by insurance agents currently licensed and appointed under this chapter, each incorporated agency whose voting shares are traded on a securities exchange, each agency designated and subject to supervision and inspection as a branch office under the rules of the National Association of Securities Dealers, and each agency whose primary function is offering insurance as a service or member benefit to members of a nonprofit corporation may file an application for registration in lieu of licensure in accordance with s. 626.172(3). Each agency engaged in business before October 1, 2006, shall file an application for licensure or registration on or before October 1, 2006.~~

(b) ~~1.~~ If an agency is required to be licensed but fails to file an application for licensure in accordance with this section, the department shall impose on the agency an administrative penalty in an amount of up to $10,000.

~~2. If an agency is eligible for registration but fails to file an application for registration or an application for licensure in accordance with this section, the department shall impose on the agency an administrative penalty in an amount of up to $5,000.~~

(c) ~~(b)~~ Effective October 1, 2013, the department must automatically convert the registration of an approved ~~a~~

registered insurance agency to ~~shall, as a condition precedent to continuing business, obtain~~ an insurance agency license ~~if the department finds that, with respect to any majority owner, partner, manager, director, officer, or other person who manages or controls the agency, any person has:~~

~~1. Been found guilty of, or has pleaded guilty or nolo contendere to, a felony in this state or any other state relating to the business of insurance or to an insurance agency, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the cases.~~

~~2. Employed any individual in a managerial capacity or in a capacity dealing with the public who is under an order of revocation or suspension issued by the department. An insurance agency may request, on forms prescribed by the department, verification of any person's license status. If a request is mailed within 5 working days after an employee is hired, and the employee's license is currently suspended or revoked, the agency shall not be required to obtain a license, if the unlicensed person's employment is immediately terminated.~~

~~3. Operated the agency or permitted the agency to be operated in violation of s. 626.747.~~

~~4. With such frequency as to have made the operation of the agency hazardous to the insurance-buying public or other persons:~~

~~a. Solicited or handled controlled business. This subparagraph shall not prohibit the licensing of any lending or financing institution or creditor, with respect to insurance only, under credit life or disability insurance policies of borrowers from the institutions, which policies are subject to~~

~~part IX of chapter 627.~~

~~b. Misappropriated, converted, or unlawfully withheld moneys belonging to insurers, insureds, beneficiaries, or others and received in the conduct of business under the license.~~

~~c. Unlawfully rebated, attempted to unlawfully rebate, or unlawfully divided or offered to divide commissions with another.~~

~~d. Misrepresented any insurance policy or annuity contract, or used deception with regard to any policy or contract, done either in person or by any form of dissemination of information or advertising.~~

~~e. Violated any provision of this code or any other law applicable to the business of insurance in the course of dealing under the license.~~

~~f. Violated any lawful order or rule of the department.~~

~~g. Failed or refused, upon demand, to pay over to any insurer he or she represents or has represented any money coming into his or her hands belonging to the insurer.~~

~~h. Violated the provision against twisting as defined in s. 626.9541(1)(l).~~

~~i. In the conduct of business, engaged in unfair methods of competition or in unfair or deceptive acts or practices, as prohibited under part IX of this chapter.~~

~~j. Willfully overinsured any property insurance risk.~~

~~k. Engaged in fraudulent or dishonest practices in the conduct of business arising out of activities related to insurance or the insurance agency.~~

~~l. Demonstrated lack of fitness or trustworthiness to engage in the business of insurance arising out of activities~~

~~related to insurance or the insurance agency.~~

~~m. Authorized or knowingly allowed individuals to transact insurance who were not then licensed as required by this code.~~

~~5. Knowingly employed any person who within the preceding 3 years has had his or her relationship with an agency terminated in accordance with paragraph (d).~~

~~6. Willfully circumvented the requirements or prohibitions of this code.~~

Section 9. Subsections (2), (3), and (4) of section 626.172, Florida Statutes, are amended to read:

626.172 Application for insurance agency license.—

(2) An application for an insurance agency license must ~~shall~~ be signed by the owner or owners of the agency. If the agency is incorporated, the application must ~~shall~~ be signed by the president and secretary of the corporation. The application for an insurance agency license must ~~shall~~ include:

(a) The name of each majority owner, partner, officer, and director of the insurance agency.

(b) The residence address of each person required to be listed in the application under paragraph (a).

(c) The name of the insurance agency, ~~and~~ its principal business street address and a valid e-mail address of the insurance agency.

(d) The physical address ~~location~~ of each branch agency, including its name, e-mail address, and telephone number and the date that the branch location began transacting insurance ~~office and the name under which each agency office conducts or will conduct business~~.

(e) The name of each agent to be in full-time charge of an

agency office and specification of which office, including branch locations.

(f) The fingerprints of each of the following:

1. A sole proprietor;

2. Each partner;

3. Each owner of an unincorporated agency;

4. Each owner who directs or participates in the management or control of an incorporated agency whose shares are not traded on a securities exchange;

5. The president, senior vice presidents, treasurer, secretary, and directors of the agency; and

6. Any other person who directs or participates in the management or control of the agency, whether through the ownership of voting securities, by contract, by ownership of agency bank accounts, or otherwise.

Fingerprints must be taken by a law enforcement agency or other entity approved by the department and must be accompanied by the fingerprint processing fee specified in s. 624.501. Fingerprints must ~~shall~~ be processed in accordance with s. 624.34. However, fingerprints need not be filed for an ~~any~~ individual who is currently licensed and appointed under this chapter. This paragraph does not apply to corporations whose voting shares are traded on a securities exchange.

(g) Such additional information as the department requires by rule to ascertain the trustworthiness and competence of persons required to be listed on the application and to ascertain that such persons meet the requirements of this code. However, the department may not require that credit or character

reports be submitted for persons required to be listed on the application.

(h) ~~Beginning October 1, 2005,~~ The department must ~~shall~~ accept the uniform application for nonresident agency licensure. The department may adopt by rule revised versions of the uniform application.

~~(3) The department shall issue a registration as an insurance agency to any agency that files a written application with the department and qualifies for registration. The application for registration shall require the agency to provide the same information required for an agency licensed under subsection (2), the agent identification number for each owner who is a licensed agent, proof that the agency qualifies for registration as provided in s. 626.112(7), and any other additional information that the department determines is necessary in order to demonstrate that the agency qualifies for registration. The application must be signed by the owner or owners of the agency. If the agency is incorporated, the application must be signed by the president and the secretary of the corporation. An agent who owns the agency need not file fingerprints with the department if the agent obtained a license under this chapter and the license is currently valid.~~

~~(a) If an application for registration is denied, the agency must file an application for licensure no later than 30 days after the date of the denial of registration.~~

~~(b) A registered insurance agency must file an application for licensure no later than 30 days after the date that any person who is not a licensed and appointed agent in this state acquires any ownership interest in the agency. If an agency~~

~~fails to file an application for licensure in compliance with this paragraph, the department shall impose an administrative penalty in an amount of up to $5,000 on the agency.~~

~~(c) Sections 626.6115 and 626.6215 do not apply to agencies registered under this subsection.~~

(3)~~(4)~~ The department must ~~shall~~ issue a license ~~or registration~~ to each agency upon approval of the application, and each agency location must ~~shall~~ display the license ~~or registration~~ prominently in a manner that makes it clearly visible to a ~~any~~ customer or potential customer who enters the agency.

Section 10. Paragraph (d) 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 applicant a license as agent authorized to transact a limited class of business in any of the following categories of limited lines insurance:

(d) *Motor vehicle rental insurance.*—

1. License covering only insurance of the risks set forth in this paragraph when offered, sold, or solicited with and incidental to the rental or lease of a motor vehicle and which applies only to the motor vehicle that is the subject of the lease or rental agreement and the occupants of the motor vehicle:

a. Excess motor vehicle liability insurance providing coverage in excess of the standard liability limits provided by the lessor in the lessor's lease to a person renting or leasing a motor vehicle from the licensee's employer for liability

arising in connection with the negligent operation of the leased or rented motor vehicle.

b. Insurance covering the liability of the lessee to the lessor for damage to the leased or rented motor vehicle.

c. Insurance covering the loss of or damage to baggage, personal effects, or travel documents of a person renting or leasing a motor vehicle.

d. Insurance covering accidental personal injury or death of the lessee and any passenger who is riding or driving with the covered lessee in the leased or rented motor vehicle.

2. Insurance under a motor vehicle rental insurance license may be issued only if the lease or rental agreement is for no more than 60 days, the lessee is not provided coverage for more than 60 consecutive days per lease period, and the lessee is given written notice that his or her personal insurance policy providing coverage on an owned motor vehicle may provide coverage of such risks and that the purchase of the insurance is not required in connection with the lease or rental of a motor vehicle. If the lease is extended beyond 60 days, the coverage may be extended one time only for a period not to exceed an additional 60 days. Insurance may be provided to the lessee as an additional insured on a policy issued to the licensee's employer.

3. The license may be issued only to the full-time salaried employee of a licensed general lines agent or to a business entity that offers motor vehicles for rent or lease if insurance sales activities authorized by the license are in connection with and incidental to the rental or lease of a motor vehicle.

a. A license issued to a business entity that offers motor

vehicles for rent or lease encompasses each office, branch office, employee, or place of business making use of the entity's business name in order to offer, solicit, and sell insurance pursuant to this paragraph.

b. The application for licensure must list the name, address, and phone number for each office, branch office, or place of business that is to be covered by the license. The licensee shall notify the department of the name, address, and phone number of any new location that is to be covered by the license before the new office, branch office, or place of business engages in the sale of insurance pursuant to this paragraph. The licensee must notify the department within 30 days after closing or terminating an office, branch office, or place of business. Upon receipt of the notice, the department shall delete the office, branch office, or place of business from the license.

c. A licensed and appointed entity is directly responsible and accountable for all acts of the licensee's employees.

Section 11. Section 626.382, Florida Statutes, is amended to read:

626.382 Continuation, expiration of license; insurance agencies.—An insurance agency license continues ~~The license of any insurance agency shall be issued for a period of 3 years and shall continue~~ in force until it is canceled, suspended, revoked, or otherwise terminated. ~~A license may be renewed by submitting a renewal request to the department on a form adopted by department rule.~~

Section 12. Section 626.601, Florida Statutes, is amended to read:

626.601 Improper conduct; inquiry; fingerprinting.—

(1) The department or office may, upon its own motion or upon a written complaint signed by an ~~any~~ interested person and filed with the department or office, inquire into any alleged improper conduct of a ~~any~~ licensed, approved, or certified insurance agency, agent, adjuster, service representative, managing general agent, customer representative, title insurance agent, title insurance agency, mediator, neutral evaluator, continuing education course provider, instructor, school official, or monitor group under this code. The department or office may thereafter initiate an investigation of ~~any~~ such individual or entity ~~licensee~~ if it has reasonable cause to believe that the individual or entity ~~licensee~~ has violated any provision of the insurance code. During the course of its investigation, the department or office shall contact the individual or entity ~~licensee~~ being investigated unless it determines that contacting such individual or entity ~~person~~ could jeopardize the successful completion of the investigation or cause injury to the public.

(2) In the investigation by the department or office of the alleged misconduct, the individual or entity ~~licensee~~ shall, whenever so required by the department or office, cause the individual's or entity's ~~his or her~~ books and records to be open for inspection for the purpose of such inquiries.

(3) The complaints against an individual or entity ~~any licensee~~ may be informally alleged and are not required to include language ~~need not be in any such language as is~~ necessary to charge a crime on an indictment or information.

(4) The expense for ~~any~~ hearings or investigations

conducted under this law, as well as the fees and mileage of witnesses, may be paid out of the appropriate fund.

(5) If the department or office, after investigation, has reason to believe that an individual ~~a licensee~~ may have been found guilty of or pleaded guilty or nolo contendere to a felony or a crime related to the business of insurance in this or any other state or jurisdiction, the department or office may require the individual ~~licensee~~ to file with the department or office a complete set of his or her fingerprints, which must ~~shall~~ be accompanied by the fingerprint processing fee set forth in s. 624.501. The fingerprints shall be taken by an authorized law enforcement agency or other department-approved entity.

(6) The complaint and ~~any~~ information obtained pursuant to the investigation by the department or office are confidential and are exempt from ~~the provisions of~~ s. 119.07, unless the department or office files a formal administrative complaint, emergency order, or consent order against the individual or entity ~~licensee~~. ~~Nothing in~~ This subsection does not ~~shall be construed to~~ prevent the department or office from disclosing the complaint or such information as it deems necessary to conduct the investigation, to update the complainant as to the status and outcome of the complaint, or to share such information with a ~~any~~ law enforcement agency.

Section 13. Section 626.747, Florida Statutes, is repealed.

Section 14. Paragraph (b) of subsection (1) of section 626.8411, Florida Statutes, is amended to read:

626.8411 Application of Florida Insurance Code provisions to title insurance agents or agencies.—

(1) The following provisions of part II applicable to

general lines agents or agencies also apply to title insurance agents or agencies:

(b) Section 626.0428(4)(a) and (b) ~~626.747~~, relating to branch agencies.

Section 15. Paragraph (c) of subsection (2) and subsection (3) of section 626.8805, Florida Statutes, is amended to read:

626.8805 Certificate of authority to act as administrator.—

(2) The administrator shall file with the office an application for a certificate of authority upon a form to be adopted by the commission and furnished by the office, which application shall include or have attached the following information and documents:

(c) The names, addresses, official positions, and professional qualifications of the individuals who are employed or retained by the administrator and who are responsible for the conduct of the affairs of the administrator, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, and the principal officers in the case of a corporation or~~,~~ the partners or members in the case of a partnership or association of the administrator~~, and any other person who exercises control or influence over the affairs of the administrator~~.

(3) The applicant shall make available for inspection by the office copies of all contracts relating to services provided by the administrator to ~~with~~ insurers or other persons utilizing the services of the administrator.

Section 16. Subsections (1) and (3) of section 626.8817, Florida Statutes, are amended to read:

626.8817 Responsibilities of insurance company with respect

to administration of coverage insured.—

(1) If an insurer uses the services of an administrator, the insurer is responsible for determining the benefits, premium rates, underwriting criteria, and claims payment procedures applicable to the coverage and for securing reinsurance, if any. The rules pertaining to these matters shall be provided~~,~~ in writing~~,~~ by the insurer, or its designee, to the administrator. The responsibilities of the administrator as to any of these matters shall be set forth in a ~~the~~ written agreement binding upon ~~between~~ the administrator and the insurer.

(3) In cases in which an administrator administers benefits for more than 100 certificateholders on behalf of an insurer, the insurer shall, at least semiannually, conduct a review of the operations of the administrator. At least one such review must be an onsite audit of the operations of the administrator. The insurer may contract with a qualified third party to conduct such examination.

Section 17. Subsections (1) and (4) of section 626.882, Florida Statutes, are amended to read:

626.882 Agreement between administrator and insurer; required provisions; maintenance of records.—

(1) A ~~No~~ person may not act as an administrator without a written agreement, as required under s. 626.8817, which specifies the rights, duties and obligations of the ~~between such person as~~ administrator and ~~an~~ insurer.

(4) If a policy is issued to a trustee or trustees, a copy of the trust agreement and any amendments to that agreement shall be furnished to the insurer or its designee by the administrator and shall be retained as part of the official

records of both the administrator and the insurer for the duration of the policy and for 5 years thereafter.

Section 18. Subsections (3), (4), and (5) of section 626.883, Florida Statutes, are amended to read:

626.883 Administrator as intermediary; collections held in fiduciary capacity; establishment of account; disbursement; payments on behalf of insurer.—

(3) If charges or premiums deposited in a fiduciary account have been collected on behalf of or for more than one insurer, the administrator shall keep records clearly recording the deposits in and withdrawals from such account on behalf of or for each insurer. The administrator shall, upon request of an insurer or its designee, furnish such insurer with copies of records pertaining to deposits and withdrawals on behalf of or for such insurer.

(4) The administrator may not pay a ~~any~~ claim by withdrawals from a fiduciary account. Withdrawals from such account shall be made as provided in the written agreement required under ss. 626.8817 and 626.882 ~~between the administrator and the insurer~~ for any of the following:

(a) Remittance to an insurer entitled to such remittance.

(b) Deposit in an account maintained in the name of such insurer.

(c) Transfer to and deposit in a claims-paying account, with claims to be paid as provided by such insurer.

(d) Payment to a group policyholder for remittance to the insurer entitled to such remittance.

(e) Payment to the administrator of the commission, fees, or charges of the administrator.

(f) Remittance of return premium to the person or persons entitled to such return premium.

(5) All claims paid by the administrator from funds collected on behalf of the insurer shall be paid only on drafts of, and as authorized by, such insurer or its designee.

Section 19. Subsection (3) of section 626.884, Florida Statutes, is amended to read:

626.884 Maintenance of records by administrator; access; confidentiality.—

(3) The insurer shall retain the right of continuing access to books and records maintained by the administrator sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement pertaining to ~~between the insurer and the administrator on~~ the proprietary rights of the parties in such books and records.

Section 20. Subsections (1) and (2) of section 626.89, Florida Statutes, are amended to read:

626.89 Annual financial statement and filing fee; notice of change of ownership.—

(1) Each authorized administrator shall file with the office a full and true statement of its financial condition, transactions, and affairs. The statement shall be filed annually on or before April ~~March~~ 1 or within such extension of time therefor as the office for good cause may have granted and shall be for the preceding calendar year or fiscal year, if the administrator's accounting is on a fiscal year basis. The statement shall be in such form and contain such matters as the commission prescribes and shall be verified by at least two

officers of such administrator. ~~An administrator whose sole stockholder is an association representing health care providers which is not an affiliate of an insurer, an administrator of a pooled governmental self-insurance program, or an administrator that is a university may submit the preceding fiscal year's statement within 2 months after its fiscal year end.~~

(2) Each authorized administrator shall also file an audited financial statement performed by an independent certified public accountant. The audited financial statement shall be filed with the office on or before July ~~June~~ 1 for the preceding calendar or fiscal year ~~ending December 31~~. ~~An administrator whose sole stockholder is an association representing health care providers which is not an affiliate of an insurer, an administrator of a pooled governmental self-insurance program, or an administrator that is a university may submit the preceding fiscal year's audited financial statement within 5 months after the end of its fiscal year.~~ An audited financial statement prepared on a consolidated basis must include a columnar consolidating or combining worksheet that must be filed with the statement and must comply with the following:

(a) Amounts shown on the consolidated audited financial statement must be shown on the worksheet;

(b) Amounts for each entity must be stated separately; and

(c) Explanations of consolidating and eliminating entries must be included.

Section 21. Section 626.931, Florida Statutes, is amended to read:

626.931 ~~Agent affidavit and~~ Insurer reporting

requirements.—

~~(1) Each surplus lines agent shall on or before the 45th day following each calendar quarter file with the Florida Surplus Lines Service Office an affidavit, on forms as prescribed and furnished by the Florida Surplus Lines Service Office, stating that all surplus lines insurance transacted by him or her during such calendar quarter has been submitted to the Florida Surplus Lines Service Office as required.~~

~~(2) The affidavit of the surplus lines agent shall include efforts made to place coverages with authorized insurers and the results thereof.~~

(1)~~(3)~~ Each foreign insurer accepting premiums shall, on or before the end of the month following each calendar quarter, file with the Florida Surplus Lines Service Office a verified report of all surplus lines insurance transacted by such insurer for insurance risks located in this state during such calendar quarter.

(2)~~(4)~~ Each alien insurer accepting premiums shall, on or before June 30 of each year, file with the Florida Surplus Lines Service Office a verified report of all surplus lines insurance transacted by such insurer for insurance risks located in this state during the preceding calendar year.

(3)~~(5)~~ The department may waive the filing requirements described in subsections (1) ~~(3)~~ and (2) ~~(4)~~.

(4)~~(6)~~ Each insurer's report and supporting information shall be in a computer-readable format as determined by the Florida Surplus Lines Service Office or shall be submitted on forms prescribed by the Florida Surplus Lines Service Office and shall show for each applicable agent:

(a) A listing of all policies, certificates, cover notes, or other forms of confirmation of insurance coverage or any substitutions thereof or endorsements thereto and the identifying number; and

(b) Any additional information required by the department or Florida Surplus Lines Service Office.

Section 22. Paragraph (a) of subsection (2) of section 626.932, Florida Statutes, is amended to read:

626.932 Surplus lines tax.—

(2)(a) The surplus lines agent shall make payable to the department the tax related to each calendar quarter's business as reported to the Florida Surplus Lines Service Office, and remit the tax to the Florida Surplus Lines Service Office on or before the 45th day following each calendar quarter ~~at the same time as provided for the filing of the quarterly affidavit, under s. 626.931~~. The Florida Surplus Lines Service Office shall forward to the department the taxes and any interest collected pursuant to paragraph (b), within 10 days after ~~of~~ receipt.

Section 23. Subsection (1) of section 626.935, Florida Statutes, is amended to read:

626.935 Suspension, revocation, or refusal of surplus lines agent's license.—

(1) The department shall deny an application for, suspend, revoke, or refuse to renew the appointment of a surplus lines agent and all other licenses and appointments held by the licensee under this code, on any of the following grounds:

(a) Removal of the licensee's office from the licensee's state of residence.

(b) Removal of the accounts and records of his or her

surplus lines business from this state or the licensee's state of residence during the period when such accounts and records are required to be maintained under s. 626.930.

(c) Closure of the licensee's office for more than 30 consecutive days.

~~(d) Failure to make and file his or her affidavit or reports when due as required by s. 626.931.~~

(d)~~(e)~~ Failure to pay the tax or service fee on surplus lines premiums, as provided in the Surplus Lines Law.

(e)~~(f)~~ Suspension, revocation, or refusal to renew or continue the license or appointment as a general lines agent, service representative, or managing general agent.

(f)~~(g)~~ Lack of qualifications as for an original surplus lines agent's license.

(g)~~(h)~~ Violation of this Surplus Lines Law.

(h)~~(i)~~ For any other applicable cause for which the license of a general lines agent could be suspended, revoked, or refused under s. 626.611 or s. 626.621.

Section 24. Subsection (1) of section 626.936, Florida Statutes, is amended to read:

626.936 Failure to file reports or pay tax or service fee; administrative penalty.—

(1) A ~~Any~~ licensed surplus lines agent who neglects to file a report ~~or an affidavit~~ in the form and within the time required or provided for in the Surplus Lines Law may be fined up to $50 per day for each day the neglect continues, beginning the day after the report ~~or affidavit~~ was due until the date the report ~~or affidavit~~ is received. All sums collected under this section shall be deposited into the Insurance Regulatory Trust

Fund.

Section 25. Paragraph (b) of subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(b) Upon receiving a rate filing, the office shall review the filing to determine if a rate is excessive, inadequate, or unfairly discriminatory. In making that determination, the office shall, in accordance with generally accepted and reasonable actuarial techniques, consider the following factors:

1. Past and prospective loss experience within and without this state.

2. Past and prospective expenses.

3. The degree of competition among insurers for the risk insured.

4. Investment income reasonably expected by the insurer, consistent with the insurer's investment practices, from investable premiums anticipated in the filing, plus any other expected income from currently invested assets representing the amount expected on unearned premium reserves and loss reserves. The commission may adopt rules using reasonable techniques of actuarial science and economics to specify the manner in which insurers calculate investment income attributable to classes of insurance written in this state and the manner in which investment income is used to calculate insurance rates. Such manner must contemplate allowances for an underwriting profit factor and full consideration of investment income which produce a reasonable rate of return; however, investment income from invested surplus may not be considered.

5. The reasonableness of the judgment reflected in the filing.

6. Dividends, savings, or unabsorbed premium deposits allowed or returned to Florida policyholders, members, or subscribers.

7. The adequacy of loss reserves.

8. The cost of reinsurance. The office may not disapprove a rate as excessive solely due to the insurer having obtained catastrophic reinsurance to cover the insurer's estimated 250-year probable maximum loss or any lower level of loss.

9. Trend factors, including trends in actual losses per insured unit for the insurer making the filing.

10. Conflagration and catastrophe hazards, if applicable.

11. Projected hurricane losses, if applicable, which must be estimated using a model or method, or a straight average of model results or output ranges, independently found to be acceptable or reliable by the Florida Commission on Hurricane Loss Projection Methodology, and as further provided in s. 627.0628.

12. A reasonable margin for underwriting profit and contingencies.

13. The cost of medical services, if applicable.

14. Other relevant factors that affect the frequency or severity of claims or expenses.

Section 26. Paragraph (d) of subsection (3) of section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.—

(3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

(d) With respect to a rate filing under s. 627.062, an insurer shall employ and may not modify or adjust actuarial methods, principles, standards, models, or output ranges found by the commission to be accurate or reliable in determining hurricane loss factors for use in a rate filing under s. 627.062. An insurer shall employ and may not modify or adjust models found by the commission to be accurate or reliable in determining probable maximum loss levels pursuant to paragraph (b) with respect to a rate filing under s. 627.062 made more than 180 ~~60~~ days after the commission has made such findings. This paragraph does not prohibit an insurer from using a straight average of model results or output ranges or using straight averages for the purposes of a rate filing under s. 627.062.

Section 27. Present subsections (2) through (4) of section 627.072, Florida Statutes, are renumbered as subsections (3) through (5), respectively, and a new subsection (2) is added to that section, to read:

627.072 Making and use of rates.—

(2) A retrospective rating plan may contain a provision that allows negotiation between the employer and the insurer to determine the retrospective rating factors used to calculate the premium for employers that have exposure in more than one state and an estimated annual countrywide standard premium of $1 million or more for workers' compensation.

Section 28. Subsection (2) of section 627.281, Florida Statutes, is amended to read:

627.281 Appeal from rating organization; workers'

compensation and employer's liability insurance filings.—

(2) If such appeal is based upon the failure of the rating organization to make a filing on behalf of such member or subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in s. 627.072(3) ~~627.072(2)~~, from the system of expense provisions included in a filing made by the rating organization, the office shall, if it grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal, the office shall apply the applicable standards set forth in ss. 627.062 and 627.072.

Section 29. Section 627.3519, Florida Statutes, is repealed.

Section 30. Paragraph (b) of subsection (2) of section 627.4133, Florida Statutes, is amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(2) With respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner's, mobile home owner's, farmowner's, condominium association, condominium unit owner's, apartment building, or other policy covering a residential structure or its contents:

(b) The insurer shall give the first-named insured written notice of nonrenewal, cancellation, or termination at least 120 ~~100~~ days before the effective date of the nonrenewal, cancellation, or termination. ~~However, the insurer shall give at least 100 days' written notice, or written notice by June 1, whichever is earlier, for any nonrenewal, cancellation, or~~

~~termination that would be effective between June 1 and November 30.~~ The notice must include the reason or reasons for the nonrenewal, cancellation, or termination, except that:

~~1. The insurer shall give the first-named insured written notice of nonrenewal, cancellation, or termination at least 120 days prior to the effective date of the nonrenewal, cancellation, or termination for a first-named insured whose residential structure has been insured by that insurer or an affiliated insurer for at least a 5-year period immediately prior to the date of the written notice.~~

1.~~2.~~ If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor must be given. As used in this subparagraph, the term "nonpayment of premium" means failure of the named insured to discharge when due her or his obligations for ~~in connection with~~ the payment of premiums on a policy or an ~~any~~ installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under a ~~any~~ premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is

sent to the applicant by certified mail or registered mail.~~, and~~ If the contract is void, any premium received by the insurer from a third party must be refunded to that party in full.

2.~~3.~~ If ~~such~~ cancellation or termination occurs during the first 90 days the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor must be given unless there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer.

3. After the policy has been in effect for 90 days, the policy may not be canceled by the insurer unless there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days after the date of effectuation of coverage, a substantial change in the risk covered by the policy, or the cancellation is for all insureds under such policies for a given class of insureds. This subparagraph does not apply to individually rated risks having a policy term of less than 90 days.

~~4. The requirement for providing written notice by June 1 of any nonrenewal that would be effective between June 1 and November 30 does not apply to the following situations, but the insurer remains subject to the requirement to provide such notice at least 100 days before the effective date of nonrenewal:~~

~~a. A policy that is nonrenewed due to a revision in the coverage for sinkhole losses and catastrophic ground cover~~

~~collapse pursuant to s. 627.706.~~

4.~~b.~~ A policy that is nonrenewed by Citizens Property Insurance Corporation, pursuant to s. 627.351(6), for a policy that has been assumed by an authorized insurer offering replacement coverage to the policyholder is exempt from the notice requirements of paragraph (a) and this paragraph. In such cases, the corporation must give the named insured written notice of nonrenewal at least 45 days before the effective date of the nonrenewal.

~~After the policy has been in effect for 90 days, the policy may not be canceled by the insurer unless there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days after the date of effectuation of coverage, or a substantial change in the risk covered by the policy or if the cancellation is for all insureds under such policies for a given class of insureds. This paragraph does not apply to individually rated risks having a policy term of less than 90 days.~~

5. Notwithstanding any other provision of law, an insurer may cancel or nonrenew a property insurance policy after at least 45 days' notice if the office finds that the early cancellation of some or all of the insurer's policies is necessary to protect the best interests of the public or policyholders and the office approves the insurer's plan for early cancellation or nonrenewal of some or all of its policies. The office may base such finding upon the financial condition of the insurer, lack of adequate reinsurance coverage for hurricane risk, or other relevant factors. The office may condition its

finding on the consent of the insurer to be placed under administrative supervision pursuant to s. 624.81 or to the appointment of a receiver under chapter 631.

6. A policy covering both a home and motor vehicle may be nonrenewed for any reason applicable to ~~either~~ the property or motor vehicle insurance after providing 90 days' notice.

Section 31. Subsection (1) of section 627.4137, Florida Statutes, is amended to read:

627.4137 Disclosure of certain information required.—

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

(a) The name of the insurer.

(b) The name of each insured.

(c) The limits of the liability coverage.

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

(e) A copy of the policy.

In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, shall disclose the name and coverage of each known insurer to the claimant and shall forward such request for information as

required by this subsection to all affected insurers. The insurer shall then supply the information required in this subsection to the claimant within 30 days after ~~of~~ receipt of such request.

Section 32. Subsection (1) of section 627.421, Florida Statutes, is amended to read:

627.421 Delivery of policy.—

(1) Subject to the insurer's requirement as to payment of premium, every policy shall be mailed or delivered to the insured or to the person entitled thereto not later than 60 days after the effectuation of coverage. Notwithstanding any other provision of law, an insurer may allow a policyholder of personal lines insurance to affirmatively elect delivery of the policy documents, including, but not limited to, policies, endorsements, notices, or documents, by electronic means in lieu of delivery by mail.

Section 33. Subsection (2) of section 627.43141, Florida Statutes, is amended to read:

627.43141 Notice of change in policy terms.—

(2) A renewal policy may contain a change in policy terms. If a renewal policy contains ~~does contain~~ such change, the insurer must give the named insured written notice of the change, which may either ~~must~~ be enclosed along with the written notice of renewal premium required by ss. 627.4133 and 627.728 or sent in a separate notice that complies with the nonrenewal mailing time requirement for that particular line of business. The insurer must also provide a sample copy of the notice to the insured's insurance agent before or at the same time that notice is given to the insured. Such notice shall be entitled "Notice

of Change in Policy Terms."

Section 34. Section 627.6484, Florida Statutes, is amended to read:

627.6484 Dissolution of association; termination of enrollment; availability of other coverage.—

(1) The association shall accept applications for insurance only until June 30, 1991, after which date no further applications may be accepted. ~~Upon receipt of an application for insurance, the association shall issue coverage for an eligible applicant. When appropriate, the administrator shall forward a copy of the application to a market assistance plan created by the office, which shall conduct a diligent search of the private marketplace for a carrier willing to accept the application.~~

(2) Coverage for each policyholder of the association terminates at midnight, June 30, 2014, or on the date that health insurance coverage is effective with another insurer, whichever occurs first, and such coverage may not be renewed.

(3) The association shall provide assistance to each policyholder concerning how to obtain health insurance coverage. Such assistance must include:

(a) The identification of insurers and health maintenance organizations offering coverage in the individual market, including coverage inside and outside of the Health Insurance Exchange;

(b) A basic explanation of the levels of coverage available; and

(c) Specific information relating to local and online sources from which a policyholder may obtain detailed policy and premium comparisons and directly obtain coverage.

(4) The association shall provide written notice to all policyholders by September 1, 2013, which informs each policyholder with respect to:

(a) The date that coverage with the association is terminated and that such coverage may not be renewed.

(b) The opportunity for the policyholder to obtain individual health insurance coverage on a guaranteed-issue basis, regardless of policyholder's health status, from a health insurer or health maintenance organization that offers coverage in the individual market, including the dates of open enrollment periods for obtaining such coverage.

(c) How to access coverage through the Health Insurance Exchange established for this state pursuant to the Patient Protection and Affordable Care Act and the potential for obtaining reduced premiums and cost-sharing provisions depending on the policyholder's family income level.

(d) Contact information for a representative of the association who is able to provide additional information about obtaining individual health insurance coverage both inside and outside of the Health Insurance Exchange.

(5) After termination of coverage, the association must continue to receive and process timely submitted claims in accordance with the laws of this state.

(6) By March 15, 2015, the association shall determine the final assessment to be collected from insurers for funding claims and administrative expenses of the association or, if surplus funds remain, shall determine the refund amount to be provided to each insurer based on the same pro rata formula used for determining each insurer's assessment.

(7) By September 1, 2015, the board must:

(a) Complete performance of all program responsibilities.

(b) Sell or otherwise dispose of all physical assets of the association.

(c) Make a final accounting of the finances of the association.

(d) Transfer all records to the Office of Insurance Regulation, which shall serve as custodian of such records.

(e) Execute a legal dissolution of the association and report such action to the Chief Financial Officer, the Insurance Commissioner, the President of the Senate, and the Speaker of the House of Representatives.

~~(2) The office shall, after consultation with the health insurers licensed in this state, adopt a market assistance plan to assist in the placement of risks of Florida Comprehensive Health Association applicants. All health insurers and health maintenance organizations licensed in this state shall participate in the plan.~~

~~(3) Guidelines for the use of such program shall be a part of the association's plan of operation. The guidelines shall describe which types of applications are to be exempt from submission to the market assistance plan. An exemption shall be based upon a determination that due to a specific health condition an applicant is ineligible for coverage in the standard market. The guidelines shall also describe how the market assistance plan is to be conducted, and how the periodic reviews to depopulate the association are to be conducted.~~

~~(4) If a carrier is found through the market assistance plan, the individual shall apply to that company. If the~~

~~individual's application is accepted, association coverage shall terminate upon the effective date of the coverage with the private carrier. For the purpose of applying a preexisting condition limitation or exclusion, any carrier accepting a risk pursuant to this section shall provide coverage as if it began on the date coverage was effectuated on behalf of the association, and shall be indemnified by the association for claims costs incurred as a result of utilizing such effective date.~~

~~(5) The association shall establish a policyholder assistance program by July 1, 1991, to assist in placing eligible policyholders in other coverage programs, including Medicare and Medicaid.~~

Section 35. Section 627.64872, Florida Statutes, is repealed.

Section 36. Effective October 1, 2015, sections 627.648, 627.6482, 627.6484, 627.6486, 627.6488, 627.6489, 627.649, 627.6492, 627.6494, 627.6496, 627.6498, and 627.6499, Florida Statutes, are repealed.

Section 37. Subsection (7) of section 627.701, Florida Statutes, is amended to read:

627.701 Liability of insureds; coinsurance; deductibles.—

(7) Before ~~Prior to~~ issuing a personal lines residential property insurance policy on or after January 1, 2014 ~~April 1, 1997~~, or before ~~prior to~~ the first renewal of a residential property insurance policy on or after January 1, 2014 ~~April 1, 1997~~, the insurer must, at a minimum, offer a deductible equal to $750 and a deductible equal to 1 percent of the policy dwelling limits if such amount is not less than $750, ~~$500~~

applicable to losses from perils other than hurricane. Beginning July 1, 2018, and every 5 years thereafter, the office shall calculate and publish an adjustment to the $750 deductible based on the average percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average, all items, compiled by the United States Department of Labor for the immediately preceding 5 calendar years. The adjustment to the $750 deductible shall be rounded to the nearest $50 increment and take effect on the January 1 following the publication of the adjustment by the office. The first initial adjusted deductible shall take effect upon the renewal or issuance of policies on or after January 1, 2019 ~~The insurer must provide the policyholder with notice of the availability of the deductible specified in this subsection in a form approved by the office at least once every 3 years. The failure to provide such notice constitutes a violation of this code but does not affect the coverage provided under the policy.~~ An insurer may require a higher deductible only as part of a deductible program lawfully in effect on June 1, 1996, or as part of a similar deductible program.

Section 38. Paragraph (b) of subsection (4) of section 627.7015, Florida Statutes, is amended to read:

627.7015 Alternative procedure for resolution of disputed property insurance claims.—

(4) The department shall adopt by rule a property insurance mediation program to be administered by the department or its designee. The department may also adopt special rules which are applicable in cases of an emergency within the state. The rules shall be modeled after practices and procedures set forth in mediation rules of procedure adopted by the Supreme Court. The

rules shall provide for:

(b) Qualifications, denial of application, suspension, revocation, and other penalties for ~~of~~ mediators as provided in s. 627.745 and in the Florida Rules of Certified and Court Appointed Mediators~~, and for such other individuals as are qualified by education, training, or experience as the department determines to be appropriate~~.

Section 39. Section 627.70151, Florida Statutes, is created to read:

627.70151 Appraisal; conflicts of interest.—An insurer that offers residential coverage, as defined in s. 627.4025, or a policyholder that uses an appraisal clause in the property insurance contract to establish a process of estimating or evaluating the amount of the loss through the use of an impartial umpire may challenge the umpire's impartiality and disqualify the proposed umpire only if:

(1) A familial relationship within the third degree exists between the umpire and any party or a representative of any party;

(2) The umpire has previously represented any party or a representative of any party in a professional capacity in the same or a substantially related matter;

(3) The umpire has represented another person in a professional capacity on the same or a substantially related matter, which includes the claim, same property, or an adjacent property and that other person's interests are materially adverse to the interests of any party; or

(4) The umpire has worked as an employer or employee of any party within the preceding 5 years.

Section 40. Paragraph (c) of subsection (2) of section 627.706, Florida Statutes, is amended to read:

627.706 Sinkhole insurance; catastrophic ground cover collapse; definitions.—

(2) As used in ss. 627.706-627.7074, and as used in connection with any policy providing coverage for a catastrophic ground cover collapse or for sinkhole losses, the term:

(c) "Neutral evaluator" means a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution designed or approved by the department for use in the neutral evaluation process, ~~and~~ who is determined by the department to be fair and impartial, and who is not otherwise ineligible for certification as provided in s. 627.7074.

Section 41. Subsection (1) of section 627.7074, Florida Statutes, is amended to read:

627.7074 Alternative procedure for resolution of disputed sinkhole insurance claims.—

(1) The department shall:

(a) Certify and maintain a list of persons who are neutral evaluators.

(b) Adopt rules for certifying, denying certification, suspending certification, and revoking certification as a neutral evaluator, in keeping with qualifications specified in this section and ss. 627.706 and 627.745(4).

(c)~~(b)~~ Prepare a consumer information pamphlet for distribution by insurers to policyholders which clearly describes the neutral evaluation process and includes information necessary for the policyholder to request a neutral

evaluation.

Section 42. Paragraph (a) of subsection (5) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

(a) A physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge the insurer and injured party only a reasonable amount pursuant to this section for the services and supplies rendered, and the insurer providing such coverage may pay for such charges directly to such person or institution lawfully rendering such treatment if the insured receiving such treatment or his or her guardian has countersigned the properly completed invoice, bill, or claim form approved by the office upon which such charges are to be paid for as having actually been rendered, to the best knowledge of the insured or his or her guardian. However, such a charge may not exceed the amount the person or institution customarily charges for like services or supplies. In determining whether a charge for a particular service, treatment, or otherwise is reasonable, consideration may be given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute, reimbursement levels in the community and various federal and state medical fee schedules applicable to motor vehicle and other insurance coverages, and other information relevant to the reasonableness of the reimbursement for the service, treatment, or supply.

1. The insurer may limit reimbursement to 80 percent of the following schedule of maximum charges:

a. For emergency transport and treatment by providers licensed under chapter 401, 200 percent of Medicare.

b. For emergency services and care provided by a hospital licensed under chapter 395, 75 percent of the hospital's usual and customary charges.

c. For emergency services and care as defined by s. 395.002 provided in a facility licensed under chapter 395 rendered by a physician or dentist, and related hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community.

d. For hospital inpatient services, other than emergency services and care, 200 percent of the Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services.

e. For hospital outpatient services, other than emergency services and care, 200 percent of the Medicare Part A Ambulatory Payment Classification for the specific hospital providing the outpatient services.

f. For all other medical services, supplies, and care, 200 percent of the allowable amount under:

(I) The participating physicians fee schedule of Medicare Part B, except as provided in sub-sub-subparagraphs (II) and (III).

(II) Medicare Part B, in the case of services, supplies, and care provided by ambulatory surgical centers and clinical laboratories.

(III) The Durable Medical Equipment Prosthetics/Orthotics

and Supplies fee schedule of Medicare Part B, in the case of durable medical equipment.

However, if such services, supplies, or care is not reimbursable under Medicare Part B, as provided in this sub-subparagraph, the insurer may limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under s. 440.13 and rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.

2. For purposes of subparagraph 1., the applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect on March 1 of the year in which the services, supplies, or care is rendered and for the area in which such services, supplies, or care is rendered, and the applicable fee schedule or payment limitation applies from March 1 until the last day of the following February ~~throughout the remainder of that year~~, notwithstanding any subsequent change made to the fee schedule or payment limitation, except that it may not be less than the allowable amount under the applicable schedule of Medicare Part B for 2007 for medical services, supplies, and care subject to Medicare Part B.

3. Subparagraph 1. does not allow the insurer to apply any limitation on the number of treatments or other utilization limits that apply under Medicare or workers' compensation. An insurer that applies the allowable payment limitations of subparagraph 1. must reimburse a provider who lawfully provided

care or treatment under the scope of his or her license, regardless of whether such provider is entitled to reimbursement under Medicare due to restrictions or limitations on the types or discipline of health care providers who may be reimbursed for particular procedures or procedure codes. However, subparagraph 1. does not prohibit an insurer from using the Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers, to determine the appropriate amount of reimbursement for medical services, supplies, or care if the coding policy or payment methodology does not constitute a utilization limit.

4. If an insurer limits payment as authorized by subparagraph 1., the person providing such services, supplies, or care may not bill or attempt to collect from the insured any amount in excess of such limits, except for amounts that are not covered by the insured's personal injury protection coverage due to the coinsurance amount or maximum policy limits.

5. Effective July 1, 2012, an insurer may limit payment as authorized by this paragraph only if the insurance policy includes a notice at the time of issuance or renewal that the insurer may limit payment pursuant to the schedule of charges specified in this paragraph. A policy form approved by the office satisfies this requirement. If a provider submits a charge for an amount less than the amount allowed under subparagraph 1., the insurer may pay the amount of the charge submitted.

Section 43. Subsection (3) of section 627.745, Florida Statutes, is amended, present subsections (4) and (5) of that section are renumbered as subsections (5) and (6), respectively,

and a new subsection (4) is added to that section, to read:

627.745 Mediation of claims.—

(3)(a) The department shall approve mediators to conduct mediations pursuant to this section. All mediators must file an application under oath for approval as a mediator.

(b) To qualify for approval as a mediator, an individual ~~a person~~ must meet one of the following qualifications:

1. Possess an active certification as a Florida Circuit Court Mediator. A Florida Circuit Court Mediator in a lapsed, suspended, or decertified status is not eligible to participate in the mediation program ~~a masters or doctorate degree in psychology, counseling, business, accounting, or economics, be a member of The Florida Bar, be licensed as a certified public accountant, or demonstrate that the applicant for approval has been actively engaged as a qualified mediator for at least 4 years prior to July 1, 1990~~.

2. Be an approved department mediator as of July 1, 2013, and have conducted at least one mediation on behalf of the department within 4 years immediately preceding that ~~the~~ date ~~the application for approval is filed with the department, have completed a minimum of a 40-hour training program approved by the department and successfully passed a final examination included in the training program and approved by the department~~. ~~The training program shall include and address all of the following:~~

~~a. Mediation theory.~~

~~b. Mediation process and techniques.~~

~~c. Standards of conduct for mediators.~~

~~d. Conflict management and intervention skills.~~

~~c. Insurance nomenclature.~~

(4) The department shall deny an application, or suspend or revoke its approval of a mediator or its certification of a neutral evaluator to serve in such capacity, if it finds that any of the following grounds exist:

(a) Lack of one or more of the qualifications specified in this section for approval or certification.

(b) Material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain the approval or certification.

(c) Demonstrated lack of fitness or trustworthiness to act as a mediator or neutral evaluator.

(d) Fraudulent or dishonest practices in the conduct of mediation or neutral evaluation or in the conduct of business in the financial services industry.

(e) Violation of any provision of this code, a lawful order or rule of the department, the Florida Rules for Certified and Court-Appointed Mediators, or aiding, instructing, or encouraging another party in committing such a violation.

The department may adopt rules to administer this subsection.

Section 44. Subsection (4) of section 627.841, Florida Statutes, is amended to read:

627.841 Delinquency, collection, cancellation, and payment ~~check~~ return charge ~~charges~~; attorney ~~attorney's~~ fees.—

(4) In the event that a payment is made to a premium finance company by debit, credit, electronic funds transfer, check, or draft and such payment ~~the instrument~~ is returned, declined, or cannot be processed due to ~~because of~~ insufficient funds ~~to pay it~~, the premium finance company may, if the premium

finance agreement so provides, impose a return payment charge of $15.

Section 45. Paragraph (b) of subsection (1) of section 627.952, Florida Statutes, is amended to read:

627.952 Risk retention and purchasing group agents.—

(1) Any person offering, soliciting, selling, purchasing, administering, or otherwise servicing insurance contracts, certificates, or agreements for any purchasing group or risk retention group to a ~~any~~ resident of this state, either directly or indirectly, by the use of mail, advertising, or other means of communication, shall obtain a license and appointment to act as a resident general lines agent, if a resident of this state, or a nonresident general lines agent if not a resident. Any such person shall be subject to all requirements of the Florida Insurance Code.

(b) A ~~Any~~ person required to be licensed and appointed under this subsection, in order to place business through Florida eligible surplus lines carriers, must, if a resident of this state, be licensed and appointed as a surplus lines agent. If not a resident of this state, such person must be licensed and appointed as a nonresident surplus lines agent in this ~~her or his~~ state ~~of residence and file and maintain a fidelity bond in favor of the people of the State of Florida executed by a surety company admitted in this state and payable to the State of Florida; however, such nonresident is limited to the provision of insurance for purchasing groups~~. ~~The bond must be continuous in form and in the amount of not less than $50,000, aggregate liability. The bond must remain in force and effect until the surety is released from liability by the department or~~

~~until the bond is canceled by the surety. The surety may cancel the bond and be released from further liability upon 30 days' prior written notice to the department. The cancellation does not affect any liability incurred or accrued before the termination of the 30 day period. Upon receipt of a notice of cancellation, the department shall immediately notify the agent.~~

Section 46. Subsection (6) of section 627.971, Florida Statutes, is amended to read:

627.971 Definitions.—As used in this part:

(6) "Financial guaranty insurance corporation" means a stock or mutual insurer licensed to transact financial guaranty insurance business in this state.

Section 47. Subsection (1) of section 627.972, Florida Statutes, is amended to read:

627.972 Organization; financial requirements.—

(1) A financial guaranty insurance corporation must be organized and licensed in the manner prescribed in this code for stock or mutual property and casualty insurers except that:

(a) A corporation organized to transact financial guaranty insurance may, subject to the provisions of this code, be licensed to transact:

1. Residual value insurance, as defined by s. 624.6081;

2. Surety insurance, as defined by s. 624.606;

3. Credit insurance, as defined by s. 624.605(1)(i); and

4. Mortgage guaranty insurance as defined in s. 635.011, provided that the provisions of chapter 635 are met.

(b)1. Before ~~Prior to~~ the issuance of a license, a corporation must submit to the office for approval~~,~~ a plan of operation detailing:

a. The types and projected diversification of guaranties to be issued;

b. The underwriting procedures to be followed;

c. The managerial oversight methods;

d. The investment policies; and

e. ~~Any~~ Other matters prescribed by the office;

2. An insurer which is writing only the types of insurance allowed under this part on July 1, 1988, and otherwise meets the requirements of this part, is exempt from the requirements of this paragraph.

(c) An insurer transacting financial guaranty insurance is subject to all provisions of this code that are applicable to property and casualty insurers to the extent that those provisions are not inconsistent with this part.

(d) The investments of an insurer transacting financial guaranty insurance in an ~~any~~ entity insured by the corporation may not exceed 2 percent of its admitted assets as of the end of the prior calendar year.

(e) An insurer transacting financial guaranty insurance may only assume those lines of insurance for which it is licensed to write direct business.

Section 48. Subsections (8), (9), and (13) of section 628.901, Florida Statutes, are amended to read:

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

(8) "Industrial insured" means an insured that:

(a) Has gross assets in excess of $50 million;

(b) Procures insurance through the use of a full-time employee of the insured who acts as an insurance manager or buyer or through the services of a person licensed as a property

and casualty insurance agent, broker, or consultant in such person's state of domicile;

(c) Has at least 100 full-time employees; and

(d) Pays annual premiums of at least $200,000 for each line of insurance purchased from the industrial insured captive insurance company ~~insurer~~ or at least $75,000 for any line of coverage in excess of at least $25 million in the annual aggregate. The purchase of umbrella or general liability coverage in excess of $25 million in the annual aggregate shall be deemed to be the purchase of a single line of insurance.

(9) "Industrial insured captive insurance company" means a ~~captive insurance~~ company that provides insurance only to the industrial insureds that are its stockholders or members, and affiliates thereof, or to the stockholders, and affiliates thereof, of its parent corporation. An industrial insured captive insurance company can also provide reinsurance to insurers only on risks written by such insurers for the industrial insureds that are the stockholders or members, and affiliates thereof, of the industrial insured captive insurance company ~~insurer~~, or the stockholders, and affiliates thereof, of the parent corporation of the industrial insured captive insurance company ~~insurer~~.

(13) "Qualifying reinsurer parent company" means a reinsurer that ~~which~~ currently holds a certificate of authority~~,~~ ~~letter of eligibility~~ or is an accredited or trusteed under s. 624.610(3)(c) ~~a satisfactory non approved~~ reinsurer in this state possessing a consolidated GAAP net worth of at least $500 million and a consolidated debt to total capital ratio of not greater than 0.50.

Section 49. Subsections (1), (2), (4), and (5) of section 628.905, Florida Statutes, are amended to read:

628.905 Licensing; authority.—

(1) A captive insurance company ~~insurer~~, if permitted by its charter or articles of incorporation, may apply to the office for a license to do any and all insurance authorized under the insurance code, other than workers' compensation and employer's liability, life, health, personal motor vehicle, and personal residential property insurance, except that:

(a) A pure captive insurance company may not insure ~~any~~ risks other than those of its parent, affiliated companies, controlled unaffiliated businesses, or a combination thereof.

(b) An industrial insured captive insurance company may not insure ~~any~~ risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies, or its stockholders or members, and affiliates thereof, of the industrial insured captive, or the stockholders or affiliates of the parent corporation of the industrial insured captive insurance company.

(c) A special purpose captive insurance company may insure only the risks of its parent.

(d) A captive insurance company may not accept or cede reinsurance except as provided in this part.

(e) An industrial insured captive insurance company with unencumbered capital and surplus of at least $20 million may be licensed to provide workers' compensation and employer's liability insurance in excess of $25 million in the annual aggregate. An industrial insured captive insurance company must maintain unencumbered capital and surplus of at least $20

million to continue to write excess workers' compensation insurance.

(2) To conduct insurance business in this state, a captive insurance company ~~insurer~~ must:

(a) Obtain from the office a license authorizing it to conduct insurance business in this state;

(b) Hold at least one board of directors' meeting each year in this state;

(c) Maintain its principal place of business in this state; and

(d) Appoint a resident registered agent to accept service of process and to otherwise act on its behalf in this state. In the case of a captive insurance company formed as a corporation or a nonprofit corporation, if the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the Chief Financial Officer of this state must be an agent of the captive insurance company upon whom ~~any~~ process, notice, or demand may be served.

(4) A captive insurance company or captive reinsurance company must pay to the office a nonrefundable fee of $1,500 for processing its application for license.

(a) A captive insurance company or captive reinsurance company must also pay an annual renewal fee of $1,000.

(b) The office may charge a fee of $5 for a ~~any~~ document requiring certification of authenticity or the signature of the office ~~commissioner or his or her designee~~.

(5) If the office ~~commissioner~~ is satisfied that the documents and statements filed by the captive insurance company comply with this chapter, the office ~~commissioner~~ may grant a

license authorizing the company to conduct insurance business in this state until the next succeeding March 1, at which time the license may be renewed.

Section 50. Subsection (1) of section 628.907, Florida Statutes, is amended to read:

628.907 Minimum capital and net assets requirements; restriction on payment of dividends.—

(1) A captive insurance company ~~insurer~~ may not be issued a license unless it possesses and thereafter maintains unimpaired paid-in capital of:

(a) In the case of a pure captive insurance company, at least $100,000.

(b) In the case of an industrial insured captive insurance company incorporated as a stock insurer, at least $200,000.

(c) In the case of a special purpose captive insurance company, an amount determined by the office after giving due consideration to the company's business plan, feasibility study, and pro forma financial statements and projections, including the nature of the risks to be insured.

Section 51. Section 628.909, Florida Statutes, is amended to read:

628.909 Applicability of other laws.—

(1) The Florida Insurance Code does not apply to captive insurance companies ~~insurers~~ or industrial insured captive insurance companies ~~insurers~~ except as provided in this part and subsections (2) and (3).

(2) The following provisions of the Florida Insurance Code apply to captive insurance companies ~~insurers~~ who are not industrial insured captive insurance companies ~~insurers~~ to the

extent that such provisions are not inconsistent with this part:

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.411, 624.425, and 624.426.

(b) Chapter 625, part II.

(c) Chapter 626, part IX.

(d) Sections 627.730-627.7405, when no-fault coverage is provided.

(e) Chapter 628.

(3) The following provisions of the Florida Insurance Code apply to industrial insured captive insurance companies ~~insurers~~ to the extent that such provisions are not inconsistent with this part:

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.411, 624.425, 624.426, and 624.609(1).

(b) Chapter 625, part II, if the industrial insured captive insurance companies ~~insurer~~ is incorporated in this state.

(c) Chapter 626, part IX.

(d) Sections 627.730-627.7405 when no-fault coverage is provided.

(e) Chapter 628, except for ss. 628.341, 628.351, and 628.6018.

Section 52. Subsection (2) of section 628.9142, Florida Statutes, is amended to read:

628.9142 Reinsurance; effect on reserves.—

(2) A captive insurance company may take credit for reserves on risks or portions of risks ceded to authorized insurers or reinsurers and unauthorized insurers or reinsurers complying with s. 624.610. A captive insurance company ~~insurer~~ may not take credit for reserves on risks or portions of risks

ceded to an unauthorized insurer or reinsurer if the insurer or reinsurer is not in compliance with s. 624.610.

Section 53. Section 628.915, Florida Statutes, is amended to read:

628.915 Exemption from compulsory association.—

(1) A ~~No~~ captive insurance company may not ~~insurer shall be permitted to~~ join or contribute financially to a ~~any~~ joint underwriting association or guaranty fund in this state, and a ~~, nor shall any~~ captive insurance company ~~insurer~~, its insured, or its parent or any affiliated company may not receive any benefit from any such joint underwriting association or guaranty fund for claims arising out of the operations of such captive insurer.

(2) An ~~No~~ industrial insured captive insurance company may not ~~insurer shall be permitted to~~ join or contribute financially to any joint underwriting association or guaranty fund in this state; nor shall any industrial insured captive insurance company ~~insurer~~, its industrial insured, or its parent or any affiliated company receive any benefit from any such joint underwriting association or guaranty fund for claims arising out of the operations of such industrial insured captive insurance company ~~insurer~~.

Section 54. Section 628.917, Florida Statutes, is amended to read:

628.917 Insolvency and liquidation.—In the event that a captive insurance company ~~insurer~~ is insolvent as defined in chapter 631, the office shall liquidate the captive insurance company ~~insurer~~ pursuant to the provisions of part I of chapter 631.~~; except that~~ The office may not ~~shall make no~~ attempt to

rehabilitate such insurer.

Section 55. Section 628.919, Florida Statutes, is amended to read:

628.919 Standards to ensure risk management control by parent company.—A pure captive insurance company shall submit to the office for approval ~~The Financial Services Commission shall adopt rules establishing~~ standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company.

Section 56. Subsection (8) of section 634.406, Florida Statutes, is renumbered as subsection (7), and present subsections (6) and (7) of that section are amended, to read:

634.406 Financial requirements.—

(6) An association that ~~which~~ holds a license under this part ~~and which does not hold any other license under this chapter~~ may allow its premiums for service warranties written under this part to exceed the ratio to net assets limitations of this section if the association meets all of the following:

(a) Maintains net assets of at least $750,000.

(b) Utilizes a contractual liability insurance policy approved by the office which:

1. Reimburses the service warranty association for 100 percent of its claims liability and is issued by an insurer that maintains a policyholder surplus of at least $100 million; or

2. Complies with the requirements of subsection (3) and is issued by an insurer that maintains a policyholder surplus of at least $200 million.

(c) The insurer issuing the contractual liability insurance

policy:

~~1. Maintains a policyholder surplus of at least $100 million.~~

1.~~2.~~ Is rated "A" or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the office.

~~3. Is in no way affiliated with the warranty association.~~

2.~~4.~~ In conjunction with the warranty association's filing of the quarterly and annual reports, provides, on a form prescribed by the commission, a statement certifying the gross written premiums in force reported by the warranty association and a statement that all of the warranty association's gross written premium in force is covered under the contractual liability policy, whether or not it has been reported.

~~(7) A contractual liability policy must insure 100 percent of an association's claims exposure under all of the association's service warranty contracts, wherever written, unless all of the following are satisfied:~~

~~(a) The contractual liability policy contains a clause that specifically names the service warranty contract holders as sole beneficiaries of the contractual liability policy and claims are paid directly to the person making a claim under the contract;~~

~~(b) The contractual liability policy meets all other requirements of this part, including subsection (3) of this section, which are not inconsistent with this subsection;~~

~~(c) The association has been in existence for at least 5 years or the association is a wholly owned subsidiary of a corporation that has been in existence and has been licensed as a service warranty association in the state for at least 5~~

~~years, and:~~

~~1. Is listed and traded on a recognized stock exchange; is listed in NASDAQ (National Association of Security Dealers Automated Quotation system) and publicly traded in the over-the-counter securities market; is required to file either of Form 10-K, Form 100, or Form 20-G with the United States Securities and Exchange Commission; or has American Depository Receipts listed on a recognized stock exchange and publicly traded or is the wholly owned subsidiary of a corporation that is listed and traded on a recognized stock exchange; is listed in NASDAQ (National Association of Security Dealers Automated Quotation system) and publicly traded in the over the counter securities market; is required to file Form 10-K, Form 100, or Form 20-G with the United States Securities and Exchange Commission; or has American Depository Receipts listed on a recognized stock exchange and is publicly traded;~~

~~2. Maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service;~~

~~3. Has and maintains at all times a minimum net worth of not less than $10 million as evidenced by audited financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles and submitted to the office annually; and~~

~~4. Is authorized to do business in this state; and~~

~~(d) The insurer issuing the contractual liability policy:~~

~~1. Maintains and has maintained for the preceding 5 years, policyholder surplus of at least $100 million and is rated "A" or higher by A.M. Best Company or has an equivalent rating by another rating company acceptable to the office;~~

~~2. Holds a certificate of authority to do business in this state and is approved to write this type of coverage; and~~

~~3. Acknowledges to the office quarterly that it insures all of the association's claims exposure under contracts delivered in this state.~~

~~If all the preceding conditions are satisfied, then the scope of coverage under a contractual liability policy shall not be required to exceed an association's claims exposure under service warranty contracts delivered in this state.~~

Section 57. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

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 Appropriations Subcommittee on General Government

BILL:	CS/SB 1080
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Evers
SUBJECT:	Public Construction Projects
DATE:	April 16, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	**Fav/CS**
2.	Toman	Yeatman	CA	**Fav/1 amendment**
3.	Betta	DeLoach	AGG	**Favorable**
4.			AP	
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
	X	Significant amendments were recommended

I. Summary:

CS/SB 1080 clarifies that a state agency constructing new buildings or renovating existing buildings is required to select a sustainable building rating system or national model green building code, and the selection is made for each building or renovation. In addition, the bill requires all state agencies, when constructing public bridges, buildings and other structures, to use lumber, timber, and other forest products produced and manufactured in Florida if such products are available, and their price, fitness, and quality are equal. This tiebreaker preference does not apply to transportation projects for which federal aid funds are available, in either local or state construction contracting.

The bill as filed has no fiscal impact; the preference for Florida produced or manufactured lumber and timber products only applies if the price for those products is equal to that of such products not produced in Florida.

The traveling amendment from the Community Affairs Committee (Barcode 453686) has an insignificant fiscal impact to the Department of Business and Professional Regulation that can be handled within existing resources.

This bill substantially amends sections 255.20, 255.257, and 255.2575 of the Florida Statutes.

II. Present Situation:

Florida Energy Conservation and Sustainable Buildings Act

In recent years, the Florida Legislature has placed an increased emphasis on promoting renewable energy, energy conservation, and enhanced energy efficiency on a state and local level. In 2008, the Legislature passed a comprehensive energy package,[1] which contained the Florida Energy Conservation and Sustainable Buildings Act (Act). This Act (ss. 255.51-255.2575, F.S.) provides that:

> Significant efforts are needed to build energy-efficient state-owned buildings that meet environmental standards and provide energy savings over the life of the building structure. With buildings lasting many decades and with energy costs escalating rapidly, it is essential that the costs of operation and maintenance for energy-using equipment and sustainable materials be included in all design proposals for state-owned buildings.[2]

Section 255.252(3), F.S., provides legislative intent that "it is the policy of the state that buildings constructed and financed by the state be designed and constructed to comply with a sustainable building rating or a national model green building code" and "[i]t is further the policy of the state that the renovation of existing state facilities be in accordance with a sustainable building rating or a national model green building code."

"Sustainable building rating or national model green building code" means a rating system established by one of the following:

- United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system,
- International Green Construction Code (IgCC),
- Green Building Initiative's Green Globes rating system,
- Florida Green Building Coalition standards, or
- A nationally recognized, high-performance green building rating system as approved by the Department of Management Services.[3]

Section 255.257(4)(a), F.S., specifies that: "[a]ll state agencies shall adopt a sustainable building rating system or use a national model green building code for all new buildings and renovations to existing buildings." Section 255.2575(2), F.S., provides that "[a]ll county, municipal, school district, water management district, state university, community college, and state court buildings shall be constructed to comply with a sustainable building rating system or a national model green building code."[4]

[1] Chapter 2008-227, L.O.F.
[2] Section 255.252(2), F.S.
[3] Section 255.253(7), F.S.
[4] This section applies to all county, municipal, school district, water management district, state university, community college, and state court buildings the architectural plans of which are commenced after July 1, 2008.

The Department of Management Services (DMS) states on its website the following:

> State agencies are required by law to comply with the various green aspects of a sustainable rating system such as LEED or the others approved in statute. However, when it comes to energy consumption in particular, state agencies are now required by rule to consider at least one design option that far outperforms their preferred rating system. Nevertheless, an agency's ultimate decision must be made on the basis of long-term cost-effectiveness.5

Administrative rules adopted by the DMS pertaining to sustainable building ratings[6] implement the statutes by requiring all agencies that are designing, constructing, or renovating a facility to perform a life-cycle cost analysis for at least three distinct energy-related designs that progressively meet and exceed the minimum energy performance requirements of the particular sustainable building rating or national model green building code adopted by the agency. The DMS then evaluates this life-cycle cost analysis for technical correctness and completeness.[7] According to the DMS, these Rules allow the agencies sole discretion as it pertains to the selection of a sustainable building rating or national model green building code.

The following are basic, brief descriptions of the four statutorily-authorized sustainable building rating systems:

- **Leadership in Energy and Environmental Design (LEED)** is a "voluntary, consensus-based, market-driven" program that provides third-party verification of green buildings [and] addresses the entire lifecycle of a building. LEED projects have been established in 135 countries…. For commercial buildings and neighborhoods, to earn LEED certification, a project must satisfy all LEED prerequisites and earn a minimum 40 points on a 110-point LEED rating system scale.[8]

- **International Green Construction Code (IgCC)** is the "first model code to include sustainability measures for the entire construction project and its site - from design through construction, certificate of occupancy and beyond. The new code is expected to make buildings more efficient, reduce waste, and have a positive impact on health, safety and community welfare…." The IgCC "creates a regulatory framework for new and existing buildings, establishing minimum green requirements for buildings and complementing voluntary rating systems, which may extend beyond baseline of the IgCC. The code acts as an overlay to the existing set of *International Codes*…."[9]

- **Green Globes** is a web-based program for green building guidance and certification that includes an onsite assessment by a third party. "Green Globes offers a streamlined and affordable…way to advance the overall environmental performance and sustainability of

[5] http://www.dms.myflorida.com/business_operations/real_estate_development_management/facilities_management/sustainablebuildings_and_energy_initiatives.
[6] Chapter 60D, F.A.C.
[7] Rule 60D-4.004(1)(c)1 and 2, F.A.C.
[8] http://new.usgbc.org/leed.
[9] http://www.iccsafe.org/cs/igcc/pages/default.aspx.

commercial buildings. The program has modules supporting new construction… [and]…existing buildings…. It is suitable for a wide range of buildings from large and small offices, multi-family structures, hospitals, and institutional buildings such as courthouses, schools, and universities."[10]

- The **Florida Green Building Coalition (FGBC)** is a nonprofit corporation "dedicated to improving the built environment, [whose] mission is to lead and promote sustainability with environmental, economic, and social benefits through regional education and certification programs. FGBC was conceived and founded in the belief that green building programs will be most successful if there are clear and meaningful principles on which 'green' qualification and marketing are based."[11]

Florida Timber Industry

According to the Florida Forestry Association, there are almost 16 million acres of forests in Florida. Seventy percent (11.2 million acres) is privately owned, 16 percent (2.6 million acres) is owned by the state, 11 percent (1.7 million acres) is owned by the federal government, and three percent (0.5 million acres) is owned by local governments.[12, 13] Although forests cover about 50 percent of the state's land area, Florida's timberlands are located mostly north of Orlando. In the northern half of the state most counties are at least 50 percent forested. Liberty County in northwest Florida is the most forested with timber lands covering more than 90 percent of its area. The peninsula is forested at 40 percent or less and a number of counties in southeast Florida are less than 10 percent forested.[14]

In 2010, there were 59 primary wood-using mills in Florida. Almost half of those are sawmills (27). Other types of mills include mulch (7), pulp/paper (6), chip-and-saw (5), chip mill (3), post (3), plywood (2), pole (2), pellet, strand board, veneer and firewood (1 each). The primary wood-using mills in Florida are located mostly in the northern part of the state.[15]

There are several forest certification standard programs that provide guidance and certification that timber land is being used in a sustainable manner. The Forest Stewardship Council, the American Tree Farm System, and the Sustainable Forestry Initiative are some commonly-used programs.

The Forest Stewardship Council (FSC) is an independent, non-profit organization. "[M]embership consists of three equally weighted chambers -- environmental, economic, and social -- to ensure the balance and the highest level of integrity. Independent FSC-accredited certification bodies verify that all FSC-certified forests conform to the requirements contained within an FSC forest management standard…. Certifiers are independent of FSC and the companies they are auditing."[16]

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[10] http://www.thegbi.org/green-globes/.
[11] http://www.floridagreenbuilding.org/home.
[12] Florida Forestry Association website: http://floridaforest.org/about-us/fl-forests-facts/.
[13] *2010 Florida's Forestry and Forest Product Industry Economic Impacts*, by the Florida Forest Service (PDF file accessed at http://floridaforest.org/about-us/fl-forests-facts/).
[14] *Ibid.*
[15] *Ibid.*
[16] Forest Stewardship Council website: https://us.fsc.org/about-certification.198.htm.

The Sustainable Forestry Initiative (SFI) program is a widely-used standard. The organization asserts that their "forest certification standard is based on principles that promote sustainable forest management, including measures to protect water quality, biodiversity, wildlife habitat, species at risk, and Forests with Exceptional Conservation Value." Further, that the standard "has strong acceptance in the global marketplace so we can deliver a steady supply of wood and paper products from legal and responsible sources. This is especially important at a time when there is growing demand for green building and responsible paper purchasing, and less than 10 percent of the world's forests are certified."[17]

The American Tree Farm System (ATFS), another commonly-used program, "offers certification to landowners who are committed to good forest management….Forest certification is the certification of land management practices to a standard of sustainability. A written certification is issued by an independent third-party that attests to the sustainable management of a working forest…protect[ing] economic, social and environmental benefits."[18]

Florida Lumber Preference in Local Government Construction Contracting

Section 255.20, F.S., specifies requirements for local government construction contracting. Section 255.20(3), F.S., provides as follows:

> All county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of contracts for public work, for the construction of public bridges, buildings, and other structures must specify lumber, timber, and other forest products produced and manufactured in this state if such products are available and their price, fitness, and quality are equal. This subsection does not apply to plywood specified for monolithic concrete forms, if the structural or service requirements for timber for a particular job cannot be supplied by native species, or if the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture.

III. Effect of Proposed Changes:

Section 1 amends s. 255.20, F.S., to exempt transportation projects for which federal aid funds are available from the operation of an existing tiebreaker preference for Florida lumber in local government construction contracting. The bill also reorganizes the provision.

Section 2 amends s. 255.2575, F.S., to require all state agencies, when constructing public bridges, buildings, and other structures, to use lumber, timber, and other forest products produced and manufactured in Florida if such products are available and their price, fitness, and quality are equal. This tiebreaker language does not apply to transportation projects for which federal aid funds are available, and mirrors the language in s. 255.20(3), F.S., in section 1 of the bill.

[17] Sustainable Forestry Initiative website: http://www.sfiprogram.org/sustainable-forestry-initiative/.
[18] American Tree Farm System website: https://us.fsc.org/about-certification.198.htm.

Section 3 clarifies that a state agency constructing new buildings or renovating existing buildings is required to select a sustainable building rating system or national model green building code in accordance with s. 255.257(4)(a), F.S. The selection is made for each building and renovation to a building.

Section 4 provides an effective date of July 1, 2013.

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:

Florida-based lumber and timber companies could see an increase in sales.

C. Government Sector Impact:

The bill has no fiscal impact. The tiebreaker preference for Florida produced or manufactured lumber and timber products only applies if the price is equal to that of such products not produced in Florida.

The traveling amendment from the Community Affairs Committee (Barcode 453686) has an insignificant fiscal impact to the Department of Business and Professional Regulation that can be handled within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The tiebreaker preference for Florida lumber created in s. 255.2575, F.S., mirrors the existing local government tiebreaker preference in s. 255.20(3), F.S., and adds state agencies to the list of entities which must use such a preference. The preference will therefore be specified for local government entities in two sections, which is duplicative.

According to the DMS, virtually all construction performed by the DMS is of the commercial, non-combustible type. The wood or timber found within this construction is the plywood specified for monolithic concrete forms, not applicable to the requirement under this bill, or for light framing or millwork. In this construction, the department does not procure "wood or timber" directly, but rather competitively procures a general contractor or construction manager for a low bid, lump sum of materials and labor.[19]

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 Governmental Oversight and Accountability on April 9, 2013:
The CS exempts transportation projects for which federal aid funds are available from the operation of the tiebreaker preference for Florida lumber in local and state construction contracting.

B. Amendments:

Barcode 453686 by Community Affairs on April 16, 2013:

- Revises noticing requirements of alleged violators of local codes and ordinances;
- Exempts specified septic tank system inspections and evaluations when remodeling a home and establishes guidelines for construction proximity to a system;
- Revises the meaning of 'demolish' as it is used to define licensed contractors;
- Provides that amendments enacted in 2012 related to the licensing of contractors and subcontractors are remedial in nature, are intended to clarify existing law, and apply retroactively;
- Increases the maximum civil penalty a local governing body may levy against an unlicensed contractor;
- Revises local government and Department of Business and Professional Regulation (DBPR) collection retention percentages for unpaid fines and costs ordered by the Construction Industry Licensing Board;
- Removes a requirement that local governments send minor violation notices to contractors prior to seeking fines and other disciplinary penalties;
- Extends the grandfathering period for certain registered electrical and alarm system contractors to acquire statewide certified licenses;
- Clarifies a prohibition to adopt any mandatory sprinkler provisions of the International Residential Code within the Florida Building Code or any local amendments to the state code;

[19] Department of Management Services' bill analysis of SB 1080, dated February 29, 2013.

- Adds a member to Florida Building Commission from the natural gas distribution industry;
- Authorizes that an electronic copy of a building site plan may be maintained for record retention and inspection purposes at a building site;
- Specifies the DBPR procedures for Florida Building Code product approval compliance and authorizes the process for expedited 10-day approval reviews;
- Renames the statewide standard for energy efficiency;
- Specifies that residential heating and cooling systems need only meet the manufacturer's approval and listing of equipment;
- Eliminates the DBPR's responsibilities regarding a statewide uniform building energy-efficiency rating system;
- Provides building energy-efficiency system definitions; and
- Creates the Florida Concrete and Masonry Council, Inc., as a direct support organization of the Florida Building Commission and specifies its composition and duties.

(WITH TITLE AMENDMENT)

This traveling amendment from the Community Affairs Committee (Barcode 453686) has an insignificant fiscal impact to the Department of Business and Professional Regulation that can be handled within existing resources.

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

585-04017-13 20131080c1

A bill to be entitled

An act relating to public construction projects; amending ss. 255.20 and 255.2575, F.S.; requiring governmental entities to specify certain products associated with public works projects; providing for applicability; amending s. 255.257, F.S.; requiring state agencies to use certain building rating systems and building codes for each new construction and renovation project; providing an effective date.

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

Section 1. Subsection (3) of section 255.20, Florida Statutes, is amended to read:

255.20 Local bids and contracts for public construction works; specification of state-produced lumber.—

(3)(a) All county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of contracts for public work, for the construction of public bridges, buildings, and other structures must specify in the contract lumber, timber, and other forest products produced and manufactured in this state, if wood is a component of the public work, and if such products are available and their price, fitness, and quality are equal.

(b) This subsection does not apply:

1. To plywood specified for monolithic concrete forms.~~,~~

2. If the structural or service requirements for timber for a particular job cannot be supplied by native species.~~, or~~

585-04017-13 20131080c1

3. If the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture.

4. To transportation projects for which federal aid funds are available.

Section 2. Subsection (4) is added to section 255.2575, Florida Statutes, to read:

255.2575 Energy-efficient and sustainable buildings.—

(4)(a) All state agencies, county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of contracts for public work, for the construction of public bridges, buildings, and other structures must specify in the contract lumber, timber, and other forest products produced and manufactured in this state, if wood is a component of the public work, and if such products are available and their price, fitness, and quality are equal.

(b) This subsection does not apply:

1. To plywood specified for monolithic concrete forms.

2. If the structural or service requirements for timber for a particular job cannot be supplied by native species.

3. If the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture.

4. To transportation projects for which federal aid funds are available.

Section 3. Paragraph (a) of subsection (4) of section 255.257, Florida Statutes, is amended to read:

255.257 Energy management; buildings occupied by state agencies.—

(4) ADOPTION OF STANDARDS.—

(a) Each ~~All~~ state agency ~~agencies~~ shall use ~~adopt~~ a sustainable building rating system or ~~use~~ a national model green building code for each ~~all~~ new building ~~buildings~~ and renovation ~~renovations~~ to an existing building ~~buildings~~.

Section 4. This act shall take effect July 1, 2013.

453686

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/16/2013	.	
	.	
	.	
	.	

The Committee on Community Affairs (Simpson) recommended the following:

Senate Amendment (with title amendment)

Between lines 12 and 13
insert:

Section 1. Section 162.12, Florida Statutes, is amended to read:

162.12 Notices.—

(1) All notices required by this part must be provided to the alleged violator by:

(a) Certified mail, return receipt requested, to the address listed in the tax collector's office for tax notices, or to the address listed in the county property appraiser's

database. The local government may also provide an additional notice to any other address it may find for ~~provided by~~ the property owner ~~in writing to the local government for the purpose of receiving notices~~. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the postmarked date of mailing, notice may be provided by posting as described in subparagraphs (2)(b)1. and 2.;

(b) Hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the local governing body;

(c) Leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; or

(d) In the case of commercial premises, leaving the notice with the manager or other person in charge.

(2) In addition to providing notice as set forth in subsection (1), at the option of the code enforcement board or the local government, notice may ~~also~~ be served by publication or posting, as follows:

(a)1. Such notice shall be published once during each week for 4 consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county where the code enforcement board is located. The newspaper shall meet such requirements as are prescribed under chapter 50 for legal and official advertisements.

2. Proof of publication shall be made as provided in ss.

50.041 and 50.051.

(b)1. In lieu of publication as described in paragraph (a), such notice may be posted at least 10 days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be, in the case of municipalities, at the primary municipal government office, and in the case of counties, at the front door of the courthouse or the main county governmental center in said county.

2. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

(c) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (1).

Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (1), together with proof of publication or posting as provided in subsection (2), shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice.

Section 2. Paragraph (aa) of subsection (4) of section 381.0065, Florida Statutes, is amended to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not construct, repair, modify, abandon, or operate an onsite sewage

treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, but shall not make the issuance of such permits contingent upon prior approval by the Department of Environmental Protection, except that the issuance of a permit for work seaward of the coastal construction control line established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the Department of Environmental Protection. A construction permit is valid for 18 months from the issuance date and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days from the date of issuance. An operating permit must be obtained prior to the use of any aerobic treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system is valid for 1 year from the date of issuance and must be renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years from the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an amended application providing all corrected information and

proof of ownership of the property. There is no fee associated with the processing of this supplemental information. A person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under part III of chapter 489. A property owner who personally performs construction, maintenance, or repairs to a system serving his or her own owner-occupied single-family residence is exempt from registration requirements for performing such construction, maintenance, or repairs on that residence, but is subject to all permitting requirements. A municipality or political subdivision of the state may not issue a building or plumbing permit for any building that requires the use of an onsite sewage treatment and disposal system unless the owner or builder has received a construction permit for such system from the department. A building or structure may not be occupied and a municipality, political subdivision, or any state or federal agency may not authorize occupancy until the department approves the final installation of the onsite sewage treatment and disposal system. A municipality or political subdivision of the state may not approve any change in occupancy or tenancy of a building that uses an onsite sewage treatment and disposal system until the department has reviewed the use of the system with the proposed change, approved the change, and amended the operating permit.

(aa) An existing-system inspection or evaluation and assessment, or a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition or modification to a single-family home if a bedroom is not added. However, a remodeling addition or

modification to a single-family home may not cover any part of the existing system or encroach upon a required setback or the unobstructed area. To determine if a setback or the unobstructed area is impacted, the local health department shall review and verify a floor plan and site plan of the proposed remodeling addition or modification to the home submitted by a remodeler which shows the location of the system, including the distance of the remodeling addition or modification to the home from the onsite sewage treatment and disposal system. The local health department may visit the site or otherwise determine the best means of verifying the information submitted. A verification of the location of a system is not an inspection or evaluation and assessment of the system. The review and verification must be completed within 7 business days after receipt by the local health department of a floor plan and site plan. If the review and verification is not completed within such time, the remodeling addition or modification to the single-family home, for the purposes of this paragraph, is approved.

Section 3. Subsection (3) of section 489.105, Florida Statutes, is amended to read:

489.105 Definitions.—As used in this part:

(3) "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is

substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height, other than buildings or residences more than three stories tall; and ~~all~~ buildings or residences more than three stories tall. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

(a) "General contractor" means a contractor whose services are unlimited as to the type of work which he or she may do, who may contract for any activity requiring licensure under this part, and who may perform any work requiring licensure under this part, except as otherwise expressly provided in s. 489.113.

(b) "Building contractor" means a contractor whose services are limited to construction of commercial buildings and single-dwelling or multiple-dwelling residential buildings, which do not exceed three stories in height, and accessory use structures in connection therewith or a contractor whose services are limited to remodeling, repair, or improvement of any size building if the services do not affect the structural members of the building.

(c) "Residential contractor" means a contractor whose services are limited to construction, remodeling, repair, or improvement of one-family, two-family, or three-family residences not exceeding two habitable stories above no more than one uninhabitable story and accessory use structures in

connection therewith.

(d) "Sheet metal contractor" means a contractor whose services are unlimited in the sheet metal trade and who has the experience, knowledge, and skill necessary for the manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, insulation, alteration, repair, servicing, or design, if not prohibited by law, of ferrous or nonferrous metal work of U.S. No. 10 gauge or its equivalent or lighter gauge and of other materials, including, but not limited to, fiberglass, used in lieu thereof and of air-handling systems, including the setting of air-handling equipment and reinforcement of same, the balancing of air-handling systems, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system.

(e) "Roofing contractor" means a contractor whose services are unlimited in the roofing trade and who has the experience, knowledge, and skill to install, maintain, repair, alter, extend, or design, if not prohibited by law, and use materials and items used in the installation, maintenance, extension, and alteration of all kinds of roofing, waterproofing, and coating, except when coating is not represented to protect, repair, waterproof, stop leaks, or extend the life of the roof. The scope of work of a roofing contractor also includes skylights and any related work, required roof-deck attachments, and any repair or replacement of wood roof sheathing or fascia as needed during roof repair or replacement and any related work.

(f) "Class A air-conditioning contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to

install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if such duct work is performed by the contractor as necessary to complete an air-distribution system, boiler and unfired pressure vessel systems, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, and pneumatic control piping; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring. A Class A air-conditioning contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however,

a mandatory licensing requirement is not established for the performance of these specific services.

(g) "Class B air-conditioning contractor" means a contractor whose services are limited to 25 tons of cooling and 500,000 Btu of heating in any one system in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system only to the extent such duct work is performed by the contractor as necessary to complete an air-distribution system being installed under this classification, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping and insulation of pipes, vessels, and ducts; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto;

sanitary sewer lines; swimming pool piping and filters; or electrical power wiring. A Class B air-conditioning contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

(h) "Class C air-conditioning contractor" means a contractor whose business is limited to the servicing of air-conditioning, heating, or refrigeration systems, including any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system, and whose certification or registration, issued pursuant to this part, was valid on October 1, 1988. Only a person who was registered or certified as a Class C air-conditioning contractor as of October 1, 1988, shall be so registered or certified after October 1, 1988. However, the board shall continue to license and regulate those Class C air-conditioning contractors who held Class C licenses before October 1, 1988.

(i) "Mechanical contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if such duct work is performed by the contractor as necessary to complete an air-distribution system, boiler and unfired pressure vessel systems, lift station equipment and piping, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment

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sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, pneumatic control piping, gasoline tanks and pump installations and piping for same, standpipes, air piping, vacuum line piping, oxygen lines, nitrous oxide piping, ink and chemical lines, fuel transmission lines, liquefied petroleum gas lines within buildings, and natural gas fuel lines within buildings; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as potable water lines or connections thereto, sanitary sewer lines, swimming pool piping and filters, or electrical power wiring. A mechanical contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

(j) “Commercial pool/spa contractor” means a contractor whose scope of work involves, but is not limited to, the construction, repair, and servicing of any swimming pool, or hot tub or spa, whether public, private, or otherwise, regardless of use. The scope of work includes the installation, repair, or

replacement of existing equipment, any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license is not required for the cleaning of the pool or spa in a way that does not affect the structural integrity of the pool or spa or its associated equipment.

(k) "Residential pool/spa contractor" means a contractor whose scope of work involves, but is not limited to, the construction, repair, and servicing of a residential swimming pool, or hot tub or spa, regardless of use. The scope of work includes the installation, repair, or replacement of existing equipment, any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior finishes, the

installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license is not required for the cleaning of the pool or spa in a way that does not affect the structural integrity of the pool or spa or its associated equipment.

(l) "Swimming pool/spa servicing contractor" means a contractor whose scope of work involves, but is not limited to, the repair and servicing of a swimming pool, or hot tub or spa, whether public or private, or otherwise, regardless of use. The scope of work includes the repair or replacement of existing equipment, any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior refinishing, the reinstallation or addition of pool heaters, the repair or replacement of all perimeter piping and filter piping, the repair of equipment rooms or housing for pool/spa equipment, and

the substantial or complete draining of a swimming pool, or hot tub or spa, for the purpose of repair or renovation. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, substantial or complete disassembly, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, substantial or complete disassembly, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license is not required for the cleaning of the pool or spa in a way that does not affect the structural integrity of the pool or spa or its associated equipment.

(m) "Plumbing contractor" means a contractor whose services are unlimited in the plumbing trade and includes contracting business consisting of the execution of contracts requiring the experience, financial means, knowledge, and skill to install, maintain, repair, alter, extend, or, if not prohibited by law, design plumbing. A plumbing contractor may install, maintain, repair, alter, extend, or, if not prohibited by law, design the following without obtaining an additional local regulatory license, certificate, or registration: sanitary drainage or storm drainage facilities, water and sewer plants and substations, venting systems, public or private water supply systems, septic tanks, drainage and supply wells, swimming pool

piping, irrigation systems, and solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas, liquefied petroleum gas and related venting, and storm and sanitary sewer lines. The scope of work of the plumbing contractor also includes the design, if not prohibited by law, and installation, maintenance, repair, alteration, or extension of air-piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers if authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in a manner that complies with all plans, specifications, codes, laws, and regulations applicable. The scope of work of the plumbing contractor applies to private property and public property, including any excavation work incidental thereto, and includes the work of the specialty plumbing contractor. Such contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to the work but which is specified as being the work of a trade other than that of a plumbing contractor. This definition does not limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6), and does not require certification or registration under this part of any authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater. A

plumbing contractor may perform drain cleaning and clearing and install or repair rainwater catchment systems; however, a mandatory licensing requirement is not established for the performance of these specific services.

(n) "Underground utility and excavation contractor" means a contractor whose services are limited to the construction, installation, and repair, on public or private property, whether accomplished through open excavations or through other means, including, but not limited to, directional drilling, auger boring, jacking and boring, trenchless technologies, wet and dry taps, grouting, and slip lining, of main sanitary sewer collection systems, main water distribution systems, storm sewer collection systems, and the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer collection systems at property line on residential or single-occupancy commercial properties, or on multioccupancy properties at manhole or wye lateral extended to an invert elevation as engineered to accommodate future building sewers, water distribution systems, or storm sewer collection systems at storm sewer structures. However, an underground utility and excavation contractor may install empty underground conduits in rights-of-way, easements, platted rights-of-way in new site development, and sleeves for parking lot crossings no smaller than 2 inches in diameter if each conduit system installed is designed by a licensed professional engineer or an authorized employee of a municipality, county, or public utility and the installation of such conduit does not include installation of any conductor wiring or connection to an energized electrical system. An

underground utility and excavation contractor may not install piping that is an integral part of a fire protection system as defined in s. 633.021 beginning at the point where the piping is used exclusively for such system.

(o) "Solar contractor" means a contractor whose services consist of the installation, alteration, repair, maintenance, relocation, or replacement of solar panels for potable solar water heating systems, swimming pool solar heating systems, and photovoltaic systems and any appurtenances, apparatus, or equipment used in connection therewith, whether public, private, or otherwise, regardless of use. A contractor, certified or registered pursuant to this chapter, is not required to become a certified or registered solar contractor or to contract with a solar contractor in order to provide services enumerated in this paragraph that are within the scope of the services such contractors may render under this part.

(p) "Pollutant storage systems contractor" means a contractor whose services are limited to, and who has the experience, knowledge, and skill to install, maintain, repair, alter, extend, or design, if not prohibited by law, and use materials and items used in the installation, maintenance, extension, and alteration of, pollutant storage tanks. Any person installing a pollutant storage tank shall perform such installation in accordance with the standards adopted pursuant to s. 376.303.

(q) "Specialty contractor" means a contractor whose scope of work and responsibility is limited to a particular phase of construction established in a category adopted by board rule and whose scope is limited to a subset of the activities described

in one of the paragraphs of this subsection.

Section 4. The amendments to s. 489.113(2), Florida Statutes, by section 11 of chapter 2012-13, Laws of Florida, are remedial in nature and intended to clarify existing law. This section applies retroactively to any action initiated or pending on or after March 23, 2012.

Section 5. Paragraphs (c) and (f) of subsection (5) and subsection (6) of section 489.127, Florida Statutes, are amended to read:

489.127 Prohibitions; penalties.—

(5) Each county or municipality may, at its option, designate one or more of its code enforcement officers, as defined in chapter 162, to enforce, as set out in this subsection, the provisions of subsection (1) and s. 489.132(1) against persons who engage in activity for which a county or municipal certificate of competency or license or state certification or registration is required.

(c) The local governing body of the county or municipality may ~~is authorized to~~ enforce codes and ordinances against unlicensed contractors under the provisions of this subsection and may enact an ordinance establishing procedures for implementing this subsection, including a schedule of penalties to be assessed by the code enforcement officer. The maximum civil penalty which may be levied may ~~shall~~ not exceed $2,000 ~~$500~~. Moneys collected pursuant to this subsection shall be retained locally, as provided for by local ordinance, and may be set aside in a specific fund to support future enforcement activities against unlicensed contractors.

(f) If the enforcement or licensing board or designated


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special magistrate finds that a violation exists, the enforcement or licensing board or designated special magistrate may order the violator to pay a civil penalty of not less than the amount set forth on the citation but not more than $1,500 ~~$1,000~~ per day for each violation. In determining the amount of the penalty, the enforcement or licensing board or designated special magistrate shall consider the following factors:

1. The gravity of the violation.

2. Any actions taken by the violator to correct the violation.

3. Any previous violations committed by the violator.

(6) Local building departments may collect outstanding fines against registered or certified contractors issued by the Construction Industry Licensing Board and may retain 75 ~~25~~ percent of the fines they are able to collect, provided that they transmit 25 ~~75~~ percent of the fines they are able to collect to the department according to a procedure to be determined by the department.

Section 6. Paragraph (a) of subsection (7) of section 489.131, Florida Statutes, is amended to read:

489.131 Applicability.—

(7)(a) It is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established in law. Fines and other penalties are provided in order to ensure compliance~~; however, the collection of fines and the imposition of penalties are intended to be secondary to the primary goal of attaining compliance~~ with state laws and local jurisdiction ordinances. ~~It is the intent of the Legislature that a local jurisdiction agency charged with~~

~~enforcing regulatory laws shall issue a notice of noncompliance as its first response to a minor violation of a regulatory law in any instance in which it is reasonable to assume that the violator was unaware of such a law or unclear as to how to comply with it. A violation of a regulatory law is a "minor violation" if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. A "notice of noncompliance" is a notification by the local jurisdiction agency charged with enforcing the ordinance, which is issued to the licensee that is subject to the ordinance. A notice of noncompliance should not be accompanied with a fine or other disciplinary penalty. It should identify the specific ordinance that is being violated, provide information on how to comply with the ordinance, and specify a reasonable time for the violator to comply with the ordinance. Failure of a licensee to take action correcting the violation within a set period of time would then result in the institution of further disciplinary proceedings.~~

Section 7. Section 489.514, Florida Statutes, is amended to read:

489.514 Certification for registered contractors; grandfathering provisions.—

(1) The board shall, upon receipt of a completed application, appropriate fee, and proof of compliance with the provisions of this section, issue:

(a) To an applying registered electrical contractor, a certificate as an electrical contractor, as defined in s. 489.505(12); ~~or~~


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(b) To an applying registered alarm system contractor, a certificate in the matching alarm system contractor category, as defined in s. 489.505(2)(a) or (b); or

(c) To an applying registered electrical specialty contractor, a certificate in the matching electrical specialty contractor category, as defined in s. 489.505(19).

(2) Any contractor registered under this part who makes application under this section to the board shall meet each of the following requirements for certification:

(a) Currently holds a valid registered local license in the category of electrical contractor, alarm system contractor, or electrical specialty contractor.

(b) Has, for that category, passed a written, proctored examination that the board finds to be substantially similar to the examination required to be licensed as a certified contractor under this part. For purposes of this subsection, a written, proctored examination such as that produced by the National Assessment Institute, Block and Associates, NAI/Block, Experior Assessments, Professional Testing, Inc., or Assessment Systems, Inc., shall be considered to be substantially similar to the examination required to be licensed as a certified contractor. The board may not impose or make any requirements regarding the nature or content of these cited examinations.

(c) Has at least 5 years of experience as a contractor in that contracting category, or as an inspector or building administrator with oversight over that category, at the time of application. For contractors, only time periods in which the contractor license is active and the contractor is not on probation ~~shall~~ count toward the 5 years required under this

subsection.

(d) Has not had his or her contractor's license revoked at any time, had his or her contractor's license suspended in the last 5 years, or been assessed a fine in excess of $500 in the last 5 years.

(e) Is in compliance with the insurance and financial responsibility requirements in s. 489.515(1)(b).

(3) An applicant must make application by November 1, 2015 ~~2004~~, to be licensed pursuant to this section.

Section 8. Paragraph (c) of subsection (4) of section 489.531, Florida Statutes, is amended to read:

489.531 Prohibitions; penalties.—

(4) Each county or municipality may, at its option, designate one or more of its code enforcement officers, as defined in chapter 162, to enforce, as set out in this subsection, the provisions of subsection (1) against persons who engage in activity for which county or municipal certification is required.

(c) The local governing body of the county or municipality may ~~is authorized to~~ enforce codes and ordinances against unlicensed contractors under the provisions of this section and may enact an ordinance establishing procedures for implementing this section, including a schedule of penalties to be assessed by the code enforcement officers. The maximum civil penalty which may be levied may ~~shall~~ not exceed $2,000 ~~$500~~. Moneys collected pursuant to this section shall be retained locally as provided for by local ordinance and may be set aside in a specific fund to support future enforcement activities against unlicensed contractors.


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Section 9. Subsection (17) of section 553.73, Florida Statutes, is amended to read:

553.73 Florida Building Code.—

(17) A provision ~~The provisions of section R313 of the most current version~~ of the International Residential Code relating to mandated fire sprinklers may not be incorporated into the Florida Building Code as adopted by the Florida Building Commission and may not be adopted as a local amendment to the Florida Building Code. This subsection does not prohibit the application of cost-saving incentives for residential fire sprinklers that are authorized in the International Residential Code upon a mutual agreement between the builder and the code official. This subsection does not apply to a local government that has a lawfully adopted ordinance relating to fire sprinklers which has been in effect since January 1, 2010.

Section 10. Subsection (1) of section 553.74, Florida Statutes, is amended to read:

553.74 Florida Building Commission.—

(1) The Florida Building Commission is created and located within the Department of Business and Professional Regulation for administrative purposes. Members are ~~shall be~~ appointed by the Governor subject to confirmation by the Senate. The commission is ~~shall be~~ composed of 26 ~~25~~ members, consisting of the following:

(a) One architect registered to practice in this state and actively engaged in the profession. The American Institute of Architects, Florida Section, is encouraged to recommend a list of candidates for consideration.

(b) One structural engineer registered to practice in this

state and actively engaged in the profession. The Florida Engineering Society is encouraged to recommend a list of candidates for consideration.

(c) One air-conditioning or mechanical contractor certified to do business in this state and actively engaged in the profession. The Florida Air Conditioning Contractors Association, the Florida Refrigeration and Air Conditioning Contractors Association, and the Mechanical Contractors Association of Florida are encouraged to recommend a list of candidates for consideration.

(d) One electrical contractor certified to do business in this state and actively engaged in the profession. The Florida Electrical Contractors Association and the National Electrical Contractors Association, Florida Chapter, are encouraged to recommend a list of candidates for consideration.

(e) One member from fire protection engineering or technology who is actively engaged in the profession. The Florida Chapter of the Society of Fire Protection Engineers and the Florida Fire Marshals and Inspectors Association are encouraged to recommend a list of candidates for consideration.

(f) One general contractor certified to do business in this state and actively engaged in the profession. The Associated Builders and Contractors of Florida, the Florida Associated General Contractors Council, and the Union Contractors Association are encouraged to recommend a list of candidates for consideration.

(g) One plumbing contractor licensed to do business in this state and actively engaged in the profession. The Florida Association of Plumbing, Heating, and Cooling Contractors is

encouraged to recommend a list of candidates for consideration.

(h) One roofing or sheet metal contractor certified to do business in this state and actively engaged in the profession. The Florida Roofing, Sheet Metal, and Air Conditioning Contractors Association and the Sheet Metal and Air Conditioning Contractors National Association are encouraged to recommend a list of candidates for consideration.

(i) One residential contractor licensed to do business in this state and actively engaged in the profession. The Florida Home Builders Association is encouraged to recommend a list of candidates for consideration.

(j) Three members who are municipal or district codes enforcement officials, one of whom is also a fire official. The Building Officials Association of Florida and the Florida Fire Marshals and Inspectors Association are encouraged to recommend a list of candidates for consideration.

(k) One member who represents the Department of Financial Services.

(l) One member who is a county codes enforcement official. The Building Officials Association of Florida is encouraged to recommend a list of candidates for consideration.

(m) One member of a Florida-based organization of persons with disabilities or a nationally chartered organization of persons with disabilities with chapters in this state.

(n) One member of the manufactured buildings industry who is licensed to do business in this state and is actively engaged in the industry. The Florida Manufactured Housing Association is encouraged to recommend a list of candidates for consideration.

(o) One mechanical or electrical engineer registered to

practice in this state and actively engaged in the profession. The Florida Engineering Society is encouraged to recommend a list of candidates for consideration.

(p) One member who is a representative of a municipality or a charter county. The Florida League of Cities and the Florida Association of Counties are encouraged to recommend a list of candidates for consideration.

(q) One member of the building products manufacturing industry who is authorized to do business in this state and is actively engaged in the industry. The Florida Building Material Association, the Florida Concrete and Products Association, and the Fenestration Manufacturers Association are encouraged to recommend a list of candidates for consideration.

(r) One member who is a representative of the building owners and managers industry who is actively engaged in commercial building ownership or management. The Building Owners and Managers Association is encouraged to recommend a list of candidates for consideration.

(s) One member who is a representative of the insurance industry. The Florida Insurance Council is encouraged to recommend a list of candidates for consideration.

(t) One member who is a representative of public education.

(u) One member who is a swimming pool contractor licensed to do business in this state and actively engaged in the profession. The Florida Swimming Pool Association and the United Pool and Spa Association are encouraged to recommend a list of candidates for consideration.

(v) One member who is a representative of the green building industry and who is a third-party commission agent, a

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Florida board member of the United States Green Building Council or Green Building Initiative, a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED).

(w) One member who is a representative of a natural gas distribution system and who is actively engaged in the distribution of natural gas in this state. The Florida Natural Gas Association is encouraged to recommend a list of candidates for consideration.

(x) ~~(w)~~ One member who shall be the chair.

Any person serving on the commission under paragraph (c) or paragraph (h) on October 1, 2003, and who has served less than two full terms is eligible for reappointment to the commission regardless of whether he or she meets the new qualification.

Section 11. Subsection (18) is added to section 553.79, Florida Statutes, to read:

553.79 Permits; applications; issuance; inspections.—

(18) For the purpose of inspection and record retention, site plans for a building may be maintained in the form of an electronic copy at the worksite. These plans must be open to inspection by the building official or a duly authorized representative, as required by the Florida Building Code.

Section 12. Paragraph (a) of subsection (5) of section 553.842, Florida Statutes, is amended to read:

553.842 Product evaluation and approval.—

(5) Statewide approval of products, methods, or systems of construction may be achieved by one of the following methods.


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One of these methods must be used by the commission to approve the following categories of products: panel walls, exterior doors, roofing, skylights, windows, shutters, impact protective systems, and structural components as established by the commission by rule. A product may not be advertised, sold, offered, provided, distributed, or marketed as hurricane, windstorm, or impact protection from wind-borne debris from a hurricane or windstorm unless it is approved pursuant to this section or s. 553.8425. Any person who advertises, sells, offers, provides, distributes, or markets a product as hurricane, windstorm, or impact protection from wind-borne debris without such approval is subject to the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501 brought by the enforcing authority as defined in s. 501.203.

(a) Products for which the code establishes standardized testing or comparative or rational analysis methods shall be approved by submittal and validation of one of the following reports or listings indicating that the product or method or system of construction was in compliance with the Florida Building Code and that the product or method or system of construction is, for the purpose intended, at least equivalent to that required by the Florida Building Code:

1. A certification mark or listing of an approved certification agency, which may be used only for products for which the code designates standardized testing;

2. A test report from an approved testing laboratory;

3. A product evaluation report based upon testing or comparative or rational analysis, or a combination thereof, from an approved product evaluation entity; or

4. A product evaluation report based upon testing or comparative or rational analysis, or a combination thereof, developed and signed and sealed by a professional engineer or architect, licensed in this state.

A product evaluation report or a certification mark or listing of an approved certification agency which demonstrates that the product or method or system of construction complies with the Florida Building Code for the purpose intended is equivalent to a test report and test procedure referenced in the Florida Building Code. An application for state approval of a product under subparagraph 1. or 3. must be approved by the department after the commission staff or a designee verifies that the application and related documentation are complete. This verification must be completed within 10 business days after receipt of the application. Upon approval by the department, the product shall be immediately added to the list of state-approved products maintained under subsection (13). Approvals by the department shall be reviewed and ratified by the commission's program oversight committee except for a showing of good cause that a review by the full commission is necessary. The commission shall adopt rules providing means to cure deficiencies identified within submittals for products approved under this paragraph.

Section 13. Section 553.901, Florida Statutes, is amended to read:

553.901 Purpose of thermal efficiency code.—The Department of Business and Professional Regulation shall prepare a thermal efficiency code to provide for a statewide uniform standard for


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energy efficiency in the thermal design and operation of all buildings statewide, consistent with energy conservation goals, and to best provide for public safety, health, and general welfare. The Florida Building Commission shall adopt the Florida Building Code-Energy Conservation ~~Florida Energy Efficiency Code for Building Construction within the Florida Building Code~~, and shall modify, revise, update, and maintain the code to implement the provisions of this thermal efficiency code and amendments thereto, in accordance with the procedures of chapter 120. The department shall, at least triennially, determine the most cost-effective energy-saving equipment and techniques available and report its determinations to the commission, which shall update the code to incorporate such equipment and techniques. The proposed changes shall be made available for public review and comment no later than 6 months before ~~prior to~~ code implementation. The term "cost-effective," as used in ~~for the purposes of~~ this part, means ~~shall be construed to mean~~ cost-effective to the consumer.

Section 14. Section 553.902, Florida Statutes, is reordered and amended to read:

553.902 Definitions.—As used in ~~For the purposes of~~ this part, the term:

(2)~~(1)~~ "Exempted building" means:

(a) A ~~Any~~ building or portion thereof whose peak design rate of energy usage for all purposes is less than 1 watt (3.4 Btu per hour) per square foot of floor area for all purposes.

(b) A ~~Any~~ building that ~~which~~ is neither heated nor cooled by a mechanical system designed to control or modify the indoor temperature and powered by electricity or fossil fuels.


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(c) A ~~Any~~ building for which federal mandatory standards preempt state energy codes.

(d) A ~~Any~~ historical building as described in s. 267.021(3).

The Florida Building Commission may recommend to the Legislature additional types of buildings which should be exempted from compliance with the Florida Building Code-Energy Conservation ~~Florida Energy Efficiency Code for Building Construction~~.

(4) ~~(2)~~ "HVAC" means a system of heating, ventilating, and air-conditioning.

(6) ~~(3)~~ "Renovated building" means a residential or nonresidential building undergoing alteration that varies or changes insulation, HVAC systems, water heating systems, or exterior envelope conditions, if ~~provided~~ the estimated cost of renovation exceeds 30 percent of the assessed value of the structure.

(5) ~~(4)~~ "Local enforcement agency" means the agency of local government which has the authority to make inspections of buildings and to enforce the Florida Building Code. The term ~~It~~ includes any agency within the definition of s. 553.71(5).

(3) ~~(5)~~ "Exterior envelope physical characteristics" means the physical nature of those elements of a building which enclose conditioned spaces through which energy may be transferred to or from the exterior.

(1) ~~(6)~~ "Energy performance level" means the indicator of the energy-related performance of a building, including, but not limited to, the levels of insulation, the amount and type of

glass, and the HVAC and water heating system efficiencies.

Section 15. Section 553.903, Florida Statutes, is amended to read:

553.903 Applicability.—This part applies ~~shall apply~~ to all new and renovated buildings in the state, except exempted buildings, for which building permits are obtained after March 15, 1979, and to the installation or replacement of building systems and components with new products for which thermal efficiency standards are set by the Florida Building Code-Energy Conservation ~~Florida Energy Efficiency Code for Building Construction~~. The provisions of this part shall constitute a statewide uniform code.

Section 16. Section 553.904, Florida Statutes, is amended to read:

553.904 Thermal efficiency standards for new nonresidential buildings.—Thermal designs and operations for new nonresidential buildings for which building permits are obtained after March 15, 1979, must ~~shall~~ at a minimum take into account exterior envelope physical characteristics, including thermal mass; HVAC, service water heating, energy distribution, lighting, energy managing, and auxiliary systems design and selection; and HVAC, service water heating, energy distribution, lighting, energy managing, and auxiliary equipment performance, and are ~~shall~~ not ~~be~~ required to meet standards more stringent than the provisions of the Florida Building Code-Energy Conservation ~~Florida Energy Efficiency Code for Building Construction~~.

Section 17. Section 553.905, Florida Statutes, is amended to read:

553.905 Thermal efficiency standards for new residential


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buildings.—Thermal designs and operations for new residential buildings for which building permits are obtained after March 15, 1979, must ~~shall~~ at a minimum take into account exterior envelope physical characteristics, HVAC system selection and configuration, HVAC equipment performance, and service water heating design and equipment selection and are ~~shall~~ not ~~be~~ required to meet standards more stringent than the provisions of the Florida Building Code-Energy Conservation ~~Florida Energy Efficiency Code for Building Construction~~. HVAC equipment mounted in an attic or a garage is ~~shall~~ not ~~be~~ required to have supplemental insulation in addition to that installed by the manufacturer. All new residential buildings, except those herein exempted, must ~~shall~~ have insulation in ceilings rated at R-19 or more, space permitting. Thermal efficiency standards do not apply to a building of less than 1,000 square feet which is not primarily used as a principal residence and which is constructed and owned by a natural person for hunting or similar recreational purposes; however, ~~no~~ such person may not build more than one exempt building in any 12-month period.

Section 18. Section 553.906, Florida Statutes, is amended to read:

553.906 Thermal efficiency standards for renovated buildings.—Thermal designs and operations for renovated buildings for which building permits are obtained after March 15, 1979, must ~~shall~~ take into account insulation; windows; infiltration; and HVAC, service water heating, energy distribution, lighting, energy managing, and auxiliary systems design and equipment selection and performance. Such buildings are ~~shall~~ not ~~be~~ required to meet standards more stringent than


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the provisions of the Florida Building Code-Energy Conservation ~~Florida Energy Efficiency Code for Building Construction~~. These standards apply only to those portions of the structure which are actually renovated.

Section 19. Section 553.912, Florida Statutes, is amended to read:

553.912 Air conditioners.—All air conditioners that are sold or installed in the state must ~~shall~~ meet the minimum efficiency ratings of the Florida Building Code-Energy Conservation ~~Energy Efficiency Code for Building Construction~~. These efficiency ratings must ~~shall~~ be minimums and may be updated in the Florida Building Code-Energy Conservation ~~Florida Energy Efficiency Code for Building Construction~~ by the department in accordance with s. 553.901, following its determination that more cost-effective energy-saving equipment and techniques are available. It is the intent of the Legislature that all replacement air-conditioning systems be installed using energy-saving, quality installation procedures in residential~~, including, but not limited to,~~ equipment sizing analysis and duct inspection. Notwithstanding this section, existing heating and cooling equipment in residential applications need not meet the minimum equipment efficiencies, including system sizing and duct sealing, except to preserve the original approval or listing of the equipment.

Section 20. Section 553.991, Florida Statutes, is amended to read:

553.991 Purpose.—The purpose of this part is to identify systems ~~provide for a statewide uniform system~~ for rating the energy efficiency of buildings. It is in the interest of the


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state to encourage the consideration of ~~the~~ energy-efficiency rating systems ~~system~~ in the market so as to provide market rewards for energy-efficient buildings and to those persons or companies designing, building, or selling energy-efficient buildings.

Section 21. Section 553.992, Florida Statutes, is repealed.

Section 22. Section 553.993, Florida Statutes, is amended to read:

553.993 Definitions.—For purposes of this part:

(1) "Acquisition" means to gain the sole or partial use of a building through a purchase agreement.

(2) "Builder" means the primary contractor who possesses the requisite skill, knowledge, and experience, and has the responsibility, to supervise, direct, manage, and control the contracting activities of the business organization with which she or he is connected and who has the responsibility to supervise, direct, manage, and control the construction work on a job for which she or he has obtained the building permit. Construction work includes, but is not limited to, foundation, framing, wiring, plumbing, and finishing work.

(3) "Building energy-efficiency rating system" means a whole building energy evaluation system established by the Residential Energy Services Network, the Commercial Energy Services Network, the Building Performance Institute, or the Florida Solar Energy Center.

(4) ~~(3)~~ "Designer" means the architect, engineer, landscape architect, builder, interior designer, or other person who performs the actual design work or under whose direct supervision and responsible charge the construction documents

are prepared.

(5) "Energy auditor" means a trained and certified professional who conducts energy evaluations of an existing building and uses tools to identify the building's current energy usage and the condition of the building and equipment.

(6) "Energy-efficiency rating" means an unbiased indication of a building's relative energy efficiency based on consistent inspection procedures, operating assumptions, climate data, and calculation methods.

(7) "Energy rater" means an individual certified by a building energy-efficiency rating system to perform building energy-efficiency ratings for the building type and in the rating class for which the rater is certified.

(8) ~~(4)~~ "New building" means commercial occupancy buildings permitted for construction after January 1, 1995, and residential occupancy buildings permitted for construction after January 1, 1994.

(9) ~~(5)~~ "Public building" means a building comfort-conditioned for occupancy that is owned or leased by the state, a state agency, or a governmental subdivision, including, but not limited to, a city, county, or school district.

Section 23. Section 553.994, Florida Statutes, is amended to read:

553.994 Applicability.—Building energy-efficiency ~~The~~ rating systems ~~system shall~~ apply to all public, commercial, and residential buildings in the state.

Section 24. Section 553.995, Florida Statutes, is amended to read:

553.995 Energy-efficiency ratings for buildings.—


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(1) Building ~~The~~ energy-efficiency rating systems must, ~~system shall~~ at a minimum:

~~(a) Provide a uniform rating scale of the efficiency of buildings based on annual energy usage.~~

(a) ~~(b)~~ Take into account local climate conditions, construction practices, and building use.

(b) ~~(c)~~ Be compatible with standard federal rating systems and state building codes and standards, where applicable, and shall satisfy the requirements of s. 553.9085 with respect to residential buildings and s. 255.256 with respect to state buildings.

(c) ~~(2) The energy-efficiency rating system adopted by the department shall~~ Provide a means of analyzing ~~and comparing~~ the relative energy efficiency of buildings upon the sale of new or existing residential, public, or commercial buildings.

~~(3) The department shall establish a voluntary working group of persons interested in the energy-efficiency rating system or energy efficiency, including, but not limited to, such persons as electrical engineers, mechanical engineers, architects, public utilities, and builders. The interest group shall advise the department in the development of the energy-efficiency rating system and shall assist the department in the implementation of the rating system by coordinating educational programs for designers, builders, businesses, and other interested persons to assist compliance and to facilitate incorporation of the rating system into existing practices.~~

(2)(a) ~~(4) The department shall develop a training and certification program to certify raters. In addition to the department,~~ Ratings may be conducted by a ~~any~~ local government


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or private entity if~~, provided that~~ the appropriate persons have completed the necessary training established by the applicable building energy-efficiency rating system ~~and have been certified by the department~~.

(b) The Department of Management Services shall rate state-owned or state-leased buildings if~~, provided that~~ the appropriate persons have completed the necessary training established by the applicable building energy-efficiency rating system ~~and have been certified by the Department of Business and Professional Regulation~~.

(c) A state agency that ~~which~~ has building construction regulation authority may rate its own buildings and those it is responsible for~~,~~ if the appropriate persons have completed the necessary training established by the applicable building energy-efficiency rating system ~~and have been certified by the Department of Business and Professional Regulation~~. ~~The Department of Business and Professional Regulation may charge a fee not to exceed the costs for the training and certification of raters. The department shall by rule set the appropriate charges for raters to charge for energy ratings, not to exceed the actual costs.~~

Section 25. Section 553.996, Florida Statutes, is amended to read:

553.996 Energy-efficiency information provided by building energy-efficiency rating systems providers ~~brochure~~.~~—~~A prospective purchaser of real property with a building for occupancy located thereon shall be provided ~~with a copy of an~~ information ~~brochure,~~ at the time of or before ~~prior to~~ the purchaser’s execution of the contract for sale and purchase


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which notifies~~, notifying~~ the purchaser of the option for an energy-efficiency rating on the building. Building energy-efficiency rating system providers identified in this part shall prepare such information and make it available for distribution ~~Such brochure shall be prepared, made available for distribution, and provided at no cost by the department~~. Such ~~brochure shall contain~~ information relevant to that class of building must include, ~~including,~~ but need not be limited to:

(1) How to analyze the building's energy-efficiency rating.

(2) Comparisons to statewide averages for new and existing construction of that class.

(3) Information concerning methods to improve the building's energy-efficiency rating.

(4) A notice to residential purchasers that the energy-efficiency rating may qualify the purchaser for an energy-efficient mortgage from lending institutions.

Section 26. Subsection (2) of section 553.997, Florida Statutes, is amended to read:

553.997 Public buildings.—

(2) ~~The department, together with other~~ State agencies having building construction and maintenance responsibilities, shall make available energy-efficiency practices information to be used by individuals involved in the design, construction, retrofitting, and maintenance of buildings for state and local governments.

Section 27. Section 553.998, Florida Statutes, is amended to read:

553.998 Compliance.—All ratings must ~~shall~~ be determined using tools and procedures developed by the systems recognized


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under this part ~~adopted by the department by rule in accordance with chapter 120~~ and must ~~shall~~ be certified by the rater as accurate and correct and in compliance with procedures of the system under which the rater is certified ~~adopted by the department by rule in accordance with chapter 120~~.

Section 28. Concrete Masonry Products Research, Education, and Promotion Act.—

(1) SHORT TITLE.—This section may be cited as the "Concrete Masonry Products Research, Education, and Promotion Act."

(2) FLORIDA CONCRETE MASONRY COUNCIL, INC.; CREATION; PURPOSES.—

(a) There is created the Florida Concrete Masonry Council, Inc., a nonprofit corporation organized under the laws of this state and operating as a direct-support organization of the Florida Building Commission.

(b) The council shall:

1. Develop, implement, and monitor a system for the definition of masonry products and for the collection of self-imposed voluntary assessments.

2. Plan, implement, and conduct programs of education, promotion, research, and consumer information and industry information which are designed to strengthen the market position of the concrete masonry industry in this state and in the nation, to maintain and expand domestic and foreign markets, and to expand the uses for concrete masonry products.

3. Use the means authorized by this subsection for the purpose of funding research, education, promotion, and consumer and industry information of concrete masonry products in this state and in the nation.

4. Coordinate research, education, promotion, industry, and consumer information programs with national programs or programs of other states.

5. Develop new uses and markets for concrete masonry products.

6. Develop and improve educational access to individuals seeking employment in the field of concrete masonry.

7. Develop methods of improving the quality of concrete masonry products for the purpose of windstorm protection.

8. Develop methods of improving the energy efficiency attributes of concrete masonry products.

9. Inform and educate the public concerning the sustainability and economic benefits of concrete masonry products.

10. Do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the council.

(c) The council may:

1. Conduct or contract for scientific research with any accredited university, college, or similar institution and enter into other contracts or agreements that will aid in carrying out the purposes of this section, including contracts for the purchase or acquisition of facilities or equipment necessary to carry out the purposes of this section.

2. Disseminate reliable information benefiting the consumer and the concrete masonry industry.

3. Provide to governmental bodies, on request, information relating to subjects of concern to the concrete masonry industry and act jointly or in cooperation with the state or Federal


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Government, and agencies thereof, in the development or administration of programs that the council considers to be consistent with the objectives of this section.

4. Sue and be sued as a council without individual liability of the members for acts of the council when acting within the scope of the powers of this section and in the manner prescribed by the laws of this state.

5. Maintain a financial reserve for emergency use, the total of which must not exceed 50 percent of the council's anticipated annual income.

6. Employ subordinate officers and employees of the council, prescribe their duties, and fix their compensation and terms of employment.

7. Cooperate with any local, state, regional, or nationwide organization or agency engaged in work or activities consistent with the objectives of the program.

8. Do all other things necessary to further the intent of this section which are not prohibited by law.

(d) The council and concrete masonry manufacturers may meet and coordinate the collection of self-imposed voluntary assessments for each concrete masonry unit that is produced and sold by manufacturers in the state.

(e)1. The council may not participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office or any state or local ballot initiative. This restriction includes, but is not limited to, a prohibition against publishing or distributing any statement.

2. The net receipts of the council may not in any part inure to the benefit of or be distributable to its directors,

its officers, or other private persons, except that the council may pay reasonable compensation for services rendered by staff employees and may make payments and distributions in furtherance of the purposes of this section.

3. Notwithstanding any other provision of law, the council may not carry on any other activity not permitted to be carried on by a corporation:

a. That is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code; or

b. To which charitable contributions are deductible under s. 170(c)(2) of the Internal Revenue Code.

(3) GOVERNING BOARD.—

(a) The Florida Concrete Masonry Council, Inc., shall be governed by a board of directors composed of 15 members as follows:

1. Nine members representing concrete masonry manufacturers. Of these board members, at least five must be a representative of a manufacturer that is a member of the Masonry Association of Florida. These members must be representatives of concrete masonry manufacturers of various sizes. A manufacturer may not be represented by more than one member of the board.

2. One member representing the Florida Building Commission.

3. One member representing the Florida Home Builders Association.

4. One member having expertise in apprenticeship or vocational training.

5. Two members who are masonry contractors and who are members of the Masonry Association of Florida.

6. One member who is not a masonry contractor or


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manufacturer or an employee of a masonry contractor or manufacturer, but who is otherwise a stakeholder in the masonry industry.

(b) The initial board of directors shall be appointed by the chair of the commission based on recommendations from the Masonry Association of Florida. Five of the initial board members shall be appointed to a 1-year term. Five shall be appointed for a 2-year term. The remaining board members shall be appointed for a 3-year term. Thereafter, each member shall be appointed to serve a 3-year term and may be reappointed to serve an additional consecutive term. After the initial appointments are made, each subsequent vacancy shall be filled in accordance with the bylaws of the council. A member may not serve more than two consecutive terms. A member representing a manufacturer or a contractor must be employed by a manufacturer or contractor engaging in the trade of manufacture of concrete masonry products for at least 5 years immediately preceding the first day of his or her service on the board. All members of the board shall serve without compensation. However, the board members are entitled to reimbursement for per diem and travel expenses incurred in carrying out the intents and purposes of this section in accordance with s. 112.061, Florida Statutes.

(c) The council shall elect from its members a chair, vice chair, and a secretary-treasurer to a 2-year term each. The chair of the board must be a concrete masonry manufacturer.

(d) The initial board of directors shall adopt bylaws to govern initial terms of directors, governance of board members and meetings, term limits, and procedures for filling vacancies.

(4) ACCEPTANCE OF GRANTS AND GIFTS.—The council may accept

grants, donations, contributions, or gifts from any source if the use of such resources is not restricted in any manner that the council considers to be inconsistent with the objectives of this section.

(5) PAYMENTS TO ORGANIZATIONS.—

(a) The council may make payments to other organizations for work or services performed which are consistent with the objectives of the program.

(b) Before making payments described in this subsection, the council must secure a written agreement that the organization receiving payment will furnish at least annually, or more frequently on request of the council, written or printed reports of program activities and reports of financial data that are relative to the council's funding of such activities.

(c) The council may require adequate proof of security bonding on the payments to any individual, business, or other organization.

(6) COLLECTION OF MONEYS AT TIME OF SALE.—

(a) If a self-imposed voluntary assessment is paid by a manufacturer, each manufacturer shall list on its invoice to the purchaser, at the time of sale by the manufacturer, such assessment. The amount of the assessment must be separately stated on all receipts, invoices, or other evidence of sale as the "Florida Building Sustainability Assessment."

(b) Each manufacturer that elects to self-impose a voluntary assessment shall commit to the assessment for a period of not less than 1 year and shall annually be authorized to renew or end the self-imposed voluntary assessment.

(c) The manufacturer shall collect all such moneys and

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forward them quarterly to the council.

(d) The council shall maintain within its financial records a separate accounting of all moneys received under this subsection. The council shall provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant licensed under chapter 473.

(7) BYLAWS.—The council shall, by September 30, 2013, adopt bylaws to carry out the intents and purposes of this section. These bylaws may be amended upon 30 days' notice to board members at any regular or special meeting called for this purpose. The bylaws must conform to the requirements of this section but may also address any matter not in conflict with the general laws of this state.

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

And the title is amended as follows:

Delete line 2

and insert:

An act relating to building construction; amending s. 162.12, F.S.; revising notice requirements in the Local Government Code Enforcement Boards Act; amending s. 381.0065, F.S.; specifying that certain actions relating to onsite sewage treatment and removal are not required if a bedroom is not added during a remodeling addition or modification to a single-family home; prohibiting a remodeling addition or modification from certain coverage or encroachment; authorizing a local health board to review specific plans; requiring a review to be

completed within a specific time period after receipt of specific plans; amending s. 489.105, F.S.; revising a definition; providing that amendments to s. 489.113(2), F.S., enacted in s. 11, ch. 2012-13, Laws of Florida, are remedial and intended to clarify existing law; providing for retroactivity; amending s. 489.127, F.S.; revising civil penalties; authorizing a local building department to retain 75 percent of certain fines collected if it transmits 25 percent to the Department of Business and Professional Regulation; amending s. 489.131, F.S.; deleting legislative intent referring to a local agency's enforcement of regulatory laws; deleting the definitions of "minor violation" and "notice of noncompliance"; deleting provisions that provide for what a notice of noncompliance should or should not include; deleting a provision that provides for further disciplinary proceedings for certain licensees; amending s. 489.514, F.S.; extending the date by which an applicant must make application for a license to be grandfathered; amending s. 489.531, F.S.; revising a maximum civil penalty; amending s. 553.73, F.S.; prohibiting any provision of the International Residential Code relating to mandated fire sprinklers from incorporation into the Florida Building Code; amending s. 553.74, F.S.; revising membership of the Florida Building Commission; amending s. 553.79, F.S.; authorizing a site plan to be maintained at the worksite as an electronic copy; requiring the copy to be open to inspection by certain officials; amending s. 553.842, F.S.; requiring an application for state approval of a certain product to be approved by the department after the application and related documentation are complete; amending ss. 553.901, 553.902,

553.903, 553.904, 553.905, and 553.906, F.S.; requiring the Florida Building Commission to adopt the Florida Building Code-Energy Conservation; conforming subsequent sections of the thermal efficiency code; amending s. 553.912, F.S.; providing that certain existing heating and cooling equipment is not required to meet the minimum equipment efficiencies; amending s. 553.991, F.S.; revising the purpose of the Florida Building Energy-Efficiency Rating Act; repealing s. 553.992, F.S., relating to the adoption of a rating system; amending s. 553.993, F.S.; providing definitions; amending s. 553.994, F.S.; providing for the applicability of building energy-efficiency rating systems; amending s. 553.995, F.S.; deleting a minimum requirement for the building energy-efficiency rating systems; revising language; deleting provisions relating to a certain interest group; deleting provisions relating to the Department of Business and Professional Regulation; amending s. 553.996, F.S.; requiring building energy-efficiency rating system providers to provide certain information; amending s. 553.997, F.S.; deleting a provision relating to the department; amending s. 553.998, F.S.; revising provisions relating to rating compliance; providing a short title; creating the Florida Concrete Masonry Council, Inc.; authorizing the council to levy an assessment on the sale of concrete masonry units under certain circumstances; providing the powers and duties of the council and restrictions upon actions of the council; providing for appointment of the governing board of the council; authorizing the council to submit a referendum to manufacturers of concrete masonry units for authorization to levy an assessment on the sale of concrete masonry units; providing

procedure for holding the referendum; authorizing the council to accept grants, donations, contributions, and gifts under certain circumstances; authorizing the council to make payments to other organizations under certain circumstances; providing requirements for the manufacturer’s collection of assessments; requiring the council to adopt bylaws;

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 Appropriations Subcommittee on General Government

BILL:	CS/CS/SB 1416
INTRODUCER:	Appropriations Subcommittee on General Government; Environmental Preservation and Conservation Committee and Senator Evers
SUBJECT:	Rehabilitation Projects for Petroleum Contamination Sites
DATE:	April 17, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	**Fav/CS**
2.	Howard	DeLoach	AGG	**Fav/CS**
3.			AP	
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/CS/SB 1416 amends s. 376.30711, F.S., to delete provisions that require the Department of Environmental Protection (DEP) to pre-approve costs or use performance-based contracts for petroleum contaminated site rehabilitation projects. The DEP may use competitive bid procedures for all costs related to the rehabilitation of contaminated sites after it has approved the site assessment. The bill prohibits an owner or operator from receiving funding from both the Inland Protection Trust Fund (IPTF) and another funding source. Additionally, the bill requires contractors to provide the DEP with specific information in order to be qualified for participation in the program.

The fiscal impact to the state is indeterminate; however, competitively bidding state-funded petroleum contaminated site cleanups could result in significant savings. These savings could provide resources for additional contaminated site cleanups.

The bill amends s. 376.3071, F.S., to remove the references to the preapproval program and provides DEP with the ability to impose a lien on contaminated property. Additionally, the bill amends s. 376.30713, F.S., to remove references to the preapproval program and requires the

advanced cleanup program to be conducted under rules adopted for the petroleum contaminated site rehabilitation program.

II. Present Situation:

The DEP Bureau of Petroleum Storage Systems regulates underground and aboveground storage tank systems. In 1983, Florida became one of the first states in the nation to pass legislation and adopt rules for underground and aboveground storage tank systems. Leaking storage tanks pose a significant threat to groundwater quality, and Florida relies on groundwater for about 92 percent of its drinking water needs.[1]

In 1986, the Legislature passed SB 206 which created the State Underground Petroleum Environmental Response Act (SUPER Act) to address the problems of pollution from leaking underground petroleum storage systems. The SUPER Act authorized the DEP to establish criteria for the prioritization, assessment and cleanup, and reimbursement for cleanup of contaminated sites. The bill also created the Inland Protection Trust Fund (IPTF), with a tax on petroleum products imported or produced in Florida as the primary revenue source. The SUPER Act established the Early Detection Incentive Program (EDI), which provided site owners with the option of conducting the cleanup themselves, and then receive reimbursement from the IPTF, or has the state conduct the cleanup in priority order.[2]

In 1989, the Legislature passed HB 430 to create the Petroleum Liability and Insurance Restoration Program (PLIRP). The PLIRP allowed eligible petroleum facilities to purchase $1 million in pollution liability protection from a state contracted insurer. PLIRP also provided $1 million worth of site restoration coverage through reimbursement or state cleanup.[3]

The Legislature passed CS/SB 2702 in 1990 to establish the Abandoned Tank Restoration Program (ATRP). The ATRP was created to address the contamination at facilities that had out-of- service or abandoned tanks as of March 1990. The ATRP originally had a one-year application period, but the deadline is now waived indefinitely for owners that are financially unable to pay for the closure of abandoned tanks.[4]

The Legislature passed HB 2477 in 1992 to phase out the state's role in the cleanup process and shift the cleanup sites to the reimbursement program.[5] The excise tax on petroleum and petroleum products was increased to pay for the expanded reimbursement program. The reimbursement program proved costly and within a few years the reimbursement amount exceeded the administrative capacity of the DEP and the financial resources of the IPTF.[6] By 1996, over 18,000 petroleum sites had been identified as contaminated and the program had accumulated $551.5 million in unreimbursed claims.[7]

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[1] DEP, *Bureau of Petroleum Storage Systems*, http://dep.state.fl.us/waste/categories/pss/default.htm (last visited Mar. 18, 2013).
[2] Chapter 86-159, Laws of Fla.
[3] Chapter 89-188, Laws of Fla.
[4] Chapter 90-98, Laws of Fla.
[5] The term "cleanup sites" includes contaminated sites that are being remediated by the state or the property owner.
[6] Chapter 92-30, Laws of Fla.
[7] Comm. on Environmental Preservation, The Florida Senate, *Underground Petroleum Storage Tank Cleanup Program*, (Interim Report 2005-153) (Nov. 2004).

In 1995, the Legislature passed SB 1290 as a temporary measure to address the large backlog of reimbursement applications and unpaid claims. The bill required that only property owners who have received prior approval from the DEP for the scope of work and costs associated with the cleanup may continue with state funded site rehabilitation.[8]

In 1996, the legislature passed HB 1127 to implement the Petroleum Preapproval Program. The program required state-funded cleanups to be done on a preapproved basis, in priority order, and within the current fiscal year's budget. The Preapproval Program also required the DEP to use risk-based corrective action principles in the cleanup criteria rule. The Petroleum Cleanup Participation Program (PCPP) was created for sites that had missed the opportunity for state funding assistance but had reported contamination before 1995. Responsible parties were required to cost share in the cleanup and prepare a limited scope assessment at their expense. The Preapproved Advanced Cleanup (PAC) was created to allow sites to bypass the priority ranking list and receive funding in order to facilitate a public works project or property transaction. The PAC program requires applicants to cost share in the cleanup and to prepare limited scope assessments at their expense.[9]

In 1999, the Legislature passed HB 2151 to amend the Petroleum Preapproval Program and allow the DEP to provide funding for certain source removal activities. The bill also addressed new petroleum discharges that occur at a site with existing contamination and were reported after December 31, 1998. The bill allows a responsible party to enter into a Site Rehabilitation Agreement with the DEP and share in the cost and coordination of the cleanup, provided that the responsible party submits an application and a Limited Contamination Assessment Report to the DEP.[10]

In 2005, the Legislature passed CS/SB 1318 to substantially amend the Petroleum Preapproval Program.[11] Specifically, CS/SB 1318:

- Required that all of Florida's underground petroleum storage tanks be upgraded prior to January 1, 2010;
- Required the DEP to establish a process to uniformly encumber funds appropriated for the underground storage tank program throughout a fiscal year;
- Authorized the DEP to establish priorities based on a scoring system;
- Provided funding for limited interim soil-source removals for sites that become inaccessible for future remediation due to road infrastructure and right-of-way restrictions resulting from a pending Department of Transportation project;
- Provided funding for limited interim soil-source removals associated with the underground petroleum storage system upgrade that are conducted in advance of the site's priority ranking for cleanup;
- Limited the funding for source removal associated with the underground petroleum storage system upgrade to 10 sites per fiscal year per owner;
- Limited the amount of funding per facility and the activities that may be funded;

[8] Chapter 95-2, Laws of Fla.
[9] Chapter 96-277, Laws of Fla.
[10] Chapter 199-376, Laws of Fla.
[11] See ss. 376.3071, 376.30713, 376.3075, and 376.30715, F.S.

- Limited the funding amount for Department of Transportation projects to $1 million per fiscal year and $10 million for underground petroleum storage system upgrade projects per fiscal year;
- Repealed the funding provisions as of June 30, 2008;
- Provided that the Preapproved Advanced Cleanup Participation Program is available for discharges of petroleum that are eligible for restoration funding under the Petroleum Cleanup Participation Program for the state's cost share of site rehabilitation; and
- Extended the life of the Inland Protection Financing Corporation from 2011 to 2025, and authorizes the corporation to issue notes and bonds, and to pay for large-scale cleanups such as ports, airports, and terminal facilities that are eligible for state funding.

The DEP is currently working with cleanup contractors, property owners, and other stakeholders to explore ways to make the state-funded petroleum cleanup program more efficient, including implementing the competitive bid process.

Pursuant to s. 376.30711, F.S., the state is authorized to use the competitive bid procedures or negotiated contracts for preapproving all costs and procedures for site-specific rehabilitation projects. Two competitive bidding pilot projects were conducted in 1996 and 2002; however, the DEP has not implemented competitive bidding on a permanent basis. Site cleanup and rehabilitation services are instead provided through preapproved, negotiated scopes of work under the state-funded petroleum cleanup program, which includes lump sum, and time and materials contracting.

Pursuant to s. 287.055, F.S., state agencies are required to adhere to specific competitive bidding procedures to:[12]

- Evaluate professional services and the capabilities of the contractor;
- Evaluate the statements of qualifications and performance data;
- Select at least three firms deemed to be the most highly qualified to perform the services; and
- Negotiate a contract with the most qualified firm for a fair, competitive, and reasonable rate.

III. Effect of Proposed Changes:

Section 1 amends s. 287.055, F.S., to provide conforming language.

Section 2 amends s. 376.30711, F.S., to provide legislative findings that the petroleum contamination site rehabilitation program be implemented efficiently and cost effectively. The bill specifies that before public funds are used to cleanup any site in the petroleum program, all private funds must be exhausted first; prohibits an owner or operator of a facility or storage tank to receive funding from the IPTF in addition to compensation from another funding source; and provides specific conditions which the owner or operator must certify to the DEP in order to be eligible for site rehabilitation funding. Specifically the bill requires the owner or operator to:

- Certify to the DEP that they have not received compensation from another funding source for site rehabilitation work for eligible discharges other than a state funding program;
- Confirm there is no insurance or other agreement that provides coverage for site rehabilitation other than state funding; and

[12] *See* s. 287.055, F.S.

- Confirm no claims against an insurance policy, indemnity agreement or other agreement have been made for the costs associated with site rehabilitation.

In addition, the bill:

- Requires that if the owner or operator cannot provide the DEP with the information required, then the owner or operator is to provide the DEP with the date, amount, and source of all payments received for site rehabilitation. The owner or operator is also required to provide copies of all insurance policies or any agreements that provide coverage for the cost of site rehabilitation or claims against any insurance policies or agreements. In the event an owner makes a claim against an insurance policy or agreement, then the owner must immediately notify the DEP of the claim and provide the date, amount, and source of all payments received for site rehabilitation. The owner must immediately reimburse the DEP for the amount paid by the claim, or amount expended by the DEP, whichever is less. If the payment received is the result of a settlement, the DEP or court may determine how the amount received is to be allocated between site rehabilitation tasks paid for by public funds and tasks for which the claim was made.
- Specifies that the DEP has the right to subrogation to any insurance policies, indemnity agreements, or other agreements that provide funds for site rehabilitation.
- Allows the DEP to recover funds paid by the DEP if the owner or operator received double payment for site rehabilitation work. The bill also specifies that the DEP has authority to recover payments or overpayments from the IPTF.
- Requires the DEP to adopt rules which must include:
  - The applicable provisions in ch. 287, F.S., that do not conflict with the bill or other applicable provisions in ch. 376, F.S.;
  - Procedures for the DEP to develop a pool of qualified contractors through an open and competitive procurement process;
  - The ability for site owners to coordinate with the DEP to develop site-specific scopes of work;
  - The ability for site owners to eliminate certain contractors from the pool of contractors based on non-performance and subject to approval by the DEP;
  - Procedures to ensure the pool of contractors has the ability to visit the work site, conduct due diligence, and have questions answered by the DEP or site owners in order to ensure the competitive procurement process is effective;
  - Procedures to improve the effectiveness and efficiency of the site assessment process;
  - Procedures to ensure the contractors may not submit competitive bids unless approved by the DEP;
  - Procedures to ensure site rehabilitation is completed efficiently and cost effectively and in accordance with ch. 376, F.S., and other applicable statutes and rules;
  - Reporting deadlines for deliverables and departmental review and approval of deliverables;
  - Reporting on the progress of site rehabilitation through a public website; and
  - Procedures for the ongoing evaluation of contractor performance.
- Requires the contractors to meet all certification and license requirements imposed by law.
- Specifies it is unlawful for a contractor or subcontractor to receive IPTF funds in any capacity if the contractor or subcontractor:

  - Owns property, has interest in property, or has beneficial interest in operations conducted on property upon which IPTF funds are expended;
  - Is the relative of someone who owns or has voting interest in any decision affecting any percentage of property upon which IPTFs are being expended; or
  - Serves as partner, director, officer, trustee, or managing employee of a corporation that owns or has voting interest in any decisions affecting the property upon which IPTF funds are expended.
- Requires all contractors performing work in the petroleum cleanup program to sign an affidavit affirming that they comply with these provisions. It also specifies that it is a third degree felony for anyone who violates state or federal law in soliciting or securing contracts for petroleum rehabilitation sites;
- Requires the DEP to select one to five sites on a yearly basis for innovative technology pilot programs.

Section 3 amends s. 376.3071, F.S., to remove the references to the preapproval program and specifies that the DEP may establish a reasonable time period to evaluate the effectiveness of natural attenuation.

The bill allows the DEP to impose a lien on contaminated property equal to the estimated cost of bringing the site into compliance and includes provisions for property owners to release their properties from any liens claimed.

Section 4 amends s. 376.30713, F.S., to remove any reference to the preapproval program and requires the advance cleanup program to be conducted according to the rules adopted pursuant to ss. 376.30711 and 287.0595, F.S.

Section 5 amends s. 373.326, F.S., to exempt monitoring wells that are required for site rehabilitation activities from permitting or fee requirements.

Section 6 provides the act shall 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 bill requires all available private funds be exhausted for site rehabilitation prior to the expenditure of public funds and prohibits owners from receiving duplicate funding from both the IPTF and other funding sources for the same site rehabilitation task. Contractors or subcontractors could not lawfully receive IPTF funds if they have an ownership or beneficial interest in sites being cleaned up.[13]

The initial preparation of bid packages may be time consuming and cause a transitional delay in authorizing work to private cleanup contractors selected as a result of the bid process; however, templates may be available for subsequent bids eliminating this delay. Bid protests may cause delays and smaller or mid-size cleanup contractors and construction subcontractors may be disadvantaged.[14]

Under a competitive bid cleanup contract, only success toward meeting the cleanup goal will be rewarded and an incentive may be provided to ensure the greatest possible success in the least amount of time. Delays may occur if there are a significant number of bid protests. However, those may decrease over time, if the DEP prevails in the bid protests and contract awards are upheld.[15]

C. Government Sector Impact:

Competitively bidding state-funded petroleum contaminated site cleanups could result in significant savings. The savings may be used to fund the cleanup of contaminated sites awaiting cleanup.[16]

The changes in the review and evaluation of bids on an ongoing basis could be time consuming but can be handled with existing staff and resources within DEP.[17]

The DEP will incur non-recurring costs of $250,000 to $300,000 to conduct rulemaking, including multiple workshops and staff time to implement a competitively bid cleanup program. According to the DEP, these costs can be absorbed with existing staff and budget authority.[18]

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[13] DEP, *Senate Bill 1416 Agency Analysis* (April 18, 2013) (on file with the Senate Committee on Environmental Preservation and Conservation).
[14] *Id*.
[15] *Id*.
[16] DEP, *Senate Bill 1416 Agency Analysis* (Mar. 18, 2013) (on file with the Senate Committee on Environmental Preservation and Conservation).
[17] *Id*.
[18] *Supra* note 14.

A competitive procurement model may result in an overall savings of 10 to 25 percent per year. The savings may be used on other contaminated sites awaiting cleanup. Review and evaluation of bids on an ongoing basis could be time consuming and may require a shifting of resources for the DEP. The permit and fee exemption for monitoring wells will save the DEP an indeterminate amount.[19]

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.)

Recommended CS/CS by Appropriations Subcommittee on General Government on April 17, 2013:

- Provides the framework for the DEP to implement competitive bid procedures for the petroleum contaminated site rehabilitation program.
- Removes references to the "preapproval" program.
- Provides legislative findings and specifies that contaminated site rehabilitation be done efficiently and cost effectively.
- Requires private funds be exhausted before expending public funds and prohibits property owners from receiving double payment.
- Requires property owners to certify specific information to the DEP.
- Provides the DEP with the right to subrogation and the ability to recover funds in the case of double payment.
- Requires the DEP to adopt specific rules.
- Requires the contractors to meet certification and license requirements and sign an affidavit certifying that information.
- Prohibits any contractor or subcontractor from receiving IPTF funds if they have an ownership or beneficial interest in sites being cleaned up.
- Specifies that it is a third degree felony for anyone who violates state or federal law in soliciting or securing contracts for petroleum rehabilitation sites.
- Requires the DEP to select one to five sites on a yearly basis for innovative technology pilot programs.
- Provides that DEP may require active remediation for natural attenuation sites in certain circumstances.
- Allows the DEP to impose a lien on contaminated property.
- Requires the advance cleanup program to be conducted according to the rules adopted pursuant to ss. 376.30711 and 287.0595, F.S.

[19] *Id*.

- Provides exemptions for monitoring wells.

CS by Environmental Preservation and Conservation on March 21, 2013:
The CS removes the reference to s. 287.0595, F.S. Section 287.0595, F.S., grants the DEP rulemaking authority to establish procedures for awarding contracts for cleanup of petroleum contaminated sites. The bill was not intended to exempt competitive bidding procedures from rulemaking.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2013	.	
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Appropriations Subcommittee on General Government (Simpson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (4) of section 287.0595, Florida Statutes, is amended to read:

287.0595 Pollution response action contracts; department rules.—

(4) Competitive solicitation pursuant to this section is not subject to the requirements of s. 287.055. ~~This section does not apply to contracts which must be negotiated under s. 287.055.~~

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Section 2. Section 376.30711, Florida Statutes, is amended to read:

376.30711 Petroleum ~~Preapproved~~ site rehabilitation.~~,~~ ~~effective March 29, 1995.~~

(1)(a) The Legislature finds and declares that the financial operation of the petroleum contamination site rehabilitation program~~,~~ must be implemented in an efficient manner which reduces costs and improves the efficiency of rehabilitation activities, thereby reducing the significant backlog of contaminated sites and their corresponding threat to human health, safety and the environment. ~~as previously structured, has resulted in site rehabilitation proceeding at a higher rate than revenues can support and at sites that are not of the highest priority as established in s. 376.3071(5). This has resulted in a large backlog of reimbursement applications and excessive costs to the Inland Protection Trust Fund.~~ It is the intent of the Legislature that petroleum contaminated sites be cleaned up efficiently and cost effectively in an open and competitive manner, ~~contamination site cleanups be conducted on a preapproved basis~~ with emphasis on addressing first the sites which pose the greatest threat to human health and the environment, within the availability of funds in the Inland Protection Trust Fund, recognizing that source removal, wherever it is technologically feasible and cost-effective and will significantly reduce the contamination or eliminate the spread of contamination, shall be considered to protect public health and safety, water resources, and the environment.

(b) Site rehabilitation work on sites eligible for state-funded cleanup from the Inland Protection Trust Fund and

pursuant to ss. 376.305(6), 376.3071, 376.3072, and 376.3073, ~~shall~~ is only ~~be~~ eligible for site rehabilitation funding under this section. After March 29, 1995, ~~only persons who have received prior written approval from the department of the scope of work and costs may continue site rehabilitation work.~~ in the event of a new release, the facility operator is ~~shall be~~ required to abate the source of the discharge. If free product is present, the operator must ~~shall~~ notify the department, which may direct the removal of the free product ~~as a preapproved expense~~ pursuant to this section. The department must ~~shall~~ grant approval to continue site rehabilitation based on this section and s. 376.3071(5).

(c) The Legislature declares that in order to protect public resources, to maximize funding available for site rehabilitation, and to prevent owners and operators of petroleum storage facilities or tanks and their insurers, indemnitors, and parties to other contractual arrangements providing funds for site rehabilitation from receiving a windfall at the expense of taxpayers, all such private funds available to perform site rehabilitation for a discharge or condition determined to be eligible for participation in any petroleum program providing state funding for site rehabilitation after the effective date of this act shall be exhausted prior to the expenditure of public funds for site rehabilitation.

(d) An owner or operator of a facility or storage tank or other person responsible for site rehabilitation may not receive both funding from the Inland Protection Trust Fund and remuneration or compensation for the same site rehabilitation task from another funding source. Therefore, prior to the

department authorizing the expenditure of any state funds for site rehabilitation after July 1, 2013, the owner and, if different, the operator, of every facility or petroleum storage tank system that is determined to be eligible for site rehabilitation funding under this section after that date shall certify to the department that:

1. The certifying party has not received compensation from any other funding source as remuneration or reimbursement for site rehabilitation work for the eligible discharge or condition other than from a state funding program; and

2. There is no insurance, indemnity agreement, or other arrangement, other than a state funding program under this chapter, that provides coverage for any site rehabilitation task for the eligible discharge or condition; and

3. The certifying party has made no claims against any insurance policy, indemnity agreement, or other arrangement for the cost of site rehabilitation for the eligible discharge or condition, nor received any remuneration for the cost of site rehabilitation for the eligible discharge or condition.

(e) If the owner and operator cannot certify as required by sub-paragraphs (d)1.-3., the owner and operator shall disclose to the department the date, amount, and source of all payments received as remuneration or reimbursement for site rehabilitation work, including a description of the tasks for which such remuneration or reimbursement was received, and shall provide copies of all insurance policies, indemnity agreements or other arrangements that provide coverage for all or a portion of the cost of site rehabilitation, all claims made by the owner or operator against any insurance policy, indemnity agreement,

or other arrangement for the cost of site rehabilitation, and all settlements, judgments and other documents detailing the basis for the claim and its disposition.

(f) If the owner or operator of a petroleum storage tank system or facility that is eligible for site rehabilitation or other person responsible for site rehabilitation becomes aware of an insurance policy, indemnity agreement, or other arrangement, makes a claim against any such instrument, or receives any remuneration or reimbursement for site rehabilitation for an eligible discharge, the owner or operator shall immediately notify the department and provide the information required under paragraph (e), and shall immediately reimburse the department in an amount equal to the lesser of the amount of the payment received or the amount expended by the department for site rehabilitation. If the payment received by the owner or operator is the result of a settlement of a claim or multiple claims against an insurer, indemnitor or other person, the department or a court may determine how the sums received should be allocated between site rehabilitation tasks for which public funds have been expended and other tasks for which the claim was made.

(g) Upon determining that a discharge or condition is eligible for state funding, or upon expending funds for rehabilitation of any site, the department has a right of subrogation to any insurance policies, indemnity agreements, or other arrangements providing funds for site rehabilitation in existence at the time of the release to the extent of any rights the owner or operator of a facility or petroleum storage tank may have had under that policy, contract, or arrangement and has

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a right of subrogation against any third party who caused or contributed to the release.

(h) The department may bring an action to compel compliance with this section, and to recover any sums paid by the department to the extent the owner or operator or other person responsible for site rehabilitation has received a double recovery prohibited by paragraph (d).

(i) Nothing in this section shall affect the department's authority to recover payments or overpayments from the Inland Protection Trust Fund pursuant to existing law.

(2)(a) Competitive bidding pursuant to this section is ~~shall~~ not ~~be~~ subject to the requirements of s. 287.055. The department must ~~is authorized to~~ use competitive ~~bid~~ procurement procedures or negotiated contracts for ~~preapproving~~ all costs and rehabilitation procedures for site-specific rehabilitation projects, pursuant to rules adopted under this section, s, 120.54 and s. 287.0595 ~~through performance-based contracts~~. Site rehabilitation shall be conducted according to the priority ranking order established pursuant to s. 376.3071(5).

(b) In addition, the Petroleum Site Rehabilitation rules shall include, at a minimum:

1. Generally applicable provisions from Ch. 287 that do not conflict with this section or other applicable provisions in Ch. 376.

2. Procedures whereby the Department will develop a pool of qualified contractors through an open and competitive procurement process to provide site assessment and rehabilitation services.

3. Coordination with the site or real property owner, at

their option, to develop a site-specific scope of work.

4. The ability for the site or real property owner to remove from the pool of qualified contractors, prior to the procurement process, any contractor based on non-performance or other demonstrable factors, subject to approval by the department.

5. In order to ensure that the competitive procurement process is effective and results in quality bids, procedures to ensure that the pool of qualified contractors are provided with the necessary site assessment report and other appropriate information, have the ability to visit the work site and to conduct other appropriate due diligence, and have questions answered by the department or site owner as needed.

6. Procedures to improve the effectiveness and efficiency of the site assessment process for eligible sites.

7. A method to ensure that a contractor conducting site assessment activities may not submit a competitive bid for site rehabilitation services unless approved by the department.

8. Procedures to ensure that site rehabilitation is completed in an efficient and cost effective manner, in accordance with criteria established in Ch. 376 and other applicable statutes and rules.

9. Reporting deadlines for deliverables and departmental review and approval deadlines for deliverables.

10. Reporting on the progress of site rehabilitation completion through a publicly accessible website.

11. In addition to the requirements in subparagraph (2)(c) below, procedures for the ongoing evaluation of contractor performance based on criteria commonly used by federal and state

agencies as well as other institutions and/or businesses engaged in environmental cleanup activities.

~~(b) Any contractor performing site rehabilitation program tasks must demonstrate to the department that:~~

~~1. The contractor meets all certification and license requirements imposed by law.~~

~~2. The contractor has obtained approval of its Comprehensive Quality Assurance Plan prepared under department rules.~~

(c) The contractor shall certify to the department that such contractor:

1. Complies with applicable OSHA regulations.

2. Maintains workers' compensation insurance for all employees as required by the Florida Workers' Compensation Law.

3. Maintains comprehensive general liability and comprehensive automobile liability insurance with minimum limits of at least $1 million per occurrence and $1 million annual aggregate, as shall protect it from claims for damage for personal injury, including accidental death, as well as claims for property damage that ~~which~~ may arise from performance of work under the program, designating the state as an additional insured party.

4. Maintains professional liability insurance of at least $1 million per occurrence and $1 million annual aggregate.

5. Has completed and submitted a sworn statement under s. 287.133(3)(a), on public entity crimes.

6. Has the capacity to perform or directly supervise the majority of the work at a site in accordance with s. 489.113(9).

7. Meets all certification and license requirements imposed

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by law.

(3) Any person responsible for site rehabilitation who received prior approval to conduct site rehabilitation and to thereafter submit an application for reimbursement, pursuant to s. 2(3), chapter 95-2, Laws of Florida, may request approval to conduct site rehabilitation pursuant to this section regardless of the site score.

(4) Any person responsible for site rehabilitation at a site with a priority ranking score of 50 points or more who was performing remedial action activities pursuant to s. 2(2), chapter 95-2, Laws of Florida, may request approval to complete site rehabilitation pursuant to this section in order to avoid disruption in cleanup activities.

(5)(a) Any contractor ~~person~~ who performs services under the approved contract ~~the conditions of a preapproved site rehabilitation agreement~~, pursuant to the provisions of this section and s. 376.3071(5), may file invoices with the department for payment ~~within the schedule and~~ for the services described in the approved contract ~~preapproved site rehabilitation agreement~~. The ~~Such~~ invoices for payment must be submitted to the department on forms provided by the department, together with evidence documenting that ~~preapproved~~ activities were conducted or completed in accordance with the approved contract ~~preapproved authorization~~. Provided there are sufficient unencumbered funds available in the Inland Protection Trust Fund which have been appropriated for expenditure by the Legislature and provided all of the terms of the approved contract ~~preapproved site rehabilitation agreement~~ have been met, invoices for payment must ~~shall~~ be paid consistent with the

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provisions of s. 215.422. After a contractor ~~an applicant~~ has submitted its invoices to the department and before payment is made, the contractor may assign its right to payment to any other person, without recourse of the assignee or assignor to the state, and in such cases the assignee must ~~shall~~ be paid consistent with the provisions of s. 215.422. Prior notice of the assignment and assignment information must ~~shall~~ be made to the department, ~~which notice shall~~ and must be signed and notarized by the assigning party. The department does ~~shall~~ not have the authority to regulate private financial transactions by which an applicant seeks to account for working capital or the time value of money, unless charges associated with such transactions are added as a separate charge in an invoice.

(b) The contractor must ~~shall~~ submit an invoice to the department within 30 days after the date of the department's written acceptance of each interim deliverable or written approval of the final deliverable specified in the approved contract ~~a preapproved site rehabilitation agreement~~.

(c) ~~Payments shall be made by~~ The department must make payments based on the terms of ~~a~~ an approved contract for site rehabilitation work. The department must ~~may, based on its experience and the past performance and concerns regarding a contractor,~~ retain between 5 and 25 ~~up to 25~~ percent of the contracted amount or use performance bonds to assure performance and final acceptance of the project by the department. The amount of retainage or performance bond or bonds, as well as the terms and conditions, must ~~shall~~ be a part of the approved ~~site-specific performance-based~~ contract.

(d) Contractors or persons to which the contractor has

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assigned its right to payment pursuant to paragraph (a) shall make prompt payment to subcontractors and suppliers for their costs associated with an ~~a~~ approved contract ~~preapproved site rehabilitation agreement~~ pursuant to s. 287.0585(1).

(e) The exemption in s. 287.0585(2) does ~~shall~~ not apply to payments associated with an ~~a~~ approved contract ~~preapproved site rehabilitation agreement~~.

(f) The department shall provide certification within 30 days after notification from a contractor that the terms of the contract for site rehabilitation work have been completed. Failure of the department to do so does ~~shall~~ not constitute a default certification of completion. The department also may withhold payment if the validity or accuracy of the contractor's invoices or supporting documents is in question.

(g) ~~Nothing in~~ This section does not ~~shall be construed to~~ authorize payment to any person for costs of contaminated soil treatment or disposal that does not meet the applicable rules of this state for such treatment or disposal, including all general permitting, state air emission standards, monitoring, sampling, and reporting rules more specifically described in department rules.

(h) If any contractor fails to perform, as determined by the department, contractual duties for site rehabilitation program tasks, the department must ~~shall~~ terminate the contractor's eligibility for participation in the program.

(i) The contractor responsible for conducting site rehabilitation must ~~shall~~ keep and preserve suitable records in accordance with the provisions of s. 376.3071(12)(e).

(6) It is unlawful for a site owner or operator, or his or

her designee, to receive any remuneration, in cash or in kind, directly or indirectly, from a rehabilitation contractor performing site cleanup activities pursuant to this section. It is also unlawful for any contractor or subcontractor to receive Inland Petroleum Trust Funds in any capacity when that contractor or subcontractor:

(a) owns or holds any real property interest in any percentage of property upon which such funds are being expended, or has any beneficial interest in operations conducted on any such property;

(b) is a relative of a person who owns or has a voting interest in any decisions affecting any percentage of property upon which such funds are being expended; or

(c) serves as a partner, director, officer, trustee, or managing employee of a corporation that owns or has a voting interest in any decisions affecting any percentage of property upon which such funds are being expended. All contractors and subcontractors performing work under this section shall sign an affidavit affirming that they comply with this provision. Any person or entity listed herein.

A contractor, subcontractor, real property owner or responsible party, or employee or agent of any person or entity listed herein, who offers, agrees, or contracts to solicit or secure a contract for petroleum contaminated site assessment or rehabilitation activities by a violation of any state or federal law involving fraud, bribery, collusion, conspiracy, or material misrepresentation with respect to such contracts is, upon conviction in a competent court of this state, guilty of a third

degree felony, punishable as provided in s. 775.082 or s. 775.083.

(7) On an annual basis, the department shall select one to five sites eligible for state restoration funding assistance under this section, each having a low-priority ranking score pursuant to s. 376.3071(5), for an innovative technology pilot program. Such sites shall be representative of varying geographic, geophysical, and petroleum-contaminated conditions. Utilizing the department's list of mechanical, chemical, and biological products and processes which have already been deemed acceptable from an environmental, regulatory, and safety standpoint, the department shall select innovative products and processes, based upon competitive bid procedures per subsection (2), to be utilized on pilot project sites.

Section 3. Section 376.3071, Florida Statutes, is amended to read:

376.3071 Inland Protection Trust Fund; creation; purposes; funding.—

(1) FINDINGS.—In addition to the legislative findings set forth in s. 376.30, the Legislature finds and declares:

(a) That significant quantities of petroleum and petroleum products are being stored in storage systems in this state, which is a hazardous undertaking.

(b) That spills, leaks, and other discharges from such storage systems have occurred, are occurring, and will continue to occur and that such discharges pose a significant threat to the quality of the groundwaters and inland surface waters of this state.

(c) That, where contamination of the ground or surface

water has occurred, remedial measures have often been delayed for long periods while determinations as to liability and the extent of liability are made and that such delays result in the continuation and intensification of the threat to the public health, safety, and welfare; in greater damage to the environment; and in significantly higher costs to contain and remove the contamination.

(d) That adequate financial resources must be readily available to provide for the expeditious supply of safe and reliable alternative sources of potable water to affected persons and to provide a means for investigation and cleanup of contamination sites without delay.

(e) That it is necessary to fulfill the intent and purposes of ss. 376.30-376.317, and further it is hereby determined to be in the best interest of, and necessary for the protection of the public health, safety, and general welfare of the residents of this state, and therefore a paramount public purpose, to provide for the creation of a nonprofit public benefit corporation as an instrumentality of the state to assist in financing the functions provided in ss. 376.30-376.317 and to authorize the department to enter into one or more service contracts with such corporation for the provision of financing services related to such functions and to make payments thereunder from the amount on deposit in the Inland Protection Trust Fund, subject to annual appropriation by the Legislature.

(f) That to achieve the purposes established in paragraph (e) and in order to facilitate the expeditious handling and rehabilitation of contamination sites and remedial measures with respect to contamination sites provided hereby without delay, it

is in the best interests of the residents of this state to authorize such corporation to issue evidences of indebtedness payable from amounts paid by the department under any such service contract entered into between the department and such corporation.

(2) INTENT AND PURPOSE.—

(a) It is the intent of the Legislature to establish the Inland Protection Trust Fund to serve as a repository for funds which will enable the department to respond without delay to incidents of inland contamination related to the storage of petroleum and petroleum products in order to protect the public health, safety, and welfare and to minimize environmental damage.

(b) It is the intent of the Legislature that the department implement rules and procedures to improve the efficiency of the Petroleum Restoration Program. The department is directed to implement rules and policies to eliminate and reduce duplication of site rehabilitation efforts, paperwork, and documentation, and micromanagement of site rehabilitation tasks.

(c) The department is directed to adopt and implement uniform and standardized forms for ~~the requests for preapproval~~ site rehabilitation work and for the submittal of reports to ensure that information is submitted to the department in a concise, standardized uniform format seeking only information that is necessary.

(d) The department is directed to implement computerized and electronic filing capabilities ~~of preapproval requests~~ and submittal of reports in order to expedite submittal of the information and elimination of delay in paperwork. The

computerized, electronic filing system shall be implemented no later than January 1, 1997.

~~(e) The department is directed to adopt uniform scopes of work with templated labor and equipment costs to provide definitive guidance as to the type of work and authorized expenditures that will be allowed for preapproved site rehabilitation tasks.~~

(e)~~(f)~~ The department is directed to establish guidelines for consideration and acceptance of new and innovative technologies for site rehabilitation work.

(3) CREATION.—There is hereby created the Inland Protection Trust Fund, hereinafter referred to as the "fund," to be administered by the department. This fund shall be used by the department as a nonlapsing revolving fund for carrying out the purposes of this section and s. 376.3073. To this fund shall be credited all penalties, judgments, recoveries, reimbursements, loans, and other fees and charges related to the implementation of this section and s. 376.3073 and the excise tax revenues levied, collected, and credited pursuant to ss. 206.9935(3) and 206.9945(1)(c). Charges against the fund shall be made in accordance with the provisions of this section.

(4) USES.—Whenever, in its determination, incidents of inland contamination related to the storage of petroleum or petroleum products may pose a threat to the environment or the public health, safety, or welfare, the department shall obligate moneys available in the fund to provide for:

(a) Prompt investigation and assessment of contamination sites.

(b) Expeditious restoration or replacement of potable water

supplies as provided in s. 376.30(3)(c)1.

(c) Rehabilitation of contamination sites, which shall consist of cleanup of affected soil, groundwater, and inland surface waters, using the most cost-effective alternative that is technologically feasible and reliable and that provides adequate protection of the public health, safety, and welfare and minimizes environmental damage, in accordance with the site selection and cleanup criteria established by the department under subsection (5), except that nothing herein shall be construed to authorize the department to obligate funds for payment of costs which may be associated with, but are not integral to, site rehabilitation, such as the cost for retrofitting or replacing petroleum storage systems.

(d) Maintenance and monitoring of contamination sites.

(e) Inspection and supervision of activities described in this subsection.

(f) Payment of expenses incurred by the department in its efforts to obtain from responsible parties the payment or recovery of reasonable costs resulting from the activities described in this subsection.

(g) 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 department in the investigation of drinking water contamination complaints and costs associated with public information and education activities.

(h) Establishment and implementation of the compliance verification program as authorized in s. 376.303(1)(a),

including contracting with local governments or state agencies to provide for the administration of such program through locally administered programs, to minimize the potential for further contamination sites.

(i) Funding of the provisions of ss. 376.305(6) and 376.3072.

(j) Activities related to removal and replacement of petroleum storage systems, exclusive of costs of any tank, piping, dispensing unit, or related hardware, if soil removal is preapproved as a component of site rehabilitation and requires removal of the tank where remediation is conducted under s. 376.30711 or if such activities were justified in an approved remedial action plan performed pursuant to subsection (12).

(k) Activities related to reimbursement application preparation and activities related to reimbursement application examination by a certified public accountant pursuant to subsection (12).

(l) Reasonable costs of restoring property as nearly as practicable to the conditions which existed prior to activities associated with contamination assessment or remedial action taken under s. 376.303(4).

(m) Repayment of loans to the fund.

(n) Expenditure of sums from the fund to cover ineligible sites or costs as set forth in subsection (13), if the department in its discretion deems it necessary to do so. In such cases, the department may seek recovery and reimbursement of costs in the same manner and in accordance with the same procedures as are established for recovery and reimbursement of sums otherwise owed to or expended from the fund.

(o) Payment of amounts payable under any service contract entered into by the department pursuant to s. 376.3075, subject to annual appropriation by the Legislature.

(p) Petroleum remediation pursuant to s. 376.30711 throughout a state fiscal year. The department shall establish a process to uniformly encumber appropriated funds throughout a state fiscal year and shall allow for emergencies and imminent threats to human health and the environment as provided in paragraph (5)(a). This paragraph does not apply to appropriations associated with the free product recovery initiative of paragraph (5)(c) or the ~~preapproved~~ advanced cleanup program of s. 376.30713.

(q) Enforcement of this section and ss. 376.30-376.317 by the Fish and Wildlife Conservation Commission. The department shall disburse moneys to the commission for such purpose.

The Inland Protection Trust Fund may only be used to fund the activities in ss. 376.30-376.317 except ss. 376.3078 and 376.3079. Amounts on deposit in the Inland Protection Trust Fund in each fiscal year shall first be applied or allocated for the payment of amounts payable by the department pursuant to paragraph (o) under a service contract entered into by the department pursuant to s. 376.3075 and appropriated in each year by the Legislature prior to making or providing for other disbursements from the fund. Nothing in this subsection shall authorize the use of the Inland Protection Trust Fund for cleanup of contamination caused primarily by a discharge of solvents as defined in s. 206.9925(6), or polychlorinated biphenyls when their presence causes them to be hazardous

wastes, except solvent contamination which is the result of chemical or physical breakdown of petroleum products and is otherwise eligible. Facilities used primarily for the storage of motor or diesel fuels as defined in ss. 206.01 and 206.86 shall be presumed not to be excluded from eligibility pursuant to this section.

(5) SITE SELECTION AND CLEANUP CRITERIA.—

(a) The department shall adopt rules to establish priorities based upon a scoring system for state-conducted cleanup at petroleum contamination sites based upon factors that include, but need not be limited to:

1. The degree to which human health, safety, or welfare may be affected by exposure to the contamination;

2. The size of the population or area affected by the contamination;

3. 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

4. The effect of the contamination on the environment.

Moneys in the fund shall then be obligated for activities described in paragraphs (4)(a)-(e) at individual sites in accordance with such established criteria. However, nothing in this paragraph shall be construed to restrict the department from modifying the priority status of a rehabilitation site where conditions warrant, taking into consideration the actual distance between the contamination site and groundwater or

surface water receptors or other factors that affect the risk of exposure to petroleum products' chemicals of concern. The department may use the effective date of a department final order granting eligibility pursuant to subsections (9) and (13) and ss. 376.305(6) and 376.3072 to establish a prioritization system within a particular priority scoring range.

(b) It is the intent of the Legislature to protect the health of all people under actual circumstances of exposure. The secretary shall establish criteria by rule for the purpose of determining, on a site-specific basis, the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program task and a site rehabilitation program may be deemed completed. In establishing the rule, the department shall incorporate, to the maximum extent feasible, risk-based corrective action principles to achieve protection of human health and safety and the environment in a cost-effective manner as provided in this subsection. Criteria for determining what constitutes a rehabilitation program task or completion of site rehabilitation program tasks and site rehabilitation programs shall be based upon the factors set forth in paragraph (a) and the following additional factors:

1. The current exposure and potential risk of exposure to humans and the environment including multiple pathways of exposure.

2. The appropriate point of compliance with cleanup target levels for petroleum products' chemicals of concern. The point of compliance shall be at the source of the petroleum contamination. However, the department is authorized to

temporarily move the point of compliance to the boundary of the property, or to the edge of the plume when the plume is within the property boundary, while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding. The department also is authorized, pursuant to criteria provided for in this paragraph, to temporarily extend the point of compliance beyond the property boundary with appropriate monitoring, if such extension is needed to facilitate natural attenuation or to address the current conditions of the plume, provided human health, public safety, and the environment are adequately protected. Temporary extension of the point of compliance beyond the property boundary, as provided in this subparagraph, shall include notice to local governments and owners of any property into which the point of compliance is allowed to extend.

3. The appropriate site-specific cleanup goal. The site-specific cleanup goal shall be that all petroleum contamination sites ultimately achieve the applicable cleanup target levels provided in this paragraph. However, the department is authorized to allow concentrations of the petroleum products' chemicals of concern to temporarily exceed the applicable cleanup target levels while cleanup, including cleanup through natural attenuation processes in conjunction with appropriate monitoring, is proceeding, provided human health, public safety, and the environment are adequately protected.

4. The appropriateness of using institutional or engineering controls. Site rehabilitation programs may include the use of institutional or engineering controls to eliminate the potential exposure to petroleum products' chemicals of

concern to humans or the environment. Use of such controls must be preapproved by the department, and institutional controls shall not be acquired with funds from the Inland Protection Trust Fund. When institutional or engineering controls are implemented to control exposure, the removal of such controls must have prior department approval and must be accompanied immediately by the resumption of active cleanup, or other approved controls, unless cleanup target levels pursuant to this paragraph have been achieved.

5. The additive effects of the petroleum products' chemicals of concern. The synergistic effects of petroleum products' chemicals of concern shall also be considered when the scientific data becomes available.

6. Individual site characteristics which shall include, but not be limited to, the current and projected use of the affected groundwater in the vicinity of the site, current and projected land uses of the area affected by the contamination, the exposed population, the degree and extent of contamination, the rate of contaminant migration, the apparent or potential rate of contaminant degradation through natural attenuation processes, the location of the plume, and the potential for further migration in relation to site property boundaries.

7. Applicable state water quality standards.

a. Cleanup target levels for petroleum products' chemicals of concern found in groundwater shall be the applicable state water quality standards. Where such standards do not exist, the cleanup target levels for groundwater shall be based on the minimum criteria specified in department rule. The department shall consider the following, as appropriate, in establishing

the applicable minimum criteria: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; the best achievable detection limit; the naturally occurring background concentration; or nuisance, organoleptic, and aesthetic considerations.

b. Where surface waters are exposed to petroleum contaminated groundwater, the cleanup target levels for the petroleum products' chemicals of concern shall be based on the surface water standards as established by department rule. The point of measuring compliance with the surface water standards shall be in the groundwater immediately adjacent to the surface water body.

8. Whether deviation from state water quality standards or from established criteria is appropriate. The department may issue a "No Further Action Order" based upon the degree to which the desired cleanup target level is achievable and can be reasonably and cost-effectively implemented within available technologies or engineering and institutional control strategies. Where a state water quality standard is applicable, a deviation may not result in the application of cleanup target levels more stringent than said standard. In determining whether it is appropriate to establish alternate cleanup target levels at a site, the department may consider the effectiveness of source removal that has been completed at the site and the practical likelihood of: the use of low yield or poor quality groundwater; the use of groundwater near marine surface water bodies; the current and projected use of the affected groundwater in the vicinity of the site; or the use of groundwater in the immediate vicinity of the storage tank area,

where it has been demonstrated that the groundwater contamination is not migrating away from such localized source; provided human health, public safety, and the environment are adequately protected.

9. Appropriate cleanup target levels for soils.

a. In establishing soil cleanup target levels for human exposure to petroleum products' chemicals of concern found in soils from the land surface to 2 feet below land surface, the department shall consider the following, as appropriate: calculations using a lifetime cancer risk level of 1.0E-6; a hazard index of 1 or less; the best achievable detection limit; or the naturally occurring background concentration.

b. Leachability-based soil target levels shall be based on protection of the groundwater cleanup target levels or the alternate cleanup target levels for groundwater established pursuant to this paragraph, as appropriate. Source removal and other cost-effective alternatives that are technologically feasible shall be considered in achieving the leachability soil target levels established by the department. The leachability goals shall not be applicable if the department determines, based upon individual site characteristics, that petroleum products' chemicals of concern will not leach into the groundwater at levels which pose a threat to human health and safety or the environment.

However, nothing in this paragraph shall be construed to restrict the department from temporarily postponing completion of any site rehabilitation program for which funds are being expended whenever such postponement is deemed necessary in order

to make funds available for rehabilitation of a contamination site with a higher priority status.

(c) The department shall require source removal, if warranted and cost-effective, at each site eligible for restoration funding from the Inland Protection Trust Fund.

1. Funding for free product recovery may be provided in advance of the order established by the priority ranking system under paragraph (a) for site cleanup activities. However, a separate prioritization for free product recovery shall be established consistent with paragraph (a). No more than $5 million shall be encumbered from the Inland Protection Trust Fund in any fiscal year for free product recovery conducted in advance of the priority order under paragraph (a) established for site cleanup activities.

2. Once free product removal and other source removal identified in this paragraph are completed at a site, and notwithstanding the order established by the priority ranking system under paragraph (a) for site cleanup activities, the department may reevaluate the site to determine the degree of active cleanup needed to continue site rehabilitation. Further, the department shall determine if the reevaluated site qualifies for natural attenuation monitoring, long-term natural attenuation monitoring, or no further action. If additional site rehabilitation is necessary to reach no further action status, the site rehabilitation shall be conducted in the order established by the priority ranking system under paragraph (a). The department shall utilize natural attenuation monitoring strategies and, when cost-effective, transition sites eligible for restoration funding assistance to long-term natural

attenuation monitoring where the plume is shrinking or stable and confined to the source property boundaries and the petroleum products' chemicals of concern meet the natural attenuation default concentrations, as defined by department rule. If the plume migrates beyond the source property boundaries, natural attenuation monitoring may be conducted in accordance with department rule, or if the site no longer qualifies for natural attenuation monitoring, active remediation may be resumed. For long-term natural attenuation monitoring, if the petroleum products' chemicals of concern increase or are not significantly reduced after 42 months of monitoring or at the discretion of the department, or if the plume migrates beyond the property boundaries, active remediation shall be resumed as necessary. For sites undergoing active remediation, the department shall evaluate ~~template~~ the cost of natural attenuation monitoring pursuant to s. 376.30711 to ensure that site mobilizations are performed in a cost-effective manner. Sites that are not eligible for state restoration funding may transition to long-term natural attenuation monitoring using the criteria in this subparagraph. Nothing in this subparagraph precludes a site from pursuing a "No Further Action" order with conditions.

3. The department shall evaluate whether higher natural attenuation default concentrations for natural attenuation monitoring or long-term natural attenuation monitoring are cost-effective and would adequately protect public health and the environment. The department shall also evaluate site-specific characteristics that would allow for higher natural attenuation or long-term natural attenuation concentration levels.

4. A local government may not deny a building permit based

solely on the presence of petroleum contamination for any construction, repairs, or renovations performed in conjunction with tank upgrade activities to an existing retail fuel facility if the facility was fully operational before the building permit was requested and if the construction, repair, or renovation is performed by a licensed contractor. All building permits and any construction, repairs, or renovations performed in conjunction with such permits must comply with the applicable provisions of chapters 489 and 553.

(6) FUNDING.—The Inland Protection Trust Fund shall be funded as follows:

(a) All excise taxes levied, collected, and credited to the fund in accordance with the provisions of ss. 206.9935(3) and 206.9945(1)(c).

(b) All penalties, judgments, recoveries, reimbursements, and other fees and charges credited to the fund in accordance with the provisions of subsection (3).

(7) DEPARTMENTAL DUTY TO SEEK RECOVERY AND REIMBURSEMENT.—

(a) Except as provided in subsection (9) and as otherwise provided by law, the department shall recover to the use of the fund from a person or persons at any time causing or having caused the discharge or from the Federal Government, jointly and severally, all sums owed or expended from the fund, pursuant to s. 376.308, except that the department may decline to pursue such recovery if it finds the amount involved too small or the likelihood of recovery too uncertain. Sums recovered as a result of damage due to a discharge related to the storage of petroleum or petroleum products or other similar disaster shall be apportioned between the fund and the General Revenue Fund so as

to repay the full costs to the General Revenue Fund of any sums disbursed therefrom as a result of such disaster. Any request for reimbursement to the fund for such costs, if not paid within 30 days of demand, shall be turned over to the department for collection.

(b) Except as provided in subsection (9) and as otherwise provided by law, it is the duty of the department in administering the fund diligently to pursue the reimbursement to the fund of any sum expended from the fund for cleanup and abatement in accordance with the provisions of this section or s. 376.3073, unless the department finds the amount involved too small or the likelihood of recovery too uncertain. For the purposes of s. 95.11, the limitation period within which to institute an action to recover such sums shall commence on the last date on which any such sums were expended, and not the date that the discharge occurred.

(c) If the department initiates an enforcement action to clean up a contaminated site and determines that the responsible party is financially unable to undertake complete restoration of the contaminated site, that the current property owner was not responsible for the discharge when the contamination first occurred, or that the state’s interest can best be served by conducting cleanup, the department may enter into an agreement with the responsible party or property owner whereby the department agrees to conduct site rehabilitation and the responsible party or property owner agrees to pay for the portion of the cleanup costs that are within such party’s or owner’s financial capabilities as determined by the department, taking into consideration the party’s net worth and the economic

impact on the party.

(d) The department may impose a lien on the real property on which the contaminated site is located equal to the estimated cost to bring the site into compliance, including attorney's fees and court costs. Any owner whose property has such a lien imposed may release her or his property from any lien claimed under this subsection by filing with the clerk of the circuit court a cash or surety bond, payable to the department in the amount of the estimated cost of bringing the site into compliance with department rules, including attorney's fees and court costs, or the value of the property after the abatement action is complete, whichever is less. A lien provided by this subsection may not continue for a period longer than 4 years after the abatement action is completed, unless within that period an action to enforce the lien is commenced in a court of competent jurisdiction. The department may take action to enforce the lien in the same manner used for construction liens under part I of chapter 713.

(8) INVESTMENTS; INTEREST.—Moneys in the fund which are not needed currently to meet the obligations of the department in the exercise of its responsibilities under this section and s. 376.3073 shall be deposited with the Chief Financial Officer to the credit of the fund and may be invested in such manner as is provided for by statute. The interest received on such investment shall be credited to the fund. Any provisions of law to the contrary notwithstanding, such interest may be freely transferred between this trust fund and the Water Quality Assurance Trust Fund, in the discretion of the department.

(9) EARLY DETECTION INCENTIVE PROGRAM.—To encourage early

detection, reporting, and cleanup of contamination from leaking petroleum storage systems, the department shall, within the guidelines established in this subsection, conduct an incentive program which shall provide for a 30-month grace period ending on December 31, 1988. Pursuant thereto:

(a) The department shall establish reasonable requirements for the written reporting of petroleum contamination incidents and shall distribute forms to registrants under s. 376.303(1)(b) and to other interested parties upon request to be used for such purpose. Until such forms are available for distribution, the department shall take reports of such incidents, however made, but shall notify any person making such a report that a complete written report of the incident will be required by the department at a later time, the form for which will be provided by the department.

(b) When reporting forms become available for distribution, all sites involving incidents of contamination from petroleum storage systems initially reported to the department at any time from midnight on June 30, 1986, to midnight on December 31, 1988, shall be qualified sites, provided that such a complete written report is filed with respect thereto within a reasonable time. Subject to the delays which may occur as a result of the prioritization of sites under paragraph (5)(a) for any qualified site, costs for activities described in paragraphs (4)(a)-(e) shall be absorbed at the expense of the fund, without recourse to reimbursement or recovery, with the following exceptions:

1. The provisions of this subsection shall not apply to any site where the department has been denied site access to implement the provisions of this section.

2. The provisions of this subsection shall not be construed to authorize or require reimbursement from the fund for costs expended prior to the beginning of the grace period, except as provided in subsection (12).

3.a. Upon discovery by the department that the owner or operator of a petroleum storage system has been grossly negligent in the maintenance of such petroleum storage system; has, with willful intent to conceal the existence of a serious discharge, falsified inventory or reconciliation records maintained with respect to the site at which such system is located; or has intentionally damaged such petroleum storage system, the site at which such system is located shall be ineligible for participation in the incentive program and the owner shall be liable for all costs due to discharges from petroleum storage systems at that site, any other provisions of chapter 86-159, Laws of Florida, to the contrary notwithstanding. For the purposes of this paragraph, willful failure to maintain inventory and reconciliation records, willful failure to make monthly monitoring system checks where such systems are in place, and failure to meet monitoring and retrofitting requirements within the schedules established under chapter 62-761, Florida Administrative Code, or violation of similar rules adopted by the department under this chapter, shall be construed to be gross negligence in the maintenance of a petroleum storage system.

b. The department shall redetermine the eligibility of petroleum storage systems for which a timely EDI application was filed, but which were deemed ineligible by the department, under the following conditions:

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(I) The owner or operator, on or before March 31, 1991, shall submit, in writing, notification that the storage system is now in compliance with department rules adopted pursuant to s. 376.303, and which requests the department to reevaluate the storage system eligibility; and

(II) The department verifies the storage system compliance based on a compliance inspection.

Provided, however, that a site may be determined eligible by the department for good cause shown, including, but not limited to, demonstration by the owner or operator that to achieve compliance would cause an increase in the potential for the spread of the contamination.

c. Redetermination of eligibility pursuant to sub-subparagraph b. shall not be available to:

(I) Petroleum storage systems owned or operated by the Federal Government.

(II) Facilities that denied site access to the department.

(III) Facilities where a discharge was intentionally concealed.

(IV) Facilities that were denied eligibility due to:

(A) Absence of contamination, unless any such facility subsequently establishes that contamination did exist at that facility on or before December 31, 1988.

(B) Contamination from substances that were not petroleum or a petroleum product.

(C) Contamination that was not from a petroleum storage system.

d. EDI applicants who demonstrate compliance for a site

pursuant to sub-subparagraph b. are eligible for the Early Detection Incentive Program and site rehabilitation funding pursuant to subsection (5) and s. 376.30711.

If, in order to avoid prolonged delay, the department in its discretion deems it necessary to expend sums from the fund to cover ineligible sites or costs as set forth in this paragraph, the department may do so and seek recovery and reimbursement therefor in the same manner and in accordance with the same procedures as are established for recovery and reimbursement of sums otherwise owed to or expended from the fund.

(c) No report of a discharge made to the department by any person in accordance with this subsection, or any rules promulgated pursuant hereto, shall be used directly as evidence of liability for such discharge in any civil or criminal trial arising out of the discharge.

(d) The provisions of this subsection shall not apply to petroleum storage systems owned or operated by the Federal Government.

(10) VIOLATIONS; PENALTY.—It is unlawful for any person to:

(a) Falsify inventory or reconciliation records maintained in compliance with chapters 62-761 and 62-762, Florida Administrative Code, with willful intent to conceal the existence of a serious leak; or

(b) Intentionally damage a petroleum storage system.

Any person convicted of such a violation shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(11) SITE CLEANUP.—

(a) *Voluntary cleanup.*—This section does not prohibit a person from conducting site rehabilitation either through his or her own personnel or through responsible response action contractors or subcontractors when such person is not seeking site rehabilitation funding from the fund. Such voluntary cleanups must meet all applicable environmental standards.

(b) *Low-scored site initiative.*—Notwithstanding s. 376.30711, any site with a priority ranking score of 29 points or less may voluntarily participate in the low-scored site initiative, whether or not the site is eligible for state restoration funding.

1. To participate in the low-scored site initiative, the responsible party or property owner must affirmatively demonstrate that the following conditions are met:

a. Upon reassessment pursuant to department rule, the site retains a priority ranking score of 29 points or less.

b. No excessively contaminated soil, as defined by department rule, exists onsite as a result of a release of petroleum products.

c. A minimum of 6 months of groundwater monitoring indicates that the plume is shrinking or stable.

d. The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment.

e. 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.

f. Soils onsite that are subject to human exposure found between land surface and 2 feet below land surface meet the soil cleanup target levels established by department rule or human exposure is limited by appropriate institutional or engineering controls.

2. Upon affirmative demonstration of the conditions under subparagraph 1., the department shall issue a determination of "No Further Action." Such determination acknowledges that minimal contamination exists onsite and that such contamination is not a threat to human health or the environment. If no contamination is detected, the department may issue a site rehabilitation completion order.

3. Sites that are eligible for state restoration funding may receive payment of ~~preapproved~~ costs for the low-scored site initiative as follows:

a. A responsible party or property owner may submit an assessment plan designed to affirmatively demonstrate that the site meets the conditions under subparagraph 1. Notwithstanding the priority ranking score of the site, the department may approve ~~preapprove~~ the cost of the assessment pursuant to s. 376.30711, including 6 months of groundwater monitoring, not to exceed $30,000 for each site. The department may not pay the costs associated with the establishment of institutional or engineering controls.

b. The assessment work shall be completed no later than 6 months after the department issues its approval.

c. No more than $10 million for the low-scored site initiative may be encumbered from the Inland Protection Trust Fund in any fiscal year. Funds shall be made available on a

first-come, first-served basis and shall be limited to 10 sites in each fiscal year for each responsible party or property owner.

d. Program deductibles, copayments, and the limited contamination assessment report requirements under paragraph (13)(c) do not apply to expenditures under this paragraph.

(12) REIMBURSEMENT FOR CLEANUP EXPENSES.—Except as provided in s. 2(3), chapter 95-2, Laws of Florida, this subsection shall not apply to any site rehabilitation program task initiated after March 29, 1995. Effective August 1, 1996, no further site rehabilitation work on sites eligible for state-funded cleanup from the Inland Protection Trust Fund shall be eligible for reimbursement pursuant to this subsection. The person responsible for conducting site rehabilitation may seek reimbursement for site rehabilitation program task work conducted after March 28, 1995, in accordance with s. 2(2) and (3), chapter 95-2, Laws of Florida, regardless of whether the site rehabilitation program task is completed. A site rehabilitation program task shall be considered to be initiated when actual onsite work or engineering design, pursuant to chapter 62-770, Florida Administrative Code, which is integral to performing a site rehabilitation program task has begun and shall not include contract negotiation and execution, site research, or project planning. All reimbursement applications pursuant to this subsection must be submitted to the department by January 3, 1997. The department shall not accept any applications for reimbursement or pay any claims on applications for reimbursement received after that date; provided, however if an application filed on or prior to January 3, 1997, was

returned by the department on the grounds of untimely filing, it shall be refiled within 30 days after the effective date of this act in order to be processed.

(a) *Legislative findings.*—The Legislature finds and declares that rehabilitation of contamination sites should be conducted in a manner and to a level of completion which will protect the public health, safety, and welfare and will minimize damage to the environment.

(b) *Conditions.*—

1. The owner, operator, or his or her designee of a site which is eligible for restoration funding assistance in the EDI, PLRIP, or ATRP programs shall be reimbursed from the Inland Protection Trust Fund of allowable costs at reasonable rates incurred on or after January 1, 1985, for completed program tasks as identified in the department rule promulgated pursuant to paragraph (5)(b), or uncompleted program tasks pursuant to chapter 95-2, Laws of Florida, subject to the conditions in this section. It is unlawful for a site owner or operator, or his or her designee, to receive any remuneration, in cash or in kind, directly or indirectly from the rehabilitation contractor.

2. Nothing in this subsection shall be construed to authorize reimbursement to any person for costs of contaminated soil treatment or disposal that does not meet the applicable rules of this state for such treatment or disposal, including all general permitting, state air emission standards, monitoring, sampling, and reporting rules more specifically described in department rules.

(c) *Legislative intent.*—Due to the value of the potable water of this state, it is the intent of the Legislature that

the department initiate and facilitate as many cleanups as possible utilizing the resources of the state, local governments, and the private sector, recognizing that source removal, wherever it is technologically feasible and cost-effective, shall be considered the primary initial response to protect public health, safety, and the environment.

(d) *Amount of reimbursement.*—The department shall reimburse actual and reasonable costs for site rehabilitation. The department shall not reimburse interest on the amount of reimbursable costs for any reimbursement application. However, nothing herein shall affect the department's authority to pay interest authorized under prior law.

(e) *Records.*—The person responsible for conducting site rehabilitation, or his or her agent, shall keep and preserve suitable records as follows:

1. Hydrological and other site investigations and assessments; site rehabilitation plans; contracts and contract negotiations; and accounts, invoices, sales tickets, or other payment records from purchases, sales, leases, or other transactions involving costs actually incurred related to site rehabilitation. Such records shall be made available upon request to agents and employees of the department during regular business hours and at other times upon written request of the department.

2. In addition, the department may from time to time request submission of such site-specific information as it may require, unless a waiver or variance from such department request is granted pursuant to paragraph (k).

3. All records of costs actually incurred for cleanup shall

be certified by affidavit to the department as being true and correct.

(f) *Application for reimbursement.*—Any eligible person who performs a site rehabilitation program or performs site rehabilitation program tasks such as preparation of site rehabilitation plans or assessments; product recovery; cleanup of groundwater or inland surface water; soil treatment or removal; or any other tasks identified by department rule developed pursuant to subsection (5), may apply for reimbursement. Such applications for reimbursement must be submitted to the department on forms provided by the department, together with evidence documenting that site rehabilitation program tasks were conducted or completed in accordance with department rule developed pursuant to subsection (5), and other such records or information as the department requires. The reimbursement application and supporting documentation shall be examined by a certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants. A copy of the accountant's report shall be submitted with the reimbursement application. Applications for reimbursement shall not be approved for site rehabilitation program tasks which have not been completed, except for the task of remedial action and except for uncompleted program tasks pursuant to chapter 95-2, Laws of Florida, and this subsection. Applications for remedial action may be submitted semiannually at the discretion of the person responsible for cleanup. After an applicant has filed an application with the department and before payment is made, the applicant may assign the right to payment to any other person, without recourse of the assignee or

assignor to the state, without affecting the order in which payment is made. Information necessary to process the application shall be requested from and provided by the assigning applicant. Proper notice of the assignment and assignment information shall be made to the department which notice shall be signed and notarized by the assigning applicant.

(g) *Review.*—

1. Provided there are sufficient unencumbered funds available in the Inland Protection Trust Fund, or to the extent proceeds of debt obligations are available for the payment of existing reimbursement obligations pursuant to s. 376.3075, the department shall have 60 days to determine if the applicant has provided sufficient information for processing the application and shall request submission of any additional information that the department may require within such 60-day period. If the applicant believes any request for additional information is not authorized, the applicant may request a hearing pursuant to ss. 120.569 and 120.57. Once the department requests additional information, the department may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information.

2. The department shall deny or approve the application for reimbursement within 90 days after receipt of the last item of timely requested additional material, or, if no additional material is requested, within 90 days of the close of the 60-day period described in subparagraph 1., unless the total review period is otherwise extended by written mutual agreement of the applicant and the department.

3. Final disposition of an application shall be provided to the applicant in writing, accompanied by a written explanation setting forth in detail the reason or reasons for the approval or denial. If the department fails to make a determination on an application within the time provided in subparagraph 2., or denies an application, or if a dispute otherwise arises with regard to reimbursement, the applicant may request a hearing pursuant to ss. 120.569 and 120.57.

(h) *Reimbursement.*—Upon approval of an application for reimbursement, reimbursement for reasonable expenditures of a site rehabilitation program or site rehabilitation program tasks documented therein shall be made in the order in which the department receives completed applications. Effective January 1, 1997, all unpaid reimbursement applications are subject to payment on the following terms: The department shall develop a schedule of the anticipated dates of reimbursement of applications submitted to the department pursuant to this subsection. The schedule shall specify the projected date of payment based on equal monthly payments and projected annual revenue of $100 million. Based on the schedule, the department shall notify all reimbursement applicants of the projected date of payment of their applications. The department shall direct the Inland Protection Financing Corporation to pay applicants the present value of their applications as soon as practicable after approval by the department, subject to the availability of funds within the Inland Protection Financing Corporation. The present value of an application shall be based on the date on which the department anticipates the Inland Protection Financing Corporation will settle the reimbursement application and the

schedule's projected date of payment and shall use 3.5 percent as the annual discount rate. The determination of the amount of the claim and the projected date of payment shall be subject to s. 120.57.

(i) *Liberal construction.*—With respect to site rehabilitation initiated prior to July 1, 1986, the provisions of this subsection shall be given such liberal construction by the department as will accomplish the purposes set forth in this subsection. With regard to the keeping of particular records or the giving of certain notice, the department may accept as compliance action by a person which meets the intent of the requirements set forth in this subsection.

(j) *Reimbursement-review contracts.*—The department may contract with entities capable of processing or assisting in the review of reimbursement applications. ~~Any purchase of such services shall not be subject to chapter 287.~~

(k) *Audits.*—

1. The department is authorized to perform financial and technical audits in order to certify site restoration costs and ensure compliance with this chapter. The department shall seek recovery of any overpayments based on the findings of these audits. The department must commence any audit within 5 years after the date of reimbursement, except in cases where the department alleges specific facts indicating fraud.

2. Upon determination by the department that any portion of costs which have been reimbursed are disallowed, the department shall give written notice to the applicant setting forth with specificity the allegations of fact which justify the department's proposed action and ordering repayment of

disallowed costs within 60 days of notification of the applicant.

3. In the event the applicant does not make payment to the department within 60 days of receipt of such notice, the department shall seek recovery in a court of competent jurisdiction to recover reimbursement overpayments made to the person responsible for conducting site rehabilitation, unless the department finds the amount involved too small or the likelihood of recovery too uncertain.

4. In addition to the amount of any overpayment, the applicant shall be liable to the department for interest of 1 percent per month or the prime rate, whichever is less, on the amount of overpayment, from the date of overpayment by the department until the applicant satisfies the department's request for repayment pursuant to this paragraph. The calculation of interest shall be tolled during the pendency of any litigation.

5. Financial and technical audits frequently are conducted under this section many years after the site rehabilitation activities were performed and the costs examined in the course of the audit were incurred by the person responsible for site rehabilitation. During the intervening span of years, the department's rule requirements and its related guidance and other nonrule policy directives may have changed significantly. The Legislature finds that it may be appropriate for the department to provide relief to persons subject to such requirements in financial and technical audits conducted pursuant to this section.

a. The department is authorized to grant variances and


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waivers from the documentation requirements of subparagraph (e)2. and from the requirements of rules applicable in technical and financial audits conducted under this section. Variances and waivers shall be granted when the person responsible for site rehabilitation demonstrates to the department that application of a financial or technical auditing requirement would create a substantial hardship or would violate principles of fairness. For purposes of this subsection, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this subsection, "principles of fairness" are violated when the application of a requirement affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are affected by the requirement or when the requirement is being applied retroactively without due notice to the affected parties.

b. A person whose reimbursed costs are subject to a financial and technical audit under this section may file a written request to the department for grant of a variance or waiver. The request shall specify:

(I) The requirement from which a variance or waiver is requested.

(II) The type of action requested.

(III) The specific facts which would justify a waiver or variance.

(IV) The reason or reasons why the requested variance or waiver would serve the purposes of this section.

c. Within 90 days after receipt of a written request for variance or waiver under this subsection, the department shall

grant or deny the request. If the request is not granted or denied within 90 days of receipt, the request shall be deemed approved. An order granting or denying the request shall be in writing and shall contain a statement of the relevant facts and reasons supporting the department's action. The department's decision to grant or deny the petition shall be supported by competent substantial evidence and is subject to ss. 120.569 and 120.57. Once adopted, model rules promulgated by the Administration Commission under s. 120.542 shall govern the processing of requests under this provision.

6. The Chief Financial Officer may audit the records of persons who receive or who have received payments pursuant to this chapter in order to verify site restoration costs, ensure compliance with this chapter, and verify the accuracy and completeness of audits performed by the department pursuant to this paragraph. The Chief Financial Officer may contract with entities or persons to perform audits pursuant to this subparagraph. The Chief Financial Officer shall commence any audit within 1 year after the department's completion of an audit conducted pursuant to this paragraph, except in cases where the department or the Chief Financial Officer alleges specific facts indicating fraud.

(13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage detection, reporting, and cleanup of contamination caused by discharges of petroleum or petroleum products, the department shall, within the guidelines established in this subsection, implement a cost-sharing cleanup program to provide rehabilitation funding assistance for all property contaminated by discharges of petroleum or petroleum products occurring

before January 1, 1995, subject to a copayment provided for in a ~~preapproved~~ Petroleum Cleanup Participation Program site rehabilitation agreement. Eligibility shall be subject to an annual appropriation from the Inland Protection Trust Fund. Additionally, funding for eligible sites shall be contingent upon annual appropriation in subsequent years. Such continued state funding shall not be deemed an entitlement or a vested right under this subsection. Eligibility in the program shall be notwithstanding any other provision of law, consent order, order, judgment, or ordinance to the contrary.

(a)1. The department shall accept any discharge reporting form received prior to January 1, 1995, as an application for this program, and the facility owner or operator need not reapply.

2. Owners or operators of property contaminated by petroleum or petroleum products from a petroleum storage system may apply for such program by filing a written report of the contamination incident, including evidence that such incident occurred prior to January 1, 1995, with the department. Incidents of petroleum contamination discovered after December 31, 1994, at sites which have not stored petroleum or petroleum products for consumption, use, or sale after such date shall be presumed to have occurred prior to January 1, 1995. An operator's filed report shall be deemed an application of the owner for all purposes. Sites reported to the department after December 31, 1998, shall not be eligible for this program.

(b) Subject to annual appropriation from the Inland Protection Trust Fund, sites meeting the criteria of this subsection are eligible for up to $400,000 of site

rehabilitation funding assistance in priority order pursuant to subsection (5) and s. 376.30711. Sites meeting the criteria of this subsection for which a site rehabilitation completion order was issued prior to June 1, 2008, do not qualify for the 2008 increase in site rehabilitation funding assistance and are bound by the pre-June 1, 2008, limits. Sites meeting the criteria of this subsection for which a site rehabilitation completion order was not issued prior to June 1, 2008, regardless of whether or not they have previously transitioned to nonstate-funded cleanup status, may continue state-funded cleanup pursuant to s. 376.30711 until a site rehabilitation completion order is issued or the increased site rehabilitation funding assistance limit is reached, whichever occurs first. At no time shall expenses incurred outside the preapproved site rehabilitation program under s. 376.30711 be reimbursable.

(c) Upon notification by the department that rehabilitation funding assistance is available for the site pursuant to subsection (5) and s. 376.30711, the owner, operator, or person otherwise responsible for site rehabilitation shall provide the department with a limited contamination assessment report and shall enter into a ~~preapproved~~ Petroleum Cleanup Participation Program site rehabilitation agreement with the department pursuant to ~~and a contractor qualified under~~ s. 376.30711(2)(b). The agreement shall provide for a 25-percent copayment by the owner, operator, or person otherwise responsible for conducting site rehabilitation. The owner, operator, or person otherwise responsible for conducting site rehabilitation shall adequately demonstrate the ability to meet the copayment obligation. The limited contamination assessment report and the copayment costs

may be reduced or eliminated if the owner and all operators responsible for restoration under s. 376.308 demonstrate that they are financially unable to comply with the copayment and limited contamination assessment report requirements. The department shall take into consideration the owner's and operator's net worth in making the determination of financial ability. In the event the department and the owner, operator, or person otherwise responsible for site rehabilitation are unable to complete negotiation of the cost-sharing agreement within 120 days after commencing negotiations, the department shall terminate negotiations and the site shall be deemed ineligible for state funding under this subsection and all liability protections provided for in this subsection shall be revoked.

(d) No report of a discharge made to the department by any person in accordance with this subsection, or any rules adopted pursuant hereto, shall be used directly as evidence of liability for such discharge in any civil or criminal trial arising out of the discharge.

(e) Nothing in this subsection shall be construed to preclude the department from pursuing penalties in accordance with s. 403.141 for violations of any law or any rule, order, permit, registration, or certification adopted or issued by the department pursuant to its lawful authority.

(f) Upon the filing of a discharge reporting form under paragraph (a), neither the department nor any local government shall pursue any judicial or enforcement action to compel rehabilitation of the discharge. This paragraph shall not prevent any such action with respect to discharges determined ineligible under this subsection or to sites for which

rehabilitation funding assistance is available in accordance with subsection (5) and s. 376.30711.

(g) The following shall be excluded from participation in the program:

1. Sites at which the department has been denied reasonable site access to implement the provisions of this section.

2. Sites that were active facilities when owned or operated by the Federal Government.

3. Sites that are identified by the United States Environmental Protection Agency to be on, or which qualify for listing on, the National Priorities List under Superfund. This exception does not apply to those sites for which eligibility has been requested or granted as of the effective date of this act under the Early Detection Incentive Program established pursuant to s. 15, chapter 86-159, Laws of Florida.

4. The contamination is covered under the Early Detection Incentive Program, the Abandoned Tank Restoration Program or the Petroleum Liability and Restoration Insurance Program, in which case site rehabilitation funding assistance shall continue under the respective program.

(14) LEGISLATIVE APPROVAL AND AUTHORIZATION.—Prior to the department entering into a service contract with the Inland Protection Financing Corporation which includes payments by the department to support any existing or planned note, bond, certificate of indebtedness, or other obligation or evidence of indebtedness of the corporation pursuant to s. 376.3075, the Legislature, by law, must specifically authorize the department to enter into such a contract. The corporation may issue bonds in an amount not to exceed $104 million, with a term up to 15

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years, and annual payments not in excess of $10.4 million. The department may enter into a service contract in conjunction with the issuance of such bonds which provides for annual payments for debt service payments or other amounts payable with respect to bonds, plus any administrative expenses of the corporation to finance the rehabilitation of petroleum contamination sites pursuant to ss. 376.30-376.317.

Section 4. Section 376.30713, Florida Statutes, is amended to read:

376.30713 Advanced ~~Preapproved advanced~~ cleanup.—

(1) In addition to the legislative findings provided in s. 376.30711, the Legislature finds and declares:

(a) That the inability to conduct site rehabilitation in advance of a site's priority ranking pursuant to s. 376.3071(5)(a) may substantially impede or prohibit property transactions or the proper completion of public works projects.

(b) While the first priority of the state is to provide for protection of the water resources of the state, human health, and the environment, the viability of commerce is of equal importance to the state.

(c) It is in the public interest and of substantial economic benefit to the state to provide an opportunity for site rehabilitation to be conducted on a limited basis at contaminated sites, in advance of the site's priority ranking, to facilitate property transactions or public works projects.

(d) It is appropriate for persons responsible for site rehabilitation to share the costs associated with managing and conducting ~~preapproved~~ advanced cleanup, to facilitate the opportunity for ~~preapproved~~ advanced cleanup, and to mitigate

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the additional costs that will be incurred by the state in conducting site rehabilitation in advance of the site's priority ranking. Such cost sharing will result in more contaminated sites being cleaned up and greater environmental benefits to the state. The provisions of this section are ~~shall~~ only ~~be~~ available for sites eligible for restoration funding under EDI, ATRP, or PLIRP. This section is available for discharges eligible for restoration funding under the petroleum cleanup participation program for the state's cost share of site rehabilitation. Applications must ~~shall~~ include a cost-sharing commitment for this section in addition to the 25-percent-copayment requirement of the petroleum cleanup participation program. This section is not available for any discharge under a petroleum cleanup participation program where the 25-percent-copayment requirement of the petroleum cleanup participation program has been reduced or eliminated pursuant to s. 376.3071(13)(c).

(2) The department may ~~is authorized to~~ approve an application for ~~preapproved~~ advanced cleanup at eligible sites, prior to funding based on the site's priority ranking established pursuant to s. 376.3071(5)(a), in accordance with the provisions of this section. Persons who qualify as an applicant under the provisions of this section shall only include the facility owner or operator or the person otherwise responsible for site rehabilitation.

(a) Advanced ~~Preapproved advanced~~ cleanup applications may be submitted between May 1 and June 30 and between November 1 and December 31 of each fiscal year. Applications submitted between May 1 and June 30 are ~~shall be~~ for the fiscal year

beginning July 1. An application must ~~shall~~ consist of:

1. A commitment to pay ~~no less than~~ 25 percent or more of the total cleanup cost deemed recoverable under the provisions of this section along with proof of the ability to pay the cost share.

2. A nonrefundable review fee of $250 to cover the administrative costs associated with the department's review of the application.

3. A limited contamination assessment report.

4. A proposed course of action.

The limited contamination assessment report is ~~shall be~~ sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. Any costs incurred related to conducting the limited contamination assessment report are not refundable from the Inland Protection Trust Fund. Site eligibility under this subsection, or any other provision of this section, is ~~shall~~ not ~~constitute~~ an entitlement to ~~preapproved~~ advanced cleanup or continued restoration funding. The applicant must ~~shall~~ certify to the department that the applicant has the prerequisite authority to enter into a preapproved advanced cleanup contract with the department. This certification shall be submitted with the application.

(b) The department must ~~shall~~ rank the applications based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant who ~~that~~ proposes the highest percentage of cost sharing. If the department receives applications that propose identical cost-

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sharing commitments and that ~~which~~ exceed the funds available to commit to all such proposals during the ~~preapproved~~ advanced cleanup application period, the department must ~~shall proceed to~~ rerank those applicants. Those applicants submitting identical cost-sharing proposals which exceed funding availability must ~~shall~~ be ~~so~~ notified by the department and must ~~shall~~ be offered the opportunity to raise their individual cost-share commitments, in a period of time specified in the notice. At the close of the period, the department must ~~shall proceed to~~ rerank the applications in accordance with this paragraph.

(3)(a) Based on the ranking established under paragraph (2)(b) ~~and the funding limitations provided in subsection (4)~~, the department must ~~shall~~ commence negotiation with ~~such~~ applicants. If the department and the applicant agree on the course of action, the department may enter into a contract with the applicant. The department may ~~is authorized~~ to negotiate the terms and conditions of the contract.

(b) Advanced ~~Preapproved advanced~~ cleanup must ~~shall~~ be conducted under the provisions of ss. 376.3071(5)(b) and 376.30711 and rules adopted pursuant to s. 376.30711 and s. 287.0595. If the terms of the preapproved advanced cleanup contract are not fulfilled, the applicant forfeits any right to future payment for any site rehabilitation work conducted under the contract.

(c) The department's decision not to enter into ~~a~~ ~~preapproved~~ an advanced cleanup contract with the applicant is ~~shall~~ not ~~be~~ subject to the provisions of chapter 120. If the department cannot ~~is not able to~~ complete negotiation of the course of action and the terms of the contract within 60 days

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after commencing negotiations, the department shall terminate negotiations with that applicant.

(4) The department may ~~is authorized to~~ enter into contract for a total of up to $10 million of ~~preapproved~~ advanced cleanup work in each fiscal year. However, no facility may ~~shall~~ be approved ~~preapproved~~ for more than $500,000 of cleanup activity in each fiscal year. For the purposes of this section the term "facility" includes ~~shall include~~, but is not ~~be~~ limited to, multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter.

(5) All funds collected by the department pursuant to this section must ~~shall~~ be deposited into the Inland Protection Trust Fund to be used as provided in this section.

Section 5. Section 373.326, Florida Statutes, is amended to read:

373.326 Exemptions.—

(1) When the water management district finds that compliance with all requirements of this part would result in undue hardship, an exemption from any one or more such requirements may be granted by the water management district to the extent necessary to ameliorate such undue hardship and to the extent such exemption can be granted without impairing the intent and purpose of this part.

(2) Nothing in this part shall prevent a person who has not obtained a license pursuant to s. 373.323 from constructing a well that is 2 inches or under in diameter, on the person's own or leased property, intended for use only in a single-family house which is his or her residence, or intended for use only

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for farming purposes on the person's farm, and when the waters to be produced are not intended for use by the public or any residence other than his or her own, provided that such person complies with all local and state rules and regulations relating to the construction of water wells.

(3) A permit or a fee may not be required under this part for:

(a) any well authorized pursuant to ss. 403.061 and 403.087 under the State Underground Injection Control Program identified in chapter 62-528, Florida Administrative Code, as Class I, Class II, Class III, Class IV, or Class V Groups 2-9.

(b) any monitoring well required pursuant to site rehabilitation activities under chapter 376, when such water wells are constructed using state funds being expended pursuant to ss. 376.3071(4), 376.3078(2)(b), or 376.307(1).

(c) However, such wells must be constructed by persons who have obtained a license pursuant to s. 373.323 as otherwise required by law.

Section 6. This act shall take effect upon becoming law.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to rehabilitation projects for petroleum contamination sites; amending 287.0595, F.S.; clarifying competitive solicitation requirements; amending s. 376.30711, F.S.; providing

203334

legislative findings; requiring contractors to provide certain information; allowing the Department of Environmental Protection to recover sums paid in the event of overpayment; requiring the department to adopt rules; providing specific criteria to be adopted by rule; amending 376.3071; conforming language; allowing the department to impose a lien on real property which the contaminated site is located; amending 376.30713; conforming language; amending 373.326; exempting certain monitoring wells from requiring a permit or fee; providing an effective date; providing an effective date.

By the Committee on Environmental Preservation and Conservation; and Senator Evers

592-02846-13 20131416c1

A bill to be entitled

An act relating to rehabilitation projects for petroleum contamination sites; amending s. 376.30711, F.S.; deleting provisions requiring the Department of Environmental Protection to preapprove costs or use performance-based contracts for site rehabilitation projects; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 376.30711, Florida Statutes, is amended to read:

376.30711 Preapproved Site rehabilitation, effective March 29, 1995.—

(2)(a) Competitive bidding pursuant to this section is ~~shall~~ not ~~be~~ subject to the requirements of s. 287.055. The department may ~~is authorized to~~ use competitive bid procedures or negotiated contracts for ~~preapproving~~ all costs and rehabilitation procedures for site-specific rehabilitation projects ~~through performance-based contracts~~. Site rehabilitation shall be conducted according to the priority ranking order established pursuant to s. 376.3071(5).

Section 2. This act shall take effect July 1, 2013.

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 Appropriations Subcommittee on General Government

BILL:	CS/CS/SB 1684
INTRODUCER:	Appropriations Subcommittee on General Government; Environmental Preservation and Conservation Committee and Senator Altman
SUBJECT:	Environmental Regulation
DATE:	April 17, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Uchino	EP	**Fav/CS**
2.	Weidenbenner	Halley	AG	**Favorable**
3.	Howard	DeLoach	AGG	**Fav/CS**
4.			AP	
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/CS/SB 1684 makes changes to environmental regulation and permitting statutes.

The bill has significant fiscal impacts to several trust funds within the Department of Environmental Protection. See Section V.

The bill:

- Provides that the Department of Environmental Protection (DEP) may adopt rules for the electronic submission of forms, documents, fees or reports.
- Provides that when reviewing an application for a development permit, counties and municipalities cannot request additional information from an applicant more than three times, unless the applicant waives the limitation in writing. It also provides that prior to the third request; a permittee should be offered a meeting to resolve outstanding issues. It allows a permittee to request a final decision on the application if he or she believes the request for additional information is not supported by any legal authority. Lastly, it stipulates that development permits do not include building permits.
- Provides for an expansion of the definition of "phosphate-related expenses".

- Provides that the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) is authorized to issue leases or consents of use to special event promoters and boat show owners to allow for the installation of temporary structures. The lease or consent of use must include appropriate lease fees and must be for a period not to exceed 45 days and for a duration not to exceed 10 consecutive years.
- Authorizes the DEP to establish general permits for special events relating to boat shows.
- Defines "first-come, first-served basis" as it relates to marinas, provides requirements for the calculation of lease fees for certain marinas, and provides conditions for the discount and waiver of lease fees for certain marinas, boatyards, and marine retailers.
- Provides for the waiver of lease fees for private residential docks and piers over sovereignty submerged lands.
- Provides general permits for local governments to construct certain mooring fields and places a limit on the size of mooring fields.
- Provides that if two or more consumptive use permit (CUP) applications are complete and in conflict, the DEP or WMD may then approve or modify the application that best serves the public interest.
- Provides that permitted water allocations may not be changed under certain circumstances with respect to seawater desalination plants;
- Provides for electronic mail notification of restrictions or changes to permitted water use in the case of a water shortage or emergency.
- Provides that the issuance of well permits is the sole responsibility of the WMDs, a delegated local government, or local county health department, and prohibits government entities from imposing duplicative requirements and fees associated with the installation and abandonment of groundwater wells.
- Provides that licensure of water well contractors by a WMD must be the only water well construction license required for the construction, repair or abandonment of water wells in the state or any political subdivision.
- Exempts certain ponds, ditches and wetlands from regulatory requirements.
- Exempts certain independent water control districts from further wetlands regulations.
- Increases the funds available to DEP to contract for preapproved advanced cleanup work and increases the preapproval amount for contracting with a single facility.
- Provides that a person can bring a cause of action for damages resulting from a discharge of certain types of pollution if not regulated or authorized pursuant to ch. 403, F.S..
- Defines "beneficiary" as it relates to the entities from which a local government may collect stormwater fees, provides for the collection of stormwater utility fees from beneficiaries, and clarifies that the provisions only apply to fees billed on or after July 1, 2013.
- Provides that the DEP may adopt rules requiring or incentivizing the electronic submission of certain forms, documents, fees or reports.
- Extends the payment deadline for permit fees for major sources of air pollution and directs that fees must be based on actual emissions and not permitted emissions.
- Provides certain requirements for testing procedures used when determining if a proposed discharge will lower the quality of receiving waters below their existing classification.
- Provides that local governments may not compete with recovered materials dealers for 90 days while an application for engaging in business is pending with the locality and provides relief for a violation of that provision.
- Provides for expedited permitting of interstate natural gas pipelines.

- Provides that a permit is not required for the restoration of seawalls at their previous locations or upland of their previous locations, or within 18 inches, instead of 12 inches, waterward of their previous locations; and
- Ratifies certain leases of land by the Board of Trustees in the Everglades Agricultural Area and provides that the leases are in the public interest and are not contrary to the public interest.

This bill substantially amends the following sections of the Florida Statutes: 20.255, 125.022, 166.033, 211.3103, 253.0345, 253.0347, 373.118, 373.233, 373.236, 373.246, 373.308, 373.323, 373.406, 376.30713, 376.313, 403.031, 403.061, 403.0872, 403.088, 403.0893, 403.7046, 403.813, and 403.973.

The bill creates sections 253.0346 and 403.8141 of the Florida Statutes.

II. Present Situation:

The statutes affected by this bill are diverse. The present situation of each area affected by the bill will be addressed in Section III – Effect of Proposed Changes.

III. Effect of Proposed Changes:

Sections 1 and 18 amend ss. 20.255 and 403.061, F.S., relating to the electronic submission of forms to the DEP.

Present Situation

Section 20.255, F.S., creates the DEP and provides for its organizational structure.
Section 403.061, F.S., authorizes the DEP to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it.

The DEP currently accepts certain types of permit applications on-line. In addition, Florida's five WMDs have developed a shared permitting portal. This portal is designed to direct the user to the appropriate WMD website for obtaining information regarding permitting programs, applying for permits, and submitting permit compliance information. The WMDs issue several types of permits. The three most common relate to how much water is used (consumptive use permitting), the construction of wells (well construction permitting), and how new development affects water resources (environmental resource permitting).

Effect of Proposed Changes

The bill amends ss. 20.255 and 403.061, F.S., authorizing the DEP to adopt rules requiring or incentivizing electronic submission of any form, document, fee, or report required under ch. 161, F.S., (relating to beach and shore preservation), ch. 253, F.S., (relating to state lands), ch. 373, F.S., (relating to water resources), ch. 376, F.S., (relating to pollutant discharge prevention and removal), ch. 377, F.S., (relating to energy resources), or ch. 403, F.S., (relating to environmental control).

Sections 2 and 3 amend ss. 125.022 and 163.033, F.S., respectively, relating to development permits.

Present Situation

A development permit is any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.[1] Pursuant to ss. 125.022 and 166.033, F.S., when a county or municipality denies an application for a development permit, the county or municipality must give written notice to the applicant. The notice must include a citation to the applicable portions of ordinance, rule, statute or other legal authority for the denial of the permit.

For any development permit application filed with a county or municipality after July 1, 2012, that county or municipality is prohibited from requiring, as a condition of processing or issuing a development permit, that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the county or municipality action on the local development permit. The issuance of a development permit by a county or municipality does not create any rights on the part of the county or municipality for issuance of the permit if the applicant fails to obtain the requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A county or municipality can attach such a disclaimer to the issuance of a development permit and can include a permit condition that all other applicable state or federal permits be obtained prior to commencement of the development. This does not prohibit a county or municipality from providing information to an applicant regarding what other state or federal permits may apply.

Effect of Proposed Changes

The bill amends ss. 125.022 and 163.033, F.S., providing that when reviewing an application for a development permit, counties and municipalities cannot request additional information from an applicant more than three times, unless the applicant waives the limitation in writing. Prior to the third request for information, the county (section 2) or the municipality (section 3) is directed to offer a meeting to try to resolve outstanding issues. If the applicant believes the request for additional information is not authorized by ordinance, rule, statute or other legal authority, the county or municipality, at the applicant's request, must proceed with processing the application. These sections do not apply to building permits.

Section 4 amends s. 211.3103, F.S., expanding activities qualifying as "phosphate-related expenses."

Present Situation

Pursuant to s. 211.3103, F.S., an excise tax is levied upon each person engaging in the business of severing phosphate rock from the soils or waters of this state for commercial use. The tax rate

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

is $1.61 per ton severed, except for the time period from January 1, 2015, until December 21, 2022, when it is $1.80 per ton severed.

The proceeds of all taxes, interest and penalties imposed under this section of law are paid into the State Treasury as follows:

- To the credit of the Conservation and Recreation Lands Trust Fund: 25.5 percent.
- To the credit of the General Revenue Fund of the state: 35.7 percent.
- For payment to counties in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary: 12.8 percent.
- For payment to counties that have been designated as a rural area of critical economic concern in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary: 10 percent.

Any such proceeds received by a county must be used only for phosphate-related expenses.

Section 211.3103(6)(c), F.S., defines "phosphate-related expenses" as those expenses that provide for infrastructure or services in support of the phosphate industry, reclamation or restoration of phosphate lands, community infrastructure on such reclaimed lands, and similar expenses directly related to support of the industry.

Effect of Proposed Changes

The bill amends s. 211.3103, F.S., to expand the activities that qualify as "phosphate-related expenses" to include environmental education, maintenance and restoration of reclaimed lands and county-owned environmental lands which were formerly phosphate lands, and community infrastructure on county owned environmental lands that were formerly phosphate lands.

Sections 5 and 24 amend s. 253.0345, F.S., and create s. 403.8141, F.S., respectively, relating to special events on sovereignty submerged lands.

Present Situation

The Board of Trustees may authorize the use of sovereignty submerged lands for special events. The Board of Trustees is authorized to issue "consents of use" or leases to riparian landowners and event promoters to allow the installation of temporary structures, including docks, moorings, pilings and access walkways on sovereignty submerged lands solely for the purpose of facilitating boat shows and displays in, or adjacent to, established marinas or government owned upland property. Riparian owners of adjacent uplands who are not seeking a lease or consent of use must be notified by certified mail of any request for such a lease or consent of use prior to approval by the Board of Trustees. The Board of Trustees must balance the interests of any objecting riparian owners with the economic interests of the public and the state as a factor in determining whether a lease or consent of use should be executed over the objection of adjacent

riparian owners. This does not apply to structures for viewing motorboat racing, high-speed motorboat contests or high-speed displays in waters that manatees are known to frequent.[2]

The Board of Trustees' rules contain three classifications for special events:

- Class II Special Events are events of 30 days or less involving the construction of structures that are not revenue-generating and either preempt 1,000 square feet or less of sovereignty submerged lands or preempt no more than 10 square feet of sovereignty submerged land for each linear foot of the applicant's contiguous shoreline along the affected sovereignty submerged land. These activities require a letter of consent from the DEP but no lease.[3]
- Class III Special Events are single events involving the construction of 50 or fewer new slips or a preempted area of 50,000 square feet or less. A lease is required and the term of the lease is limited to 30 days or less.[4]
- Class IV Special Events are events that do not qualify as Class III events or are events authorized to be conducted more than once during the lease term. A lease is required and the term of the lease may be up to five years.[5]

Any special event must be for 30 days or less. The lease or consent of use may also contain appropriate requirements for removal of the temporary structures, including the posting of sufficient surety to guarantee appropriate funds for removal of the structures should both the promoter or riparian owner fail to do so within the time specified in the agreement.[6]

Effect of Proposed Changes

Section 5 of the bill amends s. 253.0345, F.S., to provide that the Board of Trustees is authorized to issue leases or consents of use to special event promoters and boat show owners to allow the installation of temporary structures, including docks, moorings, pilings, and access walkways, on sovereignty submerged lands solely for the purpose of facilitating boat shows and displays in, or adjacent to, established marinas or government-owned upland property. A lease or consent of use for a special event under this section must include an exemption from lease fees and must be for a period of 45 days or less and for a duration of 10 consecutive years or less.

Section 23 of the bill creates s. 403.8141, F.S., directing the DEP to issue permits for special events as defined in s. 253.0345, F.S. The permits must be for a period that runs concurrently with the letter of consent or lease issued and must allow for the movement of temporary structures within the footprint of the lease area.

Sections 6 and 7 create s. 253.0346, F.S., relating to the lease of sovereignty submerged lands for marinas, boatyards and marine retailers and amend s. 253.0347, F.S., relating to regarding the lease of sovereignty submerged lands for private residences, respectively.

[2] *See* s. 253.0345, F.S. *See also* Rule 18-21.0082, F.A.C., for information required on applications for leases or consents of use and for provisions concerning limitations on consents of use and leases, depending on the type of event.
[3] Rule 18-21.005(1)(c)17., F.A.C.
[4] Rule 18-21.005(1)(d)10., F.A.C.
[5] Rule 18-21.005(1)(d)11., F.A.C.
[6] Rule 18-21.0082(2)(c), F.A.C.

Present Situation

The Board of Trustees is responsible for the administration and disposition of the state's sovereignty submerged lands. [7] It has the authority to adopt rules and regulations pertaining to anchoring, mooring or otherwise attaching to the bottom. Waterfront landowners must receive the Board of Trustees' authorization to build docks and related structures on sovereignty submerged lands. The DEP administers all staff functions on the Board of Trustees' behalf.

Florida recognizes riparian rights for landowners with waterfront property bordering navigable waters, which include the rights of ingress, egress, boating, bathing, fishing and others as defined by law.[8] Riparian landowners must obtain the Board of Trustees' authorization for installation and maintenance of docks, piers and boat ramps on sovereignty submerged land.[9] Under the Board of Trustees' rules, "dock" generally means a fixed or floating structure, including moorings and access walkways, used for the purpose of mooring and accessing vessels.[10]

Authorization may be by rule, letter of consent, or lease.[11] All leases authorizing activities on sovereignty submerged lands must include provisions for lease fee adjustments and annual payments.[12]

The Board of Trustees has promulgated detailed rules regulating the design of docks and related structures, including determining whether a lease is required and setting the amount of lease fees.[13] The DEP determines whether a lease is required for a person to build a dock or related structure on sovereignty submerged lands based on a number of factors including:

- Location within or outside of an aquatic preserve;
- Area of sovereignty submerged land preempted;
- Number of wet slips or the number of boats the structure is designed to moor;
- Whether the dock is for a single-family residence or a multi-unit dwelling;
- Whether the dock generates revenue; and
- Whether the dock is for "private residential" or other uses.

A property owner who is required to obtain a lease to build a dock or related structure must follow the lease terms and pay applicable fees. Currently, the standard lease term is five years, and sites under lease must be inspected once every five years. Annual lease fees for standard term leases are calculated through a formula based on annual income, square footage or a minimum annual fee. Extended term leases are available, under limited conditions, for up to 25 years. Annual lease fees for extended term leases are calculated like standard lease fees but with

[7] Section 253.03(8)(b), F.S., defines submerged lands as publicly owned lands below the ordinary high-water mark of fresh waters and below the mean high-water line of salt waters extending seaward to the outer jurisdiction of the state.
[8] *See* s. 253.141(1), F.S.
[9] Rule 18-21.005(1)(d), F.A.C.
[10] *See* Rules 18-20.003(2) and (19), F.A.C.
[11] Rule 18-21.005(1), F.A.C.
[12] Rule 18-21.008(1)(b)(2), F.A.C.
[13] *See* Rules 18-20 and 18-21, F.A.C.

a multiplier for the term in years. Site inspections are conducted at least once every five years by the DEP or a WMD to determine compliance with lease conditions.[14]

When determining whether to approve or deny uses for sovereignty submerged land leases, the Board of Trustees must consider whether such uses pass a public interest test. "Public interest" is defined as:

> [T]he demonstrable environmental, social and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social and economic costs of the proposed action. In determining the public interest in a request for use, sale, lease, or transfer of interest in sovereignty lands, or severance of materials from sovereignty lands, the Board of Trustees must consider the ultimate project and purpose to be served by said use, sale, lease or transfer of lands or materials.[15]

There are currently three categories of leases identified in Rule 18-21.008, F.A.C.:

- Standard leases are for terms of five years with the exception of leases for marinas where at least 90 percent of the slips are maintained for rent to the public on a first-come, first-served basis, which are for ten years.
- Extended Term leases are those with terms in excess of standard leases and are available for up to 25 years. Such leases are for activities that will have an expected life equal to or greater than the requested lease term. Those leases include:
  - Facilities or activities that provide public access;
  - Facilities constructed, operated, or maintained by government or funded by government secured bonds; and
  - Facilities that have other unique operational characteristics as determined by the Board of Trustees.

Florida Clean Marina Program

The Florida Clean Marina Program is a voluntary designation program. Participants receive assistance in implementing best management practices through on-site and distance technical assistance, mentoring by other Clean Marinas and continuing education. To become designated as a Clean Marina, facilities must implement a set of environmental measures designed to protect Florida's waterways. These measures address critical environmental issues such as sensitive habitat, waste management, stormwater control, spill prevention and emergency preparedness.[16]

The Florida Clean Boatyard Program is a voluntary designation program that encourages boatyards to implement environmentally conscious practices. Measures include using dustless sanders, recycling oil and solvents, and re-circulating pressure wash systems to recycle wastewater.[17]

[14] Rule 18-21.008(1)(b)4., F.A.C.
[15] Rule 18-21.003(51), F.A.C.
[16] DEP, *About Florida Clean Marina Programs*, http://www.dep.state.fl.us/cleanmarina/about.htm (last visited Mar. 29, 2013).
[17] *Id.*

The Florida Clean Marine Retailer Program is a voluntary designation program that encourages marine retailers to educate boaters by providing information to those who purchase vessels on clean boating practices. A Clean Marine Retailer also employs environmental best management practices in its boat and engine service operations and facilities.[18]

As of June 21, 2012, there were 263 designated Clean Marinas, 38 Clean Boatyards and 17 Clean Marine Retailers in Florida.[19]

Effect of Proposed Changes

Section 6 of the bill creates s. 253.0346, F.S., relating to the lease of sovereignty submerged lands for marinas, boatyards and marine retailers. The bill defines "first-come, first-served basis" to mean the facility operates on state-owned submerged land for which:

- There is no club membership, stock ownership, equity interest, or other qualifying requirement; and
- Rental terms do not exceed 12 months and do not include automatic renewal rights or conditions.

For marinas that are open to the public on a first-come, first-served basis and for which at least 90 percent of the slips are open for rent to the public, a 30 percent discount on the annual lease fee must apply if dockage rate sheet publications and dockage advertising clearly state the slips are open for rent to the public on a first-come, first-served basis.

For a facility designated by the DEP as a Clean Marina, Clean Boatyard, or Clean Marine Retailer under the Clean Marina Program, the following requirements apply:

- A 10 percent discount on the annual lease fee must apply if the facility:
  - Actively maintains designation under the program;
  - Complies with the terms of the lease; and
  - Does not change use during the term of the lease.
- Extended term lease surcharges must be waived if the facility:
  - Actively maintains designation under the program;
  - Complies with the terms of the lease;
  - Does not change use during the term of the lease; and
  - Is available to the public on a first-come, first-served basis.

If the facility has unpaid lease fees or fails to comply with this section, the facility is not eligible for the discount or waiver under this section until the debts have been paid and compliance with the program has been met.

This section only applies to new leases or amendments to leases effective after July 1, 2013.

[18] *Id.*
[19] DEP, *Florida Clean Marina Programs*, http://www.dep.state.fl.us/cleanmarina/ (last visited Mar. 29, 2013).

Section 7 of the bill provides that lease fees are not required for:

- Private residential single-family docks designed to moor up to four boats so long as the preempted area is equal to or less than 10 times the distance along the riparian shoreline or the square footage allowed for private residential single-family docks under rules adopted by the Board of Trustees, whichever is greater.
- Private residential multi-family docks designed to moor boats up to the number of units within the development that are equal to or less than 10 times the riparian shoreline along the sovereignty submerged land on the affected waterbody multiplied by the number of units with docks in the development.

Section 8 amends s. 373.118, F.S., relating to general permits for marine facilities built by local governments.

Present Situation

Section 373.118(4), F.S., directs the DEP to adopt one or more general permits for local governments to construct, operate and maintain public marina facilities, public mooring fields, public boat ramps, including associated courtesy docks and parking facilities located in uplands. A facility authorized under these general permits is exempt from review as a development of regional impact if the facility complies with the comprehensive plan of the applicable local government. Such facilities must be consistent with the local government manatee protection plan required pursuant to ch. 379, F.S., must obtain Clean Marina Program Status prior to opening for operation, and must maintain that status for the life of the facility. Marinas and mooring fields authorized under a general permit cannot exceed an area of 50,000 square feet over wetlands and other surface waters.

Effect of Proposed Changes

The bill amends s. 373.118(4), F.S., removing a provision directing the DEP to adopt rules for one or more general permits for local governments to construct, operate and maintain public marina facilities. The bill removes a provision that local government facilities permitted under s. 373.118(4), F.S., must obtain Clean Marina Program status before opening for operation and must maintain that designation for the life of the facility. The bill also removes a provision limiting such facilities to 50,000 square feet over wetlands and other surface waters.

The bill adds a provision limiting mooring fields permitted under s. 373.118(4), F.S., to 100 vessels and it adds a provision authorizing the Board of Trustees to delegate to the DEP the ability to issue leases for mooring fields that meet the requirements of the general permit per s. 373.118(4), F.S.

Section 9 amends s. 373.233, F.S., relating to consumptive use permitting.

Present Situation

A CUP establishes the duration and type of water an entity may 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 WMD and not 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, F.S.;
- Must not interfere with any presently existing legal use of water; and
- Must be consistent with the public interest.[20]

Section 373.233, F.S., provides that if two or more complete applications that otherwise comply with the provisions of Part II of ch. 373, F.S., are pending for a quantity of water that is inadequate for both or all applications, or that are in conflict for any other reason, the governing board of the DEP or the WMD has the right to approve or modify the application which best serves the public interest.

The Three Prong Test

"Reasonable-beneficial use," the first prong of the test, 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."[21] The Legislature has declared water a public resource. Therefore, wasteful uses of water are not allowed even if there are sufficient resources to meet all other demands.

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 water management needs.[22] 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.[23]

The second element of the three-prong test protects the rights of existing legal uses of water for the duration of their permits.[24] 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.[25]

[20] Section 373.223(1)(a-c), F.S.
[21] Section 373.019(16), F.S. *See also* Rule 62-410(2), F.A.C., for a list of 18 factors to help determine whether a water use is a reasonable-beneficial use.
[22] *See* Rule 62-40, F.A.C.
[23] *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).
[24] Section 373.223(1)(b), F.S.
[25] *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).

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.[26] 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 particular WMD or the DEP gives preference to renewal applications.[27]

Effect of Proposed Changes

The bill amends s. 373.233, F.S., to provide that where there are competing CUP applications and a WMD or the DEP has deemed the applications complete, the governing board of a WMD or the DEP has the right to approve or modify the application which best serves the public interest.

Section 10 amends s. 373.236, F.S., relating to the duration of CUPs.

Present Situation

Section 373.236(1), F.S., provides that CUPs must be granted for a period of 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 DEP may determine the duration of permits based upon a reasonable system of classification according to the water source, type of use, or both.

Pursuant to s. 373.326(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 DEP may require a permittee to produce a compliance report every 10 years. A compliance report must contain sufficient data to maintain reasonable assurance that the initial permit conditions are met. After reviewing a compliance report, the WMD or DEP may modify the permit, including reductions or changes in the initial allocations of water, to ensure that the water use comports with initial conditions for issuance of the permit. Permit modifications made by a WMD or 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.

[26] *Supra* note 23.
[27] *See* s. 373.233, F.S.

Effect of Proposed Changes

The bill amends s. 373.236, F.S., to provide that in order to promote the sustainability of natural systems through the diversification of water supplies to include sources that are resistant to drought, a WMD may not reduce an existing permitted allocation of water during the permit term as a result of planned future construction of, or additional water becoming available from, a seawater desalination plant unless the reduction is a condition of a permit or funding agreement with the WMD. Except as otherwise provided, this does not limit the existing authority of DEP or the governing board of a WMD to modify or revoke a CUP.

Section 11 amends s. 373.246, F.S., relating to declarations of water shortages or emergencies.

Present Situation

Section 373.246, F.S., provides direction for the governing board of a WMD or the DEP during a water shortage. The section, among other things, requires the formulation of a plan for periods of water shortage, allows for the imposition of restrictions on water use, provides for notice to those residing in the areas affected by the water shortage, and provides for the rescission of a declaration of a water shortage.

Effect of Proposed Changes

The bill amends s. 373.246, F.S., to allow a WMD governing board or the DEP to notify permittees by electronic mail of any change in the condition of their permits or any suspension of their permits or any other restriction on permittees' use of water for the duration of the water shortage. This is in addition to the existing option of making such notification by regular mail.

Section 12 amends s. 373.308, F.S., relating to well permits issued by water management districts.

Present Situation

Section 373.308, F.S., directs the DEP to authorize the governing board of a WMD to implement a program for the issuance of permits for the location, construction, repair and abandonment of water wells. The DEP may prescribe minimum standards for the location, construction, repair, and abandonment of water wells throughout all or part of the state. Some local governments also have certain ordinances pertaining to water wells, which have resulted in duplicative regulation at the state and local level.

Effect of Proposed Changes

The bill amends s. 373.308, F.S., to provide that upon authorization from the DEP, issuance of well permits is the sole responsibility of the WMDs, a delegated local government, or a local county health department, and that other government entities may not impose additional or duplicate requirements or fees, or establish a separate program for permitting the location, abandonment, boring, or other activities reasonably associated with the installation and abandonment of a groundwater well.

Section 13 amends s. 373.323, F.S., relating to licenses for water well contractors.

Present Situation

Any person that wishes to engage in business as a water well contractor must obtain a license from a WMD. Each person must apply to take the licensure examination and the application must be made to the WMD in which the applicant resides or in which his or her principal place of business is located. An applicant must:

- Be at least 18 years of age;
- Have two years of experience in constructing, repairing, or abandoning water wells; and
- Show certain proof of experience.[28]

Section 373.323(11), F.S., provides that licensed water well contractors may install pumps, tanks, and water conditioning equipment for all water well systems.

Effect of Proposed Changes

The bill amends s. 373.323, F.S., to provide that licensure under this section by a WMD must be the only water well construction license required for the construction, repair, or abandonment of water wells in the state or any political subdivision.

The bill also expands the types of systems that licensed water well contractors may install pumps, tanks, and water conditioning equipment on. The bill changes the systems water well contractors can work on from "water well systems" to "water systems."

Section 14 amends s. 373.406, F.S., relating to surface water management and storage.

Present Situation

Part IV of ch. 373, F.S., provides for the management and storage of surface water. Part IV also establishes the Environmental Resource Permit (ERP) program, which is the primary tool used by the DEP and the WMDs for preserving natural resources and fish and wildlife, minimizing degradation of water resources caused by stormwater discharges, and providing for the management of water and related land resources.

The activities regulated under the ERP program include the construction, alteration, operation, maintenance, abandonment, and removal of stormwater management systems, dams, impoundments, reservoirs, and appurtenant work and works. Individually and collectively these terms are referred to as "surface water management systems."

Certain activities are exempt by statute from the need to obtain an ERP under state law or by agency rule. Section 373.406, F.S., provides for several exemptions from the regulatory requirements in ch. 373, F.S. The DEP's rules also provide for certain exemptions and general

[28] Section 373.323, F.S.

permits for certain activities that cause only minimal individual and cumulative adverse impacts to wetlands and other surface waters. Some examples of exempt activities are:

- Construction, repair, and replacement of private docking facilities below certain size thresholds;
- Maintenance dredging of existing navigational channels and canals;
- Construction and alteration of boat ramps within certain size limits;
- Construction, repair, and replacement of seawalls and riprap in artificial waterways;
- Repair and replacement of structures; and
- Construction of certain agricultural activities.

In addition, the state has issued a number of noticed general permits for activities that are slightly larger than those that qualify for the above exemptions and that otherwise have been determined to have the potential for no more than minimal individual direct and secondary impacts. These include, but are not limited to, the following:

- 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.

Anything that does not specifically qualify for an exemption or noticed general permit typically requires an ERP permit.

Effect of Proposed Changes

The bill amends s. 373.406, F.S., to include the following exemptions from regulation under Part IV of ch. 373, F.S.:

- Construction, operation, or maintenance of any wholly owned, manmade ponds or drainage ditches constructed entirely in uplands as long as any alteration or maintenance does not involve any work to connect the pond to, or expand the farm into, other wetlands or surface waters;
- Activities affecting wetlands created solely by the unreasonable and negligent flooding or interference with the natural flow or surface water caused by an adjoining landowner. Requests to qualify for the exemption must be submitted in writing to a WMD or the DEP within seven years after the cause of the unauthorized flooding or diversion occurred. Such activities may not begin before a WMD or DEP confirms in writing that the activity qualifies for the exemption; and
- Any water control district created and operating pursuant to ch. 298, F.S., for which a valid ERP or management and storage of surface waters permit has been issued pursuant to Part IV of ch. 373, F.S., is exempt from further wetlands regulations imposed pursuant to local government regulation under chs. 125, 163, and 166, F.S.

Section 15 amends s. 376.30713, F.S., relating to preapproved advanced cleanup of contaminated sites.

Present Situation

The Preapproved Advanced Cleanup Program is a cost-sharing program designed to provide an opportunity for site rehabilitation, on a limited basis, at contaminated sites in advance of their priority ranking in order to facilitate property transfers or public works projects.[29] Consideration for the program is through an application to the DEP. Applications must contain:

- A commitment to pay no less than 25 percent of total cleanup cost;
- A review fee of $25;
- A limited contamination assessment report; and
- A proposed course of action.[30]

If approved for the program, the applicant enters into a contract with the DEP. If the terms of the preapproved advanced cleanup contract are not fulfilled, the applicant forfeits any right to future payment for any site rehabilitation work conducted under the contract.[31]

The DEP is allowed to enter into contracts with approved entities for a total of $10 million of preapproved advanced cleanup work each fiscal year and no facility may be preapproved for more than $500,000.[32]

Effect of Proposed Changes

The bill raises the total funds available for preapproved advanced cleanup work each fiscal year from $10 million to $15 million, and it raises the amount any one facility may be approved for from $500,000 to $5 million.

Section 16 amends s. 376.313, F.S., relating to the nonexclusiveness of remedies and individual causes of action for damages under ss. 376.30 to 376.317, F.S.

Present Situation

Section 376.313(3), F.S., provides that nothing contained in ss. 376.30-376.317, F.S., (relating to petroleum storage discharges, dry cleaning facilities, and wholesale supply facilities) prohibits any person from bringing a cause of action in court for all damages resulting from a discharge or other condition of pollution covered by the referred to sections.

Effect of Proposed Changes

The bill amends s. 376.313(3), F.S., to provide that a person can bring a cause of action in court for all damages resulting from a discharge or other condition of pollution covered by ss. 376.30-376.317, F.S., that is not regulated or authorized pursuant to ch. 403, F.S. (relating to environmental control policies that conserve state water, protect and improve water quality for

[29] DEP, *Preapproved Advanced Cleanup Program (PAC)*, www.dep.state.fl.us/waste/categories/pcp/pages/pac.htm (last visited Apr. 18, 2013).
[30] Section 376.30713(2)(a), F.S.
[31] Section 376.30713(3)(b), F.S.
[32] Section 373.30713(4), F.S.

consumption, and maintain air quality to protect human health). This serves to limit the causes of action currently available under s. 376.313, F.S.

Sections 17, 21 and 27 amend ss. 403.031 and 403.0893, F.S., and creates an unnumbered section of law, respectively, regarding stormwater utility fees.

Present Situation

Section 403.031, F.S., provides definitions for ch. 403, F.S. Section 403.0893, F.S., provides that a county or municipality may:

- Create one or more stormwater utilities and adopt stormwater utility fees sufficient to plan, construct, operate, and maintain stormwater management systems set out in the local program required pursuant to s. 403.0891(3), F.S.;
- Establish and set aside, as a continuing source of revenue, other funds sufficient to plan, construct, operate, and maintain stormwater management systems set out in the local program required pursuant to s. 403.0891(3), F.S.; or
- Create, alone or in cooperation with counties, municipalities, and special districts pursuant to the Interlocal Cooperation Act, s. 163.01, F.S., one or more stormwater management system benefit areas.

Effect of Proposed Changes

Section 17 of the bill amends s. 403.031, F.S., to provide a definition for the term "beneficiary" to mean "any person, partnership, corporation, business entity, charitable organizations, not-for-profit corporation, state, county, district, authority, or municipal unit of government or any other separate unit of government created or established by law." Those entities listed here are responsible for paying stormwater fees assessed by a local government. This definition will make clear the entities from which a local government can collect stormwater fees.

Section 21 of the bill amends s. 403.0893, F.S. to provide that stormwater utility fees may be charged to the beneficiaries of a stormwater utility, and it provides for the collection of delinquent fees.

Section 27 of the bill creates an unnumbered section of law to provide that the two sections only apply to stormwater utility fees billed on or after July 1, 2013, to a beneficiary of a stormwater utility for services provided on or after that date.

Section 19 amends s. 403.0872, F.S., relating to operation permits for majority sources of air pollution and fee calculations.

Present Situation

The Clean Air Act (CAA) was enacted in 1970 as the comprehensive federal law to regulate air emissions from stationary and mobile sources. The law authorizes the U.S. Environmental

Protection Agency (EPA) to establish National Ambient Air Quality Standards to protect public health and public welfare and to regulate emissions of hazardous air pollutants.[33]

In 1990, Congress amended Title V of the CAA to create the operating permit program. The program streamlines the way federal, state, tribal, and local authorities regulate air pollution by consolidating all air pollution control requirements into a single, comprehensive operating permit that covers all aspects of a source's year-to-year pollution activities.[34] Under Title V, the EPA must establish minimum elements to be included in all state and local operating permit programs and then assist the state and local governments in developing their programs.[35] All major stationary sources (power plants, pulp mills, and other facilities) emitting certain air pollutants are required to obtain operating permits.

Pursuant to s. 403.0872, F.S., and as promulgated in ch. 62-4, F.A.C., the DEP is responsible for air permits regulating major and minor facilities. Section 403.0872(11), F.S., provides that each source of air pollution permitted to operate in Florida must pay between January 15 and March 1 of each year, upon written notice from the DEP, an annual operation license fee in an amount determined by DEP rule. The annual fee is assessed based upon the source's previous year's emissions and is calculated by multiplying the applicable annual operation license fee factor by the tons of each regulated air pollutant (except carbon monoxide) allowed to be emitted per hour by specific condition of the source's most recent construction or operation permit, and multiplying that by the annual hours of operation allowed by permit conditions provided, however, that:

1. The license fee factor is $25 or another amount determined by DEP rule, which ensures that the revenue provided by each year's operation license fees is sufficient to cover all reasonable direct and indirect costs of the major stationary source air-operation permit program established by this section. The license fee factor may be increased beyond $25 only if the Secretary of Environmental Protection affirmatively finds that a shortage of revenue for support of the major stationary source air-operation permit program will occur in the absence of a fee factor adjustment. The annual license fee factor may not exceed $35.
2. For any source that operates for fewer hours during the calendar year than allowed under its permit, the annual fee calculation must be based upon actual hours of operation rather than allowable hours if the owner or operator of the source documents the source's actual hours of operation for the calendar year. For any source that has an emissions limit that is dependent upon the type of fuel burned, the annual fee calculation must be based on the emissions limit applicable during actual hours of operation.
3. For any source whose allowable emission limitation is specified by permit per units of material input or heat input or product output, the applicable input or production amount may be used to calculate the allowable emissions if the owner or operator of the source documents the actual input or production amount. If the input or production amount is not documented, the maximum allowable input or production amount specified in the permit must be used to calculate the allowable emissions.

[33] EPA, *Summary of the Clean Air Act*, http://epa.gov/regulations/laws/caa.html (last visited Mar. 29, 2013).
[34] *See* EPA, *Air Pollution Operating Permit Program Update: Key Features and Benefits*, http://www.epa.gov/oaqps001/permits/permitupdate/index.html (last visited Mar. 29, 2013).
[35] *Id.*

4. For any new source that does not receive its first operation permit until after the beginning of a calendar year, the annual fee for the year must be reduced pro rata to reflect the period during which the source was not operational.
5. For any source that emits less of any regulated air pollutant than allowed by permit condition, the annual fee calculation for such pollutant must be based upon actual emissions rather than allowable emissions if the owner or operator documents the source's actual emissions by means of data from a DEP-approved certified continuous emissions monitor or from an emissions monitoring method which has been approved by the EPA under the regulations implementing 42 U.S.C. ss. 7651 et seq., or from a method approved by the DEP.
6. The amount of each regulated air pollutant in excess of 4,000 tons per year allowed to be emitted by any source, or group of sources belonging to the same Major Group as described in the Standard Industrial Classification Manual, 1987, may not be included in the calculation of the fee. Any source, or group of sources, which does not emit any regulated air pollutant in excess of 4,000 tons per year, is allowed a one-time credit not to exceed 25 percent of the first annual licensing fee for the prorated portion of existing air-operation permit application fees remaining upon commencement of the annual licensing fees.
7. If the DEP has not received the fee by February 15 of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by March 1. If the fee is not postmarked by March 1 of the calendar year, the DEP shall impose, in addition to the fee, a penalty of 50 percent of the amount of the fee, plus interest on such amount computed in accordance with s. 220.807, F.S. The DEP may not impose such penalty or interest on any amount underpaid, provided that the permittee has timely remitted payment of at least 90 percent of the amount determined to be due and remits full payment within 60 days after receipt of notice of the amount underpaid. The DEP may waive the collection of underpayment and is not required to refund overpayment of the fee, if the amount due is less than 1 percent of the fee, up to $50. The DEP may revoke any major air pollution source operation permit if it finds that the permitholder has failed to timely pay any required annual operation license fee, penalty or interest.
8. Notwithstanding the computational provisions of s. 403.0872(a), F.S., the annual operation license fee for any source subject to this section cannot be less than $250, except that the annual operation license fee for sources permitted solely through general permits issued under s. 403.814, F.S., shall not exceed $50 per year.
9. Notwithstanding the provisions of s. 403.087(6)(a)5.a., F.S., authorizing air pollution construction permit fees, the DEP may not require such fees for changes or additions to a major source of air pollution permitted pursuant to this section, unless the activity triggers permitting requirements under Title I, Part C or Part D, of the CAA, 42 U.S.C. ss. 7470-7514a. Costs to issue and administer such permits are considered direct and indirect costs of the major stationary source air-operation permit program under s. 403.0873, F.S. The DEP must, however, require fees pursuant to the provisions of s. 403.087(6)(a)5.a., F.S., for the construction of a new major source of air pollution that will be subject to the permitting requirements of s. 403.0872, F.S., once constructed and for activities triggering permitting requirements under Title I, Part C or Part D, of the CAA, 42 U.S.C. ss. 7470-7514a.[36]

[36] Section 403.0872(11)(a)1.-9., F.S.

Effect of Proposed Changes

The bill amends s. 403.0872, F.S., to extend the annual payment deadline for air pollution permits from March 1 to April 1. In addition, the bill provides that the annual fee must be assessed based upon the source's previous year's emissions and must be calculated by multiplying the applicable annual operation license fee factor by the tons of each regulated air pollutant actually emitted, as calculated in accordance with DEP's emissions computation and reporting rules. The annual fee only applies to those regulated pollutants, except carbon monoxide and greenhouse gases, for which an allowable numeric emission limiting standard is specified in the source's most recent construction or operation permit. This will result in a decrease in fees charged since it is likely that most permitted entities are not discharging up to their permitted limit.

The bill deletes subparagraphs 2-5 from s. 403.0872(11), F.S.

The bill provides that if the DEP has not received the fee by March 1, instead of February 15, the permittee must be sent a written warning concerning the consequences of failing to pay the fee by April 1. If the fee is not postmarked by April 1, the DEP will impose an additional fee.

Section 20 amends s. 403.088, F.S., relating to conditions for the issuance of water pollution permits.

Present Situation

Section 403.088, F.S., provides guidance for the issuance of pollution discharge permits. Generally, if the DEP finds that a proposed discharge will reduce the quality of receiving waters below the classification established for them, the DEP is directed to deny the application and refuse to issue a permit.

Effect of Proposed Changes

The bill amends s. 403.088, F.S., to provide that when testing to determine whether or not a proposed discharge will reduce the quality of the receiving waters below the classification established for them, the DEP may not use results from a field procedure or laboratory method to make the finding or determine compliance unless the procedure or method has been adopted by rule or noticed and approved by DEP order pursuant to DEP rule. Additionally, field procedures and laboratory methods must satisfy quality assurance requirements of DEP rule and must produce data of known and verifiable quality. Lastly, the results of field procedures and laboratory methods must be evaluated for sources of uncertainty to assure suitability for the intended purposes as properly documented with each procedure or method.

Section 22 amends s. 403.7046, F.S., relating to the regulation of recovered materials.

Present Situation

Section 403.7046, F.S., governs the regulation of recovered materials. It allows the DEP to establish a system whereby recovered materials dealers must be certified by the DEP. At a minimum, the information that needs to be collected from a recovered materials dealer must include:

- The amount and types of recovered materials handled, and
- The amount and disposal site, or the name of the person with whom the disposal was arranged, of any solid waste generated by the recovered materials facility and subsequently disposed of.[37]

It also provides that prior to engaging in business within the jurisdiction of a local government, the dealer must provide the government with the DEP certification and must register with the local government. Local governments are limited to collecting the following information:

- Name, including the owner or operator of the dealer;
- If the dealer is a business entity:
  - Its general or limited partners; and
  - Its corporate officers and directors;
- Its permanent place of business;
- Evidence of its certification from the DEP; and
- A certification that the recovered materials will be processed at a recovered materials processing facility satisfying the requirements of the section.

Local governments may also impose yearly reporting requirements which include:

- Requiring the dealer to identify the types and approximate amount of recovered materials collected, recycled, or reused during the reporting period;
- The approximate percentage of recovered materials reused, stored, or delivered to a recovered materials processing facility or disposed of in a solid waste disposal facility; and
- The locations where any recovered materials were disposed of as solid waste.

There are protections for trade secrets and any information that constitutes a trade secret is to be kept confidential.[38]

Effect of Proposed Changes

The bill amends s. 403.7046, F.S., providing that a local government that receives a registration application from a recovered materials dealer may not use the registration information to compete with the recovered materials dealer until 90 days after the registration information is submitted.

The bill also provides for injunctive relief or damages for recovered materials dealers, or associations whose members include recovered materials dealers, in cases where localities violate the prohibition.

[37] Section 403.7046(1), F.S.
[38] Section 403.7046(3)(b), F.S.

Section 23 amends s. 403.813, F.S., relating to conditions under which certain permits are not required for seawall restoration.

Present Situation

Section 403.813(1), F.S., provides that a permit is not required for the restoration of a seawall at its previous locations or upland of, or within 12 inches waterward of, its previous location.

Effect of Proposed Changes

The bill amends s. 403.813, F.S., to provide that a permit is not required for the restoration of a seawall at its previous location or upland of that location, or within 18 inches, instead of 12 inches, waterward of its previous location.

Section 25 amends s. 403.973, F.S., relating to expedited permitting of natural gas pipelines.

Present Situation

Section 403.973, F.S., provides for expedited permitting and a process for amendments to comprehensive plans for certain projects that are identified to encourage and facilitate the location and expansion of those types of economic development projects that offer job creation and high wages, strengthen and diversify the state's economy, and have been thoughtfully planned to take into consideration the protection of the state's environment.

Under s. 403.973, F.S., the secretary of the DEP must direct the creation of regional permit action teams for the purpose of expediting the review of permit applications and local comprehensive plan amendments submitted by:

- Businesses creating at least 50 jobs or a commercial or industrial development project that will be occupied by businesses that would individually or collectively create at least 50 jobs; or
- Businesses creating at least 25 jobs if the project is located in an enterprise zone, or in a county having a population of fewer than 75,000 or in a county having a population of fewer than 125,000 which is contiguous to a county having a population of fewer than 75,000, as determined by the most recent decennial census, residing in incorporated and unincorporated areas of the county.

Appeals of expedited permitting projects are subject to the summary hearing provisions of s. 120.574, F.S. The administrative law judge's 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 administrative law judge's decision to constitute the final agency action. Where one state agency action is challenged, the agency of the state shall issue the final order within 45 working days of receipt of the administrative law judge's recommended order. In those proceedings where more than one state agency action is challenged, the governor shall issue the final order within 45 working days of receipt of the administrative law judge's recommended order.

Effect of Proposed Changes

The bill amends s. 403.973, F.S., to authorize expedited permitting for projects to construct interstate natural gas pipelines subject to certification by the Federal Energy Regulatory Commission.

Section 26 creates an unnumbered section of law, relating to land leases.

Current Situation

The Everglades Forever Act (EFA) was enacted in 1994 and is codified at s. 373.4592(5), F.S. It offers farmers impacted by the Everglades Restoration Project (Project) leases on several Board of Trustees parcels in the Everglades Agricultural Area in Palm Beach County. The law states that impacted farmers have the right to lease the parcels, upon expiration of the then existing leases, for a term of 20 years and at a rental rate determined by an appraisal using established state procedures. For those parcels that had previously been competitively bid, the rental rate may not be less than the rate the Board of Trustees received at that time. The Board of Trustees can also adjust the rental rate on an annual basis using an appropriate index, and update the appraisal at five-year intervals. If more than one impacted farmer desires to lease the same parcel of land, the one with the greatest number of acres affected by the Project has priority.[39]

The DEP developed new leases to implement the Act. Four of the leases are scheduled to expire on April 1, 2015 and three are scheduled to expire on January 31, 2016, December 31, 2016, and August 25, 2018, respectively. Five leases are issued to companies owned by affiliates of Florida Crystals Corporation (Florida Crystals) and two are issued to A. Duda and Sons, Inc. (Duda) They are located on non-conservation lands and state school lands.[40]

Situation Regarding the Florida Crystal Leases

The South Florida Water Management District (SFWMD) contacted the DEP to request that the five Florida Crystals leases be amended to extend the lease terms for an additional 30 years, and to delete a provision that allows the Board of Trustees to terminate a lease if the lessee ceases to be an impacted farmer. The extensions are a condition of a land exchange between SFWMD and Florida Crystals to secure additional stormwater treatment area that is critical to SFWMD's efforts under the Act[41]

Situation Regarding the Duda Leases

SFWMD contacted the DEP to request that the two Duda leases be extended for additional 30 year terms. The extensions have been requested as a condition of land acquisition negotiations between the SFWMD and Duda to secure property for water storage that is critical to SFWMD's efforts to protect the Caloosahatchee River and Estuary under the Northern Everglades and Estuary Protection Act (NEEP Act). To address water quality and quantity associated with the

[39] Section 373.4592(5)(c), F.S.
[40] Board of Trustees of the Internal Improvement Trust Fund, *Meeting Agenda, January 23, 2013*, http://www.myflorida.com/myflorida/cabinet/agenda13/0123/BOT012313.pdf (last visited Apr. 18, 2013).
[41] *Id.*

existing flows from Lake Okeechobee to the Caloosahatchee River and Estuary, SWFMD will construct a surface water reservoir on the property acquired from Duda. The primary objectives will be to rehydrate Lake Hicpochee and intercept harmful excess flows to the Caloosahatchee River.[42]

Florida Administrative Code

A 20-year term was originally authorized in the Act for Florida Crystals' five leases. Pursuant to Rule 18-2.018(3)(a)1.b., F.A.C., the standard lease term for agricultural leases is six years. The DEP offered the following to assist the Board of Trustees in affirming that the Florida Crystals' leases are not standard leases:

- The leases are critical to SFWMD's acquisition of the 4,700 acres of private property adjacent to Stormwater Treatment Area 1W. Unless the leases are extended, the SFWMD will have to seek condemnation at great cost to the state. No other fiscally reasonable and technologically practical site exists for acquisition;
- The specific project that will be constructed on the exchanged lands is included in enforceable state and federal water quality consent orders issued by the DEP to the SFWMD and was mandated by the permits issued by the DEP under the federal Clean Water Act to improve the quality of water flowing into the Everglades;
- The five lessees are the farmers most impacted by acquisition of land for Everglades restoration and hydroperiod purposes as identified in the EFA; and
- The EFA recognizes the need to maintain the quality of life for South Florida residents, including those in agricultural-related jobs, which contribute to the regional economy.[43]

For the Duda leases, the DEP offered the following to assist the Board of Trustees in affirming that the leases are not standard leases:

- the lease extensions are critical to the SFWMD's acquisition of the lands needed for water storage and treatment as a component of both the NEEP Act and Caloosahatchee Plan;
- Duda remains one of the farmers most impacted by acquisition of land for Everglades restoration as identified in the EFA; and
- if the leases are not extended, SFWMD will have to seek alternative lands at significant additional costs with uncertain results.[44]

Public Interest

Pursuant to rule 18-2.018(1), F.A.C., the decision to authorize the use of Board of Trustees owned uplands requires a determination that such use is not contrary to the public interest. The public interest determination requires an evaluation of the probable impacts of the proposed activity on the uplands. All direct and indirect impacts related to the proposed activity, as well as the cumulative effects of those impacts, must be considered.

[42] *Id.*
[43] *Id.*
[44] *Id.*

The DEP offered information to the Board of Trustees to aid in making a determination that the leases for Florida Crystals and Duda are in the public interest, and not contrary to the public interest.[45]

Pursuant to rule 18-2.018(2)(i), F.A.C., equitable compensation is required when the use of uplands will limit or preempt use by the general public or will generate income or revenue for a private user. The rule directs the Board of Trustees to award authorization for such uses on the basis of competitive bidding rather than negotiation, unless it is determined by the Board of Trustees to be in the public interest pursuant to the results of an evaluation of the impacts, both direct and indirect, which may occur as a result of the proposed use.

The DEP offered information to assist the Board of Trustees to make the determination that waiving the competitive bid requirements for Florida Crystals and Duda were in the public interest.

There have been at least two objections to the Duda leases from other farmers. One was received from Hundley Farms, Inc., and one from Roth Farms, Inc. Both object to the Duda lease extensions being granted without being competitively bid.[46]

On April 11, 2013, the Florida Wildlife Federation petitioned for a formal administrative hearing challenging whether several of the leases are typical agricultural leases, whether they represent the greatest combination of benefits to the public, whether the lease extensions are necessary for the project proposed by the SFWMD, and other aspects of the leases and the process by which they were awarded.[47]

Effect of Proposed Changes

The bill:

- Creates an unnumbered section of law that ratifies the decisions of the Board of Trustees with respect to the Florida Crystal and Duda leases, numbered 1447, 1971S, 3420, 3433, 3543, 3422 and 1935/1935-S.
- States the legislative finding that the decision to authorize the use of Board of Trustees-owned uplands and the use of those lands as set forth in the leases is not contrary to the public interest, that it is in the public interest to waive the competitive bid process, that the leases are not standard agricultural leases, and that the leases should be amended on the terms and conditions approved by the Board of Trustees.
- States the legislative finding that notwithstanding any other provision of law, the Legislature finds that the lease amendments and extensions approved by the Board or Trustees are necessary for Everglades restoration purposes, are in the public interest, and provide the greatest combination of benefits to the public.
- Will effectively render the administrative hearing request by the Florida Wildlife Foundation moot.

[45] *Id.*
[46] *Id.*
[47] Florida Wildlife Federation, Inc., v. Florida Department of Environmental Protection and Board of Trustees of the Internal Improvement Trust Fund, Amended Petition for Administrative Hearing, OGC Case No.: 13-0065, Apr. 11, 2013.

Section 28 provides an effective date of July 1, 2013

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:

Section 4 Expanding the use of the phosphate tax for education could benefit the private sector but the benefits cannot be quantified.

Sections 5 and 24 The Special Event promoter would benefit from structuring lease fees around the actual size of the preemption and the flexibility provided for restructuring of temporary structures. The public would not benefit from this reduction because the promoter charges the vendor to participate in the event. Substantial savings are expected but cannot be calculated at this time.

Section 6 There would be a positive impact from the annual reduction or elimination of the annual fee for leases of sovereignty submerged land.

Section 7 The private sector will benefit from reduced lease fees related to docks and piers. The savings cannot be calculated at this time.

Section 9 According to the DEP, if a private sector entity is a CUP applicant, the proposed language may result in increased costs resulting from litigation. The bill envisions a WMD issuing proposed affirmative agency action for two applications, even though there is not adequate water for both. Therefore, it would appear that a private entity seeking a permit would either be forced to challenge a competing permit or be subject to such a challenge.

Section 12 The bill would have a positive effect on water well contractors by eliminating the requirement to obtain a separate local government water well construction permit, including any required fees.

Section 13 The bill would have a positive effect on water well contractors by eliminating the requirement to obtain any local government water well contractor licenses. It also expands the license to apply to all water systems, not just water well systems. The impact of this expansion is unknown and may create additional competition in the water systems business.

Section 14 The bill will ease some of the regulatory requirements for farm ponds, created wetlands, and certain water control districts. This will result in a positive but indeterminate affect on the private sector.

Section 15 There will be increased funds available for contamination cleanup so there could be increased participation in the program. By raising the individual facility limit, it could result in a lower number of facilities being able to take advantage of the program.

Section 16 Currently, if a person or entity is damaged as a result of a discharge or other condition of pollution covered in ss. 376.30 – 376.317, F.S., he or she has a cause of action to sue for damages. This bill limits those causes of action to situations where the offending party's activities are not regulated or authorized pursuant to ch. 403, F.S.

Section 19 According to the DEP, this legislation will save over 400 of Florida's manufacturing and industrial businesses an estimated $2 million per year. Approximately $1.4 million would be saved in Title V permit fees because they would be paying fees based on their "actual emissions" instead of their "adjusted allowable emissions." Synchronizing the Title V fee and annual operating report requirements will save the sources an additional estimated $600,000 by eliminating the need to compute and submit different emission calculations.

Section 22 The bill will provide more certainty for recovered materials dealers when applying for permits to operate with a locality. Ultimately, this will have a positive but indeterminate impact.

Section 25 The bill will have a sizeable impact on entities that wish to build natural gas pipelines in the state. The effect is indeterminate. Giving one party the option to force summary judgment could have a positive but indeterminate impact on judicial awards for parties. For parties suing the entities building natural gas pipelines, summary judgment could result in an indeterminate effect on awards.

C. Government Sector Impact:

Section 1 and 18 Electronic submissions should have an indeterminate reduction in paper costs for the DEP.

Section 4 By expanding the definition of "phosphate related expenses," local governments may have more flexibility in how they spend phosphate related fees, taxes, and penalties.

Sections 5 and 24 The fees for special event fees are calculated based on the number of event days multiplied by the annual rent, or five percent of any revenue generated from the special event, whichever is greater. The loss of revenue would be approximately $187,000 annually, based on data from seven fiscal years. The lease term would exceed the standard term of five years.

Section 7 The DEP will see a reduction in lease fees from certain private docks and piers. The negative effect on revenues is estimated at $1.24 million to the Internal Improvement Trust Fund; however, recurring revenue currently exceeds recurring expenditures by over $2 million and this recurring revenue reduction should not impact the trust fund's ability to meet department's needs. Also, this provision would require enhancement of the department's database at a cost of $13,000.

Section 8 According to the DEP, there would be costs incurred due to the rulemaking requirement, estimated at $50,000 for mooring field expansion. After the general permits are developed, there would be a revenue loss in permit fees in the Permit Fee Trust Fund. The DEP is expected to absorb any minor negative impact to permit fees with existing resources.

Section 10 According to the DEP, local governments may avoid some transactional costs associated with a permit modification.

Section 11 The DEP or a WMD could saving funds on postage if notifications are sent via electronic mail.

Section 13 Local governments would lose any fees currently charged as part of a local government requirement for obtaining a local water well contractor license.

Section 14 The exemptions for farm ponds and wetlands apply to all of Part IV of Chapter 373, F.S. These exemptions would have an insignificant fiscal impact to the department's Permit Fee Trust Fund.

Sections 17, 21, and 27 Allow stormwater utilities to collect fees from specific beneficiaries and delinquent fees as of July 1, 2013.

Section 19

Effect on the DEP

According to the DEP, the bill would enable the agency to synchronize the federally required emissions computation and reporting obligation with the Title V air operation permit fee calculation requirement. This would save the department significant time that goes into reviewing and processing two separate calculations that serve the same underlying purpose - to identify emissions.

Pursuant to s. 403.0873, F.S., all permit fees received under the DEP's federally approved Title V permitting program are deposited in the Air Pollution Control Trust Fund. Those fees must be used for the sole purpose of paying the direct and indirect costs of the DEP's Title V permitting program, which are enumerated under 40 CFR part 70. The DEP estimates that those costs to be $5.3 million in Fiscal Year 2012-2013 and that they will decline to $4.9 million by Fiscal Year 2017-2018. The trust fund reserve balance for the Title V program was $4.1 million in July 2012. With the estimated $1.4 million annual reduction in fee receipts that would occur as a result of the bill, the DEP estimates that the fund balance will increase to $4.9 million by Fiscal Year 2017-2018. This increase is related to several efficiencies that have occurred in the DEP's air program. In the event that unforeseeable circumstances arise and program costs exceed revenues, the DEP can adjust its fee by rule as provided under s. 403.0872, F.S.

Effect on Local Governments

The Title V permit fees in the Air Pollution Control Trust Fund must be used for the sole purpose of paying the direct and indirect costs of the DEP's federally approved Title V permitting program. The DEP may contract with local governments (or any other public or private entity) to perform Title V program services on its behalf. The DEP currently contracts with seven local governments to perform certain Title V program services. The above agency impact projections accommodate the maintenance of the 2012 contracts with these entities, so there are no local government impacts.

Total Revenue Impacts by Fund[48]:

Internal Improvement Trust Fund	($1.4) million (sections 5 and 7)
Air Pollution Trust Fund	($1.4) million (section 19)
Permit Fee Trust Fund	($0.05) million (section 8)
Service Charge to General Revenue	($231,200)

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 15 Provisions contained in the CS conflict with provisions contained in CS/SB 1416.

VIII. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on April 17, 2013:

[48] Senate Subcommittee on General Government, *Senate Bill 1684 Fiscal Summary* (Apr. 18, 2013) (on file with Senate Committee on Environmental Preservation and Conservation).

- For both counties and municipalities, the bill provides clarifying language regarding requests for additional information for pending development permits and stipulates that the limit on requests for additional information does not apply to building permits.
- Clarifies that marinas with slips that are open for rent to the public are able to receive a discount of 30 percent on their annual lease fees.
- Specifies that only seawater desalination plants are protected from having their water allocation reduced.
- Clarifies that it is the DEP or a WMD that has authority to deem an application for a water application complete.
- Allows for electronic mail notification of changes to a water permit during water shortage.
- Includes local county health departments in the list of entities that may have sole responsibility for issuing well permits if authorized by the DEP.
- Clarifies that manmade, excavated farm ponds may not be altered or maintained in a way that connects or expands that farm pond to an existing wetland.
- Exempts certain water control districts from wetland or water quality regulations.
- Provides certain requirements for testing procedures used when determining if a proposed discharge will lower the quality of receiving waters below what it is classified as.
- Clarifies that beneficiaries of stormwater utilities may be charged fees for those services and provides a cause of action for recovering those fees.
- Removes a 90 day processing deadline from the requirement for local governments to process recovered materials dealers registrations with the locality.
- Provides a cause of action for recovered materials dealers alleging a violation of the section regarding recovered materials dealers.
- Removes provisions related to a Department of Agriculture and Consumer Services regional water supply planning program.
- Ratifies certain leases by the Board of Trustees and states the legislative finding that the leases are in the public interest and not contrary to the public interest.

CS by Environmental Preservation and Conservation on April 2, 2013:

- Adds two sections related to the electronic submission of forms to the DEP, authorizing the DEP to adopt rules regarding electronic submission of forms to the DEP;
- Adds one section that expands the types of activities qualifying as "phosphate-related expenses";
- Regarding special events on sovereignty submerged lands, the bill expands the allowable period of a lease under that section of law from 30 days or less to 45 days or less. The bill also provides that the lease or consent of use should include a lease fee (if applicable) based solely on the period and size of the preemption. The lease or consent of use should also include conditions to reconfigure temporary structures within the lease area;
- Rather than amend s. 403.814, F.S., as in the original bill, the bill creates s. 403.8141, F.S. The bill expands the allowable period of leases from 30 to 45 days. The bill also removes provisions from the original bill limiting the number of seagrass studies and

removes a provision requiring an excess of 25 percent of the preempted area from a previous lease to be added to a new lease to accommodate economic expansion;
- Removes a provision stipulating that dock lease fees for standard term leases are 6 percent of the annual gross dockage income;
- Adds a section relating to the lease of sovereignty submerged lands for private residential docks. The bill provides that lease fees are not required for private residential single-family docks or private residential multifamily docks, given certain circumstances;
- Removes an existing provision directing the DEP to adopt by rule one or more general permits for local governments to construct, operate, and maintain public marina facilities in s. 373.118, F.S. The bill also removes existing provisions from s. 373.118, F.S., that limit general permits for marinas and mooring fields authorized under the general permits described in that section of statute to an area of 50,000 feet or less and that require a marina or mooring field permitted under that section of statute to obtain Clean Marina Program status prior to opening for operation and to maintain it for the life of the facility;
- Adds a provision authorizing the Board of Trustees to delegate authority to the DEP to issue leases for mooring fields under the general permit described in s. 373.118, F.S.;
- Adds a section that limits the ability of a WMD to reduce existing permitted allocations of water for drought resistant water supplies, including water desalination plants;
- Adds a provision to the bill stating that the issuance of well permits is the sole responsibility of the WMDs. The bill adds that a local government may have the responsibility for permitting water wells delegated to it;
- Removes a section from the bill defining the term "mean annual flood line";
- Removes a provision from the bill exempting water control districts operating pursuant to ch. 298, F.S., from further wetland or water quality regulations imposed pursuant to chapters 125, 163, and 166, F.S., under certain conditions;
- Adds a section that provides that cooperative water planning efforts include utility companies, private landowners, water consumers and the DACS. It also encourages municipalities, counties and special districts to create multijurisdictional water supply entities;
- Adds a section that includes "self-suppliers" to the list of entities the WMDs must help with meeting water supply needs;
- Adds a provision directing the WMDs, in developing water supply plans, to describe any adjustment or deviation from information provided by the DACS regarding agricultural water demand projections and present the original data along with the adjusted data;
- Makes changes to section 18 of the bill to conform language to CS/SB 948, regarding agricultural water supply planning;
- Removes a section from the bill regarding testing procedures for measuring deviations from water quality standards;
- Adds a section defining the term "beneficiary," as it relates to what entities a local government can collect stormwater fees from; and

- Adds a section that prevents localities from competing with recovered materials dealers when a dealer submits a registration application with the locality and that locality has it under review. It also directs localities to process such applications within 90 days.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2013	.	
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	.	
	.	

Appropriations Subcommittee on General Government (Simpson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (8) is added to section 20.255, Florida Statutes, to read:

20.255 Department of Environmental Protection.—There is created a Department of Environmental Protection.

(8) The department may adopt rules requiring or incentivizing electronic submission of forms, documents, fees, or reports required under chapter 161, chapter 253, chapter 373,

chapter 376, chapter 377, or chapter 403. The rules must reasonably accommodate technological or financial hardship and must provide procedures for obtaining an exemption due to such hardship.

Section 2. Section 125.022, Florida Statutes, is amended to read:

125.022 Development permits.—

(1) When reviewing an application for a development permit that is certified by a professional listed in s. 403.0877, a county may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing. Before a third request for additional information, the applicant must be offered a meeting to attempt to resolve outstanding issues. Except as provided in subsection (4), if the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the county, at the applicant's request, shall proceed to process the application for approval or denial.

(2) When a county denies an application for a development permit, the county shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit.

(3) As used in this section, the term "development permit" has the same meaning as in s. 163.3164 but does not include building permits.

(4) For any development permit application filed with the county after July 1, 2012, a county may not require as a condition of processing or issuing a development permit that an

applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the county action on the local development permit.

(5) Issuance of a development permit by a county does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the county for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A county may attach such a disclaimer to the issuance of a development permit and may include a permit condition that all other applicable state or federal permits be obtained before commencement of the development.

(6) This section does not prohibit a county from providing information to an applicant regarding what other state or federal permits may apply.

Section 3. Section 166.033, Florida Statutes, is amended to read:

166.033 Development permits.—

(1) When reviewing an application for a development permit that is certified by a professional listed in s. 403.0877, a municipality may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing. Before a third request for additional information, the applicant must be offered a meeting to attempt to resolve outstanding issues. Except as provided in subsection (4), if the applicant believes the request for additional

information is not authorized by ordinance, rule, statute, or other legal authority, the municipality, at the applicant's request, shall proceed to process the application for approval or denial.

(2) When a municipality denies an application for a development permit, the municipality shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit.

(3) As used in this section, the term "development permit" has the same meaning as in s. 163.3164 but does not include building permits.

(4) For any development permit application filed with the municipality after July 1, 2012, a municipality may not require as a condition of processing or issuing a development permit that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the municipal action on the local development permit.

(5) Issuance of a development permit by a municipality does not in any way create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the municipality for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A municipality may attach such a disclaimer to the issuance of development permits and may include a permit condition that all other applicable state or

federal permits be obtained before commencement of the development.

(6) This section does not prohibit a municipality from providing information to an applicant regarding what other state or federal permits may apply.

Section 4. Paragraph (c) of subsection (6) of section 211.3103, Florida Statutes is amended to read:

211.3103 Levy of tax on severance of phosphate rock; rate, basis, and distribution of tax.—

(6)

(c) For purposes of this section, "phosphate-related expenses" means those expenses that provide for infrastructure or services in support of the phosphate industry, including environmental education, reclamation or restoration of phosphate lands, maintenance and restoration of reclaimed lands and county owned environmental lands which were formerly phosphate lands, community infrastructure on such reclaimed lands and county owned environmental lands which were formerly phosphate lands, and similar expenses directly related to support of the industry.

Section 5. Section 253.0345, Florida Statutes, is amended to read:

253.0345 Special events; submerged land leases.—

(1) The trustees may ~~are authorized to~~ issue leases or letters of consent ~~consents of use or leases~~ to riparian landowners, special ~~and~~ event promoters, and boat show owners to allow the installation of temporary structures, including docks, moorings, pilings, and access walkways, on sovereign submerged lands solely for the purpose of facilitating boat shows and


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displays in, or adjacent to, established marinas or government-owned ~~government owned~~ upland property. Riparian owners of adjacent uplands who are not seeking a lease or letter of consent ~~of use~~ shall be notified by certified mail of any request for such a lease or letter of consent before ~~of use prior to~~ approval by the trustees. The trustees shall balance the interests of any objecting riparian owners with the economic interests of the public and the state as a factor in determining whether ~~if~~ a lease or letter of consent ~~of use~~ should be executed over the objection of adjacent riparian owners. This section does ~~shall~~ not apply to structures for viewing motorboat racing, high-speed motorboat contests, or high-speed displays in waters where manatees are known to frequent.

(2) A lease or letter of consent for a ~~Any~~ special event under ~~provided for in~~ subsection (1):

(a) Shall be for a period not to exceed 45 ~~30~~ days and a duration not to exceed 10 consecutive years.

(b) Shall include a lease fee, if applicable, based solely on the period and actual size of the preemption and conditions to allow reconfiguration of temporary structures within the lease area with notice to the department of the configuration and size of preemption within the lease area.

(c) The lease or letter of consent ~~of use~~ may ~~also~~ contain appropriate requirements for removal of the temporary structures, including the posting of sufficient surety to guarantee appropriate funds for removal of the structures should the promoter or riparian owner fail to do so within the time specified in the agreement.

(3) ~~Nothing in~~ This section does not ~~shall be construed to~~

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allow any lease or letter of consent ~~of use~~ that would result in harm to the natural resources of the area as a result of the structures or the activities of the special events agreed to.

Section 6. Section 253.0346, Florida Statutes, is created to read:

253.0346 Lease of sovereignty submerged lands for marinas, boatyards, and marine retailers.—

(1) For purposes of this section, the term "first-come, first-served basis" means the facility operates on state-owned submerged land for which:

(a) There is not a club membership, stock ownership, equity interest, or other qualifying requirement.

(b) Rental terms do not exceed 12 months and do not include automatic renewal rights or conditions.

(2) For marinas that are open to the public on a first-come, first-served basis and for which at least 90 percent of the slips are open for rent to the public, a discount of 30 percent on the annual lease fee shall apply if dockage rate sheet publications and dockage advertising clearly state that slips are open for rent to the public on a first-come, first-served basis.

(3) For a facility designated by the department as a Clean Marina, Clean Boatyard, or Clean Marine Retailer under the Clean Marina Program:

(a) A discount of 10 percent on the annual lease fee shall apply if the facility:

1. Actively maintains designation under the program.

2. Complies with the terms of the lease.

3. Does not change use during the term of the lease.

(b) Extended-term lease surcharges shall be waived if the facility:

1. Actively maintains designation under the program.

2. Complies with the terms of the lease.

3. Does not change use during the term of the lease.

4. Is available to the public on a first-come, first-served basis.

(c) If the facility is in arrears on lease fees or fails to comply with paragraph (b), the facility is not eligible for the discount or waiver under this subsection until arrears have been paid and compliance with the program has been met.

(4) This section applies to new leases or amendments to leases effective after July 1, 2013.

Section 7. Paragraphs (e) and (f) are added to subsection (2) of section 253.0347, Florida Statutes, to read:

253.0347 Lease of sovereignty submerged lands for private residential docks and piers.—

(2)

(e) A lessee of sovereignty submerged land for a private residential single-family dock designed to moor up to four boats is not required to pay lease fees for a preempted area equal to or less than 10 times the riparian shoreline along sovereignty submerged land on the affected waterbody or the square footage authorized for a private residential single-family dock under rules adopted by the Board of Trustees of the Internal Improvement Trust Fund for the management of sovereignty submerged lands, whichever is greater.

(f) A lessee of sovereignty submerged land for a private residential multifamily dock designed to moor boats up to the


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number of units within the multifamily development is not required to pay lease fees for a preempted area equal to or less than 10 times the riparian shoreline along sovereignty submerged land on the affected waterbody times the number of units with docks in the private multifamily development.

Section 8. Subsection (4) of section 373.118, Florida Statutes, is amended to read:

373.118 General permits; delegation.—

(4) The department shall adopt by rule one or more general permits for local governments to construct, operate, and maintain ~~public marina facilities,~~ public mooring fields, public boat ramps, including associated courtesy docks, and associated parking facilities located in uplands. Such general permits adopted by rule shall include provisions to ensure compliance with part IV of this chapter, subsection (1), and the criteria necessary to include the general permits in a state programmatic general permit issued by the United States Army Corps of Engineers under s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq. A facility authorized under such general permits is exempt from review as a development of regional impact if the facility complies with the comprehensive plan of the applicable local government. Such facilities shall be consistent with the local government manatee protection plan required pursuant to chapter 379 ~~and shall obtain Clean Marina Program status prior to opening for operation and maintain that status for the life of the facility~~. ~~Marinas and mooring fields authorized under any such general permit shall not exceed an area of 50,000 square feet over wetlands and other surface waters~~. Mooring fields authorized

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under such general permits may not exceed 100 vessels. All facilities permitted under this section shall be constructed, maintained, and operated in perpetuity for the exclusive use of the general public. The Board of Trustees of the Internal Improvement Trust Fund may delegate to the department authority to issue leases for mooring fields that meet the requirements of permits issued under this subsection. The department shall initiate the rulemaking process within 60 days after the effective date of this act.

Section 9. Subsection (1) of section 373.233, Florida Statutes, is amended to read:

373.233 Competing applications.—

(1) If two or more applications that ~~which~~ otherwise comply with the provisions of this part are pending for a quantity of water that is inadequate for both or all, or that ~~which~~ for any other reason are in conflict, the governing board or the department has ~~shall have~~ the right to approve or modify the application that ~~which~~ best serves the public interest if it deems the application complete.

Section 10. Subsection (4) of section 373.236, Florida Statutes, is amended to read:

373.236 Duration of permits; compliance reports.—

(4) Where necessary to maintain reasonable assurance that the conditions for issuance of a 20-year permit can continue to be met, the governing board or department, in addition to any conditions required pursuant to s. 373.219, may require a compliance report by the permittee every 10 years during the term of a permit. The Suwannee River Water Management District may require a compliance report by the permittee every 5 years


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through July 1, 2015, and thereafter every 10 years during the term of the permit. This report shall contain sufficient data to maintain reasonable assurance that the initial conditions for permit issuance are met. Following review of this report, the governing board or the department may modify the permit to ensure that the use meets the conditions for issuance. Permit modifications pursuant to this subsection are ~~shall~~ not ~~be~~ subject to competing applications, provided there is no increase in the permitted allocation or permit duration, and no change in source, except for changes in source requested by the district. In order to promote the sustainability of natural systems through the diversification of water supplies through the development of seawater desalination plants, a water management district shall not reduce an existing permitted allocation of water during the permit term as a result of planned future construction of, or additional water becoming available from, a new seawater desalination plant that does not receive funding from a water management district. Except as expressly provided herein, nothing in this subsection may ~~shall not~~ be construed to alter a district's ~~limit the~~ existing authority ~~of the department or the governing board~~ to modify ~~or revoke~~ a consumptive use permit pursuant to chapter 373.

Section 11. Subsection (6) of section 373.246, Florida Statutes, is amended to read:

373.246 Declaration of water shortage or emergency.—

(6) The governing board or the department shall notify each permittee in the district by electronic mail or regular mail of any change in the condition of his or her permit or any suspension of his or her permit or of any other restriction on

the permittee's use of water for the duration of the water shortage.

Section 12. Subsection (1) of section 373.308, Florida Statutes, is amended to read:

373.308 Implementation of programs for regulating water wells.—

(1) The department shall authorize the governing board of a water management district to implement a program for the issuance of permits for the location, construction, repair, and abandonment of water wells. Upon authorization from the department, issuance of well permits will be the sole responsibility of the water management district, delegated local government, or local county health department. Other local governmental entities may not impose additional or duplicate requirements or fees or establish a separate program for the permitting of the location, abandonment, boring, or other activities reasonably associated with the installation and abandonment of a groundwater well.

Section 13. Subsections (1) and (10) of section 373.323, Florida Statutes, are amended to read:

373.323 Licensure of water well contractors; application, qualifications, and examinations; equipment identification.—

(1) Every person who wishes to engage in business as a water well contractor shall obtain from the water management district a license to conduct such business. Licensure under this part by a water management district shall be the only water well construction license required for the construction, repair, or abandonment of water wells in the state or any political subdivision thereof.

(10) Water well contractors licensed under this section may install, repair, and modify pumps and tanks in accordance with the Florida Building Code, Plumbing; Section 612—Wells pumps and tanks used for private potable water systems. In addition, licensed water well contractors may install pumps, tanks, and water conditioning equipment for all water ~~well~~ systems.

Section 14. Subsections (13) through (15) are added to section 373.406, Florida Statutes, to read:

373.406 Exemptions.—The following exemptions shall apply:

(13) Nothing in this part, or in any rule, regulation, or order adopted pursuant to this part, applies to the construction, alteration, operation, or maintenance of any wholly owned, manmade, excavated farm ponds, as defined in s. 403.927, constructed entirely in uplands.

(14) Nothing in this part, or in any rule, regulation, or order adopted pursuant to this part, may require a permit for activities affecting wetlands created solely by the unauthorized flooding or interference with the natural flow of surface water caused by an unaffiliated adjoining landowner. Requests to qualify for this exemption must be made within 7 years after the cause of such unauthorized flooding or unauthorized interference with the natural flow of surface water and must be submitted in writing to the district or department. Such activities may not begin before the district or department confirms in writing that the activity qualifies for the exemption. This exemption does not expand the jurisdiction of the department or water management districts and does not apply to activities that discharge dredged or fill material into waters of the United States, including wetlands, subject to federal jurisdiction

under section 404 of the Clean Water Act, 33 U.S.C. s. 1344.

(15) Any independent water control district created and operating pursuant to chapter 298 for which a valid environmental resource permit or management and storage of surface waters permit has been issued pursuant to this part is exempt from further wetlands regulations imposed pursuant to chapters 125, 163, and 166.

Section 15. Subsection (4) of section 376.30713, Florida Statutes, is amended to read:

376.30713 Preapproved advanced cleanup.—

(4) The department is authorized to enter into contracts ~~contract~~ for a total of up to $15 ~~$10~~ million of preapproved advanced cleanup work in each fiscal year. However, no facility shall be preapproved for more than $5 million ~~$500,000~~ of cleanup activity in each fiscal year. For the purposes of this section the term "facility" shall include, but not be limited to, multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter.

Section 16. Subsection (3) of section 376.313, Florida Statutes, is amended to read:

376.313 Nonexclusiveness of remedies and individual cause of action for damages under ss. 376.30-376.317.—

(3) Except as provided in s. 376.3078(3) and (11), nothing contained in ss. 376.30-376.317 prohibits any person from bringing a cause of action in a court of competent jurisdiction for all damages resulting from a discharge or other condition of pollution covered by ss. 376.30-376.317 which was not authorized

pursuant to chapter 403. Nothing in this chapter shall prohibit or diminish a party's right to contribution from other parties jointly or severally liable for a prohibited discharge of pollutants or hazardous substances or other pollution conditions. Except as otherwise provided in subsection (4) or subsection (5), in any such suit, it is not necessary for such person to plead or prove negligence in any form or manner. Such person need only plead and prove the fact of the prohibited discharge or other pollutive condition and that it has occurred. The only defenses to such cause of action shall be those specified in s. 376.308.

Section 17. Subsection (22) is added to section 403.031, Florida Statutes, to read:

403.031 Definitions.—In construing this chapter, or rules and regulations adopted pursuant hereto, the following words, phrases, or terms, unless the context otherwise indicates, have the following meanings:

(22) "Beneficiary" means any person, partnership, corporation, business entity, charitable organization, not-for-profit corporation, state, county, district, authority, or municipal unit of government or any other separate unit of government created or established by law.

Section 18. Subsection (43) is added to section 403.061, Florida Statutes, to read:

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(43) Adopt rules requiring or incentivizing the electronic

submission of forms, documents, fees, or reports required under chapter 161, chapter 253, chapter 373, chapter 376, chapter 377, or this chapter. The rules must reasonably accommodate technological or financial hardship and provide procedures for obtaining an exemption due to such hardship.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 19. Paragraph (a) of subsection (11) of section 403.0872, Florida Statutes, is amended to read:

403.0872 Operation permits for major sources of air pollution; annual operation license fee.—Provided that program approval pursuant to 42 U.S.C. s. 7661a has been received from the United States Environmental Protection Agency, beginning January 2, 1995, each major source of air pollution, including electrical power plants certified under s. 403.511, must obtain from the department an operation permit for a major source of air pollution under this section. This operation permit is the only department operation permit for a major source of air pollution required for such source; provided, at the applicant's request, the department shall issue a separate acid rain permit for a major source of air pollution that is an affected source within the meaning of 42 U.S.C. s. 7651a(1). Operation permits for major sources of air pollution, except general permits issued pursuant to s. 403.814, must be issued in accordance with the procedures contained in this section and in accordance with chapter 120; however, to the extent that chapter 120 is


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inconsistent with the provisions of this section, the procedures contained in this section prevail.

(11) Each major source of air pollution permitted to operate in this state must pay between January 15 and April ~~March~~ 1 of each year, upon written notice from the department, an annual operation license fee in an amount determined by department rule. The annual operation license fee shall be terminated immediately in the event the United States Environmental Protection Agency imposes annual fees solely to implement and administer the major source air-operation permit program in Florida under 40 C.F.R. s. 70.10(d).

(a) The annual fee must be assessed based upon the source's previous year's emissions and must be calculated by multiplying the applicable annual operation license fee factor times the tons of each regulated air pollutant actually emitted, as calculated in accordance with the department's emissions computation and reporting rules. The annual fee shall apply only to those regulated pollutants, except carbon monoxide and greenhouse gases, for which an allowable numeric emission limiting standard is specified in ~~(except carbon monoxide) allowed to be emitted per hour by specific condition of~~ the source's most recent construction or operation permit~~, times the annual hours of operation allowed by permit condition~~; provided, however, that:

1. The license fee factor is $25 or another amount determined by department rule which ensures that the revenue provided by each year's operation license fees is sufficient to cover all reasonable direct and indirect costs of the major stationary source air-operation permit program established by

this section. The license fee factor may be increased beyond $25 only if the secretary of the department affirmatively finds that a shortage of revenue for support of the major stationary source air-operation permit program will occur in the absence of a fee factor adjustment. The annual license fee factor may never exceed $35.

~~2. For any source that operates for fewer hours during the calendar year than allowed under its permit, the annual fee calculation must be based upon actual hours of operation rather than allowable hours if the owner or operator of the source documents the source's actual hours of operation for the calendar year. For any source that has an emissions limit that is dependent upon the type of fuel burned, the annual fee calculation must be based on the emissions limit applicable during actual hours of operation.~~

~~3. For any source whose allowable emission limitation is specified by permit per units of material input or heat input or product output, the applicable input or production amount may be used to calculate the allowable emissions if the owner or operator of the source documents the actual input or production amount. If the input or production amount is not documented, the maximum allowable input or production amount specified in the permit must be used to calculate the allowable emissions.~~

~~4. For any new source that does not receive its first operation permit until after the beginning of a calendar year, the annual fee for the year must be reduced pro rata to reflect the period during which the source was not allowed to operate.~~

~~5. For any source that emits less of any regulated air pollutant than allowed by permit condition, the annual fee~~

~~calculation for such pollutant must be based upon actual emissions rather than allowable emissions if the owner or operator documents the source's actual emissions by means of data from a department-approved certified continuous emissions monitor or from an emissions monitoring method which has been approved by the United States Environmental Protection Agency under the regulations implementing 42 U.S.C. ss. 7651 et seq., or from a method approved by the department for purposes of this section.~~

2.~~6.~~ The amount of each regulated air pollutant in excess of 4,000 tons per year ~~allowed to be~~ emitted by any source, or group of sources belonging to the same Major Group as described in the Standard Industrial Classification Manual, 1987, may not be included in the calculation of the fee. Any source, or group of sources, which does not emit any regulated air pollutant in excess of 4,000 tons per year, is allowed a one-time credit not to exceed 25 percent of the first annual licensing fee for the prorated portion of existing air-operation permit application fees remaining upon commencement of the annual licensing fees.

3.~~7.~~ If the department has not received the fee by March 1 ~~February 15~~ of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by April ~~March~~ 1. If the fee is not postmarked by April ~~March~~ 1 of the calendar year, the department shall impose, in addition to the fee, a penalty of 50 percent of the amount of the fee, plus interest on such amount computed in accordance with s. 220.807. The department may not impose such penalty or interest on any amount underpaid, provided that the permittee has timely remitted payment of at least 90 percent of the amount determined


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to be due and remits full payment within 60 days after receipt of notice of the amount underpaid. The department may waive the collection of underpayment and shall not be required to refund overpayment of the fee, if the amount due is less than 1 percent of the fee, up to $50. The department may revoke any major air pollution source operation permit if it finds that the permitholder has failed to timely pay any required annual operation license fee, penalty, or interest.

4.~~8.~~ Notwithstanding the computational provisions of this subsection, the annual operation license fee for any source subject to this section shall not be less than $250, except that the annual operation license fee for sources permitted solely through general permits issued under s. 403.814 shall not exceed $50 per year.

5.~~9.~~ Notwithstanding the provisions of s. 403.087(6)(a)5.a., authorizing air pollution construction permit fees, the department may not require such fees for changes or additions to a major source of air pollution permitted pursuant to this section, unless the activity triggers permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a. Costs to issue and administer such permits shall be considered direct and indirect costs of the major stationary source air-operation permit program under s. 403.0873. The department shall, however, require fees pursuant to the provisions of s. 403.087(6)(a)5.a. for the construction of a new major source of air pollution that will be subject to the permitting requirements of this section once constructed and for activities triggering permitting requirements under Title I, Part C or Part D, of the federal

Clean Air Act, 42 U.S.C. ss. 7470-7514a.

Section 20. Paragraph (b) of subsection (2) of section 403.088, Florida Statutes, is amended to read:

403.088 Water pollution operation permits; conditions.—

(2)

(b)1. If the department finds that the proposed discharge will reduce the quality of the receiving waters below the classification established for them, it shall deny the application and refuse to issue a permit. The department may not use the results from a field procedure or laboratory method to make such a finding or to determine facility compliance unless the field procedure or laboratory method has been adopted by rule or noticed and approved by department order pursuant to department rule. Field procedures and laboratory methods must satisfy the quality assurance requirements of department rule and must produce data of known and verifiable quality. The results of field procedures and laboratory methods shall be evaluated for sources of uncertainty to assure suitability for the intended purposes as properly documented with each procedure or method.

2. If the department finds that the proposed discharge will not reduce the quality of the receiving waters below the classification established for them, it may issue an operation permit if it finds that such degradation is necessary or desirable under federal standards and under circumstances which are clearly in the public interest.

Section 21. Section 403.0893, Florida Statutes, is amended to read:

403.0893 Stormwater funding; dedicated funds for stormwater

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management.—In addition to any other funding mechanism legally available to local government to construct, operate, or maintain stormwater systems, a county or municipality may:

(1) Create one or more stormwater utilities and adopt stormwater utility fees sufficient to plan, construct, operate, and maintain stormwater management systems set out in the local program required pursuant to s. 403.0891(3). Stormwater utility fees adopted pursuant to this subsection may be charged to the beneficiaries of a stormwater utility. If stormwater utility fees charged to a beneficiary of a stormwater utility are not paid when due, the county or municipality may file suit in a court of competent jurisdiction or utilize any lawful method to collect delinquent fees;

(2) Establish and set aside, as a continuing source of revenue, other funds sufficient to plan, construct, operate, and maintain stormwater management systems set out in the local program required pursuant to s. 403.0891(3); or

(3) Create, alone or in cooperation with counties, municipalities, and special districts pursuant to the Interlocal Cooperation Act, s. 163.01, one or more stormwater management system benefit areas. All property owners within said area may be assessed a per acreage fee to fund the planning, construction, operation, maintenance, and administration of a public stormwater management system for the benefited area. Any benefit area containing different land uses which receive substantially different levels of stormwater benefits shall include stormwater management system benefit subareas which shall be assessed different per acreage fees from subarea to subarea based upon a reasonable relationship to benefits

received. The fees shall be calculated to generate sufficient funds to plan, construct, operate, and maintain stormwater management systems called for in the local program required pursuant to s. 403.0891(3). For fees assessed pursuant to this section, counties or municipalities may use the non-ad valorem levy, collection, and enforcement method as provided for in chapter 197.

Section 22. Paragraph (b) of subsection (3) of section 403.7046, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

403.7046 Regulation of recovered materials.—

(3) Except as otherwise provided in this section or pursuant to a special act in effect on or before January 1, 1993, a local government may not require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designated by the local government, nor may the local government restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has satisfied the requirements of this section. A local government may not enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.

(b) Before ~~Prior to~~ engaging in business within the jurisdiction of the local government, a recovered materials dealer must provide the local government with a copy of the certification provided for in this section. In addition, the

local government may establish a registration process whereby a recovered materials dealer must register with the local government before ~~prior to~~ engaging in business within the jurisdiction of the local government. Such registration process is limited to requiring the dealer to register its name, including the owner or operator of the dealer, and, if the dealer is a business entity, its general or limited partners, its corporate officers and directors, its permanent place of business, evidence of its certification under this section, and a certification that the recovered materials will be processed at a recovered materials processing facility satisfying the requirements of this section. A local government may not use the registration information to compete with the recovered materials dealer until 90 days after the registration information is submitted. All counties, and municipalities whose population exceeds 35,000 according to the population estimates determined pursuant to s. 186.901, may establish a reporting process which shall be limited to the regulations, reporting format, and reporting frequency established by the department pursuant to this section, which shall, at a minimum, include requiring the dealer to identify the types and approximate amount of recovered materials collected, recycled, or reused during the reporting period; the approximate percentage of recovered materials reused, stored, or delivered to a recovered materials processing facility or disposed of in a solid waste disposal facility; and the locations where any recovered materials were disposed of as solid waste. Information reported under this subsection which, if disclosed, would reveal a trade secret, as defined in s. 812.081(1)(c), is confidential and exempt from the provisions of

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s. 24(a), Art. I of the State Constitution and s. 119.07(1). The local government may charge the dealer a registration fee commensurate with and no greater than the cost incurred by the local government in operating its registration program. Registration program costs are limited to those costs associated with the activities described in this paragraph. Any reporting or registration process established by a local government with regard to recovered materials shall be governed by the provisions of this section and department rules adopted ~~promulgated~~ pursuant thereto.

(4) A recovered materials dealer, or an association whose members include recovered materials dealers, may initiate an action for injunctive relief or damages for alleged violations of this section. The court may award to the prevailing party or parties reasonable attorney fees and costs.

Section 23. Paragraph (e) of subsection (1) of section 403.813, Florida Statutes, is amended to read:

403.813 Permits issued at district centers; exceptions.—

(1) A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, for activities associated with the following types of projects; however, except as otherwise provided in this subsection, nothing in this subsection relieves an applicant from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or any water management district in its governmental or proprietary capacity or from complying with applicable local pollution control programs authorized under this chapter or other requirements of county

and municipal governments:

(e) The restoration of seawalls at their previous locations or upland of, or within 18 inches ~~1 foot~~ waterward of, their previous locations. However, this shall not affect the permitting requirements of chapter 161, and department rules shall clearly indicate that this exception does not constitute an exception from the permitting requirements of chapter 161.

Section 24. Section 403.8141, Florida Statutes, is created to read:

403.8141 Special event permits.—The department shall issue permits for special events under s. 253.0345. The permits must be for a period that runs concurrently with the lease or letter of consent issued pursuant to s. 253.0345 and must allow for the movement of temporary structures within the footprint of the lease area.

Section 25. Paragraph (b) of subsection (14) and paragraph (b) of subsection (19) of section 403.973, Florida Statutes, are amended, and paragraph (g) is added to subsection (3) of that section, to read:

403.973 Expedited permitting; amendments to comprehensive plans.—

(3)

(g) Projects to construct interstate natural gas pipelines subject to certification by the Federal Energy Regulatory Commission are eligible for the expedited permitting process.

(14)

(b) Projects identified in paragraph (3)(f) or paragraph (3)(g) or challenges to state agency action in the expedited permitting process for establishment of a state-of-the-art

biomedical research institution and campus in this state by the grantee under s. 288.955 are subject to the same requirements as challenges brought under paragraph (a), except that, notwithstanding s. 120.574, summary proceedings must be conducted within 30 days after a party files the motion for summary hearing, regardless of whether the parties agree to the summary proceeding.

(19) The following projects are ineligible for review under this part:

(b) A project, the primary purpose of which is to:

1. Effect the final disposal of solid waste, biomedical waste, or hazardous waste in this state.

2. Produce electrical power, unless the production of electricity is incidental and not the primary function of the project or the electrical power is derived from a fuel source for renewable energy as defined in s. 366.91(2)(d).

3. Extract natural resources.

4. Produce oil.

5. Construct, maintain, or operate an oil, petroleum, ~~natural gas,~~ or sewage pipeline.

Section 26. The changes made by this act to ss. 403.031 and 403.0893 apply only to stormwater utility fees billed on or after July 1, 2013, to a beneficiary of a stormwater utility for services provided on or after that date.

Section 27. This act shall take effect July 1, 2013.

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

And the title is amended as follows:

Delete everything before the enacting clause

736210

and insert:

A bill to be entitled

An act relating to environmental regulation; amending s. 20.255, F.S.; authorizing the Department of Environmental Protection to adopt rules requiring or incentivizing the electronic submission of certain forms, documents, fees, and reports; amending ss. 125.022 and 166.033, F.S.; providing requirements for the review of development permit applications by counties and municipalities; amending s. 211.3103, F.S.; revising the definition of the term "phosphate-related expenses" to include maintenance and restoration of certain lands; amending s. 253.0345, F.S.; revising provisions for the duration of leases and letters of consent issued by the Board of Trustees of the Internal Improvement Trust Fund for special events; providing conditions for fees relating to such leases and letters of consent; creating s. 253.0346, F.S.; defining the term "first-come, first-served basis"; providing conditions for the discount and waiver of lease fees and surcharges for certain marinas, boatyards, and marine retailers; providing applicability; amending s. 253.0347, F.S.; providing exemptions from lease fees for certain lessees; amending s. 373.118, F.S.; deleting provisions requiring the department to adopt general permits for public marina facilities; deleting certain requirements under general permits for public marina facilities and mooring fields; limiting the number of

795 vessels for mooring fields authorized under such
796 permits; authorizing the department to issue certain
797 leases; amending s. 373.233, F.S.; clarifying
798 conditions for competing applications for consumptive
799 use of water permits; amending s. 373.236, F.S.;
800 prohibiting water management districts from reducing
801 certain allocations as a result of activities
802 involving a new seawater desalination plant that does
803 not receive funding from a water management district;
804 providing an exception; amending s. 373.246, F.S.;
805 allowing the governing board or the department to
806 notify a permittee by electronic mail of any change in
807 the condition of his or her permit during a declared
808 water shortage or emergency; amending s. 373.308,
809 F.S.; providing that issuance of well permits is the
810 sole responsibility of water management districts,
811 delegated local governments, and local county health
812 departments; prohibiting other local governmental
813 entities from imposing requirements and fees or
814 establishing programs for installation and abandonment
815 of groundwater wells; amending s. 373.323, F.S.;
816 providing that licenses issued by water management
817 districts are the only water well construction
818 licenses required for construction, repair, or
819 abandonment of water wells; authorizing licensed water
820 well contractors to install equipment for all water
821 systems; amending s. 373.406, F.S.; exempting
822 specified ponds, ditches, wetlands, and water control
823 districts from surface water management and storage

requirements; requiring that a request for an exemption be made within a certain time period and that activities not begin until such exemption is made; exempting certain water control districts from certain wetlands regulation; amending s. 376.30713, F.S.; increasing maximum costs for preapproved advanced cleanup in a fiscal year; amending s. 376.313, F.S.; holding harmless a person who discharges pollution pursuant to ch. 403, F.S.; amending s. 403.031, F.S.; defining the term "beneficiary"; amending s. 403.061, F.S.; authorizing the department to adopt rules requiring or incentivizing the electronic submission of certain forms, documents, fees, and reports; amending s. 403.0872, F.S.; extending the payment deadline of permit fees for major sources of air pollution and conforming the date for related notice by the department; revising provisions for the calculation of such annual fees; amending s. 403.088, F.S.; revising conditions for water pollution operation permits; requiring the department to meet certain standards in making determinations; amending s. 403.0893, F.S.; authorizing stormwater utility fees to be charged to the beneficiaries of the stormwater utility; amending s. 403.7046, F.S.; providing requirements for the review of recovered materials dealer registration applications; providing that a recovered materials dealer may seek injunctive relief or damages for certain violations; amending s. 403.813, F.S.;

revising conditions under which certain permits are not required for seawall restoration projects; creating s. 403.8141, F.S.; requiring the Department of Environmental Protection to establish permits for special events; providing permit requirements; amending s. 403.973, F.S.; authorizing expedited permitting for natural gas pipelines, subject to specified certification; providing that natural gas pipelines are subject to certain requirements; providing that changes made by this act to ss. 403.031 and 403.0893, F.S., apply only to stormwater utility fees billed on or after July 1, 2013, to a stormwater utility's beneficiary for services provided on or after that date; providing an effective date.

439954

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/17/2013	.	
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	.	
	.	

Appropriations Subcommittee on General Government (Soto) recommended the following:

Senate Amendment to Amendment (736210) (with directory and title amendments)

Delete lines 361 - 366.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:
Delete line 337
and insert:
Section 14. Subsections (13) and (14) are added to

439954

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 822 - 828
and insert:
specified ponds and wetlands from surface water management and storage requirements; requiring that a request for an exemption be made within a certain time period and that activities not begin until such exemption is made; amending s. 376.30713,

815726

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2013	.	
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	.	
	.	

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

Senate Amendment to Amendment (736210)

Delete lines 259 - 262

and insert:

other reason are in conflict, and the water management district or department has deemed the applications complete, the governing board or the department has ~~shall have~~ the right to approve or modify the application that ~~which~~ best serves the public interest.

331970

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2013	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (736210) (with title amendment)

Delete lines 328 - 354
and insert:
well contractor license required for the location, construction, repair, or abandonment of water wells in the state or any political subdivision thereof.

(10) Water well contractors licensed under this section may install, repair, and modify pumps and tanks in accordance with the Florida Building Code, Plumbing; Section 612—Wells pumps and tanks used for private potable water systems. In addition,

331970

licensed water well contractors may install pumps, tanks, and water conditioning equipment for all water ~~well~~ systems.

Section 14. Subsections (13) through (15) are added to section 373.406, Florida Statutes, to read:

373.406 Exemptions.—The following exemptions shall apply:

(13) Nothing in this part, or in any rule, regulation, or order adopted pursuant to this part, applies to the construction, alteration, operation, or maintenance of any wholly owned, manmade, excavated farm ponds, as defined in s. 403.927, constructed entirely in uplands. Alteration or maintenance may not involve any work to connect the farm pond to, or expand the farm pond into, other wetlands or other surface waters.

(14) Nothing in this part, or in any rule, regulation, or order adopted pursuant to this part, may require a permit for activities affecting wetlands created solely by the unauthorized flooding or interference with the natural flow of surface water caused by an unaffiliated adjoining landowner. Requests to qualify for this exemption must be made within 7 years after the cause of such unauthorized flooding or unauthorized interference with the natural flow of surface water and must be submitted in writing to the district or department. Such activities may not begin without a written determination from the district or department confirming that

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

And the title is amended as follows:

Delete lines 817 - 823

and insert:

districts are the only water well contractor licenses required for location, construction, repair, or abandonment of water wells; authorizing licensed water well contractors to install equipment for all water systems; amending s. 373.406, F.S.; exempting specified ponds and wetlands from surface water management and storage

738182

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2013	.	
	.	
	.	
	.	

Appropriations Subcommittee on General Government (Simpson) recommended the following:

Senate Amendment to Amendment (736210) (with title amendment)

Between lines 756 and 757

insert:

Section 26. (1) The Legislature ratifies and approves the actions of the Board of Trustees of the Internal Improvement Trust Fund regarding lease numbers 1447, 1971S, 3420, 3433, and 3543, and lease numbers 3422 and 1935/1935-S as approved on January 23, 2013, subject to the terms and conditions established by the board of trustees as approved on January 23, 2013.

738182

(2) The Legislature finds that the decision to authorize the use of board of trustees-owned uplands and the use of those lands as set forth in the leases is not contrary to the public interest; that it is in the public interest to waive the competitive bid process; that the leases are not standard agricultural leases; and that such leases should be amended on the terms and conditions as approved by the board of trustees.

(3) Notwithstanding any other provision of law, the Legislature finds that the lease amendments and extensions approved by the board of trustees are necessary for Everglades restoration purposes, are in the public interest, and provide the greatest combination of benefits to the public.

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

And the title is amended as follows:

Between lines 861 and 862

insert:

ratifying and approving certain leases approved by the Board of Trustees of the Internal Improvement Trust Fund; provided findings that the decision to authorize the use of board of trustees-owned uplands and the use of those lands as set forth in certain leases is not contrary to the public interest;

By the Committee on Environmental Preservation and Conservation; and Senator Altman

592-03473B-13 20131684c1

A bill to be entitled

An act relating to environmental regulation; amending s. 20.255, F.S.; authorizing the Department of Environmental Protection to adopt rules requiring or incentivizing the electronic submission of forms, documents, fees, and reports required for certain permits; amending ss. 125.022 and 166.033, F.S.; providing requirements for the review of development permit applications by counties and municipalities; amending s. 211.3103, F.S.; revising the definition of "phosphate-related expenses" to include maintenance and restoration of certain lands; amending s. 253.0345, F.S.; revising provisions for the duration of leases and letters of consent issued by the Board of Trustees of the Internal Improvement Trust Fund for special events; providing conditions for fees relating to such leases and letters of consent; creating s. 253.0346, F.S.; defining the term "first-come, first-served basis"; providing conditions for the discount and waiver of lease fees and surcharges for certain marinas, boatyards, and marine retailers; providing applicability; amending s. 253.0347, F.S.; exempting lessees of certain docks from lease fees; amending s. 373.118, F.S.; deleting provisions requiring the department to adopt general permits for public marina facilities; deleting certain requirements under general permits for public marina facilities and mooring fields; limiting the number of vessels for mooring fields authorized under such permits; amending

Florida Senate - 2013 CS for SB 1684

592-03473B-13 20131684c1

s. 373.233, F.S.; clarifying conditions for competing consumptive use of water applications; amending s. 373.236, F.S.; prohibiting water management districts from reducing certain allocations as a result of activities relating to sources that are resistant to drought; providing an exception; amending s. 373.308, F.S.; providing that issuance of well permits is the sole responsibility of water management districts; prohibiting government entities from imposing requirements and fees and establishing programs for installation and abandonment of groundwater wells; amending s. 373.323, F.S.; providing that licenses issued by water management districts are the only water well construction licenses required for construction, repair, or abandonment of water wells; authorizing licensed water well contractors to install equipment for all water systems; amending s. 373.406, F.S.; exempting specified ponds, ditches, and wetlands from surface water management and storage requirements; amending s. 373.701, F.S.; providing a legislative declaration that efforts to adequately and dependably meet water needs; requiring the cooperation of utility companies, private landowners, water consumers, and the Department of Agriculture and Consumer Services; amending s. 373.703, F.S.; requiring the governing boards of water management districts to assist self-suppliers, among others, in meeting water supply demands; authorizing the governing boards to contract with self-suppliers for

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

the purpose of carrying out its powers; amending s.373.709, F.S.; requiring water management districts to coordinate and cooperate with the Department of Agriculture and Consumer Services for regional water supply planning; providing criteria and requirements for determining agricultural water supply demand projections; amending s. 376.313, F.S.; holding harmless a person who discharges pollution pursuant to ch. 403, F.S.; amending s. 403.031, F.S.; defining the term "beneficiaries"; amending s. 403.061, F.S.; authorizing the department to adopt rules requiring or incentivizing the electronic submission of forms, documents, fees, and reports required for certain permits; amending s. 403.0872, F.S.; extending the payment deadline of permit fees for major sources of air pollution and conforming the date for related notice by the department; revising provisions for the calculation of such annual fees; amending s. 403.7046, F.S.; revising requirements relating to recovered materials; amending s. 403.813, F.S.; revising conditions under which certain permits are not required for seawall restoration projects; creating s. 403.8141, F.S.; requiring the Department of Environmental Protection to establish general permits for special events; providing permit requirements; amending s. 403.973, F.S.; authorizing expedited permitting for natural gas pipelines, subject to specified certification; providing that natural gas pipelines are subject to certain requirements;

providing that natural gas pipelines are eligible for certain review; amending s. 570.076, F.S.; conforming a cross-reference; amending s. 570.085, F.S.; requiring the Department of Agriculture and Consumer Services to establish an agricultural water supply planning program; providing program requirements; providing an effective date.

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

Section 1. Subsection (8) is added to section 20.255, Florida Statutes, to read:

20.255 Department of Environmental Protection.—There is created a Department of Environmental Protection.

(8) The department may adopt rules requiring or incentivizing electronic submission of forms, documents, fees, or reports required for permits under chapter 161, chapter 253, chapter 373, chapter 376, or chapter 403. The rules must reasonably accommodate technological or financial hardship and must provide procedures for obtaining an exemption due to such hardship.

Section 2. Section 125.022, Florida Statutes, is amended to read:

125.022 Development permits.—

(1) When reviewing an application for a development permit that is certified by a professional listed in s. 403.0877, a county may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing. Prior to a third request for additional

information, the applicant shall be offered a meeting to try and resolve outstanding issues. If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the county, at the applicant's request, shall proceed to process the application for approval or denial.

(2) When a county denies an application for a development permit, the county shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit.

(3) As used in this section, the term "development permit" has the same meaning as in s. 163.3164.

(4) For any development permit application filed with the county after July 1, 2012, a county may not require as a condition of processing or issuing a development permit that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the county action on the local development permit.

(5) Issuance of a development permit by a county does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the county for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A county may attach such a disclaimer to the issuance of a development permit and may include a permit

condition that all other applicable state or federal permits be obtained before commencement of the development.

(6) This section does not prohibit a county from providing information to an applicant regarding what other state or federal permits may apply.

Section 3. Section 166.033, Florida Statutes, is amended to read:

166.033 Development permits.—

(1) When reviewing an application for a development permit that is certified by a professional listed in s. 403.0877, a municipality may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing. Prior to a third request for additional information, the applicant shall be offered a meeting to try and resolve outstanding issues. If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the municipality, at the applicant's request, shall proceed to process the application for approval or denial.

(2) When a municipality denies an application for a development permit, the municipality shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit.

(3) As used in this section, the term "development permit" has the same meaning as in s. 163.3164.

(4) For any development permit application filed with the municipality after July 1, 2012, a municipality may not require as a condition of processing or issuing a development permit

that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the municipal action on the local development permit.

(5) Issuance of a development permit by a municipality does not in any way create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the municipality for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A municipality may attach such a disclaimer to the issuance of development permits and may include a permit condition that all other applicable state or federal permits be obtained before commencement of the development.

(6) This section does not prohibit a municipality from providing information to an applicant regarding what other state or federal permits may apply.

Section 4. Paragraph (c) of subsection (6) of section 211.3103, Florida Statutes is amended to read:

211.3103 Levy of tax on severance of phosphate rock; rate, basis, and distribution of tax.—

(6)

(c) For purposes of this section, "phosphate-related expenses" means those expenses that provide for infrastructure or services in support of the phosphate industry, including environmental education, reclamation or restoration of phosphate lands, maintenance and restoration of reclaimed lands and county

owned environmental lands which were formerly phosphate lands, community infrastructure on such reclaimed lands and county owned environmental lands which were formerly phosphate lands, and similar expenses directly related to support of the industry.

Section 5. Section 253.0345, Florida Statutes, is amended to read:

253.0345 Special events; submerged land leases.—

(1) The trustees may ~~are authorized to~~ issue leases or consents of use ~~or leases~~ to riparian landowners, special ~~and~~ event promoters, and boat show owners to allow the installation of temporary structures, including docks, moorings, pilings, and access walkways, on sovereign submerged lands solely for the purpose of facilitating boat shows and displays in, or adjacent to, established marinas or government-owned ~~government owned~~ upland property. Riparian owners of adjacent uplands who are not seeking a lease or consent of use shall be notified by certified mail of any request for such a lease or consent of use before ~~prior to~~ approval by the trustees. The trustees shall balance the interests of any objecting riparian owners with the economic interests of the public and the state as a factor in determining whether ~~if~~ a lease or consent of use should be executed over the objection of adjacent riparian owners. This section does ~~shall~~ not apply to structures for viewing motorboat racing, high-speed motorboat contests, or high-speed displays in waters where manatees are known to frequent.

(2) A lease or consent of use for a ~~Any~~ special event under ~~provided for in~~ subsection (1):

(a) Shall be for a period not to exceed 45 ~~30~~ days and a

duration not to exceed 10 consecutive years.

(b) Shall include a lease fee, if applicable, based solely on the period and actual size of the preemption and conditions to allow reconfiguration of temporary structures within the lease area with notice to the department of the configuration and size of preemption within the lease area.

(c) The lease or letter of consent ~~of use~~ may ~~also~~ contain appropriate requirements for removal of the temporary structures, including the posting of sufficient surety to guarantee appropriate funds for removal of the structures should the promoter or riparian owner fail to do so within the time specified in the agreement.

(3) ~~Nothing in~~ This section does not ~~shall be construed to~~ allow any lease or consent of use that would result in harm to the natural resources of the area as a result of the structures or the activities of the special events agreed to.

Section 6. Section 253.0346, Florida Statutes, is created to read:

253.0346 Lease of sovereignty submerged lands for marinas, boatyards, and marine retailers.—

(1) For purposes of this section, the term "first-come, first-served basis" means the facility operates on state-owned submerged land for which:

(a) There is not a club membership, stock ownership, equity interest, or other qualifying requirement.

(b) Rental terms do not exceed 12 months and do not include automatic renewal rights or conditions.

(2) For marinas that are open to the public on a first-come, first-served basis and for which at least 90 percent of

the slips are open to the public, a discount of 30 percent on the annual lease fee shall apply if dockage rate sheet publications and dockage advertising clearly state that slips are open to the public on a first-come, first-served basis.

(3) For a facility designated by the department as a Clean Marina, Clean Boatyard, or Clean Marine Retailer under the Clean Marina Program:

(a) A discount of 10 percent on the annual lease fee shall apply if the facility:

1. Actively maintains designation under the program.

2. Complies with the terms of the lease.

3. Does not change use during the term of the lease.

(b) Extended-term lease surcharges shall be waived if the facility:

1. Actively maintains designation under the program.

2. Complies with the terms of the lease.

3. Does not change use during the term of the lease.

4. Is available to the public on a first-come, first-served basis.

(c) If the facility is in arrears on lease fees or fails to comply with paragraph (b), the facility is not eligible for the discount or waiver under this subsection until arrears have been paid and compliance with the program has been met.

(4) This section applies to new leases or amendments to leases effective after July 1, 2013.

Section 7. Subsection (2) of section 253.0347, Florida Statutes, is amended to read:

253.0347 Lease of sovereignty submerged lands for private residential docks and piers.—

(2)(a) A standard lease contract for sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock must specify the amount of lease fees as established by the Board of Trustees of the Internal Improvement Trust Fund.

(b) If private residential multifamily docks or piers, private residential multislip docks, and other private residential structures pertaining to the same upland parcel include a total of no more than one wet slip for each approved upland residential unit, the lessee is not required to pay a lease fee on a preempted area of 10 square feet or less of sovereignty submerged lands for each linear foot of shoreline in which the lessee has a sufficient upland interest as determined by the Board of Trustees of the Internal Improvement Trust Fund.

(c) A lessee of sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock is not required to pay a lease fee on revenue derived from the transfer of fee simple or beneficial ownership of private residential property that is entitled to a homestead exemption pursuant to s. 196.031 at the time of transfer.

(d) A lessee of sovereignty submerged lands for a private residential single-family dock or pier, private residential multifamily dock or pier, or private residential multislip dock must pay a lease fee on any income derived from a wet slip, dock, or pier in the preempted area under lease in an amount determined by the Board of Trustees of the Internal Improvement Trust Fund.

(e) A lessee of sovereignty submerged land for a private residential single-family dock designed to moor up to four boats is not required to pay lease fees for a preempted area equal to or less than 10 times the riparian shoreline along sovereignty submerged land on the affected waterbody or the square footage authorized for a private residential single-family dock under rules adopted by the Board of Trustees of the Internal Improvement Trust Fund for the management of sovereignty submerged lands, whichever is greater.

(f) A lessee of sovereignty submerged land for a private residential multifamily dock designed to moor boats up to the number of units within the multifamily development is not required to pay lease fees for a preempted area equal to or less than 10 times the riparian shoreline along sovereignty submerged land on the affected waterbody times the number of units with docks in the private multifamily development providing for existing docks.

Section 8. Subsection (4) of section 373.118, Florida Statutes, is amended to read:

373.118 General permits; delegation.—

(4) The department shall adopt by rule one or more general permits for local governments to construct, operate, and maintain ~~public marina facilities,~~ public mooring fields, public boat ramps, including associated courtesy docks, and associated parking facilities located in uplands. Such general permits adopted by rule shall include provisions to ensure compliance with part IV of this chapter, subsection (1), and the criteria necessary to include the general permits in a state programmatic general permit issued by the United States Army Corps of

Engineers under s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq. A facility authorized under such general permits is exempt from review as a development of regional impact if the facility complies with the comprehensive plan of the applicable local government. Such facilities shall be consistent with the local government manatee protection plan required pursuant to chapter 379 ~~and shall obtain Clean Marina Program status prior to opening for operation and maintain that status for the life of the facility~~. ~~Marinas and mooring fields authorized under any such general permit shall not exceed an area of 50,000 square feet over wetlands and other surface waters~~. Mooring fields authorized under such general permits may not exceed 100 vessels. All facilities permitted under this section shall be constructed, maintained, and operated in perpetuity for the exclusive use of the general public. The department is authorized to have delegation from the Board of Trustees to issue leases for mooring fields that meet the requirements of this general permit. The department shall initiate the rulemaking process within 60 days after the effective date of this act.

Section 9. Subsection (1) of section 373.233, Florida Statutes, is amended to read:

373.233 Competing applications.—

(1) If two or more applications that ~~which~~ otherwise comply with the provisions of this part are pending for a quantity of water that is inadequate for both or all, or which for any other reason are in conflict, and the governing board or department has deemed the application complete, the governing board or the department has ~~shall have~~ the right to approve or modify the

application which best serves the public interest.

Section 10. Subsection (4) of section 373.236, Florida Statutes, is amended to read:

373.236 Duration of permits; compliance reports.—

(4) Where necessary to maintain reasonable assurance that the conditions for issuance of a 20-year permit can continue to be met, the governing board or department, in addition to any conditions required pursuant to s. 373.219, may require a compliance report by the permittee every 10 years during the term of a permit. The Suwannee River Water Management District may require a compliance report by the permittee every 5 years through July 1, 2015, and thereafter every 10 years during the term of the permit. This report shall contain sufficient data to maintain reasonable assurance that the initial conditions for permit issuance are met. Following review of this report, the governing board or the department may modify the permit to ensure that the use meets the conditions for issuance. Permit modifications pursuant to this subsection shall not be subject to competing applications, provided there is no increase in the permitted allocation or permit duration, and no change in source, except for changes in source requested by the district. In order to promote the sustainability of natural systems through the diversification of water supplies to include sources that are resistant to drought, a water management district may not reduce an existing permitted allocation of water during the permit term as a result of planned future construction of, or additional water becoming available from, sources that are resistant to drought, including, but not limited to, a seawater desalination plant, unless such reductions are conditions of a

permit with the water management district. Except as otherwise provided in this subsection, this subsection does ~~shall~~ not ~~be construed to~~ limit the existing authority of the department or the governing board to modify or revoke a consumptive use permit.

Section 11. Subsection (1) of section 373.308, Florida Statutes, is amended to read:

373.308 Implementation of programs for regulating water wells.—

(1) The department shall authorize the governing board of a water management district to implement a program for the issuance of permits for the location, construction, repair, and abandonment of water wells. Upon authorization from the department, issuance of well permits will be the sole responsibility of the water management district or delegated local government. Other government entities may not impose additional or duplicate requirements or fees or establish a separate program for the permitting of the location, abandonment, boring, or other activities reasonably associated with the installation and abandonment of a groundwater well.

Section 12. Subsections (1) and (10) of section 373.323, Florida Statutes, are amended to read:

373.323 Licensure of water well contractors; application, qualifications, and examinations; equipment identification.—

(1) Every person who wishes to engage in business as a water well contractor shall obtain from the water management district a license to conduct such business. Licensure under this part by a water management district shall be the only water well construction license required for the construction, repair,

or abandonment of water wells in the state or any political subdivision thereof.

(10) Water well contractors licensed under this section may install, repair, and modify pumps and tanks in accordance with the Florida Building Code, Plumbing; Section 612—Wells pumps and tanks used for private potable water systems. In addition, licensed water well contractors may install pumps, tanks, and water conditioning equipment for all water ~~well~~ systems.

Section 13. Subsections (13) and (14) are added to section 373.406, Florida Statutes, to read:

373.406 Exemptions.—The following exemptions shall apply:

(13) Nothing in this part, or in any rule, regulation, or order adopted pursuant to this part, applies to construction, alteration, operation, or maintenance of any wholly owned, manmade farm ponds as defined in s. 403.927 constructed entirely in uplands.

(14) Nothing in this part, or in any rule, regulation, or order adopted pursuant to this part, may require a permit for activities affecting wetlands created solely by the unauthorized flooding or interference with the natural flow of surface water caused by an unaffiliated adjoining landowner. This exemption does not apply to activities that discharge dredged or fill material into waters of the United States, including wetlands, subject to federal jurisdiction under section 404 of the federal Clean Water Act, 33 U.S.C. s. 1344.

Section 14. Subsection (3) of section 373.701, Florida Statutes, is amended to read:

373.701 Declaration of policy.—It is declared to be the policy of the Legislature:

(3) Cooperative efforts between municipalities, counties, utility companies, private landowners, water consumers, water management districts, ~~and~~ the Department of Environmental Protection, and the Department of Agriculture and Consumer Services are necessary ~~mandatory~~ in order to meet the water needs of rural and rapidly urbanizing areas in a manner that will supply adequate and dependable supplies of water where needed without resulting in adverse effects upon the areas from which ~~such~~ water is withdrawn. Such efforts should employ ~~use~~ all practical means of obtaining water, including, but not limited to, withdrawals of surface water and groundwater, reuse, and desalination, and will require ~~necessitate not only~~ cooperation and ~~but also~~ well-coordinated activities. Municipalities, counties, and special districts are encouraged to create multijurisdictional water supply entities or regional water supply authorities as authorized in s. 373.713 ~~or multijurisdictional water supply entities~~.

Section 15. Subsections (1), (2), and (9) of section 373.703, Florida Statutes, are amended to read:

373.703 Water production; general powers and duties.—In the performance of, and in conjunction with, its other powers and duties, the governing board of a water management district existing pursuant to this chapter:

(1) Shall engage in planning to assist counties, municipalities, special districts, publicly owned and privately owned water utilities, multijurisdictional water supply entities, or regional water supply authorities, or self-suppliers in meeting water supply needs in such manner as will give priority to encouraging conservation and reducing adverse

environmental effects of improper or excessive withdrawals of water from concentrated areas. As used in this section and s. 373.707, regional water supply authorities are regional water authorities created under s. 373.713 or other laws of this state. As used in part VII of this chapter, self-suppliers are persons who obtain surface or groundwater from a source other than a public water supply.

(2) Shall assist counties, municipalities, special districts, publicly owned or privately owned water utilities, multijurisdictional water supply entities, or regional water supply authorities, or self-suppliers in meeting water supply needs in such manner as will give priority to encouraging conservation and reducing adverse environmental effects of improper or excessive withdrawals of water from concentrated areas.

(9) May join with one or more other water management districts, counties, municipalities, special districts, publicly owned or privately owned water utilities, multijurisdictional water supply entities, or regional water supply authorities, or self-suppliers for the purpose of carrying out any of its powers, and may contract with such other entities to finance acquisitions, construction, operation, and maintenance, provided such contracts are consistent with the public interest. The contract may provide for contributions to be made by each party to the contract ~~thereto~~, for the division and apportionment of the expenses of acquisitions, construction, operation, and maintenance, and for the division and apportionment of resulting the benefits, services, and products ~~therefrom~~. The contracts may contain other covenants and agreements necessary and

appropriate to accomplish their purposes.

Section 16. Subsection (1), paragraph (a) of subsection (2), and subsection (3) of section 373.709, Florida Statutes, are amended to read:

373.709 Regional water supply planning.—

(1) The governing board of each water management district shall conduct water supply planning for a ~~any~~ water supply planning region within the district identified in the appropriate district water supply plan under s. 373.036, where it determines that existing sources of water are not adequate to supply water for all existing and future reasonable-beneficial uses and to sustain the water resources and related natural systems for the planning period. The planning must be conducted in an open public process, in coordination and cooperation with local governments, regional water supply authorities, government-owned and privately owned water and wastewater utilities, multijurisdictional water supply entities, self-suppliers, reuse utilities, the Department of Environmental Protection, the Department of Agriculture and Consumer Services, and other affected and interested parties. The districts shall actively engage in public education and outreach to all affected local entities and their officials, as well as members of the public, in the planning process and in seeking input. During preparation, but before ~~prior to~~ completion of the regional water supply plan, the district shall ~~must~~ conduct at least one public workshop to discuss the technical data and modeling tools anticipated to be used to support the regional water supply plan. The district shall also hold several public meetings to communicate the status, overall conceptual intent, and impacts

of the plan on existing and future reasonable-beneficial uses and related natural systems. During the planning process, a local government may choose to prepare its own water supply assessment to determine if existing water sources are adequate to meet existing and projected reasonable-beneficial needs of the local government while sustaining water resources and related natural systems. The local government shall submit such assessment, including the data and methodology used, to the district. The district shall consider the local government's assessment during the formation of the plan. A determination by the governing board that initiation of a regional water supply plan for a specific planning region is not needed pursuant to this section is ~~shall be~~ subject to s. 120.569. The governing board shall reevaluate the ~~such a~~ determination at least once every 5 years and shall initiate a regional water supply plan, if needed, pursuant to this subsection.

(2) Each regional water supply plan must ~~shall~~ be based on at least a 20-year planning period and must ~~shall~~ include, but need not be limited to:

(a) A water supply development component for each water supply planning region identified by the district which includes:

1. A quantification of the water supply needs for all existing and future reasonable-beneficial uses within the planning horizon. The level-of-certainty planning goal associated with identifying the water supply needs of existing and future reasonable-beneficial uses must ~~shall~~ be based upon meeting those needs for a 1-in-10-year drought event.

a. Population projections used for determining public water

supply needs must be based upon the best available data. In determining the best available data, the district shall consider the University of Florida's Bureau of Economic and Business Research (BEBR) medium population projections and any population projection data and analysis submitted by a local government pursuant to the public workshop described in subsection (1) if the data and analysis support the local government's comprehensive plan. Any adjustment of or deviation from the BEBR projections must be fully described, and the original BEBR data must be presented along with the adjusted data.

b. Agricultural demand projections used for determining the needs of agricultural self-suppliers must be based upon the best available data. In determining the best available data for agricultural self-supplied water needs, the district shall consider the data indicative of future water supply demands provided by the Department of Agriculture and Consumer Services pursuant to s. 570.085. Any adjustment of or deviation from the data provided by the Department of Agriculture and Consumer Services must be fully described, and the original data must be presented along with the adjusted data.

2. A list of water supply development project options, including traditional and alternative water supply project options, from which local government, government-owned and privately owned utilities, regional water supply authorities, multijurisdictional water supply entities, self-suppliers, and others may choose for water supply development. In addition to projects listed by the district, such users may propose specific projects for inclusion in the list of ~~alternative~~ water supply development project options ~~projects~~. If such users propose a

project to be listed as a ~~an alternative~~ water supply project, the district shall determine whether it meets the goals of the plan, and, if so, it shall be included in the list. The total capacity of the projects included in the plan must ~~shall~~ exceed the needs identified in subparagraph 1. and shall take into account water conservation and other demand management measures, as well as water resources constraints, including adopted minimum flows and levels and water reservations. Where the district determines it is appropriate, the plan should specifically identify the need for multijurisdictional approaches to project options that, based on planning level analysis, are appropriate to supply the intended uses and that, based on such analysis, appear to be permittable and financially and technically feasible. The list of water supply development options must contain provisions that recognize that alternative water supply options for agricultural self-suppliers are limited.

3. For each project option identified in subparagraph 2., the following must ~~shall~~ be provided:

a. An estimate of the amount of water to become available through the project.

b. The timeframe in which the project option should be implemented and the estimated planning-level costs for capital investment and operating and maintaining the project.

c. An analysis of funding needs and sources of possible funding options. For alternative water supply projects the water management districts shall provide funding assistance in accordance with s. 373.707(8).

d. Identification of the entity that should implement each

project option and the current status of project implementation.

(3) The water supply development component of a regional water supply plan which deals with or affects public utilities and public water supply for those areas served by a regional water supply authority and its member governments within the boundary of the Southwest Florida Water Management District shall be developed jointly by the authority and the district. In areas not served by regional water supply authorities, or other multijurisdictional water supply entities, and where opportunities exist to meet water supply needs more efficiently through multijurisdictional projects identified pursuant to paragraph (2)(a), water management districts are directed to assist in developing multijurisdictional approaches to water supply project development jointly with affected water utilities, special districts, self-suppliers, and local governments.

Section 17. Subsection (3) of section 376.313, Florida Statutes, is amended to read:

376.313 Nonexclusiveness of remedies and individual cause of action for damages under ss. 376.30-376.317.—

(3) Except as provided in s. 376.3078(3) and (11), nothing contained in ss. 376.30-376.317 prohibits any person from bringing a cause of action in a court of competent jurisdiction for all damages resulting from a discharge or other condition of pollution covered by ss. 376.30-376.317 which was not authorized pursuant to chapter 403. Nothing in this chapter shall prohibit or diminish a party's right to contribution from other parties jointly or severally liable for a prohibited discharge of pollutants or hazardous substances or other pollution

conditions. Except as otherwise provided in subsection (4) or subsection (5), in any such suit, it is not necessary for such person to plead or prove negligence in any form or manner. Such person need only plead and prove the fact of the prohibited discharge or other pollutive condition and that it has occurred. The only defenses to such cause of action shall be those specified in s. 376.308.

Section 18. Subsection (22) is added to section 403.031, Florida Statutes, to read:

403.031 Definitions.—In construing this chapter, or rules and regulations adopted pursuant hereto, the following words, phrases, or terms, unless the context otherwise indicates, have the following meanings:

(22) "Beneficiary" means any person, partnership, corporation, business entity, charitable organization, not-for-profit corporation, state, county, district, authority, or municipal unit of government or any other separate unit of government created or established by law.

Section 19. Subsection (43) is added to section 403.061, Florida Statutes, to read:

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(43) Adopt rules requiring or incentivizing the electronic submission of forms, documents, fees, or reports required for permits issued under chapter 161, chapter 253, chapter 373, chapter 376, or this chapter. The rules must reasonably accommodate technological or financial hardship and provide

procedures for obtaining an exemption due to such hardship.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 20. Subsection (11) of section 403.0872, Florida Statutes, is amended to read:

403.0872 Operation permits for major sources of air pollution; annual operation license fee.—Provided that program approval pursuant to 42 U.S.C. s. 7661a has been received from the United States Environmental Protection Agency, beginning January 2, 1995, each major source of air pollution, including electrical power plants certified under s. 403.511, must obtain from the department an operation permit for a major source of air pollution under this section. This operation permit is the only department operation permit for a major source of air pollution required for such source; provided, at the applicant's request, the department shall issue a separate acid rain permit for a major source of air pollution that is an affected source within the meaning of 42 U.S.C. s. 7651a(1). Operation permits for major sources of air pollution, except general permits issued pursuant to s. 403.814, must be issued in accordance with the procedures contained in this section and in accordance with chapter 120; however, to the extent that chapter 120 is inconsistent with the provisions of this section, the procedures contained in this section prevail.

(11) Each major source of air pollution permitted to operate in this state must pay between January 15 and April

~~March~~ 1 of each year, upon written notice from the department, an annual operation license fee in an amount determined by department rule. The annual operation license fee shall be terminated immediately in the event the United States Environmental Protection Agency imposes annual fees solely to implement and administer the major source air-operation permit program in Florida under 40 C.F.R. s. 70.10(d).

(a) The annual fee must be assessed based upon the source's previous year's emissions and must be calculated by multiplying the applicable annual operation license fee factor times the tons of each regulated air pollutant actually emitted, as calculated in accordance with department's emissions computation and reporting rules. The annual fee shall only apply to those regulated pollutants, ~~(~~except carbon monoxide~~)~~ and greenhouse gases, for which an allowable numeric emission limiting standard is specified in ~~allowed to be emitted per hour by specific condition of~~ the source's most recent construction or operation permit~~, times the annual hours of operation allowed by permit condition~~; provided, however, that:

1. The license fee factor is $25 or another amount determined by department rule which ensures that the revenue provided by each year's operation license fees is sufficient to cover all reasonable direct and indirect costs of the major stationary source air-operation permit program established by this section. The license fee factor may be increased beyond $25 only if the secretary of the department affirmatively finds that a shortage of revenue for support of the major stationary source air-operation permit program will occur in the absence of a fee factor adjustment. The annual license fee factor may never

exceed $35.

~~2. For any source that operates for fewer hours during the calendar year than allowed under its permit, the annual fee calculation must be based upon actual hours of operation rather than allowable hours if the owner or operator of the source documents the source's actual hours of operation for the calendar year. For any source that has an emissions limit that is dependent upon the type of fuel burned, the annual fee calculation must be based on the emissions limit applicable during actual hours of operation.~~

~~3. For any source whose allowable emission limitation is specified by permit per units of material input or heat input or product output, the applicable input or production amount may be used to calculate the allowable emissions if the owner or operator of the source documents the actual input or production amount. If the input or production amount is not documented, the maximum allowable input or production amount specified in the permit must be used to calculate the allowable emissions.~~

~~4. For any new source that does not receive its first operation permit until after the beginning of a calendar year, the annual fee for the year must be reduced pro rata to reflect the period during which the source was not allowed to operate.~~

~~5. For any source that emits less of any regulated air pollutant than allowed by permit condition, the annual fee calculation for such pollutant must be based upon actual emissions rather than allowable emissions if the owner or operator documents the source's actual emissions by means of data from a department approved certified continuous emissions monitor or from an emissions monitoring method which has been~~

~~approved by the United States Environmental Protection Agency under the regulations implementing 42 U.S.C. ss. 7651 et seq., or from a method approved by the department for purposes of this section.~~

2.~~6.~~ The amount of each regulated air pollutant in excess of 4,000 tons per year ~~allowed to be~~ emitted by any source, or group of sources belonging to the same Major Group as described in the Standard Industrial Classification Manual, 1987, may not be included in the calculation of the fee. Any source, or group of sources, which does not emit any regulated air pollutant in excess of 4,000 tons per year, is allowed a one-time credit not to exceed 25 percent of the first annual licensing fee for the prorated portion of existing air-operation permit application fees remaining upon commencement of the annual licensing fees.

3.~~7.~~ If the department has not received the fee by March 1 ~~February 15~~ of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by April ~~March~~ 1. If the fee is not postmarked by April ~~March~~ 1 of the calendar year, the department shall impose, in addition to the fee, a penalty of 50 percent of the amount of the fee, plus interest on such amount computed in accordance with s. 220.807. The department may not impose such penalty or interest on any amount underpaid, provided that the permittee has timely remitted payment of at least 90 percent of the amount determined to be due and remits full payment within 60 days after receipt of notice of the amount underpaid. The department may waive the collection of underpayment and shall not be required to refund overpayment of the fee, if the amount due is less than 1 percent of the fee, up to $50. The department may revoke any major air

pollution source operation permit if it finds that the permitholder has failed to timely pay any required annual operation license fee, penalty, or interest.

4.~~8.~~ Notwithstanding the computational provisions of this subsection, the annual operation license fee for any source subject to this section shall not be less than $250, except that the annual operation license fee for sources permitted solely through general permits issued under s. 403.814 shall not exceed $50 per year.

5.~~9.~~ Notwithstanding the provisions of s. 403.087(6)(a)5.a., authorizing air pollution construction permit fees, the department may not require such fees for changes or additions to a major source of air pollution permitted pursuant to this section, unless the activity triggers permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a. Costs to issue and administer such permits shall be considered direct and indirect costs of the major stationary source air-operation permit program under s. 403.0873. The department shall, however, require fees pursuant to the provisions of s. 403.087(6)(a)5.a. for the construction of a new major source of air pollution that will be subject to the permitting requirements of this section once constructed and for activities triggering permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a.

(b) Annual operation license fees collected by the department must be sufficient to cover all reasonable direct and indirect costs required to develop and administer the major stationary source air-operation permit program, which shall

consist of the following elements to the extent that they are reasonably related to the regulation of major stationary air pollution sources, in accordance with United States Environmental Protection Agency regulations and guidelines:

1. Reviewing and acting upon any application for such a permit.

2. Implementing and enforcing the terms and conditions of any such permit, excluding court costs or other costs associated with any enforcement action.

3. Emissions and ambient monitoring.

4. Preparing generally applicable regulations or guidance.

5. Modeling, analyses, and demonstrations.

6. Preparing inventories and tracking emissions.

7. Implementing the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

8. Any audits conducted under paragraph (c).

(c) An audit of the major stationary source air-operation permit program must be conducted 2 years after the United States Environmental Protection Agency has given full approval of the program to ascertain whether the annual operation license fees collected by the department are used solely to support any reasonable direct and indirect costs as listed in paragraph (b). A program audit must be performed biennially after the first audit.

Section 21. Section 403.7046, Florida Statutes, is amended to read:

403.7046 Regulation of recovered materials.—

(1) Any person who handles, purchases, receives, recovers, sells, or is an end user of recovered materials shall annually

certify to the department on forms provided by the department. The department may by rule exempt from this requirement generators of recovered materials; persons who handle or sell recovered materials as an activity which is incidental to the normal primary business activities of that person; or persons who handle, purchase, receive, recover, sell, or are end users of recovered materials in small quantities as defined by the department. The department shall adopt rules for the certification of and reporting by such persons and shall establish criteria for revocation of such certification. Such rules shall be designed to elicit, at a minimum, the amount and types of recovered materials handled by registrants, and the amount and disposal site, or name of person with whom such disposal was arranged, of any solid waste generated by such facility. By February 1 of each year, registrants shall report all required information to the department and to all counties from which it received materials. Such rules may provide for the department to conduct periodic inspections. The department may charge a fee of up to $50 for each registration, which shall be deposited into the Solid Waste Management Trust Fund for implementation of the program.

(2) Information reported pursuant to the requirements of this section or any rule adopted pursuant to this section which, if disclosed, would reveal a trade secret, as defined in s. 812.081(1)(c), is confidential and exempt from the provisions of s. 119.07(1). For reporting or information purposes, however, the department may provide this information in such form that the names of the persons reporting such information and the specific information reported are not revealed.

(3) Except as otherwise provided in this section or pursuant to a special act in effect on or before January 1, 1993, a local government may not require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designated by the local government, nor may the local government restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has satisfied the requirements of this section. A local government may not enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.

(a) The local government may require that the recovered materials generated at the commercial establishment be source separated at the premises of the commercial establishment.

(b) Prior to engaging in business within the jurisdiction of the local government, a recovered materials dealer must provide the local government with a copy of the certification provided for in this section. In addition, the local government may establish a registration process whereby a recovered materials dealer must register with the local government prior to engaging in business within the jurisdiction of the local government. Such registration process is limited to requiring the dealer to register its name, including the owner or operator of the dealer, and, if the dealer is a business entity, its general or limited partners, its corporate officers and directors, its permanent place of business, evidence of its

certification under this section, and a certification that the recovered materials will be processed at a recovered materials processing facility satisfying the requirements of this section. A registration application must be acted on by the local government within 90 days of receipt. During the pendency of the local government's review, a local government may not use the registration information to unfairly compete with the recovered materials dealer seeking registration. All counties, and municipalities whose population exceeds 35,000 according to the population estimates determined pursuant to s. 186.901, may establish a reporting process which shall be limited to the regulations, reporting format, and reporting frequency established by the department pursuant to this section, which shall, at a minimum, include requiring the dealer to identify the types and approximate amount of recovered materials collected, recycled, or reused during the reporting period; the approximate percentage of recovered materials reused, stored, or delivered to a recovered materials processing facility or disposed of in a solid waste disposal facility; and the locations where any recovered materials were disposed of as solid waste. Information reported under this subsection which, if disclosed, would reveal a trade secret, as defined in s. 812.081(1)(c), is confidential and exempt from the provisions of s. 24(a), Art. I of the State Constitution and s. 119.07(1). The local government may charge the dealer a registration fee commensurate with and no greater than the cost incurred by the local government in operating its registration program. Registration program costs are limited to those costs associated with the activities described in this paragraph. Any reporting

or registration process established by a local government with regard to recovered materials shall be governed by the provisions of this section and department rules promulgated pursuant thereto.

(c) A local government may establish a process in which the local government may temporarily or permanently revoke the authority of a recovered materials dealer to do business within the local government if the local government finds the recovered materials dealer, after reasonable notice of the charges and an opportunity to be heard by an impartial party, has consistently and repeatedly violated state or local laws, ordinances, rules, and regulations.

(d) In addition to any other authority provided by law, a local government is hereby expressly authorized to prohibit a person or entity not certified under this section from doing business within the jurisdiction of the local government; to enter into a nonexclusive franchise or to otherwise provide for the collection, transportation, and processing of recovered materials at commercial establishments, provided that a local government may not require a certified recovered materials dealer to enter into such franchise agreement in order to enter into a contract with any commercial establishment located within the local government's jurisdiction to purchase, collect, transport, process, or receive source-separated recovered materials; and to enter into an exclusive franchise or to otherwise provide for the exclusive collection, transportation, and processing of recovered materials at single-family or multifamily residential properties.

(e) Nothing in this section shall prohibit a local

government from enacting ordinances designed to protect the public's general health, safety, and welfare.

(f) As used in this section:

1. "Commercial establishment" means a property or properties zoned or used for commercial or industrial uses, or used by an entity exempt from taxation under s. 501(c)(3) of the Internal Revenue Code, and excludes property or properties zoned or used for single-family residential or multifamily residential uses.

2. "Local government" means a county or municipality.

3. "Certified recovered materials dealer" means a dealer certified under this section.

Section 22. Paragraph (e) of subsection (1) of section 403.813, Florida Statutes, is amended to read:

403.813 Permits issued at district centers; exceptions.—

(1) A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, for activities associated with the following types of projects; however, except as otherwise provided in this subsection, ~~nothing in~~ this subsection does not relieve ~~relieves~~ an applicant from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a ~~any~~ water management district in its governmental or proprietary capacity or from complying with applicable local pollution control programs authorized under this chapter or other requirements of county and municipal governments:

(e) The restoration of seawalls at their previous locations or upland of, or within 18 inches ~~1 foot~~ waterward of, their

previous locations. However, this shall not affect the permitting requirements of chapter 161, and department rules shall clearly indicate that this exception does not constitute an exception from the permitting requirements of chapter 161.

Section 23. Section 403.8141, Florida Statutes, is created to read:

403.8141 Special event permits.—The department shall issue permits for special events as defined in s. 253.0345. The permits must be for a period that runs concurrently with the letter of consent or lease issued pursuant to that section and must allow for the movement of temporary structures within the footprint of the lease area.

Section 24. Paragraph (b) of subsection (14) and paragraph (b) of subsection (19) of section 403.973, Florida Statutes, are amended, and paragraph (g) is added to subsection (3) of that section, to read:

403.973 Expedited permitting; amendments to comprehensive plans.—

(3)

(g) Projects to construct interstate natural gas pipelines subject to certification by the Federal Energy Regulatory Commission.

(14)

(b) Projects identified in paragraph (3)(f) or paragraph (3)(g) or challenges to state agency action in the expedited permitting process for establishment of a state-of-the-art biomedical research institution and campus in this state by the grantee under s. 288.955 are subject to the same requirements as challenges brought under paragraph (a), except that,

notwithstanding s. 120.574, summary proceedings must be conducted within 30 days after a party files the motion for summary hearing, regardless of whether the parties agree to the summary proceeding.

(19) The following projects are ineligible for review under this part:

(b) A project, the primary purpose of which is to:

1. Effect the final disposal of solid waste, biomedical waste, or hazardous waste in this state.

2. Produce electrical power, unless the production of electricity is incidental and not the primary function of the project or the electrical power is derived from a fuel source for renewable energy as defined in s. 366.91(2)(d).

3. Extract natural resources.

4. Produce oil.

5. Construct, maintain, or operate an oil, petroleum, ~~natural gas,~~ or sewage pipeline.

Section 25. Subsection (2) of section 570.076, Florida Statutes, is amended to read:

570.076 Environmental Stewardship Certification Program.—The department may, by rule, establish the Environmental Stewardship Certification Program consistent with this section. A rule adopted under this section must be developed in consultation with state universities, agricultural organizations, and other interested parties.

(2) The department shall provide an agricultural certification under this program for implementation of one or more of the following criteria:

(a) A voluntary agreement between an agency and an

agricultural producer for environmental improvement or water-resource protection.

(b) A conservation plan that meets or exceeds the requirements of the United States Department of Agriculture.

(c) Best management practices adopted by rule pursuant to s. 403.067(7)(c) or s. 570.085(1)(b) ~~570.085(2)~~.

Section 26. Section 570.085, Florida Statutes, is amended to read:

570.085 Department of Agriculture and Consumer Services; agricultural water conservation and water supply planning.—

(1) The department shall establish an agricultural water conservation program that includes the following:

(a) ~~(1)~~ A cost-share program, coordinated where appropriate with the United States Department of Agriculture and other federal, state, regional, and local agencies, for irrigation system retrofit and application of mobile irrigation laboratory evaluations for water conservation as provided in this section and, where applicable, for water quality improvement pursuant to s. 403.067(7)(c).

(b) ~~(2)~~ The development and implementation of voluntary interim measures or best management practices, adopted by rule, which provide for increased efficiencies in the use and management of water for agricultural production. In the process of developing and adopting rules for interim measures or best management practices, the department shall consult with the Department of Environmental Protection and the water management districts. Such rules may also include a system to assure the implementation of the practices, including recordkeeping requirements. As new information regarding efficient

agricultural water use and management becomes available, the department shall reevaluate and revise as needed, the interim measures or best management practices. The interim measures or best management practices may include irrigation retrofit, implementation of mobile irrigation laboratory evaluations and recommendations, water resource augmentation, and integrated water management systems for drought management and flood control and should, to the maximum extent practicable, be designed to qualify for regulatory incentives and other incentives, as determined by the agency having applicable statutory authority.

(c) ~~(3)~~ Provision of assistance to the water management districts in the development and implementation of a consistent, to the extent practicable, methodology for the efficient allocation of water for agricultural irrigation.

(2)(a) The department shall establish an agricultural water supply planning program that includes the development of appropriate data indicative of future agricultural water needs, which must be:

1. Based on at least a 20-year planning period.

2. Provided to each water management district.

3. Considered by each water management district in accordance with ss. 373.036(2) and 373.709(2)(a)1.b.

(b) The data on future agricultural water supply demands which are provided to each district must include, but need not be limited to:

1. Applicable agricultural crop types or categories.

2. Historic estimates of irrigated acreage, current estimates of irrigated acreage, and future projections of

irrigated acreage for each applicable crop type or category, spatially for each county, including the historic and current methods and assumptions used to generate the spatial acreage estimates and projections.

3. Crop type or category water use coefficients for a 1-in-10 year drought and average year used in calculating historic and current water demands and projected future water demands, including data, methods, and assumptions used to generate the coefficients. Estimates of historic and current water demands must take into account actual metered data as available. Projected future water demands shall incorporate appropriate potential water conservation factors based upon data collected as part of the department's agricultural water conservation program pursuant to s. 570.085(1).

4. An evaluation of significant uncertainties affecting agricultural production which may require a range of projections for future agricultural water supply needs.

(c) In developing the data on future agricultural water supply needs described in paragraph (a), the department shall consult with the agricultural industry, the University of Florida Institute of Food and Agricultural Sciences, the Department of Environmental Protection, the water management districts, the United States Department of Agriculture, the National Agricultural Statistics Service, and the United States Geological Survey.

(d) The department shall coordinate with each water management district to establish a schedule for provision of data on agricultural water supply needs in order to comply with water supply planning provisions in ss. 373.036(2) and

373.709(2)(a)1.b.

Section 27. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-17-13
Meeting Date

Topic Swimming Pools

Bill Number SB 156 *(if applicable)*

Name KARI HEBRANK

Amendment Barcode *(if applicable)*

Job Title

Address 113 EAST COLLEGE AVE. #200
Street
TALLAHASSEE, FL 32301
City *State* *Zip*

Phone 566-1824

E-mail Khebrank@WilsonMgmt.com

Speaking: ☑ For ☐ Against ☐ Information

Representing FLORIDA HOME BUILDERS

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

APPEARANCE RECORD

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

4/17/2013
Meeting Date

Topic _____ Bill Number 156 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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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)

4/17/13
Meeting Date

Topic Swimming Pools & Spas

Bill Number SB 156 *(if applicable)*

Name Bruce Kershner

Amendment Barcode *(if applicable)*

Job Title

Address 231 West Bay Ave.
Street

Phone 407-830-7882

Longwood FL 32750
City *State* *Zip*

E-mail RBKershner@att.net

Speaking: ☑ For ☐ Against ☐ Information

Representing United Pool & Spa 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.

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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)

4/17/13
Meeting Date

Topic Swimming Pools

Bill Number SB 156 *(if applicable)*

Name Jennifer O Hatfield

Amendment Barcode *(if applicable)*

Job Title

Address 34 SE 7th Ave #9
Street

Phone 941-345-3263

Delray Beach FL 33483
City *State* *Zip*

E-mail jen@jhatfieldandassociates.com

Speaking: ☑ For ☐ Against ☐ Information

Representing FL Swimming Pool Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4/17/13
Meeting Date

Topic Swimming Pools + Spas — Bill Number SB 156 *(if applicable)*

Name Gary Crayton III — Amendment Barcode *(if applicable)*

Job Title Owner Bay Area Pool Service

Address 5015 W. Waters Ave. — Phone 813-889-9091
Street

Tampa FL 33634 — E-mail gfc3@bapsmail.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Swimming Pool Association

Appearing at request of Chair: ☐ Yes ☒ No — Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

4/17/13
Meeting Date

Topic Swimming Pool Service Contracting

Bill Number SB 156 *(if applicable)*

Name Rick Howard

Amendment Barcode *(if applicable)*

Job Title President, Rick's Pool Svc Inc

Address 1461 S Missouri Ave
Street
Clearwater FL 33756
City *State* *Zip*

Phone 727 442 4343

E-mail Flapoolguy1@Yahoo.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Swimming Pool Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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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)

4/17/13
Meeting Date

Topic Swimming Pool Service Lic

Bill Number SB 156 *(if applicable)*

Name Marcus Howard

Amendment Barcode *(if applicable)*

Job Title Marketing Director

Address 1461 S Missouri Ave
Street

Phone 727 442 4343

Clearwater FL 33756
City *State* *Zip*

E-mail Rickspoolsue@Gmail.Com

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Swimming Pool Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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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)

4-17-13
Meeting Date

Topic _____ Bill Number 242 *(if applicable)*

Name Paul SanFord Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 106 S. Monroe st Phone _____
Street

Tallahassee FL 32301 E-mail _____
City *State* *Zip*

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

Representing FIC, ACCI

Appearing at request of Chair: [ ] Yes [ ] No Lobbyist registered with Legislature: [X] Yes [ ] No

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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)

4/17/2013
Meeting Date

Topic _____ Bill Number 242 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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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)

4/17/13
Meeting Date

Topic Money Services Businesses

Bill Number 410 *(if applicable)*

Name French Brown

Amendment Barcode 329332 *(if applicable)*

Job Title Cabinet and Legislative Affairs Director

Address 200 E. Gaines Street
Street

Phone 850-410-9544

Tallahassee FL 32399
City *State* *Zip*

E-mail French.Brown@flofr.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Office of Financial Regulation

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4/17/2013
Meeting Date

Topic _____ Bill Number 410 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH *Street* Phone 727-897-9291

SAINT PETERSBURG *City* FLORIDA *State* 33705 *Zip* E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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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)

4-17-13
Meeting Date

Topic MONEY SERVICES BUSINESSES Bill Number SB 410 *(if applicable)*

Name CARL FENTRISS Amendment Barcode *(if applicable)*

Job Title LEG. COUNSEL

Address 1400 VILLAGE SQ #3-243 Phone 850-222-2772
Street

TAL FL 32312 E-mail AFENTRISS@AOL.COM
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing FLA. ROOFING SHEET METAL & AC CONTRACTORS ASSN

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4/17
Meeting Date

Topic WC Fraud

Bill Number 410 *(if applicable)*

Name Ashley Mayer

Amendment Barcode *(if applicable)*

Job Title Dir. Cabinet & Leg Affairs

Address Capitol, PL-11 *Street*

Phone 413-2863

Tallahassee FL *City* *State* *Zip*

E-mail

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

Representing DFS

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

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

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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)

4/17/2013
Meeting Date

Topic _____ Bill Number 1096 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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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)

4/17/13
Meeting Date

Topic INSURANCE

Bill Number 1046 *(if applicable)*

Name KYLE ULRICH

Amendment Barcode *(if applicable)*

Job Title SVP

Address 3159 SHAMROCK S. *Street*

Phone 850-893-4155

TALLAHASSEE FL 32309 *City State Zip*

E-mail KULRICH@FAIA.COM

Speaking: ☑ For ☐ Against ☐ Information

Representing FL ASSOC. OF INSURANCE AGENTS

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

APPEARANCE RECORD

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

4/17
Meeting Date

Topic DHS. Bill Number 1046 *(if applicable)*

Name Ashley Mayer Amendment Barcode *(if applicable)*

Job Title Dir. Leg + Cab Affairs

Address Capitol, PL-11 Phone 413-2863
Street

Tallahassee FL E-mail
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing DFS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4/17/13
Meeting Date

Topic Insurance

Bill Number 1046 *(if applicable)*

Name Carolyn Johnson

Amendment Barcode _____ *(if applicable)*

Job Title Policy Director

Address 136 S Bronough St
Street

Phone _____

Tallahassee FL
City *State* *Zip*

E-mail cjohnson@flchamber.com

Speaking: ☑ For ☐ Against ☐ Information

Representing FL Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4-17-13
Meeting Date

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

Topic Green Bldg. Construction

Bill Number SB 1080 *(if applicable)*

Name KARI HEBRANK

Amendment Barcode *(if applicable)*

Job Title

Address 113 E. College
Street
Tally FL 32301
City *State* *Zip*

Phone 566-7824

E-mail

Speaking: ☐ For ☐ Against ☒ Information

Representing FLORIDA HOME BUILDERS ASSOC.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

4-17-13
Meeting Date

Topic Public Construction Projects Bill Number 1080 *(if applicable)*

Name Cindy Littlejohn Amendment Barcode *(if applicable)*

Job Title Consultant

Address 319 W. College Ave. Phone 222-7535
Street

Tallahassee FL 32301 E-mail Cindy@littlejohnmgmt.com
City *State* *Zip*

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

Representing Plum Creek Timber

Appearing at request of Chair: [ ] Yes [X] No Lobbyist registered with Legislature: [X] Yes [ ] No

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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)

April 17, 2013
Meeting Date

Topic Building Construction

Bill Number 1080 *(if applicable)*

Name Patrick McLaughlin

Amendment Barcode *(if applicable)*

Job Title Executive Director

Address 398 Camino Gardens Blvd
Street

Phone 561-239-2462

Boca Raton FL 33432
City *State* *Zip*

E-mail Pat@FloridaMasonry.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Masonry Association of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

APRIL 17 2013
Meeting Date

Topic CS/SB 1080 Public Const Bill
Bill Number 1080 *(if applicable)*

Name JAMES PAINTER
Amendment Barcode *(if applicable)*

Job Title OWNER PAINTER MASONRY & CONSTRUCTION

Address 2425 NE 19th Dr
Street
GAINESVILLE FL 32609
City *State* *Zip*

Phone 352-378-7511

E-mail JIM@PAINTERMASONRY.COM

Speaking: ☑ For ☐ Against ☐ Information

Representing MY COMPANY

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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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)

4-17-13
Meeting Date

Topic BUILDING CODES

Bill Number SB 1080 WITH TRAVELING AM
(if applicable)

Name CHAD FENTRISS

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1400 VILLAGE SQ # 3-243
Street

TALL FL 32312
City *State* *Zip*

Phone 850-222-2772

E-mail AFENTRISS@AOL.COM

Speaking: ☑ For ☐ Against ☐ Information

Representing FLA. ASSN OF PLUMBING CONTRACTORS / FRA CCA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4/17/13
Meeting Date

Topic _____ Bill Number 1416 *(if applicable)*

Name Jeff Littlejohn Amendment Barcode _____ *(if applicable)*

Job Title Deputy Secretary

Address 3900 Commonwealth Dr Phone 245-2140
Street

Tallahassee FL 32399 E-mail _____
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing DEP

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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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)

4/17/2013
Meeting Date

Topic _____ Bill Number 1416 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH *Street* Phone 727-897-9291

SAINT PETERSBURG *City* FLORIDA *State* 33705 *Zip* E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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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)

4/17/13
Meeting Date

Topic REHABILITATION PROJECTS Bill Number 7414
(if applicable)

Name MIKE HUEY Amendment Barcode
(if applicable)

Job Title

Address 301 S. BRONOUGH ST. Phone 850-577-9098
Street

TALLAHASSEE FL 32311 E-mail
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing FL PETROLEUM MARKETERS AND CONVENIENCE STORE ASSOC.

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4/17/13
Meeting Date

Topic Environmental Regulation

Bill Number 1684

Name Chris Lyon

Amendment Barcode 439954 (Soto) *(if applicable)*

(if applicable)

Job Title Attorney

Address 315 S. Calhoun St., Ste. 830
Street

Phone 850/566-1713

Tallahassee FL 32301
City *State* *Zip*

E-mail clyon@lhs-law.com

Speaking: ☑ For ☑ Against ☐ Information

Representing Florida Association of Special Districts / Range Drainage District

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4/17/13
Meeting Date

Topic Environmental Regulation Bill Number 1684

Name Mark Jeffries Amendment Barcode 439954 *(if applicable)*

Job Title Legislative Administrator - Orange County

Address 201 S. Rosalind Ave Phone 407-836-5909
Street
Orlando FL 32801 E-mail mark.jeffries@ocfl.net
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information Soto Amendment

Representing Orange County

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4/17/2013
Meeting Date

Topic ENVIRONMENTAL REGULATION

Bill Number 1684

Name MICHAEL RUBIN

Amendment Barcode 736210 *(if applicable)*

Job Title VP GOVT AFFAIRS

(if applicable)

Address 502 E JEFFERSON ST
Street
TALL
City *State* *Zip*

Phone 850 222-8028

E-mail MIKE.RUBIN

Speaking: ☑ For ☐ Against ☐ Information

Representing FLORIDA PORTS COUNCIL

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4/17
Meeting Date

Topic Environmental Regulation

Bill Number 1684 *(if applicable)*

Name Candice Ericks

Amendment Barcode 736210 *(if applicable)*

Job Title

Address 205 S. Adams St
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 954-648-1204

E-mail candice@ericksconsultants.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Port Everglades

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

4/17/13
Meeting Date

Topic Environmental Regulation

Bill Number 1084

Name Ryan Matthews

Amendment Barcode 756210 *(if applicable)*

(if applicable)

Job Title Leg Advocate

Address PO Box 1757 *Street*

Phone 222 9684

Tallahassee FL 32302 *City* *State* *Zip*

E-mail rmatthews@flcities.com

Speaking: ☑ For ☐ Against ☐ Information

Representing FL League of Cities

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4/17/2013
Meeting Date

Topic Environmental Regulation

Bill Number HB 84 *(if applicable)*

Name Kate Kelly

Amendment Barcode *(if applicable)*

Job Title

Address *Street*

Phone

City *State* *Zip*

E-mail

Speaking: ☐ For ☐ Against ☑ Information

Representing DEP

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4/17/2013
Meeting Date

Topic Environmental Regulation

Bill Number 1084 *(if applicable)*

Name Jeff Littlejohn

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address _____ *Street*

Phone _____

_____ *City* *State* *Zip*

E-mail _____

Speaking: ☐ For ☐ Against ☑ Information

Representing DEP

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4/17/13
Meeting Date

Topic Env. Reg. Bill Number 1684 *(if applicable)*

Name David Cullen Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 1674 University Pkwy #296 Phone 941-323-2404
Street

Sarasota FL 34243 E-mail cullenesq@aol.com
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing Sierra Club Florida

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4/17/2013
Meeting Date

Topic _____ Bill Number 1689 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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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)

4/17/13
Meeting Date

Topic Environmental Regulation

Bill Number SB 1684 *(if applicable)*

Name Mary Jean Yon

Amendment Barcode *(if applicable)*

Job Title Legislative Director

Address 3324 Charleston Rd
Street
Tallahassee, FL 32309
City *State* *Zip*

Phone 850/519-7859

E-mail maryjeanyon@comcast.net

Speaking: ☐ For ☑ Against ☐ Information

Representing Audubon Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4/11/13
Meeting Date

Topic Environmental Permitting

Bill Number 1654 *(if applicable)*

Name Phil Leary

Amendment Barcode *(if applicable)*

Job Title Lobbyist

Address *Street*

Phone

City *State* *Zip*

E-mail

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Ground Water Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4-17-13
Meeting Date

Topic PERMITTING

Bill Number 1684 *(if applicable)*

Name KURT SPITZER

Amendment Barcode *(if applicable)*

Job Title EXEC. DIRECTOR

Address 719 E PARK
Street

T 32301
City *State* *Zip*

Phone 561-0904

E-mail KURTSPITZER@ICSANET.NET

Speaking: ☒ For ☐ Against ☐ Information

Representing FLA. STORMWATER ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

4-17-13
Meeting Date

Topic Environmental Regulation

Bill Number SB 1684 *(if applicable)*

Name Stephanie Kunkel

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 1143 Albritton DR
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850-320-4208

E-mail Stef.Kunkel@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Clean Water Action

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.

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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/-17-13
Meeting Date

Topic Env. Reg. Bill Number SB 1684 *(if applicable)*

Name Doug Mann Amendment Barcode *(if applicable)*

Job Title —

Address 310 W. College Ave. Phone 222-7535
Street

Tallahassee FL 32301 E-mail
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing AIF

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4/17/13
Meeting Date

Topic ENVIRONMENTAL REGULATIONS — Bill Number SB 1684 *(if applicable)*

Name KEYNA CORY — Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 110 E. COLLEGE AVE *Street* — Phone 850 681 1065

TALLAHASSEE *City* FL *State* 32301 *Zip* — E-mail keynacory@paconsultants.com

Speaking: ☒ For ☐ Against ☐ Information

Representing NATIONAL SOLID WASTES MANAGEMENT ASSN - FL CHAPTER

Appearing at request of Chair: ☐ Yes ☒ No — Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

April 17
Meeting Date

Topic Environmental Regulatory Reform

Bill Number 1684 *(if applicable)*

Name David Childs

Amendment Barcode *(if applicable)*

Job Title Counsel

Address 119 S. Monroe St
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850 222-7500

E-mail DAVIDC@HGSLAW.COM

Speaking: ☑ For ☐ Against ☐ Information

Representing National Marine Manufacturers Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4/17/13
Meeting Date

Topic Environmental Regulation

Bill Number 1684 *(if applicable)*

Name Missy Timmins

Amendment Barcode *(if applicable)*

Job Title

Address 2910 Kerry Forest Pkwy D4-368 *Street*

Phone

Tallahassee *City* FL *State* 32309 *Zip*

E-mail

Speaking: ☑ For ☐ Against ☐ Information

Representing Marine Industries Association of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Agriculture, *Vice Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on General Government
Education
Environmental Preservation and Conservation
Military Affairs, Space, and Domestic Security

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR DWIGHT BULLARD
39th District

April 17, 2013

Chairman Hays,

I am requesting to be excused from the following General Government Appropriations Subcommittee meeting: Wednesday, April 17, 2013 at 11:00 am.

I am out of the office today as I am not feeling well.

Sincerely,

Dwight M. Bullard

State Senator, District 39

REPLY TO:
☐ 10720 Caribbean Boulevard, #435, Cutler Bay, Florida 33189
☐ 218 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5039

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: EL 110 **Case:** **Type:**
Caption: Senate Appropriations Subcommittee on General Government **Judge:**

Started: 4/17/2013 11:03:31 AM
Ends: 4/17/2013 12:54:07 PM **Length: 01:50:37**

11:03:33 AM	Meeting called to order
11:03:33 AM	Chairman Hays
11:04:42 AM	TAB 2- CS/CS/SB 242
11:05:12 AM	Senator Hukill
11:05:53 AM	Chmn. Hays
11:05:59 AM	Sen. Hukill
11:06:52 AM	Senator Joyner
11:07:26 AM	Sen. Hukill
11:07:34 AM	Senator Detert
11:07:41 AM	Sen. Hukill
11:08:23 AM	Sen. Joyner
11:08:49 AM	Chmn. Hays
11:09:06 AM	Sen. Joyner
11:09:34 AM	Sen. Hukill
11:10:08 AM	Paul Sanford, FIC
11:10:49 AM	Brian Pitts, Justice-2-Jesus
11:12:31 AM	Sen. Joyner
11:12:45 AM	Sen. Hukill
11:13:22 AM	Bill recommended favorably
11:13:35 AM	TAB 4- CS/SB 1046
11:13:54 AM	Senator Brandes
11:16:46 AM	Sen. Joyner
11:17:16 AM	Sen. Brandes
11:17:53 AM	Sen. Joyner
11:18:16 AM	Mr. Pitts, Justice-2-Jesus
11:19:21 AM	Carolyn Johnson, Florida Chamber of Commerce
11:19:32 AM	Ashley Mayer, DFS
11:19:43 AM	Kyle Ulrich, FAIA
11:19:51 AM	Sen. Joyner
11:20:22 AM	Sen. Brandes
11:21:25 AM	Bill recommended favorably
11:21:38 AM	TAB 1- CS/SB 156
11:21:55 AM	Senator Detert
11:22:38 AM	Sen. Joyner
11:23:20 AM	Senator Latvala
11:24:14 AM	Mr. Pitts, Justice-2-Jesus
11:25:50 AM	Kari Hebrank, Florida Home Builders
11:26:02 AM	Bruce Kershner, United Pool and Spa Association
11:26:12 AM	Jennifer Hatfield, Florida Swimming Pool Association
11:26:40 AM	Gary Crayton, Florida Swimming Pool Association
11:26:45 AM	Rick Howard, Florida Swimming Pool Association
11:26:49 AM	Marcus Howard, Florida Swimming Pool Association
11:27:29 AM	TAB 3- SB 410
11:27:40 AM	James Kotas, Legislative Aide to Senator Bean
11:28:12 AM	Am. 329332
11:28:28 AM	Mr. Kotas
11:28:49 AM	Sen. Detert
11:29:04 AM	Mr. Kotas
11:29:24 AM	Sen. Detert
11:29:34 AM	French Brown, OFR
11:29:55 AM	Sen. Joyner
11:30:05 AM	Mr. Brown, OFR

11:30:39 AM Sen. Joyner
11:30:43 AM Mr. Brown, OFR
11:32:23 AM Sen. Joyner
11:32:38 AM Ms. Mayer, DFS
11:35:13 AM Sen. Joyner
11:35:42 AM Ms. Mayer, DFS
11:36:27 AM Senator Thompson
11:36:47 AM Ms. Mayer, DFS
11:37:14 AM Cam Fentriss, Florida Roofing Sheet Metal & AC Contractors Association
11:38:51 AM Mr. Pitts, Justice-2-Jesus
11:41:24 AM Chmn. Hays
11:42:22 AM Bill recommended favorably
11:42:26 AM TAB 5- CS/SB 1080
11:42:29 AM Mike Bascomb, Legislative Assistant for Senator Evers
11:43:14 AM Am. 453686
11:43:19 AM Senator Simpson
11:43:40 AM Sen. Joyner
11:44:36 AM Sen. Simpson
11:45:53 AM Sen. Thompson
11:47:06 AM Sen. Soto
11:47:31 AM Ms. Hebrank, Florida Home Builders
11:48:01 AM Sen. Soto
11:48:04 AM Ms. Hebrank, Florida Home Builders
11:48:43 AM Sen. Soto
11:48:46 AM Ms. Hebrank, Florida Home Builders
11:49:30 AM Cindy Littlejohn, Plum Creek Timber
11:49:38 AM Patrick McLaughlin, Masonry Association of Florida
11:49:41 AM James Painter, Painter Masonry & Construction
11:49:46 AM Ms. Fentress, FRACCA
11:50:01 AM Sen. Thompson
11:50:37 AM Sen. Soto
11:52:14 AM Bill recommended favorably
11:52:20 AM TAB 7- CS/SB 1684
11:52:28 AM Senator Altman
11:52:44 AM Am. 736210
11:53:01 AM Sen. Altman
11:54:01 AM Am. 439954
11:54:12 AM Sen. Soto
11:55:12 AM Sen. Altman
11:55:58 AM Sen. Soto
11:57:10 AM Am. 815726
11:57:17 AM Sen. Latvala
11:58:42 AM Sen. Joyner
11:59:15 AM Sen. Altman
12:00:20 PM Sen. Joyner
12:01:04 PM Sen. Altman
12:01:14 PM Sen. Joyner
12:02:53 PM Sen. Altman
12:04:23 PM Sen. Joyner
12:04:57 PM Sen. Latvala
12:05:09 PM Sen. Altman
12:05:12 PM Sen. Soto
12:05:54 PM Sen. Altman
12:06:04 PM Sen. Soto
12:06:46 PM Am. 331970
12:06:57 PM Sen. Latvala
12:07:40 PM Sen. Simpson
12:08:13 PM Katie Kelly, DEP
12:08:45 PM Jeff Littlejohn, DEP
12:09:40 PM Sen. Simpson
12:09:55 PM Mr. Littlejohn, DEP
12:10:00 PM Sen. Latvala

12:10:12 PM Senator Dean
12:10:51 PM Mr. Littlejohn, DEP
12:10:59 PM Sen. Soto
12:11:11 PM Mr. Littlejohn, DEP
12:11:44 PM Sen. Soto
12:12:15 PM Am. 738182
12:12:36 PM Sen. Simpson
12:13:07 PM Sen. Latvala
12:13:41 PM Michael Rubin, Florida Ports Council
12:13:48 PM Candice Ericks, Port Everglades
12:13:53 PM Ryan Matthews, FLC
12:14:25 PM Sen. Soto
12:15:18 PM Sen. Joyner
12:16:53 PM Sen. Altman
12:17:36 PM Mr. Pitts, Justice-2-Jesus
12:17:45 PM David Cullen, Sierra Club of Florida
12:21:15 PM Mary Jean Yon, Audubon Florida
12:23:15 PM Stephanie Kunkel, Clean Water Action
12:23:21 PM Kurt Spitzer, Florida Stormwater Association
12:23:25 PM Phil Leary, Florida Ground Water Association
12:23:41 PM Doug Mann, AIF
12:23:45 PM Keyna Cory, National Solid Wastes Management Association
12:23:56 PM David Childs, National Marine Manufacturers Association
12:24:30 PM Missy Timmins, Marine Industries Association of Florida
12:25:25 PM Bill recommended favorably
12:25:31 PM TAB 6- CS/SB 1416
12:25:39 PM Mr. Bascomb
12:25:46 PM Am. 203334
12:27:59 PM Mr. Littlejohn, DEP
12:28:47 PM Chmn. Hays
12:28:50 PM Mr. Littlejohn, DEP
12:30:05 PM Sen. Joyner
12:30:54 PM Mr. Littlejohn, DEP
12:31:49 PM Sen. Joyner
12:32:09 PM Sen. Simpson
12:35:01 PM Sen. Dean
12:36:30 PM Sen. Joyner
12:37:33 PM Jeff Littlejohn, DEP
12:41:32 PM Mr. Pitts, Justice-2-Jesus
12:43:38 PM Mike Huey, Florida Petroleum Marketers and Convenience Store Association
12:45:04 PM Senator Bradley
12:45:23 PM Mr. Huey
12:46:16 PM Sen. Bradley
12:46:24 PM Chmn. Hays
12:46:54 PM Sen. Simpson
12:49:28 PM Chmn. Hays
12:49:48 PM Sen. Simpson
12:50:13 PM Chmn. Hays
12:50:35 PM Sen. Bradley
12:52:16 PM Mr. Bascomb
12:53:16 PM Bill recommended favorably
12:53:41 PM Chmn. Hays
12:53:54 PM Sen. Thompson
12:53:57 PM Mtg. adjourned