

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Detert, Chair
Senator Dockery, Vice Chair

MEETING DATE: Tuesday, April 12, 2011

TIME: 9:15 a.m.—12:15 p.m.

PLACE: James E. "Jim" King, Jr., Committee Room, 401 Senate Office Building

MEMBERS: Senator Detert, Chair; Senator Dockery, Vice Chair; Senators Flores, Gaetz, Lynn, Montford, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 150 Smith (Identical H 67, Compare H 1249)	Career and Education Planning; Revises the general requirements for middle grades promotion to require that a course in career and education planning explore the National Career Clusters. ED 02/21/2011 Favorable CM 04/12/2011 BC	
2	CS/SB 560 Transportation / Wise	Sale of Advertising; Cites this act as the "John Anthony Wilson Bicycle Safety Act." Provides for the Department of Environmental Protection to enter into concession agreements for naming rights of state greenway and trail facilities or property or commercial advertising to be displayed on state greenway and trail facilities or property. Provides for distribution of proceeds from such concession agreements. TR 03/09/2011 Temporarily Postponed TR 03/22/2011 Not Considered TR 03/29/2011 Fav/CS CM 04/12/2011 EP BC	
3	SB 622 Hays (Similar H 343)	Secondhand Dealers and Secondary Metals Recyclers; Defines "appropriate law enforcement official." Clarifies a provision requiring that the secondhand dealers transaction form be delivered to the appropriate law enforcement official. Requires that a secondary metals recycler complete a transaction form and transmit it to the appropriate law enforcement official within 24 hours after the acquisition of regulated metals. Authorizes such recyclers to use an electronic database and transmit transaction forms electronically, etc. CM 04/12/2011 CJ BC	

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Commerce and Tourism

Tuesday, April 12, 2011, 9:15 a.m.—12:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 790 Altman (Similar CS/H 143)	Tax Credits; Revises the priority of tax credits that may be taken against the corporate income tax or the franchise tax. Authorizes aerospace-sector jobs tax credits and tuition reimbursement tax credits. Authorizes a tax credit to aerospace businesses based on the salary or tuition reimbursed to certain employees. Specifies the maximum annual amount of tax credits for an aerospace business. Provides fines and criminal penalties for certain unlawful claims of tax credits, etc. CM 04/12/2011 BC	
5	SB 854 Negron (Identical H 837)	Production and Shipment of Wine; Authorizes the direct shipment of wine into and within this state for personal consumption only. Requires licensure of winery shippers by the Division of Alcoholic Beverages and Tobacco. Provides license requirements. Requires recipients of a direct shipment of wine to be at least 21 years of age. Requires proof of age of a recipient. Provides for the payment of taxes, a monthly report, and recordkeeping by winery shippers, etc. RI 03/29/2011 Favorable CM 04/12/2011 BC	
6	CS/SB 920 Criminal Justice / Ring (Compare CS/H 339)	Possession of Stolen Credit or Debit Cards; Prohibits possession of a stolen credit or debit card in specified circumstances. Provides penalties. Provides that a retailer or retail employee who possesses, receives, or returns a stolen credit or debit card without knowledge that the card is stolen or in order to investigate the card's theft or unlawful use does not commit a violation of the act. CJ 03/22/2011 Fav/CS CM 04/12/2011 AG	
7	SB 1080 Altman (Identical H 675)	Exemptions/Tax on Sales, Use, & Other Transactions; Exempts certain items used to manufacture, produce, or modify gas turbine engine parts from the tax on sales, use, and other transactions. CM 04/12/2011 BC	

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Commerce and Tourism

Tuesday, April 12, 2011, 9:15 a.m.—12:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	CS/SB 1284 Agriculture / Bennett	Biodiesel; Defines the term "renewable feedstocks." Exempts certain biodiesel manufacturers from bonding requirements. Exempts certain biodiesel manufacturers from specific taxes on diesel fuel. Redefines the term "pollutants" to exclude certain biodiesel. Provides legislative findings regarding the sale of diesel containing biodiesel. Establishes standards for the amount of biodiesel that must be contained in diesel fuel. Requires dealers and wholesalers to provide certified fuel analyses upon the department's request, etc. AG 03/21/2011 Fav/CS CM 04/12/2011 BC	
9	SB 1384 Altman (Compare CS/CS/H 907, S 2044)	Transfer of Tax Liabilities; Requires that a circuit court having jurisdiction over a taxpayer who fails to file a final tax return and to make tax payment for a business provide at least 20 days' written notice before issuing a temporary injunction enjoining further business activity. Specifies additional conditions for a transferee of a business, assets of the business, or stock of goods to establish that the business has no tax liability arising from the transfer, etc. CM 04/12/2011 JU BC	
10	SB 1424 Benacquisto (Identical H 4015)	Telemarketing; Deletes restrictions on the business-to-business sales exemption of the Florida Telemarketing Act. CM 04/12/2011 BC	
11	SB 1542 Siplin (Identical H 475)	Corporate Income Tax Credits; Establishes the Florida Public School Tax Credit Program. Provides for credits against the corporate income tax for contributions to public schools for certain purposes. Authorizes public schools to determine how to use undesignated contributions. Requires the Department of Revenue to apportion a dollar amount of tax credits to each school board receiving eligible contributions. Specifies certain taxpayers as ineligible to receive the corporate tax credit, etc. CM 04/12/2011 ED BC	

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Tuesday, April 12, 2011, 9:15 a.m.—12:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	SB 1610 Detert (Compare CS/H 1425)	State Minimum Wage; Provides for calculating the Florida minimum wage when the state minimum wage and the federal minimum wage for the prior year is lower than the adjusted real wage, etc. CM 04/12/2011 GO BC	
13	SB 1772 Hays (Similar H 459)	Self-service Storage Facilities; Redefines the term "last known address, to conform to changes made by the act. Revises notice requirements related to enforcing an owner's lien. Allows postal notice by first-class mail, along with a certificate of mailing. Allows electronic mail notice. Deletes provisions relating to advertisement requirements. Clarifies provisions relating to the right to create contractual liens or limitations on liability. CM 04/12/2011 CA JU	
14	SB 1884 Gaetz (Similar CS/CS/H 1303)	Consumer Protection; Prohibits a post-transaction third-party seller from charging a consumer for a good or service sold over the Internet unless certain disclosures are made and the seller receives the informed consent of the consumer. Requires a post-transaction third-party seller to provide a simple mechanism for a consumer to cancel a purchase of a good or service and stop any recurring charges. Prohibits an initial merchant from disclosing certain account numbers of a consumer to a post-transaction third-party seller under certain circumstances, etc. CM 04/12/2011 BC	

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 Commerce and Tourism Committee

BILL: SB 150

INTRODUCER: Senator Smith

SUBJECT: Career and Education Planning

DATE: April 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carrouth	Matthews	ED	Favorable
2.	Hrdlicka	Cooper	CM	Pre-meeting
3.			BC	
4.				
5.				
6.				

I. Summary:

Under SB 150, the career exploration course taken by middle grades students and required for promotion must be aligned to the National Career Clusters, as supported by Florida's Career Clusters Initiative. Course alignment to career clusters will serve to support student awareness of labor market trends and careers available in the global economy and to provide a framework for middle grades career exploration.

The bill deletes the provision to require the Department of Education to develop course frameworks and professional development materials for the middle grades career exploration course.

This bill amends section 1003.4156 of the Florida Statutes.

II. Present Situation:

Middle Grades Career Exploration and Planning

To be promoted from middle school, s. 1003.4156, F.S., requires a student to successfully complete: three middle school or higher courses in English, mathematics, social studies, and science; and one course in career and education planning to be completed in grades 7 or 8. Each student is required to complete a personalized academic and career plan by the end of the career and education planning course.

The career and education planning course may be taught by any member of the instructional staff and must include career exploration using CHOICES or a comparable program. Current law, however, does not require exploration of any specific career fields.

The Florida Department of Education (DOE) recommends using the CHOICES Explorer¹ and Career Futures² programs for the career exploration component of the course. School districts may purchase the CHOICES Explorer and Career Futures from DOE.³

Career Clusters⁴

To effectively prepare students for tomorrow's workforce, schools must help students achieve in more challenging coursework by providing students with relevant contexts for learning. By providing a connection to future goals, students are often motivated to work harder and enroll in more rigorous courses.⁵ "Career clusters link what students learn in school with the knowledge and skills they need for success in college and careers." It also serves to identify pathways from secondary school to two- and four-year colleges, graduate school, and the workplace.

National Career Clusters

The National Career Technical Education Foundation (NCTEF) established the States' Career Clusters Initiative⁶ to provide career clusters as a tool for seamless transition from education to careers. Currently, there are 16 identified workforce areas within the National Career Clusters.⁷ The 16 clusters represent all career possibilities and serve as a method of organizing instruction and applied learning in career and technical preparation courses, career academies, work-based learning programs, smaller learning communities, magnet and charter schools, and secondary schools that are restructuring around career themes.

Florida's Career Clusters Initiative⁸

Florida is actively partnering in the States' Career Clusters Initiative. The career clusters serve as a framework for Florida's required career exploration course at the middle grades. The following list identifies the 16 career clusters and includes one additional cluster adopted by Florida in the area of energy.⁹

- Agriculture, food, and natural resources;
- Architecture and construction;

¹ CHOICES Explorer is an online education and career exploration system that provides extensive libraries of education, career, and recreation articles. The site provides career profiles, postsecondary program descriptions, career videos, and other career exploration resources. Students can research individual academic subjects or take the Career Finder or Major Finder assessments to determine which academic, career, and majors interest them. Students can also combine their assessment results and career goals with the personalized education plan in FACTS.org.

² Career Futures is career exploration and planning software available on CD-ROM that provides students with access to information on more than 650 occupations. It is designed to develop a student's self-awareness and career exploration skills. Career Futures employs hands-on activities that demonstrate how interests, education, earnings, and skills relate to the workplace.

³ See DOE, Florida Choices website at <https://access.bridges.com/auth/login.do?sponsor=7> (last visited 4/7/2011).

⁴ For a definition of "career clusters" see <http://www.careerclusters.org/aboutus.php?define=CC> (last visited 4/7/2011).

⁵ See NCTEF, More about Career Clusters, available at <http://www.careerclusters.org/whatis.php> (last visited 4/7/2011).

⁶ The initiative helps states as they connect career technical education to education, workforce preparation, and economic development. The initiative promotes information-sharing, techniques, and methods to aid the development and implementation of career clusters within states. See NCTEF state website at <http://www.careerclusters.org/index.php> (last visited 4/7/2011).

⁷ See NCTEF, The 16 Career Clusters, available at <http://www.careerclusters.org/16clusters.cfm> (last visited 4/7/2011).

⁸ See DOE, Career and Technical Education Programs, Academic Year 2011/2012 Curriculum Frameworks By Career Cluster, available at <http://www.fldoe.org/workforce/dwdframe/> (last visited 4/7/2011).

⁹ Email correspondence with the Vice Chancellor, Division of Workforce Education, Florida Department of Education, April 16, 2010, on file with the Education Pre-K – 12 Committee.

- Arts, audio/visual technology, and communications;
- Business management and administration;
- Education and training;
- Finance;
- Government and public administration;
- Health science;
- Hospitality and tourism;
- Human services;
- Information Technology;
- Law, public safety, corrections, and security;
- Manufacturing;
- Marketing;
- Science, technology, engineering, and mathematics;
- Transportation, distribution, and logistics; and
- Energy (Florida only).¹⁰

The Division of Career and Adult Education within DOE publishes the curriculum frameworks aligned to the career clusters delineated by the U.S. Department of Education.

Course Frameworks and Professional Education Associated with Middle Grades Career Exploration

In 2010, DOE reviewed and updated the current frameworks for the middle grades career exploration course which identifies student performance standards. The Course Code Directory identifies the courses that meet the middle grades promotion requirement and schools must use one of the approved courses to meet the career planning and exploration requirement.¹¹

To assist teachers in planning a comprehensive middle school career course, DOE developed the Educator's Toolkit on Career and Education Planning (Toolkit). The on-line professional development Toolkit provides easy access to classroom activities, lesson plans, and related web-based resources.¹²

III. Effect of Proposed Changes:

SB 150 requires that the career exploration course taken by middle grades students and required for promotion purposes must be aligned to the National Career Clusters, as supported by Florida's Career Clusters Initiative. Course alignment to career clusters will serve to support student awareness of labor market trends and careers available in the global economy and to provide a framework for middle grades career exploration. Middle school students who are exposed to relevant career information may be better prepared to acquire skills that will enable them to earn industry certifications at the high school level in high-wage, high-skill, and high-demand careers.

¹⁰ Based on recommendations by statewide advisory groups, Florida added Energy as the 17th career cluster in 2009.

¹¹ There are 62 courses currently approved for the middle grades career course and can be accessed at: <http://www.fldoe.org/workforce/ced/pdf/approved-courses.pdf> (last visited 4/7/2011).

¹² See DOE, links to Toolkit modules at <http://www.fldoe.org/workforce/ced/> (last visited 4/7/2011).

The bill deletes the provision to require DOE to develop course frameworks and professional development materials for the middle grades career exploration course. Current law provides for flexibility in how the course is delivered, allowing any member of the instructional staff to teach the course and permitting the course to be integrated with other coursework. Eliminating the course frameworks and associated professional development materials could diminish student career exploration and may affect the opportunity for middle school students to effectively choose courses or be academically prepared for high school courses required in career areas in which they may be interested.

The bill is effective July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The Department of Education bill analysis requests that the bill require that the career course be aligned to Florida's Career Clusters rather than the National Career Clusters to include Florida's addition of the Energy workforce area.¹³

¹³ Florida Department of Education Legislative Bill Analysis, December 20, 2010, on file with the Committee.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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

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 Commerce and Tourism Committee

BILL: CS/SB 560

INTRODUCER: Transportation Committee and Senator Wise

SUBJECT: Sale of Advertising

DATE: April 10, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Spalla	TR	Fav/CS
2.	Pugh	Cooper	CM	Pre-meeting
3.			BC	
4.				
5.				
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Please see Section VIII. for Additional Information:

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

I. Summary:

Florida has one of the most-extensive and popular networks of greenways and trails in the United States. Much of the network has been acquired and managed using public dollars.

CS/SB 560 creates the “John Anthony Wilson Bicycle Safety Act of 2011,” which authorizes the Department of Environmental Protection (DEP) to enter into agreements with not-for-profit or private-sector entities allowing those entities to advertise on state-owned greenway and trail facilities in the form of naming rights and commercial displays.

The bill contains restrictions or approval on placement, size, term, content, materials, and construction. It also describes how proceeds from the agreements are to be distributed: 90 percent to the appropriate DEP trust fund to manage and operate state trails and greenways, and 10 percent to district school boards to pay for bicycle safety programs.

DEP is authorized to adopt rules to implement the bill’s provisions.

CS/SB 560 creates s. 260.014, F.S.

II. Present Situation:

Florida Greenways and Trails

The 1979 Legislature enacted ch. 79-110, L.O.F., entitled the "Florida Recreational Trails Act of 1979." The purpose of the Act was to provide for a network of recreational and scenic trails to be used for hiking, biking, horseback riding, canoeing, and jogging, which trails were to be designated as the "Florida Recreational Trails System." DEP (formerly the Department of Natural Resources) was encouraged to use areas within or connecting state parks and forests, national parks and forests, local parks, public rights-of-way, and existing trails.

In 1983, the Florida Trail was designated as the Florida National Scenic Trail, and today, it is a 1,500-mile-long trail, including both National Scenic Trail certified and non-certified miles, which stretches from the Panhandle of Florida to the Big Cypress National Preserve.¹ Portions of the trail are components of the Florida Greenways and Trails program, the successor to the Recreational Trails System.

In 1987, the Florida Rails-to-Trails program at the department was created to provide an emphasis on the acquisition and development of abandoned railroad corridors for use as public recreational trails, and to contribute to the preservation of wildlife habitat. Many railroad lines run along river corridors and coastal plains, areas with the most scenic views and productive habitat. Until 1990, the program depended on annual legislative appropriations, but the creation of the Preservation 2000 (P2000) program changed that. The P2000 program was created as a 10-year, \$3 billion bond program to acquire environmentally sensitive lands for conservation, protection, restoration and preservation purposes. The Rails-to-Trails program was provided with \$3.9 million a year in funding under P2000 through 1996.

In 1996, the Florida Legislature enacted ch. 96-389, L.O.F., which renamed the Recreational Trails System Act as the "Florida Greenways and Trails Act," and provided for a statewide system of greenways and trails for recreational and conservation purposes and uses. Greenways were defined to be "linear open spaces established along either a natural corridor, such as a riverfront, stream valley, or ridgeline, or over land along a railroad right-of-way converted to recreational use..." and trails were defined to mean "linear corridors and any adjacent support parcels on land or water providing public access for recreation or authorized alternative modes of transportation." P2000 funding for Rails-to-Trails was extended through 2000, and was succeeded by funding from the Florida Forever program, as well as other state and federal funding programs.

In 2005, the Florida Legislature enacted ch. 2005-87, L.O.F., to recognize the Florida National Scenic Trail (trail) as Florida's official statewide non-motorized trail from the Florida Panhandle to the Everglades and the Florida Keys. It further recognized the federal government's major contributions and the efforts of private landowners, state government and non-profit entities in establishing the trail. Private landowners were encouraged to continue to allow the use of private property for trail purposes, through incentives and liability protection.

¹Florida Trail Association, Hike Florida on Florida's Own National Scenic Trail, available at <http://www.floridatrail.org>. Last visited March 25, 2011.

The Office of Greenways & Trails (OGT)

An office within DEP, OGT provides statewide coordination to establish, expand, and promote Florida's Statewide System of Greenways and Trails. OGT manages trails and other lands as key components of the Florida greenways and trails system, and partners with nearly 30 communities that manage state acquired greenways and trails through sublease agreements. OGT manages a multi-million dollar capital budget consisting of federal Transportation Enhancement grants and fixed capital funds for the development of trails and facilities on state managed properties.²

OGT coordinates with, and provides assistance to, local governments, developers, state and federal agencies, private landowners, and other interested citizens or advocates regarding the acquisition, designation, establishment, and management of greenways and trails projects. OGT works to expand the statewide network through a 1.5-percent annual allocation of Florida Forever funding, about \$4.5 million annually, for acquisition of trails. OGT administers the Recreational Trails Program (RTP), a federally funded competitive grant program providing financial assistance to local communities for the development of trails. Since inception, RTP has assisted communities in 42 Florida counties to establish and expand trails.

Florida's state trails and the Cross Florida Greenway had the highest annual visitation ever in 2009 with more than 4 million visitors, generating an estimated economic impact of \$95 million.³

Florida Trail Association

The Florida Trail Association is a private, non-profit volunteer organization founded in 1966, whose mission is to develop, maintain, promote, and protect a continuous hiking trail that runs the length of the state, as well as the loop and side trails throughout the state.⁴

Outdoor Advertising

Sections 337.407 and 479.11(8), F.S., prohibit advertising signs from being placed in the right-of-way of any road on the interstate highway system, the federal-aid primary highway system, the State Highway System, or the State Park Road System.

Section 260.016, F.S., sets forth general powers that DEP may use in managing and overseeing the Florida Greenways and Trails System. These powers include charging user fees or rentals but do not specifically authorize DEP to sell naming rights or allow commercial displays.

III. Effect of Proposed Changes:

CS/SB 560 creates s. 260.0144, F.S., authorizing DEP to enter into concession agreements that allow not-for-profit or private-sector businesses or entities the right to advertise on state-owned property.

²Greenways and Trails, Florida Department of Environmental Protection, available at <http://www.dep.state.fl.us/gwt>. Last visited April 7, 2011.

³ See <http://www.dep.state.fl.us/gwt/PDF/OfficeOverview.pdf>. Site last visited April 7, 2011.

⁴Florida Trail Association, Hike Florida on Florida's Own National Scenic Trail, available at <http://www.floridatrail.org>. Last visited April 7, 2011.

Section 1: Names this legislation the “John Anthony Wilson Bicycle Safety Act.” Mr. Wilson⁵ was a veteran firefighter for the city of Boca Raton and a cycling enthusiast who was struck and killed by a motor vehicle in February of this year while riding his bike.

Section 2: Creates s. 260.0144, F.S., to authorize DEP to enter into concession agreements for naming rights or the display of commercial advertising on certain state-owned greenway and trail facilities or property, subject to the following restrictions:

- Placement of signage or displays shall be only at trailheads, trail intersections, directional or distance markers, interpretive exhibits, and parking areas.
- The size of the signage or display is limited to 16 square feet at trailheads and parking areas and 4 square feet at all other areas.
- Any concession agreement must be for a minimum 1-year term unless extended by a multiyear agreement.
- The name or display must be approved by DEP before installation.
- Materials and construction for signage must meet standards which are to be established by DEP.
- All costs associated with the signage must be borne by the concessionaire.

Any agreement under this section may be terminated by DEP at its discretion.

Additionally, CS/SB 560 specifies that the naming rights and commercial displays contemplated by the concession agreements are for public relations or advertising purposes for the concessionaires, and as such, are not to be construed as having any relationship with the department other than as set forth in the terms of the concession agreements.

Proceeds from the concession agreements are to be distributed as follows:

- 90 percent to the appropriate DEP trust fund used for the management and operation of state greenway or trail facilities and properties; and
- 10 percent, as prorated by population, to district school boards to be used only for its bicycle education program or Safe Route to Schools program. The share of any school district that does not have such programs shall be deposited into the appropriate DEP trust fund.

CS/SB 560 authorizes DEP to adopt rules to administer the act.

Section 3: Provides an effective date of July 1, 2011.

Other Potential Implications:

CS/SB 560 introduces a potential conflict with existing state and federal law. Sections 337.407 and 479.11(8), F.S., prohibit advertising signs from being placed in the right-of-way of any road on the interstate highway system, the federal-aid primary highway system, the State Highway System, or the State Park Road System. Sign placement permitted by the bill could potentially conflict with these provisions, depending on the location.

⁵ More information about the life of Mr. Wilson is available at <http://www.ci.boca-raton.fl.us/fire/pdf/PressReleases/2011/wilson.pdf> and at <http://www.palmbeachpost.com/news/hundreds-from-across-florida-gather-to-mourn-boca-1247122.html>. Sites last visited April 7, 2011.

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:

CS/SB 560 requires DEP approval prior to the installation of naming signage or an advertising display. It is not clear whether the intent of this language is to provide authority to regulate the content of a message communicated by a display or simply whether the signage meets material and construction standards. Regardless, the provision may give rise to claims based on alleged interference with constitutionally protected free speech. Further, the language could be argued to vest absolute discretion in DEP to decide appropriate content, the exercise of which can be expected to result in litigation challenging the constitutionality of the law either on the face of the law or as it is applied by DEP.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference has not considered this bill yet and, accordingly, the amount of revenue that might be realized due to this bill is not known at this time.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Transportation on March 29, 2011:

The CS removes language authorizing advertising on state-owned transportation property under regulation by the Governor’s Office of Tourism, Trade, and Economic Development, and replaces it with language authorizing advertising on state greenway and trail facilities or properties under regulation by DEP. It sets forth standards and restrictions that the advertising must meet, including approval by DEP. It gives DEP rulemaking authority to implement the bill and directs how the proceeds from the sale of advertising are to be distributed.

- B. **Amendments:**

None.

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



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (j) is added to subsection (1) of
section 538.03, Florida Statutes, to read:

538.03 Definitions; applicability.—

(1) As used in this part, the term:

(j) "Appropriate law enforcement official" means the
sheriff of the county in which a secondhand dealer is located
or, in the case of a secondhand dealer located within a
municipality, the police chief of the municipality in which the



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secondhand dealer is located; however, any sheriff or police chief may designate as the appropriate law enforcement official for the county or municipality, as applicable, any law enforcement officer working within the county or municipality headed by that sheriff or police chief. This paragraph does not limit the power and responsibilities of the sheriff.

Section 2. Subsection (1) of section 538.04, Florida Statutes, is amended to read:

538.04 Recordkeeping requirements; penalties.—

(1) Secondhand dealers shall complete a secondhand dealers transaction form at the time of the actual transaction. A secondhand dealer shall maintain a copy of a completed transaction form on the registered premises for at least 1 year after the date of the transaction. However, the secondhand dealer shall maintain a copy of the transaction form for not less than 3 years. Unless other arrangements have been agreed upon by the secondhand dealer and the appropriate law enforcement agency, the secondhand dealer shall, within 24 hours after the acquisition of any secondhand goods, deliver to the appropriate law enforcement official ~~police department of the municipality where the goods were acquired or, if the goods were acquired outside of a municipality, to the sheriff's department of the county where the goods were acquired,~~ a record of the transaction on a form approved by the Department of Law Enforcement. Such record shall contain:

(a) The time, date, and place of the transaction.

(b) A complete and accurate description of the goods acquired, including the following information, if applicable:

1. Brand name.



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- 42 2. Model number.
- 43 3. Manufacturer's serial number.
- 44 4. Size.
- 45 5. Color, as apparent to the untrained eye.
- 46 6. Precious metal type, weight, and content if known.
- 47 7. Gemstone description, including the number of stones, if
- 48 applicable.
- 49 8. In the case of firearms, the type of action, caliber or
- 50 gauge, number of barrels, barrel length, and finish.
- 51 9. Any other unique identifying marks, numbers, or letters.

52 (c) A description of the person from whom the goods were

53 acquired, including:

- 54 1. Full name, current residential address, workplace, and
- 55 home and work phone numbers.
- 56 2. Height, weight, date of birth, race, gender, hair color,
- 57 eye color, and any other identifying marks.
- 58 3. The right thumbprint, free of smudges and smears, of the
- 59 person from whom the goods were acquired.

60 (d) Any other information required by the form approved by

61 the Department of Law Enforcement.

62 Section 3. Subsection (10) is added to section 538.18,

63 Florida Statutes, to read:

64 538.18 Definitions.—As used in this part, the term:

65 (10) "Appropriate law enforcement official" means the

66 sheriff of the county in which a secondary metals recycler is

67 located or, in the case of a secondary metals recycler located

68 within a municipality, the police chief of the municipality in

69 which the secondary metals recycler is located; however, any

70 sheriff or police chief may designate as the appropriate law



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enforcement official for the county or municipality, as
applicable, any law enforcement officer working within the
county or municipality headed by that sheriff or police chief.
This subsection does not limit the power and responsibilities of
the sheriff.

Section 4. Section 538.19, Florida Statutes, is amended to
read:

538.19 Records required.—

(1) A secondary metals recycler shall complete a
transaction form at the time of the actual transaction. Unless
other arrangements have been agreed upon, the secondary metals
recycler shall, within 24 hours after acquiring the regulated
metals, deliver to the appropriate law enforcement official a
record of the transaction on a form approved by the Department
of Law Enforcement. The recycler shall also maintain a legible
record of all purchase transactions to which the ~~such~~ secondary
metals recycler is a party.

(2) The following information must be maintained on the ~~a~~
form approved by the Department of Law Enforcement for each
purchase transaction:

(a) The name and address of the secondary metals recycler.

(b) The name, initials, or other identification of the
individual entering the information on the ticket.

(c) The date and time of the transaction.

(d) The weight, quantity, or volume, and a description of
the type of regulated metals property purchased in a purchase
transaction.

(e) The amount of consideration given in a purchase
transaction for the regulated metals property.



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(f) A signed statement from the person delivering the regulated metals property stating that she or he is the rightful owner of, or is entitled to sell, the regulated metals property being sold. If the purchase involves a stainless steel beer keg, the seller must provide written documentation from the manufacturer that the seller is the owner of the stainless steel beer keg or is an employee or agent of the manufacturer.

(g) The distinctive number from the personal identification card of the person delivering the regulated metals property to the secondary metals recycler.

(h) A description of the person from whom the goods were acquired, including:

1. Full name, current residential address, workplace, and home and work phone numbers.

2. Height, weight, date of birth, race, gender, hair color, eye color, and any other identifying marks.

3. The right thumbprint, free of smudges and smears.

4. Vehicle description to include the make, model, and tag number of the vehicle and trailer of the person selling the regulated metals property.

5. Any other information required by the form approved by the Department of Law Enforcement.

(i) A photograph, videotape, or digital image of the regulated metals being sold.

(j) A photograph, videotape, or similar likeness of the person receiving consideration in which such person's facial features are clearly visible.

(3) Any secondary metals recycler may, with the approval of the appropriate law enforcement official, use ~~that maintains~~ an



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electronic database containing the information required in subsection (2) ~~paragraph (2) (h)~~, along with an oath of ownership with a signature of the seller of the secondary metals being purchased by the secondary metals recycler and a right thumbprint that has no smudges and smears on the oath of ownership for each purchase transaction, shall be exempt from the records requirement of ~~paragraph (2) (h)~~. A secondary metals recycler complies with the requirements of this section if it maintains an electronic database containing the information required by subsection (2) ~~paragraph (2) (h)~~ as long as the electronic information required by subsection (2) ~~paragraph (2) (h)~~, along with an electronic oath of ownership with an electronic signature of the seller of the secondary metals being purchased by the secondary metals recyclers and an electronic image of the seller's right thumbprint that has no smudges and smears, can be downloaded onto a paper form in the image of the form approved by the Department of Law Enforcement as provided in subsection (2).

(4) If an appropriate law enforcement official supplies the software and the secondary metals recycler has the computer ability, the recycler shall electronically transmit regulated metals transaction records required by this section. If a recycler does not have such ability, the appropriate law enforcement official may provide the recycler with a computer and necessary equipment to electronically transmit such records. The appropriate law enforcement official shall retain ownership of the computer, unless otherwise agreed upon, and the recycler shall maintain the computer in good working order, ordinary wear and tear excepted. A recycler who transmits such records



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electronically is not required to also provide the original or
paper copies of the forms to the appropriate law enforcement
official. However, such official may, for purposes of a criminal
investigation, require the recycler to provide the original of a
transaction form that has been electronically transferred within
24 hours after receipt of the request.

(5)~~(4)~~ A secondary metals recycler shall maintain or cause
to be maintained the information required by this section for
not less than 5 years from the date of the purchase transaction.

(6)~~(5)~~ If a purchase transaction involves the transfer of
regulated metals property from a secondary metals recycler
registered with the department to another secondary metals
recycler registered with the department, the secondary metals
recycler receiving the regulated metals property shall record
the name and address of the secondary metals recycler from which
it received the regulated metals property in lieu of the
requirements of paragraph (2) (h).

Section 5. This act shall take effect July 1, 2011.

===== 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 secondhand dealers and secondary
metals recyclers; amending ss. 538.03 and 538.18,
F.S.; defining the term "appropriate law enforcement
official"; amending s. 538.04, F.S.; clarifying a
provision requiring that the secondhand dealers



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transaction form be delivered to the appropriate law enforcement official; amending s. 538.19, F.S.; requiring that a secondary metals recycler complete a transaction form and transmit it to the appropriate law enforcement official within 24 hours after the acquisition of regulated metals; authorizing such recyclers to use an electronic database and transmit transaction forms electronically; providing for appropriate law enforcement officials to provide software and computer equipment to recyclers; requiring that a recycler produce an original form in certain situations; 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 Commerce and Tourism Committee

BILL: SB 622

INTRODUCER: Senator Hays

SUBJECT: Secondhand dealers and secondary metals recyclers

DATE: April 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McCarthy	Cooper	CM	Pre-meeting
2.			CJ	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill expands the reporting requirements on secondhand dealers, secondary metals recyclers, and pawnbrokers whose place of business is located in municipalities. These businesses would be required to deliver – either copies of or electronically – records of purchase transactions to both the Sheriff and the Chief of Police. If the Sheriff or Chief of Police have different systems or requirements for receiving these records, this may require the dealer to have two separate systems for maintaining and reporting purchase transactions.

This bill also imposes new requirements and limits on secondary metals recyclers in their retention and transmission of purchase transaction records to local law enforcement. This bill:

- Requires recyclers to deliver purchase transaction records to both the Sheriff and, if in a city, the Chief of Police within 24 hours, rather than only maintain such records;
- Expands the reporting requirements of recyclers that submit purchase transaction information electronically, and requires that the electronic submission of the information be approved by the appropriate law enforcement official;
- Requires recyclers to submit purchase transaction information electronically if the appropriate law enforcement official supplies the appropriate software and, if necessary, the appropriate hardware; and
- Requires recyclers to provide the original transaction form, when requested by the appropriate law enforcement official, for purposes of a criminal investigation.

The bill creates a uniform definition for “appropriate law enforcement official” for the provisions relating to reporting of purchase transactions by secondhand dealers, secondary metals recyclers, and pawnshops.

This bill amends the following sections of the Florida Statutes: 538.03, 538.04, 538.18, 538.19, and 539.001.

II. Present Situation:

A **secondhand dealer** is any person, who is not a secondary metals recycler and who is engaged in the business of purchasing, consigning, or trading secondhand goods.¹ Secondhand dealers are responsible for maintaining a record of all sale transactions. A copy of a completed transaction form must be maintained for at least 3 years. The secondhand dealers must provide local law enforcement with a record of each transaction within 24 hours of the transaction on a form approved by FDLE. The form may be submitted by electronic transmission if the secondhand dealer is capable of doing so and if the law enforcement agency permits.²

A **secondary metals recycler (recycler)** is any person who is engaged in the business of gathering or obtaining ferrous or nonferrous metals, or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products.³ Recyclers are required to maintain legible records of all purchase transactions to which the recycler is a party. A recycler must keep the information required for a period of 5 years from the date of the purchase transaction.⁴ During the usual and customary business hours of a recycler, a law enforcement officer has the right to inspect all purchased regulated metals property in the possession of the recycler, as well as all records required to be maintained.⁵

A **pawnbroker** means a person who is engaged in the business of advancing funds on the security of pledged goods on condition that the pledged goods are left in the possession of the pawnbroker for the duration of the pawn and may be redeemed by the pledgor on the terms and conditions contained under law.⁶ A pawnbroker must maintain a copy of each completed pawnbroker transaction form on the pawnshop premises for at least 1 year after the date of the transaction. On or before the end of each business day, the pawnbroker must deliver to the appropriate law enforcement official the original pawnbroker transaction forms for each of the transactions occurring during the previous business day, unless other arrangements have been agreed upon between the pawnbroker and the appropriate law enforcement official. Submission of the pawnbroker transaction forms may be made electronically.⁷

III. Effect of Proposed Changes:

This bill creates a uniform definition for “appropriate law enforcement official” for the provisions relating to reporting of purchase transactions by secondhand dealers, secondary metals recyclers, and pawnshops.

“Appropriate law enforcement official” means the sheriff of the county in which a (business) is located *and*, in the case of a (business) located within a municipality, the

¹ See s. 538.03(1)(a), F.S.

² See s. 538.04, F.S.

³ See s. 538.18(8), F.S.

⁴ See s. 538.19(4), F.S.

⁵ See s. 538.20, F.S.

⁶ See s. 539.001, F.S.

⁷ See s. 539.001(9), F.S.

police chief of the municipality in which the (business) is located; however, any sheriff or police chief may designate as the appropriate law enforcement official for the county or municipality, as applicable, any law enforcement officer working within the county or municipality headed by that sheriff or police chief. This subsection does not limit the power and responsibilities of the sheriff. (*Emphasis added*)

As previously stated, current law requires secondhand dealers and pawnbrokers to report to the sheriff if the business is located in the unincorporated area of the county. If the business is located within a municipality, the business is required to report to the police department of the municipality.

The consequence of this definition, and related statutory changes, is to expand the reporting requirements to secondhand dealers and pawnshops whose place of business is located in municipalities. These businesses would be required to deliver – either copies of or electronically – records of purchase transactions to *both* the Sheriff and the Chief of Police. If the Sheriff and the Chief of Police have different systems for receiving these records, it may require the dealer have two separate systems for maintaining and reporting such purchase transactions. If the law enforcement agencies involved use the same system (either paper copies or electronic records), this requirement may not be too burdensome.

The definition also includes a provision stating that the definition “does not limit the power and responsibilities of the sheriff.”

The bill also imposes new reporting requirements on secondary metals recyclers and require, if the business is located in a municipality, purchase transaction records be submitted to *both* the Sheriff and the Chief of Police.

Section 1 amends s. 538.03, F.S., to create a definition for “appropriate law enforcement official” for the provisions relating to reporting of purchase transactions by *secondhand dealers*, consistent with the definition used for secondary metals recyclers and pawnshops, as proposed in this bill.

Section 2 amends s. 538.04, F.S., to designate the “appropriate law enforcement official” – as defined in Section 1 of the bill – as the entity whom *secondhand dealers* must submit purchase transactions.

Section 3 amends s. 538.18, F.S., to create a definition for “appropriate law enforcement official” for the provisions relating to reporting of purchase transactions by *secondary metals recyclers*, consistent with the definition used for secondhand dealers and pawnshops, as proposed in this bill.

Section 4 amends s. 538.19, F.S., to impose additional reporting requirements on *secondary metals recyclers*.

Currently, s. 538.19(1), F.S., requires recyclers to maintain a record of purchase transactions on forms approved by the Department of Law Enforcement. Subsection (2) specifies the information that must be included in the purchase transaction form. Such records must be

maintained for 5 years and be available for inspection by law enforcement officers. Subsection (1) is amended to require such transaction forms be delivered to the appropriate law enforcement official within 24 hours of the transaction.

Currently, recyclers that maintain an electronic database containing a limited amount of the information required on the approved purchase transaction forms – a description of the seller, oath of ownership, and right thumbprint of the seller – that can be downloaded onto a paper form approved by the Department of Law Enforcement, are deemed in compliance with the requirements of the entire section. Section 538.19(3), F.S., is amended to require all of the reporting requirements of subsection (2) be satisfied, and that electronic submission of the information be approved by the appropriate law enforcement official.

Subsection (4) is created to require recyclers to submit purchase transaction information electronically if the appropriate law enforcement official supplies the appropriate software and the recycler has the hardware to accommodate the software. If the recycler does not have the appropriate hardware, the appropriate law enforcement official is authorized to provide the equipment. The conditions for the provision and ownership of such equipment is specified. In addition, the recycler is required to provide the original transaction form within 24 hours, when requested by the appropriate law enforcement official, for purposes of a criminal investigation.

Section 5 amends s. 539.001, F.S., the definition of “appropriate law enforcement official” for the provisions relating to reporting of purchase transactions by *pawnshops*, consistent with the definition used for secondhand dealers and secondary metals recyclers, as proposed in this bill.

Section 6 provides and effective date of July, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill places a reporting requirement on secondary metals recyclers. To the extent that the recycler, or his staff, would have to be trained on a computer system or manually transmit the transaction reports to the appropriate law enforcement agency, there will be an indeterminate cost to the business.

The bill also creates the possibility of dual reporting of transactions by secondhand dealers, secondary metals recyclers, and pawnbrokers based upon where the business is located. This could increase the costs to the owner in complying with this requirement.

C. Government Sector Impact:

The cost to law enforcement in providing computer equipment to secondary metals recyclers cannot be determined at this time. There should be some cost savings for law enforcement to the extent that data is transmitted electronically, thereby, decreasing the data input costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None

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 Commerce and Tourism Committee

BILL: SB 790

INTRODUCER: Senator Altman

SUBJECT: Tax Credits

DATE: April 11, 2011

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hrdlicka	Cooper	CM	Pre-meeting
2. _____	_____	BC	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

I. Summary:

The retirement of the Space Shuttle is projected to leave in its wake the loss of at least 9,000 Florida jobs directly associated with the program. State and regional economic development and workforce training agencies are developing strategies to address this potential loss of jobs, ranging from the recruitment of new companies to offering retraining in related fields.

Currently, aerospace businesses can utilize, depending on their location and investment, 12 general business incentives and at least 4 business sales tax exemptions. Additionally, the Legislature has created the Qualified Defense Contractor and Spaceflight Business (QDSC) Tax Refund program, which reimburses a number of taxes to eligible companies based on job creation.

SB 790 seeks to address, in part, the job-loss issue by creating two new corporate income tax credits related to aerospace employment:

- The Aerospace-Sector Jobs Tax Credit is a maximum \$12,500 per qualified employee annually, and is based on wages subject to the unemployment tax. The credit is equal to 10 percent of the compensation paid each qualified employee for the first through fifth years of employment.
- The Tuition Reimbursement Tax Credit is equal to 50 percent of the tuition for which an aerospace business reimbursed a qualified employee in a single tax year. The credit may only be claimed if the qualified employee was awarded an undergraduate or graduate degree, a technical certification, or a certification from a training program coordinated by Workforce Florida, Inc., within 1 year after being hired by the aerospace business.

A business cannot claim both credits for the same employee. The maximum amount of credits any aerospace business may claim in a single calendar year is \$200,000; the total amount of credits claimed under the program in a calendar year by all eligible businesses is capped at \$2 million. Aerospace businesses may carry forward any unused credits up to 5 years.

The bill creates s. 220.1811, F.S., and amends ss. 220.02 and 220.13, F.S.

II. Present Situation:

Aerospace Work Force

The last mission for the Space Shuttle program is scheduled for April 2011. The “moon to Mars” successor program, known as Constellation, that was scheduled to begin in 2015, was cancelled. Instead, the National Aeronautics and Space Administration (NASA) will focus on research and development for robotic exploration, the development of human spaceflight vehicles in the U.S. commercial market, and, as part of the agency’s federal FY 2012-13 budget request, the development of a heavy-lift rocket and crew capsule.¹ The intervening period between the retirement of the Space Shuttle program and whichever direction the space program takes next is referred to as the “shuttle gap,” in which a number of employees in the aerospace industry, in Florida and elsewhere, may lose their current jobs.²

In August 2007, the Brevard Workforce Development Board, Inc., (BWDB) estimated that shuttle-related activity in Florida supports a workforce level of approximately 9,235 employees (6,340 United Space Alliance employees and 2,895 sub-tier and related support contractor employees). The majority of this workforce is located at or near the Kennedy Space Center. However, the total economic impact of the Shuttle Program is statewide, and it has a specific shuttle-related supplier base of some 1,046 companies throughout the state.³

The BWDB further found that Shuttle workforce skills are highly translatable to any work that the state pursues as part of its next generation space activities. The BWDB estimates that one-third of the Florida Shuttle-related workforce will need transition assistance to a different industry or occupation, and one-third will need skills upgrades for the next generation space programs, public or private. The remaining one-third is expected to retire.⁴ Disregarding the number of employees who will retire, the BWDB estimates that at least 9,000 aerospace workers will lose their current positions.

In response to this anticipated shuttle gap, the 2008 Florida Legislature appropriated \$1.25 million to:

...be used to provide services focused on retention and retraining of skilled talent in the space industry and shall include workforce skills analysis, training, and placement

¹ NASA, Fiscal Year 2012 Budget Estimates, available at http://www.nasa.gov/pdf/516684main_FY12_summary_Budget_Briefing_final_21411_rev1.pdf (last visited 4/7/2011).

² Efforts to Address Workforce Issues Related to the Space Program, The Florida Senate Committee on Commerce, , Issue Brief 2009-305 (October 2008), at http://www.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-305cm.pdf (last visited 4/7/2011).

³ Brevard Workforce Development Board, Inc., “Aerospace Workforce Outlook Report,” Executive Summary, August 2007.

⁴ Brevard Workforce Development Board, Inc., “Aerospace Workforce Outlook Report,” Executive Summary, August 2007.

services, and may include communications efforts. Workforce Florida, Inc., shall develop a plan to implement this program.⁵

BWDB received a \$15 million National Emergency Grant from the U.S. Department of Labor in July 2010 to implement programs for transitioning aerospace workers.

Besides retraining efforts, BWDB, the local economic development council, Space Florida, Enterprise Florida, Inc., and other entities are working to recruit new aerospace-related companies or technology-based businesses that could employ the already-skilled Shuttle workforce.

The Qualified Defense Contractor and Spaceflight Business (QDSC) Tax Refund Program⁶ Amended in 2008 to include aerospace companies,⁷ the QDSC was designed to recruit, retain, and encourage expansion of the high-wage, high-skilled jobs in a competitive industry. This tax incentive targets the following types of projects: consolidation of certain Department of Defense (DOD) contracts; conversion of DOD production jobs to non-defense production jobs; projects involving the reuse of defense-related facilities for specific activities; the manufacturing, processing, and assembly of space flight vehicles; and a number of other activities related to space flight.

Since its inception, 44 QDSC applications have been received, and 30 have been approved. There are 5 active QDSC projects, which have created or retained 1,504 jobs over the years with an average wage of nearly \$53,780, and which have received a total of \$5.9 million in tax refunds.⁸

III. Effect of Proposed Changes:

SB 790 is one attempt to address the loss of high-skilled jobs in Florida due to the retirement of the Space Shuttle by encouraging new or existing aerospace businesses in Florida to expand their workforce, and to reimburse certain employees' education expenses.

Section 220.02, F.S., lists tax credits in the order in which they may be claimed against a corporate income tax liability. Section 1 of the bill amends this section to add the new corporate tax credits to the end of the list.

Section 2 amends s. 220.13, F.S., to require corporate income taxpayers to add the amount of the new credits taken for a particular tax year to their adjusted federal income.

⁵From the Special Employment Security Administration Trust Fund. Line Item 2202, ch. 2008-152, L.O.F. Workforce Florida, Inc., received federal funds and grants in 2009 to continue dislocated aerospace workforce initiatives (about \$2.2 million).

⁶ Section 288.1045, F.S.

⁷ Chapter 2008-89, L.O.F.

⁸ Enterprise Florida, Inc., 2010 Incentives Report, p. 19-20, available at http://www.eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf (last visited 4/7/2011).

Two aerospace-related tax credits, the Aerospace Sector Jobs Tax Credit and the Tuition Reimbursement Tax Credit, are authorized in Section 3 of the bill, with the creation of s. 220.1811, F.S.

Tax Credits

The Aerospace Sector Jobs Tax Credit is a maximum \$12,500 per qualified employee annually, and is based on wages subject to the unemployment tax. The credit is equal to 10 percent of the compensation paid each qualified employee for the first through fifth years of employment.

The Tuition Reimbursement Tax Credit is equal to 50 percent of the tuition for which an aerospace business reimbursed a qualified employee in a single tax year. The credit may only be claimed if the qualified employee was awarded an undergraduate or graduate degree, a technical certification, or a certification from a Workforce Florida, Inc., training program within 1 year after being hired by the aerospace business. The business must claim the credit within 4 years of hiring the qualified employee. The bill leaves the amount of tuition to be reimbursed up to the business.

For both types of credits, aerospace businesses may carry forward any unused credits up to 5 years. The business may use the carryover credits in a subsequent year if its tax liability exceeds the unused credit even after applying other tax credits, pursuant to s. 220.02(8), F.S.

A business cannot claim both credits for the same employee. The maximum amount of credits any aerospace business may claim in a single calendar year is \$200,000; the total amount of credits claimed under the program in a calendar year by all eligible businesses is capped at \$2 million. Additionally, an aerospace business may not carry over more tax credits in an amended return than were claimed on the original return for the taxable year. This subsection does not limit increases in the amount of credit claimed on an amended return due to the use of any carryforward credits.

Application process

An aerospace business may apply to the Department of Revenue (DOR) for authorization to claim the new credits. The applications must be filed under oath and include the business's name and address, documentation that it is an aerospace business, certain information about each employee for which a tax credit is sought, and a statement indicating which credit the applicant is seeking. The business bears the burden of demonstrating to DOR's satisfaction that it meets the requirements for the tax credits.

Penalties

Any aerospace business that fraudulently claims either of these credits is liable for repayment of the credit, plus a mandatory penalty in the amount of 200 percent of the credit, plus interest at the rate provided in s. 220.807, F.S. The business also is presumed to have committed a third-degree felony, which is punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

Similarly, an aerospace business that makes an underpayment of tax as a result of a grossly overstated claim for either of these credits commits a third-degree felony. As used in the bill, the term "grossly overstated claim" means a claim in an amount in excess of 100 percent of the amount of credit allowable.

Definitions

The bill defines the terms “aerospace business,” “qualified employee,” and “tuition reimbursed to a qualified employee” for purposes of the new tax credits.

Rulemaking

DOR is authorized to adopt rules to prescribe any necessary forms required to claim one of the new tax credits, and to provide guidelines and procedures required to administer the program.

Expiration

Section 220.1811, F.S., with the exception of the credit-carryover provisions and the limits on the carryover of credits, expires December 31, 2021. An aerospace business may not claim a new tax credit created by this bill after that date. However, an aerospace business may claim tax credits carried over from a previous year, if they are still within the 5-year window.

Section 4 provides an effective date of January 1, 2012, and specifies that the bill is applicable to tax years that begin on or after that date.

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 Revenue Estimating Conference met on March 11, 2011, and determined that the tax credits created by this bill would have an annual recurring impact of \$2 million.

B. Private Sector Impact:

Aerospace company workers may benefit if their employers are encouraged by the availability of the tax credit to reimburse their tuition expenses. Aerospace companies may benefit because they could use either the jobs tax credit or the tuition reimbursement tax credit to expand their workforce and hire employees who are continuing their education.

C. Government Sector Impact:

DOR estimates that to implement the two new tax credits it will incur a cost of \$28,800 to modify the SUNTAX system. Other changes, including Taxpayer Information Publications, tax form changes, returns processing, and revenue accounting to determine eligibility for the tax credits, can be managed with existing resources or at no additional costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In federal FY 2008, NASA estimated the total impact of the agency's activity in Florida was \$4.1 billion in output, \$2.1 billion of household income, and 40,802 jobs. "This activity also generated \$246 million of federal taxes and \$103 million of state and local taxes. The largest share of the impact – 98% of the output impact, 99% of the income impact and 99% of the employment impact – occurred in Central Florida."⁹

For the Tuition Reimbursement Tax Credit, the bill leaves the amount of tuition to be reimbursed up to the business. Thus in one situation, a business could decide to reimburse a new employee's entire 4 years of college tuition, and in another situation, a business may only reimburse the last year of tuition, or a portion there of, during which the employee worked for the business.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.

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

⁹ See NASA, Economic Impact of NASA in Florida FY 2008, available at http://www.nasa.gov/centers/kennedy/pdf/318131main_economic-impact08.pdf (last visited 3/20/2010).



704562

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Ring) recommended the following:

Senate Amendment

Delete lines 57 - 58
and insert:
wine within this state or any other state may ship wines



171186

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Ring) recommended the following:

Senate Amendment

Delete lines 107 - 123
and insert:

(b) The division may issue a license under this section only if the applicant or licensee has not violated the conditions of licensure or the requirements or limitations of this section.



506406

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Detert) recommended the following:

Senate Amendment

Delete line 169
and insert:
surtax imposed under s. 212.055 and collected by licensed winery
shippers located outside this state shall be deposited into the

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 Commerce and Tourism Committee

BILL: SB 854

INTRODUCER: Senator Negron

SUBJECT: Production and Shipment of Wine

DATE: April 8, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Favorable
2.	Hrdlicka	Cooper	CM	Pre-meeting
3.			BC	
4.				
5.				
6.				

I. Summary:

SB 854 regulates the direct shipment of wine to Florida consumers by winery shippers and provides for licensure and regulation of winery shippers by the Division of Alcoholic Beverage and Tobacco (division). To legally ship wine directly to Florida consumers, an in-state or out-of-state winery shipper must meet the following basic qualifications for licensure. A winery shipper must:

- Be a manufacturer of wine that holds all applicable state and federal wine manufacturer permits and licenses;
- Not manufacture more than 250,000 gallons of wine per year, or be a subsidiary, or affiliated with, a winery that manufactures more than 250,000 gallons of wine annually;
- Not ship, or cause to be shipped, more than 12 cases of wine per calendar year to a household address;
- Meet the same basic license qualifications required for other Florida alcoholic beverage licensees; and
- Pay a \$250 license fee and renewal fee.

The bill also prohibits consumers from purchasing more than 12 cases of wine each calendar year. The bill provides that a licensed winery shipper may ship wine directly only to persons who are at least 21 years of age for personal use and not for resale. To ensure compliance with this requirement the bill requires that the winery shipper must:

- Verify the age of the purchaser at the time of sale and delivery; and
- Comply with the bill's container labeling requirement.

The bill also requires that the common carriers used to deliver the wine must keep records of wine deliveries into Florida for three years.

The bill requires that the winery shippers collect and remit all applicable excise taxes on wine to the division and sales taxes to the Department of Revenue, including discretionary local sales surtaxes. To ensure compliance with these requirements the bill requires that winery shippers:

- Register as a Primary American Source of Supply under s. 564.045, F.S.;
- Register with the Florida Department of Revenue;
- Calculate sales taxes as if the sale took place in this state;
- File a \$5,000 bond with the division;
- Make monthly reports to the division;
- Maintain records of sales for three years; and
- Submit to state audits.

The bill provides that licensed winery shippers consent to the jurisdiction of the division, any other state agency, and the courts of this state. They must also appoint a registered agent for acceptance of service of process.

It provides a second degree misdemeanor for any winery shipper, common carrier, permit carrier, or other commercial conveyance that delivers, ships, or causes to be shipped wine to a person under the age of 21. It provides a second degree misdemeanor for a consumer who violates the provisions of the bill by, for example, purchasing more than 12 cases of wine from winery shippers during a calendar year. A person who provides a winery shipper with a false date of birth would also commit a second degree misdemeanor.

The bill requires that at least 60 percent of wine produced by a Certified Florida Farm Winery must be made from Florida agricultural products. The Commissioner of Agriculture may waive this requirement in times of hardship. The bill authorizes the division to adopt rules to implement and administer the provisions of the act.

This bill substantially amends the following sections of the Florida Statutes: 561.24, 561.54, 561.545, 564.045, and 599.004.

This bill creates section 561.222, F.S.

II. Present Situation:

Florida's Three-Tier System

In the United States, the regulation of alcohol has traditionally been through what is termed the "three-tier system." The system requires that the manufacture, distribution, and sale of alcoholic beverages be separated. Retailers must buy their products from distributors who in turn buy their products from the manufacturers. Manufacturers cannot sell directly to retailers or directly to consumers. The system is deeply rooted in the perceived evils of the "tied house" in which a bar

is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.¹

There are some exceptions to this regulatory system. The exceptions include allowing beer brew pubs to manufacture malt beverages and to sell them to consumers,² allowing individuals to bring small quantities of alcohol back from trips out-of-state,³ and allowing in-state wineries to manufacture and sell directly to consumers.⁴

In Florida, alcoholic beverages are regulated by the Beverage Law.⁵ These provisions regulate the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.⁶ The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation is the agency authorized to administer and enforce the Beverage Law.⁷

In a three-tier system, each license classification has clearly delineated functions. For example, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁸ A manufacturer of wine may not be licensed as a distributor.⁹ Florida law also prohibits any distributor or vendor from having an interest in any manufacturer.¹⁰

In *Granholm v. Heald* (*Granholm*),¹¹ the U.S. Supreme Court held that states can regulate alcoholic beverages through a three-tier system, but states cannot provide an exception to that system that is limited to in-state businesses, i.e., in-state wine manufacturers.

Sales made outside the established three-tier systems by out-of-state alcoholic beverage manufacturers and retailers to consumers in another state are commonly termed “direct shipment.” The term also includes sales made directly to consumers by in-state manufacturers.

According to the Wine Institute,¹² as of July 2010, 37 states and the District of Columbia allow direct shipment of wine to consumers and many of these states require a license or permit.¹³

¹ Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington's Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, a copy can be found at: <http://www.wsba.org/media/publications/barnews/2004/june-04-price.htm> (last visited 4/9/2011).

² See s. 561.221(2), F.S., which permits the limited manufacture of beer by vendors (brew pubs).

³ See s. 562.16, F.S., which permits the possession of less than one gallon of untaxed alcoholic beverages when purchased by the possessor out-of-state in accordance with the laws of the state where purchased and brought into the state by the possessor.

⁴ See s. 561.221, F.S.

⁵ The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. See s. 561.01(6), F.S.

⁶ See s. 561.14, F.S.

⁷ Section 561.02, F.S.

⁸ Section 561.14(3), F.S. However, see discussion regarding the exception for certified Florida Farm Wineries in s. 561.221, F.S.

⁹ See s. 561.24, F.S. However, see discussion regarding the exception for Florida manufacturers of wine in s. 561.221, F.S.

¹⁰ See s. 561.42, F.S.

¹¹ *Granholm v. Heald*, 544 U.S. 460 (2005). Certiorari was granted at 541 U.S. 1062 (2004).

¹² The Wine Institute is an advocacy and public policy association for California wine. It represents more than 1000 wineries and affiliated businesses in California. See <http://www.wineinstitute.org> (Last visited 4/9/2011).

¹³ Florida is included in this list due to the injunction against enforcement of the provisions of ss. 561.54(1)-(2) and 561.545(1), F.S., in the *Bainbridge* case (see discussion below). Florida consumers are required by s. 212.06(8), F.S., to pay

Thirteen states prohibit direct shipment of wine to consumers.¹⁴ The Wine Institute includes Florida among the states in which direct shipment is permitted but requires the payment of excise taxes and consumer taxes.

Granholm v. Heald

In *Granholm*, consolidated cases from Michigan and New York, the U.S. Supreme Court held that a state cannot allow in-state wineries to sell wine directly to consumers in that state while simultaneously prohibiting out-of-state wineries from also selling wine directly to consumers. The decision invalidated laws in Michigan and New York that discriminated between in-state and out-of-state wine manufacturers in this manner.

Michigan and New York regulated the sale and importation of wine through three-tier systems and required separate licenses for manufacturers, wholesalers, and retailers. These schemes allowed in-state, but not out-of-state, wineries to make direct sales to consumers. The Court held that this differential treatment violated the Commerce Clause, Art.I, s. 8, cl. 3 of the U.S. Constitution, which provides that “[t]he Congress shall have Power...To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes...”

Michigan Law

Under the Michigan law in place at the time,¹⁵ wine producers were required to distribute their wine through wholesalers. Michigan had an exception for the approximately 40 in-state wineries that were eligible for a wine maker license that allowed the direct shipment of wine to in-state consumers. Out-of-state wineries could apply for an out-of-state seller of wine license that allowed them to sell to in-state wholesalers, but not directly to Michigan consumers.¹⁶

In the Michigan case, Michigan residents, joined by an out-of-state winery, sued Michigan officials, claiming that the state’s laws violated the Commerce Clause. The state and an in-state wholesalers association responded that the direct shipment ban was a valid exercise of Michigan’s power under the Twenty-first Amendment of the U.S. Constitution. The Twenty-first Amendment provides in s. 2 that “[t]he transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the law thereof, is hereby prohibited.” The United States District Court for the Eastern District of Michigan sustained the scheme, but the United States Court of Appeals for the Sixth Circuit reversed,¹⁷ rejecting the argument that the Twenty-first Amendment immunizes state liquor laws from Commerce Clause provisions and holding that there was no showing that the state could not meet its policy objectives through nondiscriminatory means.

use taxes on their out-of-state purchases, but the excise tax on wine imposed by s. 564.04, F.S., requires payment of the excise tax by manufacturers and distributors.

¹⁴ The Wine Institute, [Direct Shipment Laws by State for Wineries](http://www.wineinstitute.org/files/direct_shipping_laws_map.pdf) (July 1, 2010), available at http://www.wineinstitute.org/files/direct_shipping_laws_map.pdf (Last visited 4/9/2011).

¹⁵ See Michigan Comp. Laws Ann. ss. 436.1109(1), 436.1305, 436.1403, and 436.1607(1) (West 2000).

¹⁶ Effective December 16, 2005, Michigan amended its law to allow direct shipment of wine under certain circumstances, P.A. 2005, No. 268. See Mich. Comp. Laws Ann. s. 436.1203. Michigan’s direct wine shipping requirements can be found at http://www.michigan.gov/documents/LC-MW102_154466_7.DirectShipperRequirements.pdf (Last visited 4/9/2011). It allows for a winery anywhere in the US that obtains a direct shippers permit from the State of Michigan to ship up to 1,500 cases (9 liters per case) of wine annually to Michigan consumers. The winery must have an approved direct shipper's permit, register with the Michigan Department of Treasury, and pay sales and excise taxes. The license fee is \$100.

¹⁷ *Heald v. Engler*, 342 F.3d 517 (6th Cir. 2003).

New York Law

New York's licensing scheme was somewhat different from Michigan's.¹⁸ It also provided for distribution through the three-tier system and made exceptions for in-state farm wineries. Wineries that produced wine only from New York grapes could apply for a license that allowed direct shipment to in-state consumers. An out-of-state winery could ship directly to consumers only if the winery became licensed as a New York Winery, established a distribution operation in New York, and had a physical presence in the state, i.e., a warehouse, office, or storeroom. Moreover, out-of-state wineries that established the requisite in-state presence were still not eligible for the farm winery license that provides the most direct means of shipping to New York consumers. Instead, they had to obtain a separate license that authorized direct shipping to consumers. New York law did not require a separate direct shipping license for its farm wineries.¹⁹

In the New York case, out-of-state wineries and their New York customers filed suit against state officials, seeking a declaration that the State's direct shipment laws violated the Commerce Clause. State liquor wholesalers and retailers' representatives joined in support of the state. The United States District Court for the Southern District of New York granted the plaintiffs' summary judgment against the state, but the United States Court of Appeals for the Second Circuit reversed, holding that New York's laws fell within the state's powers under the Twenty-first Amendment.²⁰

Supreme Court Decision

The United States Supreme Court consolidated the Michigan and New York cases into a single case to address this issue:

Does a State regulatory scheme that permits in-state wineries to directly ship alcohol to consumers but restricts the ability of out-of-state wineries to do so violate the dormant Commerce Clause in light of Section 2 of the Twenty-first Amendment?²¹

The U.S. Supreme Court held in *Granholm* that:

the laws in both States discriminate against interstate commerce in violation of the Commerce Clause, Art. I, s. 8, cl. 3, [United States Constitution] and that the discrimination is neither authorized nor permitted by the Twenty-first Amendment. Accordingly, we affirm the judgment of the Court of Appeals for the Sixth Circuit, which invalidated the Michigan laws; and we reverse the judgment of the Court of Appeals for the Second Circuit, which upheld the New York laws.²²

¹⁸ See N. Y. Alco. Bev. Cont. Law Ann. ss.76-a(3) and 76-a(6)(a) and ss. 3(20-a) and 3(37) (West Supp. 2005).

¹⁹ New York amended its law, effective August 11, 2005 to provide for a Direct Shipper's License under certain circumstances. See N. Y. Alco. Bev. Cont. Law Ann. s. 79-c. To be eligible for a license, the applicant out-of-state wine manufacturer must be located in a state that allows New York State wine manufacturers substantially similar direct wine shipping privileges. The applicant must have a tax authority certificate, register as an alcoholic beverage distributor, and consent to New York State jurisdiction, among other requirements. The direct wine shipper may not ship more than 36 cases of wine (9 liters per case) to a New York resident. The license fee is \$125 for an interstate direct shipper's license.

²⁰ *Swedenburg v. Kelly*, 358 F.3d 223 (2nd Cir. 2004).

²¹ *Granholm*, 544 U.S. at 472.

²² *Granholm*, 544 U.S. at 466.

Granholm explicitly noted that states may regulate the distribution and sale of wine via a three-tier system of licensed manufacturers, distributors, and retailers. The court also noted that states may prohibit the direct shipment of alcoholic beverages to consumers.²³ However, states may not impose requirements on interstate commerce that discriminate in favor of in-state interests. States can regulate imported wine only to the same extent and in the same manner that they regulate domestically produced wine. The court applied the rule that the court must still consider whether a state's regulatory regime "advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives."²⁴

In *Granholm*, the court noted that New York could provide adequate safeguards for direct shipping of wine with licensing and self-reporting, because these methods were sufficient for wine distributed through the three-tier system. The court also noted that licensees could be required to submit regular sales reports and remit taxes. The court observed that licensing, reporting, and tax requirements have been used by other states that permit direct shipping and that these states have reported no problems with tax collection.²⁵ The court also noted that this is the approach sanctioned by the National Conference of State Legislatures in their Model Direct Shipping Bill.

Florida's Direct Shipping Prohibition

Section 561.545(1), F.S., prohibits the direct shipping of all alcoholic beverages to consumers from out-of-state. It also prohibits common carriers from transporting alcoholic beverages from an out-of-state location to anyone in this state who does not hold a valid manufacturer, wholesaler, or exporter's license, or who is not a state-bonded warehouse.

A first violation of this prohibition results in the issuance of an order to show cause why a cease and desist order should not be issued. A violation within two years of a cease and desist order, or within two years of a previous conviction, constitutes a felony of the third degree.

Section 561.545(5), F.S., provides an exception for the direct shipping of sacramental alcoholic beverages to bona fide religious organizations as authorized by the division. It also exempts registered exporters.

Section 561.54(1), F.S., prohibits deliveries of alcoholic beverages from out-of-state by common or permit carriers, operators of privately owned cars, trucks, buses, or other conveyances, except to manufacturers, wholesalers, or exporters, or bonded warehouses in this state. Section 561.54(2), F.S., provides a cause of action for any licensee who is aggrieved by a violation of this prohibition. The court must assess damages equal to three times the amount of delivery charges or the fair market value of the merchandise unlawfully brought into the state. The court must also award the plaintiff its costs and reasonable attorney's fees.

²³ The court's analysis is based, in part, upon the Webb-Kenyon Act, 27 U.S.C. s. 122, which prohibits the shipping of alcoholic beverages into a state in violation of that state's laws, and the Twenty First Amendment of the U.S. Constitution.

²⁴ See *Granholm*, 544 U.S. at 489, quoting *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 278 (1988).

²⁵ See *Granholm*, 544 U.S. at 491.

Florida's prohibition against direct shipping is limited to the direct shipping of alcoholic beverages from out-of-state to Florida; it does not prohibit direct shipping from a Florida winery to another state or from a Florida winery to a person in Florida.

Sales by Florida Wineries

Florida law provides an exception to the general prohibition against manufacturers of alcoholic beverages selling directly to consumers. Florida permits in-state wine²⁶ manufacturers to sell their wines directly to consumers. The premises licensed to conduct vendor sales must be situated on property contiguous to the manufacturing process.²⁷ Florida also permits wineries that are certified by the Department of Agriculture and Consumer Services as a Florida Farm Winery to conduct tastings and sales of wine directly to consumers at Florida fairs, trade shows, expositions, and festivals.²⁸

Florida wine manufacturers may also function in all three tiers of the state's regulatory system. Wineries may distribute any alcoholic beverages, including beer and liquor.²⁹ Although s. 561.24, F.S., prohibits manufacturers from being licensed as a distributor, this prohibition does not apply to Florida wineries.

Certified Florida Farm Wineries

To qualify as a certified Florida Farm Winery, a winery must meet each of the following standards:

1. Produce or sell less than 250,000 gallons of wine annually.
2. Maintain a minimum of 10 acres of owned or managed vineyards in Florida.
3. Be open to the public for tours, tastings, and sales at least 30 hours each week.
4. Make annual application to the department for recognition as a Florida Farm Winery, on forms provided by the department.
5. Pay an annual application and registration fee of \$100.³⁰

According to industry representatives, many Florida wines are blended with citrus or grapes grown outside the state. Current law does not require that wines from certified Florida Farm Wineries must consist of any particular percentage of Florida-grown grapes or other Florida-grown agriculture products.

Bainbridge v. Turner

Florida's direct shipping prohibition was challenged in the case of *Bainbridge v. Turner* by wine consumers and out-of-state wineries.³¹ This law suit challenged Florida's statutory scheme

²⁶ Section 564.01(1), F.S., defines the term "wine" to mean:

all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, vermouths, and like products. Sugar, flavors, and coloring materials may be added to wine to make it conform to the consumer's taste, except that the ultimate flavor or the color of the product may not be altered to imitate a beverage other than wine or to change the character of the wine.

²⁷ See s. 561.221(1), F.S.

²⁸ See s. 561.221(2), F.S.

²⁹ See s. 561.14(1), F.S.

³⁰ See s. 599.004, F.S., which establishes the Florida Farm Winery program within the Department of Agriculture and Consumer Services.

prohibiting out-of-state wineries from shipping their products directly to Florida consumers while permitting in-state wineries to do so.

Before the Supreme Court issued its decision in *Granholm*, the case resulted in two written federal appellate court opinions. In the first opinion, *Bainbridge v. Martelli (Bainbridge I)*,³² the United States District Court for the Middle District of Florida held that s. 561.54, F.S., and the statutory scheme that bars direct shipping violated the Commerce Clause. In *Bainbridge v. Turner (Bainbridge II)*,³³ the United States Eleventh Circuit Court of Appeals held that, if Florida could demonstrate that its statutory scheme was closely related to raising revenue and was not a pretext to mere protectionism, Florida's statutory scheme could be upheld against a Commerce Clause challenge. The appellate court remanded the case to the district court for further consideration of this issue.

The case was held in abeyance because of the pending cases before the U.S. Supreme Court. On August 5, 2005, the United States District Court for the Middle District of Florida issued an order finding ss. 561.54(1)-(2) and 561.545(1), F.S., violated the Commerce Clause and were therefore unconstitutional under the authority in *Granholm*, and enjoined the enforcement of these provisions.³⁴ The court found that these statutes discriminate against out-of-state wineries by prohibiting them from selling and delivering wine directly to customers in Florida when in-state wineries are not so prohibited.

Primary American Source of Supply Brand Registration

Section 564.045, F.S., requires registration of wine brands for the purpose of tax revenue control. Before being shipped, sold, or offered for sale to a distributor or importer in Florida, a wine brand must be registered by the brand's "primary American source of supply," which s. 564.045(1), F.S., defines as the:

manufacturer, vintner, winery, or bottler, or their legally authorized exclusive agent, who, if the product cannot be secured directly from the manufacturer by an American distributor, is the source closest to the manufacturer in the channel of commerce from whom the product can be secured by an American distributor, or who, if the product can be secured directly from the manufacturer by an American distributor, is the manufacturer. It shall also include any applicant who directly purchases vinous beverages from a manufacturer, vintner, winery, or bottler who represents that there is no primary American source of supply for the brand and such applicant must petition the division for approval of licensure.

The annual license fee for each brand is \$15. All Florida wineries that conduct direct sales to consumers must register the brands they sell and pay the fee for each brand. According to the Wine Institute, some states require brands and labels to be registered before shipping those brands to consumers in the state.

³¹ *Bainbridge v. Turner*, No. 8:99-CV-2681-T-27TBM (M.D. Fla.).

³² *Bainbridge v. Martelli*, 148 F.Supp.2d 1306 (M.D. Fla. 2001).

³³ *Bainbridge v. Turner*, 311 F.3d 1104 (11th Cir. 2002).

³⁴ *Bainbridge v. Turner*, No. 8:99-CV-2681-T-27TBM (M.D. Fla. August 5, 2005).

License Fees

Under the Beverage Law, Florida wine manufacturers pay a state license tax for a manufacture's license, a distributor's license if they distribute their wines, and a vendor's license if they sell their wines at retail. Section 564.02(2)(a), F.S., imposes a license tax of \$1,000 for a license to engage in the manufacturing or bottling of wines and nothing else. Section 561.02(2)(b), F.S., imposes a license tax of \$1,250 to distribute wines, malt beverages, and fortified wines. Section 564.02(1), F.S., imposes the license taxes for vendors who sell wine.

Vendor licenses are divided into two types: vendors operating a business where beverages are sold for consumption on the premises, and vendors operating a business where beverages are sold only for consumption off the premises. The vendor license tax for consumption off the premises is equal to 50 percent of the license tax for the applicable vendor's license for consumption on the premises. The license tax for consumption on the premises is dependent on the population size of the county where the vendor's premises is located. These license taxes range from \$120 for counties having a population of less than 25,000 to \$280 for counties having a population of over 100,000. According to industry representatives, some wine manufacturers have a consumption on the premises license for sales and wine tastings at the winery.

If licensed as a vendor, a manufacturer would also be subject to the annual surtax imposed by s. 564.025, F.S., which is equal to 40 percent of the license fee for each wine vendor, regardless of the wine's alcoholic content.

Federal Wine Producer Permits

The Federal Alcohol Administration Act (FAA Act)³⁵ requires a basic permit issued by the Alcohol and Tobacco Tax and Trade Bureau (Tax and Trade Bureau or bureau) within the U.S. Department of the Treasury (formerly the Bureau of Alcohol, Tobacco, and Firearms) to engage in the business of importing into the United States distilled spirits, wine, or malt beverages. A basic permit is required to engage in the business of producing distilled spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits in the business of distilling spirits or producing wine, and for persons who engage in the business of purchasing for resale at wholesale distilled spirits, wine or malt beverages. The Tax and Trade Bureau, as of April 2011, lists 7,259 active federal basic permits in the U.S. for wine premises (wineries). Retailers and beer manufacturers (brewers) are not required to obtain a basic permit under the FAA Act.

Interim Project 2006-146 - *Direct Shipment of Wine to Florida Consumers*

The Senate Committee on Regulated Industries was assigned Interim Project Report 2006-146 to study the issues presented by the direct shipment of wine to Florida consumers by unlicensed out-of-state persons.³⁶ This study included a review of the status of the current law and surveying the concerns of the affected interests. The interim project resulted in the recommendation that the Legislature either continue to prohibit all direct shipment of wines into Florida and eliminate the ability of in-state wine manufacturers to sell wine directly to consumers, or legalize the direct shipment of wine and regulate the practice.

³⁵ See Federal Alcohol Administration Act, codified at 27 U.S.C. s. 203. See also, 27 C.F.R. part 1subpart C, section 1.20.

³⁶ See *Direct Shipment of Wine to Florida Consumers*, Interim Report No. 2006-146, Senate Committee on Regulated Industries, October 2005.

The study recommended that a single license classification to license out-of-state and in-state direct shippers of wines should be created and that licensure should be required as a condition of legal direct shipping. The study recommended the following licensure options:

- Licensure may be limited to persons who operate a winery located in the United States and hold all state and federal permits necessary to operate the winery;
- The Legislature may permit persons operating a winery outside the United States to qualify for licensure;
- In addition, the Legislature may permit non-manufacturers, e.g., out-of-state retailers, to be licensed direct shippers; and
- If the Legislature opts to limit licensed direct shippers to wine manufacturers, it may require that a winery licensed as a direct shipper must produce or sell less than 250,000 gallons of wine annually.

In addition to licensure, the study recommended consideration of the following options for regulating direct shipment of wine:

- Require, as a condition of licensure, that out-of-state direct shippers must satisfy all of the minimum license qualification requirements required under the Beverage Law for a Florida alcoholic beverage license;
- Require, as a condition of licensure, that the license holder submit to the jurisdiction of the regulatory agency and the courts of this state in regards to compliance with the laws of this state;
- Limit direct shipment sales to sales for personal consumption, and prohibit the resale at retail of wines purchased directly from a direct shipper;
- Require age verification procedures for the point of delivery, point of sale, or both, that, at minimum, require that an adult provide proof of age with a valid photographic identification at the time of the delivery;
- Require that containers of wine shipped directly to consumers must be conspicuously labeled with words that identify them as containing alcohol requiring the signature of a person 21 years of age or older before delivery can be made;
- Impose specific shipping requirements on common carriers, including requiring that the common carrier must require that the recipient of wine provide proof of age, and that the recipient of the wine must sign an acknowledgment of receipt. The common carrier should also be required to refuse delivery if the recipient refuses to provide proof of age;
- Require that direct shippers remit to the state all applicable Florida excise and sales taxes;
- Require that direct shippers register all wine brands before shipping, selling, or offering for sale any wine to a consumer in Florida;
- Require payment of a license fee comparable to the fee required for an in-state wine vendor;
- Require that direct shippers maintain records of sales and shipments of wine into Florida, and require that the direct shippers permit state regulators to have access to these records;
- Require that direct shippers pay all attorney's fees and costs in any action to collect unpaid taxes;
- Require monthly reporting to the Division of Alcoholic Beverage and Tobacco that details all shipment of wine into Florida, including the number of bottles shipped, to whom the wine was shipped, the identity of the common carrier making the shipment, and the brands shipped;

- Require periodic audits of direct shippers by the division, that all required reports should be signed by a certified public accountant, or both; and
- Require that direct shippers pay all travel related costs necessary to conduct a compliance audit of an out-of-state direct shipper if the state auditor must travel out-of-state to conduct the audit.

III. Effect of Proposed Changes:

Section 1 creates s. 561.222, F.S., to provide for the licensure of winery shippers.

Legislative Intent

Section 561.222(1), F.S., sets forth the legislative intent. The bill states that strict regulation of the sale of alcoholic beverages promotes temperance by discouraging consumption by underage persons, the abusive consumption by adults, and the collection of excise and sales taxes. The bill also reaffirms the legislative intent that the direct shipment of beer and spirits to residents of this state remains prohibited.

Licensure Requirements

Section 561.222(2), F.S., establishes the license requirements for a winery shipper license. It provides that a winery may directly ship wine to a resident of this state only with a winery shipper's license.

Section 561.222(2)(a), F.S., provides that, to qualify for the license, a winery must:

- Not manufacture or sell more than 250,000 gallons of wine per year;
- Ship wines that the winery manufactures;
- Obtain a winery shipper's license.

Licensed wineries may only ship to residents of this state that are at least 21 years of age for that person's personal use and not for resale. The bill does not specifically prohibit retail vendors from purchasing wine from a winery shipper.³⁷

To qualify for the license, a winery shipper must also:

- Hold a wine producer basic permit issued in accordance with the Federal Alcohol Administration Act.³⁸
- Hold a current wine manufacturer's license from the state in which it manufactures wine; and
- Hold a current license as a Primary American Source of Supply under s. 564.045, F.S. and register with the division all brands shipped.

³⁷ Section 561.14(3), F.S., prohibits a retail vendor from purchasing an alcoholic beverage from a person that is not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law. It also prohibits a retail vendor from importing, or engaging in the importation of, any alcoholic beverages from places beyond the limits of the state. It is not clear whether purchases by a retail vendor from an out-of-state winery for the purpose of resale to consumers constitutes the importation of wine under the beverage law because s. 561.14(3), F.S., defines acting as an importer as selling, "or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else, in this state."

³⁸ See Federal Alcohol Administration Act, codified at 27 U.S.C. s. 203.

The bill also requires that applicants for a winery shipper's license must qualify for licensure under s. 561.15, F.S.³⁹ It is uncertain what effect the requirement to meet the license qualification requirements under s. 561.15, F.S., would have on the availability of out-of-state wines from out-of-state wineries. Based on a review of federal wine permit requirements, and the wine manufacturer license requirements in California, New York, Oregon, and Washington,⁴⁰ Florida's alcoholic beverage license requirements appear to be more extensive than those states' minimum licensure requirements. For example, California does not have a specific minimum age requirement. California law requires that a licensee not have any felony conviction or conviction related to its beverage law, but California law does not set specific time periods.⁴¹ According to the California Department of Alcoholic Beverage Control, convicted felons may be licensed by the department if they can demonstrate that they have been rehabilitated. It is not clear whether a felony in another state would disqualify an applicant in California. Whether the applicant is a rehabilitated felon is within the discretion of the California Department of Alcoholic Beverage Control.

The bill requires a license application under s. 561.17, F.S., for licensure as a winery shipper, and provides that the information on the license application must be in the same information required by the division for licensure as a wine manufacturer. The winery shipper license application must include a copy of the following:

- The current basic permit as a wine producer and blenders permit issued in accordance with the Federal Alcohol Administration Act;
- The current state license to manufacture wine;
- Appointment of a registered agent in Florida for acceptance of service of process, which must be maintained and notification to the division of any change in the appointment;
- A sales tax registration number issued by the Department of Revenue;
- An affirmation of consent to the jurisdiction in the court of Florida and its agencies for the enforcement of s. 561.222, F.S., and any related laws or rules, including actions by third parties for violations of this section;
- A surety bond with the division for payment of taxes. The bill requires a surety bond in the amount of \$5,000, but the division may accept a lesser bond if the volume of business done by the winery shippers is such that a lesser bond would be adequate to secure tax payments. If the winery already has a surety bond on file with the division an additional bond is not required. The bill further provides that the division may not accept a bond of less than \$1,000. It deems the surety bond currently on file with the division pursuant to s. 561.37, F.S., to comply with this provision; and
- Payment of a \$250 license fee, which must be renewed by August 1 of each year by paying a renewal fee of \$250.

³⁹ Section 561.15, F.S., sets forth the basic qualifications for an alcoholic beverage license. To qualify, an applicant must be of good moral character and not less than 21 years of age. Section 561.15, F.S., also prohibits licensure and licensure renewal to persons convicted of:

- Any beverage law violation in this state, any other state, or the United States in the past five years;
- Any felony in this state, any other state, or the United States in the past fifteen years; or
- Any criminal violation of the controlled substance act of this state, any other state, or the United States.

⁴⁰ According to the Wine Institute, these states represent approximately 98 percent of its member wineries.

⁴¹ Cal. Bus. Prof. Code, ss. 23952 and 23958.

Regarding the requirement that an applicant must consent to jurisdiction of the Florida courts for actions by third parties, it is not clear that s. 561.222, F.S., provides a cause of action that may be maintained by a third party.

Section 561.222(2)(b), F.S., specifies the following conditions under which the division may issue or renew a winery shipper license:

- Not violating the conditions of licensure, requirements, or limitations in s. 561.222, F.S.;
- Producing or selling less than 250,000 gallons of wine annually;
- Not having a subsidiary or being otherwise affiliated winery that manufactures more than 250,000 gallons of wine annually;
- Not having an appointed distributor in this state, unless the winery gives the distributor one-year's notice of its intent to obtain a winery shipper's license or the winery provides to the division a copy of the applicant's contract with the appointed distributor showing that the winery does not violate the requirements of the law.

The term "affiliated wineries" is not defined by the bill or in the Florida Statutes.

Age Verification and Shipping Requirements

Section 561.222(3)(a), F.S., provides age verification and shipping requirements for winery shippers and common carriers who ship wines from a winery shipper.

The bill requires that winery shippers verify the purchaser's age at the point of purchase before completing a sale and requires that the winery shippers refuse to sell wine to any person younger than 21 years of age. The bill does not specify a method of verification.

The bill provides a labeling requirement for each box of wine shipped directly to a resident of this state. Winery shippers must ensure that each box is conspicuously labeled with the following information:

- That the package contains alcohol;
- The recipient must be at least 21 years of age; and
- The signature of the recipient is required.

The bill requires that winery shippers must refuse to ship or cause to be shipped more than 12 cases containing more than nine liters each of its wine per calendar year to any "one household address" and "any household member's work address" in this state. The bill also prohibits consumers from purchasing more than 12 cases⁴² containing more than nine liters each of its wine per calendar year.

The bill uses the terms "household," "household address," and "household member" but does not define the terms.⁴³ It is not clear whether the use of alternate terms may lead to ambiguity and

⁴² According to an industry representative, a standard case contains 12 bottles of wine, each bottle holds 750 milliliters, which equals 9 liters of wine per standard case.

⁴³ Section 196.075(1)(a), F.S., relating to the homestead exemption for persons 65 and older, defines the term household to mean "a person or group of persons living together in a room or group of rooms as a housing unit, but the term does not include persons boarding in or renting a portion of the dwelling." Section 409.509(4), F.S., defines a "household" as an individual or group of individuals living in a dwelling unit defined by the Department of Community Affairs.

difficulty in enforcement. For example, if more than one household shares the same address, each household at the single address may be limited to purchasing less than the maximum allowable wine per year because of the bill's delivery restriction. Additionally, it is unclear of the effect of the purchase of wine by a business would not also constitute a "household member's work address," and thus affect the purchase of wine by a business.

The winery shippers and common carriers must also require, before delivery, the signature of a person 21 years of age or older using one of the valid forms of identification specified in the bill, including a valid Florida driver's license or identification card,⁴⁴ an identification card issued by this state or another state, a passport, or United States armed services identification card.

As noted previously, the bill does not specifically prohibit the purchase of wine by alcoholic beverage vendors from a winery shipper. Although the bill requires that the sale of wines under s. 561.222, F.S., must be for personal use and not for resale, the bill does not specifically prohibit the purchase by vendors from winery shippers or the resale by vendors of wine purchased from a winery shipper. It is a second degree misdemeanor for any person to sell alcoholic beverages without an alcoholic beverage license issued by the division.⁴⁵ It is not clear whether the bill prohibits licensed vendors from receiving wine from a licensed winery shipper. Section 561.14(3), F.S., prohibits retail vendors from purchasing or acquiring "in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law." The bill does not clarify whether a winery shipper is a manufacturer under the meaning of the prohibitions in s. 561.14(3), F.S., and whether a vendor is prohibited from purchasing wine from a winery shipper.⁴⁶

Section 561.222(3)(b), F.S., requires that licensed winery shippers obtain the common carrier's written policy declaring that the common carrier shall, before delivery, adhere to the age verification requirements of this bill.

Section 561.222(3)(c), F.S., requires that a winery shipper must offer to its distributor for purchase and sale per calendar year the same brands and quantities of wine shipped per calendar year under this bill.

Taxes

Section 561.222(4), F.S., requires that winery shippers pay monthly taxes to the Department of Revenue and all sales and excise taxes on wine to the division for sales in the preceding month. The bill provides that taxes shall be calculated as if the sale took place in this state and calculated as if the sales took place at the location where the delivery occurred. The bill requires the collection and payment of the discretionary sales surtaxes tax (local option sales tax), and that those funds must be deposited into the Discretionary Sales Surtax Clearing Trust Fund described in s. 212.054(4)(c), F.S., and distributed as provided in that provision.

⁴⁴ See s. 322.051, F.S.

⁴⁵ Section 562.12, F.S.

⁴⁶ Although s. 561.14(3), F.S., also prohibits the importation of alcoholic beverages by a retail vendor from places beyond the limits of the state, it is not clear whether purchase from an out-of-state winery shipper would constitute importation. The importation prohibition in s. 561.14(3), F.S., would not apply to purchases from in-state winery shippers. Therefore, the application of the importation prohibition to out-of-state winery shippers may raise constitutional concerns related to the disparate treatment of in-state and out-of-state winery shippers.

In current law, s. 212.054(4)(b), F.S., requires that surtax collected by dealers located in the county must be returned to that county. The proceeds are transferred to the Discretionary Sales Surtax Clearing Trust Fund. The provision in the bill would conflict with s. 212.054(4)(b), F.S., to the extent it would require the in-state wineries not to return the collect discretionary tax to the county in which they are located.⁴⁷

Under current law, s. 212.0596, F.S., requires dealers making mail order sales in Florida to collect and remit Florida sales tax pursuant to s. 212.15, F.S. Section 212.15, F.S., provides for the monthly collection of sales tax and provides that the sales are due to the department on the first day of the succeeding month and are delinquent on the 21st day of such month.

Current law, in s. 212.0596(6), F.S., provides that dealers making mail order sales⁴⁸ in Florida are exempt from collecting and remitting any local option surtax unless the dealer is located in a county that imposes a surtax, the order is placed through the dealer's location in such county, and the property purchased is delivered into such county, or into another county that imposes a surtax. The bill would exclude winery shippers' sales from this exemption.

Reporting and Recordkeeping Requirements

Section 561.222(5), F.S., requires that winery shippers report to the division, on a monthly basis, the following information regarding shipments during the previous month to residents of this state:

- Whether any wine was shipped;
- Quantity and brands of wine shipped;
- Total price of wine shipped;
- Amount of excise tax paid to the division; and
- Any other information that the division determines necessary to enforce this section.

This report is not required if the licensee files a monthly report pursuant to s. 561.55, F.S., that contains all the required information.⁴⁹

Section 561.222(6), F.S., requires each winery shipper licensee to maintain records, electronically or otherwise, for at least three years after the date of delivery. The records must be available for inspection by the Department of Revenue (DOR) and division upon request. The bill requires that winery shippers be audited at least once per year. It also requires that winery shippers furnish any documents within 30 days after a request is made.

⁴⁷ See DOR 2011 Bill Analysis (February 16, 2011), on file with the committee.

⁴⁸ Section 212.0596(1), F.S., defines "mail order sale" to include tangible personal property ordered by mail or any other means of communication.

⁴⁹ In-state winery shippers would be required to file monthly reports under ss. 561.55 and 561.222, F.S. Under s. 561.55, F.S., licensed manufacturers are required to make monthly reports showing the amount of:

- (a) Beverages manufactured or sold within the state and to whom sold;
- (b) Beverages imported from beyond the limits of the state and to whom sold;
- (c) Beverages exported beyond the limits of the state, to whom sold, the place where sold, and the address of the person to whom sold.

The bill specifies the records that must be maintained by a winery shipper regarding wines shipped to residents of Florida, including:

- The license issued under s. 561.222, F.S.;
- Records of all wines ordered, sold, or shipped, the purchasers' names, address, and dates of birth of the purchasers,
- The name of the person to whom the wine was shipped, and the date of the shipment, quantity, and brands shipped; and
- All contracts with the common carriers for delivery, including the carrier's written wine delivery policy.

Common Carrier Requirements

Section 561.222(7), F.S., sets forth requirements for common carriers that deliver wines for the winery shippers. The bill requires that the common carriers:

- Register with the division and acknowledge the intent to deliver wines and the requirements for delivery of wine shipments;
- Maintain a written wine delivery policy as specified in the bill;
- Refuse to deliver wine to recipients who appear to be under 21 years of age and who do not present a valid identification; and
- Obtain the recipient's signature.

The bill requires that the common carriers maintain such records for three years, and make the records available for inspection upon request by the division.

Penalties

Section 561.222(8), F.S., provides that the division may suspend or revoke a winery shipper's license or impose a fine for a violation of this section under its authority in s. 561.29, F.S., and any other cause of action authorized in that section. Section 561.29, F.S., provides various grounds for the suspension, revocation, or levying a fine against an alcoholic beverage licensee, including violations related to failure to maintain qualifications, violations of specified laws in other jurisdictions, and failure to comply with an order of the division.

Section 561.222(8), F.S., imposes criminal penalties. It provides a second degree misdemeanor violation for any winery shipper that ships or causes to be shipped wine to a person in this state under the age of 21.⁵⁰ This criminal penalty applies to a "winery shipper licensee." If a winery that is not licensed under s. 561.222, F.S., ships wine to a Florida consumer under 21 years of age, the criminal penalty does not appear to apply.⁵¹

The bill provides a second degree misdemeanor violation for any common carrier, permit carrier, or other commercial conveyance that delivers wine directly to any person in this state who is under 21 years of age.

⁵⁰ Section 775.082(4)(b), F.S., provides that a second degree misdemeanor is punishable by imprisonment for a finite term not longer than 60 days. Section 775.083(1)(e), F.S., provides that a second degree misdemeanor could also be punishable by a fine of not more than \$500.

⁵¹ Section 562.11, F.S., prohibits the selling, giving, or serving of an alcoholic beverage to a person under 21 years of age. The penalty is a misdemeanor of the second degree.

A second degree misdemeanor violation is also provided for persons who obtain wine from a winery shipper in violation of s. 561.222, F.S. the only prohibition against obtaining wine in s. 561.222, F.S., is the prohibition against consumers purchasing more than 12 cases of wine from winery shippers per calendar year. Under this penalty provision, a consumer could be charged with a second degree misdemeanor if he or she purchases more than 12 case of wine from winery shippers during a calendar year.

A person who provides a winery shipper with a false date of birth also commits a second degree misdemeanor.

Rulemaking

Section 561.222(9), F.S., authorizes the division to adopt rules to administer and enforce the section.

Primary American Source of Supply Brand Registration

Section 5 amends s. 564.045, F.S., to require winery shippers applying for licensure as a primary American source of supply brand registration to meet other licensure requirements in ss. 561.15 and 561.17, F.S.

Other Shipping Provisions

The bill amends the shipping prohibitions in ss. 561.54 (Section 3) and 561.545 (Section 4), F.S., to exempt direct shipment of wine by licensed winery shippers to persons 21 years of age or older.

Florida Farm Wineries

Section 2 amends s. 561.24(5), F.S., to provide that any manufacturer of wine holding a license as a distributor on July 1, 2011, shall be entitled to renewal of that license. The bill deletes the provision that this subsection does not apply to certified Florida Farm wineries. The effect of this provision is to restrict any certified Florida Farm Winery from being licensed as a distributor if the winery is not licensed as a distributor on the effective date of this act.

Section 6 amends s. 599.004, F.S., to revise the qualifications for a Florida Farm Winery to replace the term “vineyards” with a reference to lands in Florida which produce commodities used in the production of wine. It also requires that at least 60 percent of wine produced by a Certified Florida Farm Winery shall be made from Florida agricultural products. The bill authorizes the Commissioner of Agriculture to waive this requirement in times of hardship. The bill does not define hardship.

Severability

Section 7 provides for severability if any provision of the act or its application to any person or circumstance is held invalid.

This provision does not reference the severability of any specific provisions in the bill. As noted in the *Manual for Drafting General Bills* for the Florida Senate, the “[c]ourts do not need a severability section to sever unconstitutional provisions or applications and allow the other

provisions or applications to stand.”⁵² If a severability clause is included in a bill, the standard severability clause provides:

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.⁵³

Effective Date

Section 8 provides an effective date of July 1, 2011.

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:

Gallonage Limits

This bill raises Commerce Clause concerns under the U.S. Constitution because it prohibits direct shippers who produce more than 250,000 gallons of wine per year from being licensed to directly ship wine to Florida consumers. According to representatives for Florida producers, none of Florida’s certified farm wineries produce more than the 250,000 gallons annually. Consequently, the limitation would only affect out-of-state wineries, and the bill may be considered as discriminating against out-of-state direct shippers because it provides for the regulation of out-of-state direct shippers of wine in a manner that differs from the requirements imposed on in-state wineries.

In *Granholm v. Heald*,⁵⁴ the U.S. Supreme Court held that laws in New York and Michigan that discriminated between in-state and out-of-state wineries in the regulation of the direct shipment of wine were unconstitutional. The Supreme Court held that these states’ laws discriminated against interstate commerce in violation of the Commerce Clause, Art. I, s. 8, cl. 3 of United States Constitution and that the discrimination was not authorized or permitted by the Twenty-first Amendment. The court stated that when a state statute directly regulates or discriminates against interstate commerce, or when its

⁵² *Manual for Drafting General Bills*, Legal Research and Drafting Services, Office of the Secretary of the Senate, The Florida Senate (5th Edition, 1999) at page 50.

⁵³ *Id.*

⁵⁴ *Granholm*, 544 U.S. at n. 19.

effect is to favor in-state economic interests over out-of-state interests, the court has generally struck down the statute without further inquiry. In determining the extent to which states may impose requirements on interstate commerce that discriminate in favor of in-state interests, *Granholm* applied the rule that states can generally regulate imported wine only to the same extent and in the same manner that they regulate domestically produced wine. If there is any disparate treatment, the court must consider whether a state's regulatory regime "advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives."⁵⁵ It is not clear what "legitimate local purpose" is served by the 250,000 gallon limit that is not discriminatory in favor of in-state interests.

Alternatively, a gallonage cap may not violate the commerce clause as interpreted in *Granholm* if the cap is applied even-handedly to all in-state and out-of-state wineries. If limited to the issue of discrimination against interstate interests through distinctions between in-state and out-of-state wineries to the commerce clause concern in *Granholm* may not be implicated.

Four states have imposed limits on the number of gallons that wineries can produce annually to be eligible to direct ship wines to consumers in the state. The constitutionality of gallonage limits in Kentucky, Massachusetts, and Arizona have been challenged. The gallonage cap in Ohio has not been challenged. The gallonage limits in Arizona and Kentucky have been held to be constitutional. However, the gallonage limit in Massachusetts was held to be unconstitutional.

In the Kentucky case, *Cherry Hill Vineyards, L.L.C. v. Hudgins*,⁵⁶ the court held that the state's 50,000 gallon limit did not discriminate against out-of-state producers and did not violate *Granholm* because the limit provides similar licensing opportunities to in-state and out-of-state wineries. The court stated that the limit does not give Kentucky wineries a competitive advantage over similarly situated out-of-state wineries.

In the Arizona case, *Black Star Farms, L.L.C. v. Oliver*,⁵⁷ the U.S. District Court for the District of Arizona found the state's 20,000 gallon limit was constitutional. It noted that the number of out-of-state wineries that produced less than 20,000 gallons of wine a year "dwarfed the number of in-state wineries" that were able to qualify for Arizona's direct shipment license. The district court also stated that "the simple fact that there are more out-of-state wineries than in-state wineries that produce more than 20,000 gallons of wine per year and are thus required to adhere to the three-tiered distribution system in order to gain access to Arizona's wine market does not by itself establish patent discrimination in effect against interstate commerce."⁵⁸ On appeal, the U.S. District Court of Appeals for the Ninth Circuit also held that the state's 20,000 gallon limit was constitutional.⁵⁹ The Ninth Circuit noted that, when the gallonage cap was adopted in 2006, only one winery in Arizona produced more than 20,000 gallons. It also noted that, in 2004, wineries

⁵⁵ *Granholm*, 544 U.S. at n. 22.

⁵⁶ *Cherry Hill Vineyards v. Hudgins, L.L.C.*, 488 F.S. Supp.2d 601 (W.D. Ky. 2006).

⁵⁷ *Black Star Farms, L.L.C. v. Oliver*, 544 F.Supp.2d 913 (D. Ariz. 2008).

⁵⁸ *Id.* at 925-926.

⁵⁹ *Black Star Farms, L.L.C. v. Oliver*, 2010 WL 1443284 (9th Cir. 2010).

producing more than 25,000 gallons of wine per year accounted for about 98 percent of the total wine production in the United States. The Ninth Circuit then noted that more than 70 percent of the all wineries produced less than 25,000 gallon per year. The court reasoned that the Arizona statute applied to all small wineries whether located in-state or out-of-state.

However, in *Family Winemakers of California v. Jenkins*,⁶⁰ the court held that the 30,000 gallon limit in Massachusetts to be unconstitutional because it had the discriminatory effect and purpose to change the competitive balance between in-state and out-of-state wineries to the benefit of the in-state wineries. All of the Massachusetts wineries produced less than the 30,000 gallon limit.

Regulation of Common Carriers

The bill's requirements for winery shippers and common carriers raise concerns relating to federal preemption over the regulation of common carriers. The bill requires that common carriers maintain delivery records for three years and make the records available to inspection by the division upon request. In *Rowe v. New Hampshire Motor Transport Association*,⁶¹ the U.S. Supreme Court held that federal regulation of carriers, including the Motor Carrier Act of 1980⁶² and the Federal Aviation Administration Authorization Act of 1994,⁶³ pre-empted the State of Maine's regulations for the delivery of tobacco products that were intended to prevent the delivery and sale of tobacco products to minors. Maine's regulations required that the persons shipping cigarettes into Maine utilize only delivery companies that used specified delivery services, including recipient-verification services. The Supreme Court rejected the state's argument that its regulations were intended to prevent minors from obtaining cigarettes.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill imposes a \$250 license and an annual \$250 license renewal fee for the winery shipper license created under s. 561.222, F.S. Winery shipper licensees would have to pay excise taxes and sales taxes to the state.

As of the date of this analysis, the Revenue Estimating Conference (REC) has not determined the revenue impact of this bill. The bill is substantively identical to CS/SB 1096, that was filed during the 2008 Regular Session and that died in messages having passed the Senate. For CS/SB 1096, the REC determined that the bill would have generated \$4 million in revenue for FY 2008-09 on an annualized basis. Of this amount, \$3 million was General Revenue, \$0.5 million for the Alcoholic Beverage and Tobacco Trust Fund, and \$0.5 million for local revenue.

⁶⁰ *Family Winemakers of California v. Jenkins*, 592 F.3d 1 (1st Cir. 2010).

⁶¹ *Rowe v. New Hampshire Motor Transport Association*, 128 S.Ct. 989 (2008).

⁶² 94 Stat. 793.

⁶³ 108 Stat. 1605-1606.

According to DOR, it is receiving approximately 850 monthly tax payment reports evidencing out-of-state wine deliveries to approximately 20,000 recipients. The division is uncertain whether all of the wine shippers are wineries.

For December 2010, the division's records indicate that 22,826 total gallons of wine were reported as shipped into the state directly to consumers. During that time, \$57,729.61 in excises taxes was paid to the division for that month. Since January 2006, \$1,861,225.55 in excise taxes has been paid to the division for the direct shipment of wine.

According to the division, Florida could be missing between \$407,606 and \$639,440 in excise taxes per year from unreported and unpaid out-of-state direct shipment wine sales to Florida consumers.⁶⁴

The division may also collect additional fees for registration of wine brands for the 2,575 estimated wineries that will become licensed in Florida as a result of the bill.

B. Private Sector Impact:

The Department of Business and Professional Regulation estimates that 2,575 wineries nationwide would become licensed winery shippers. In addition to the license fee, winery shipper licensees would incur costs related to the record keeping and reporting requirements of the bill.

Common carriers may incur expenses to comply with the record keeping requirements of this bill. One common carrier, United Parcel Service (UPS), expressed its concerns with the provision in s. 561.222(7)(d), F.S., that requires common carriers to maintain delivery records for three years and make the records available to inspection by the division upon request. UPS advised there would be significant costs related to maintaining its records of wine deliveries to Florida for three years. There also may be costs, including legal expenses, related to responding to the division's inspection requests. It is not clear to what extent the UPS's concerns reflect the concerns of other common carriers.

C. Government Sector Impact:

The Department of Business Regulation estimated a total cost of \$282,312 in FY 2011-12, \$225,796 in FY 2012-13, and \$227,834 in FY 2013-14 to implement and administer the provisions of the bill. These costs include three additional full-time (\$157,832 recurring) and 11.5 OPS employees (\$58,496 non-recurring) to accommodate the increased workload; and changes necessary to adapt the electronic system for filing monthly product movement and excise tax reports under development.⁶⁵ Other changes necessary to computer systems used by the Department of Business Regulation can be accomplished within existing resources.

⁶⁴ See Department of Business Regulation 2011 Legislative Analysis (February 16, 2011), on file with the committee.

⁶⁵ *Id.*

VI. Technical Deficiencies:

The bill creates s. 561.222(4), F.S., to require that winery shippers collect and pay the discretionary sales surtaxes tax (local option sales tax). Section 212.054(4)(b), F.S., requires that surtax collected by dealers located in the county must be returned to that county. The proceeds are transferred to the Discretionary Sales Surtax Clearing Trust Fund. The provision in the bill would conflict with s. 212.054(4)(b), F.S., to the extent it would require the in-state wineries not to return the collected discretionary tax to the county in which they are located.⁶⁶

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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

⁶⁶ See DOR 2011 Bill Analysis (February 16, 2011), on file with the committee.

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 Commerce and Tourism Committee

BILL: CS/SB 920

INTRODUCER: Criminal Justice Committee and Senator Ring

SUBJECT: Possession of Stolen Credit or Debit Cards

DATE: April 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.	Hrdlicka	Cooper	CM	Pre-meeting
3.			AG	
4.				
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 920 (the bill) makes it a third degree felony to knowingly possess, receive, or retain custody of a credit or debit card that has been taken from the possession, custody, or control of another person without the cardholder's consent and with the intent to impede recovery of the card by the cardholder.

The bill also specifies that this new offense does not apply to a retailer or retail employee who, in the ordinary course of business, possesses, receives, or returns a credit card or debit card that the retailer or retail employee does not know was stolen; or who possesses, receives, or retains a credit card or debit card that the retailer or retail employee knows is stolen for the purpose of an investigation into the circumstances regarding the theft of the card or its possible unlawful use.

This bill substantially amends section 817.60 of the Florida Statutes.

II. Present Situation:

Section 817.60, F.S., is part of Part II of ch. 817, F.S., which is the 1967 “State Credit Card Crime Act.”¹ This statute provides criminal penalties² for various crimes relating to credit cards.³ The specific offenses are as follows:

- *Taking or retaining possession of a credit card taken*: First degree misdemeanor: Person takes a credit card from the possession, custody, or control of another person without the cardholder’s consent or, with knowledge the credit card has been so taken, receives the credit card with the intent to use it, to sell it, or to transfer it to another person other than the issuer or the cardholder.⁴
- *Theft of a credit card lost, mislaid, or delivered by mistake*: First degree misdemeanor: Person receives a credit card that he or she knows to have been lost, mislaid, or delivered by mistake as to the identity or address of the cardholder, and retains the credit card with the intent to use, sell, or transfer the credit card to another person other than the issuer or the cardholder.⁵
- *Purchase or sale of another person’s credit card*: First degree misdemeanor: Person other than the credit card issuer sells a credit card or buys a credit card from a person other than the issuer.⁶
- *Obtaining control of a credit card as security for a debt*: First degree misdemeanor: Person, with intent to defraud the credit card issuer, a person or organization providing money, goods, services, or anything else of value, or any other person, obtains control over a credit card as security for a debt.⁷
- *Dealing in another person’s credit card*: Third degree felony: Person other than the credit card issuer, during any 12-month period, receives two or more credit cards issued in the name or names of different cardholders, which cards he or she has reason to know were taken or retained under circumstances which constitute credit card theft or a violation of this part.⁸
- *Forgery of another person’s credit card*: Third degree felony: Person, with intent to defraud a purported credit card issuer or a person or organization providing money, goods, services, or anything else of value or any other person, falsely makes, falsely embosses, or falsely

¹ Section 817.57, F.S.

² The statute specifies that offenses are subject to the penalties set forth in s. 817.67(1), F.S., or s. 817.67(2), F.S., as applicable. Section 817.67(1), F.S., provides that a person who is subject to the penalties of this subsection is guilty of a first degree misdemeanor. A first degree misdemeanor is punishable by up to 1 year in county jail and a fine of up to \$1,000 may also be imposed. Sections 775.082 and 775.083, F.S. Section 817.67(2), F.S., provides that a person who is subject to the penalties of this subsection is guilty of a third degree felony. A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000 may also be imposed. Sections 775.082 and 775.083, F.S.

³ “Credit card” is defined to mean “any instrument or device, whether known as a credit card, credit plate, bank service card, banking card, check guarantee card, electronic benefits transfer (EBT) card, or debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value on credit or for use in an automated banking device to obtain any of the services offered through the device.” Section 817.58(4), F.S.

⁴ Section 817.60(1), F.S. “Taking a credit card without consent includes obtaining it by conduct defined or known as statutory larceny, common-law larceny by trespassory taking, common-law larceny by trick or embezzlement or obtaining property by false pretense, false promise or extortion.”

⁵ Section 817.60(2), F.S.

⁶ Section 817.60(3), F.S.

⁷ Section 817.60(4), F.S.

⁸ Section 817.60(5), F.S.

alters in any manner a credit card or utters such a credit card or, with intent to defraud, has a counterfeit credit card or any invoice, voucher, sales draft, or other representation or manifestation of a counterfeit credit card in his or her possession, custody, or control.⁹

- *Signing another person's card*: First degree misdemeanor: Person other than the holder of a credit card or a person authorized by the cardholder, signs the credit card with the intent to defraud the credit card issuer or a person or organization providing money, goods, services, or anything else of value or any other person.¹⁰

III. Effect of Proposed Changes:

Section 1 creates s. 817.60(8), F.S., to create a new crime related to credit cards. A person commits unlawful possession of a stolen credit or debit card when the person knowingly possesses, receives, or retains custody of a credit or debit card¹¹ that has been taken from the possession, custody, or control of another person without the cardholder's consent and with the intent to impede recovery of the card by the cardholder. The person is subject to the penalties set forth in s. 817.67(2), F.S., which are third degree felony penalties: up to 5 years in state prison and a potential fine of up to \$5,000.¹²

This new offense does not apply to a retailer or retail employee who, in the ordinary course of business, possesses, receives, or returns a credit card or debit card that the retailer or retail employee does not know was stolen; or who possesses, receives, or retains a credit card or debit card that the retailer or retail employee knows is stolen for the purpose of an investigation into the circumstances regarding the theft of the card or its possible unlawful use.

Section 2 provides an effective date of October 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁹ Section 817.60(6), F.S. "A person other than an authorized credit card manufacturer or issuer who possesses two or more counterfeit credit cards is presumed to have violated this subsection. A person falsely makes a credit card when he or she makes or draws in whole or in part a device or instrument which purports to be the credit card of a named issuer but which is not such a credit card because the issuer did not authorize the making or drawing or when he or she alters a credit card which was validly issued. A person falsely embosses a credit card when, without the authorization of the named issuer, he or she completes a credit card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder."

¹⁰ Section 817.60(7), F.S.

¹¹ "Debit card" is not a term defined in the bill, ch. 817, F.S., or the Florida Statutes. However, courts may look "to case law or related statutory provisions which define the term, and where a statute does not specifically define words of common usage, such words are construed in their plain and ordinary sense." *State v. Hagan*, 387 So.2d 943, 945 (Fla.1980).

¹² Sections 775.082 and 775.083, F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill has an insignificant prison bed impact because it creates an unranked third degree felony.¹³

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 Criminal Justice on March 22, 2011:

The CS revises a provision that specifies that the new offense involving possession of a stolen credit card or debit card does not apply to a retailer or retail employee in specified circumstances.

B. Amendments:

None.

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

¹³ "Unranked" is a descriptive term for a noncapital felony that is not specifically ranked in the offense severity ranking chart in s. 921.0022, F.S. If the felony is not ranked in the chart, it is ranked pursuant to s. 921.0023, F.S., based on its felony degree. An unranked third degree felony is a Level 1 offense. *Id.* A first-time offender convicted of only the unranked third degree felony would score a nonprison sanction as the lowest permissible sentence. Section 921.0024, F.S. Further, in this first-time offender scenario, a non prison sanction would be required unless the sentencing court made written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

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 Commerce and Tourism Committee

BILL: SB 1080

INTRODUCER: Senator Altman

SUBJECT: Exemptions/Tax on Sales, Use, & Other Transactions

DATE: April 11, 2011

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hrdlicka	Cooper	CM	Pre-meeting
2. _____	_____	BC	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

I. Summary:

SB 1080 creates an exemption from the sales and use tax for certain items used to manufacture, produce, or modify gas turbine engine parts.

This bill creates s. 212.08(7)(iii), F.S.

II. Present Situation:

Sales and Use Taxes

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. The statutes currently provide more than 200 different exemptions. Florida imposes a 6 percent tax on tangible personal property sold, used, consumed, distributed, stored for use or consumption, rented, or leased in Florida.¹

Turbines

"A turbine is any kind of spinning device that uses the action of a fluid to produce work."² Fluids typically used in turbines include air, wind, water, steam and helium. Windmills and hydroelectric dams are two examples of turbine action being used to turn the core of an electrical generator to produce power.

¹ See ss. 212.05 and 212.06, F.S.

² See Langston, Lee S., and George Opdyke, Jr., "Introduction to Gas Turbines for Non-Engineers," Global Gas Turbine News, Volume 37: 1997, No.2, available at <http://files.asme.org/IGTI/101/13001.pdf> (last visited 4/5/2011).

Gas turbines were first developed in the 1930s, and were used to generate electricity and power airplane flight. Gas turbines use a compressor to draw in and compress gas (usually air), then a combustor (or burner) adds fuel (such as propane, natural gas, kerosene or jet fuel) to heat the compressed gas, and a turbine extracts power from the hot air flow. The gas turbine is an internal combustion engine employing a continuous combustion process. Gas turbines are also known as combustion turbines, turboshaft engines, or gas turbine engines in power generation and marine applications and as jet engines, jet turbine engines, turbojets, turbofans, fanjets, turboprops or prop jets in aviation applications.

Gas turbines have many applications, and are used in power plants, tanks, jets, helicopters and trains.

III. Effect of Proposed Changes:

Section 1 creates a new exemption from the tax on sales, use, and other transactions under s. 212.08(7), F.S. The bill exempts cores, patterns, dies, and molds consumed in the production of castings used to manufacture, produce, or modify gas turbine engine parts.

Section 2 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

Subsection (b) of the provision prohibits the Legislature from “enacting, amending, or repealing any general law if the anticipated effect” is to reduce county or municipal aggregate revenue generating authority as it existed on February 1, 1989. The exception to this prohibition is if the Legislature passes such a law by 2/3 of the membership of each chamber.

Subsection (d) provides an exemption from this prohibition. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (which is \$1.88 million for FY 2011-12), are exempt.

The Revenue Estimating Conference estimated that this bill will have a \$200,000 fiscal impact annually on local governments. Consequently, it is exempt from the mandates restriction due to its insignificant fiscal impact.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference met on March 11, 2011, and made the following assessment of the impact of this exemption:

	FY 2010-2011	FY 2011-2012	FY 2012-2013	FY 2013-2014
General Revenue	(0.6)	(0.7)	(0.7)	(0.8)
State Trust	(Insignificant)	(Insignificant)	(Insignificant)	(Insignificant)
Total State Impact	(0.6)	(0.7)	(0.7)	(0.8)

	FY 2010-2011	FY 2011-2012	FY 2012-2013	FY 2013-2014
Revenue Sharing	(Insignificant)	(Insignificant)	(Insignificant)	(Insignificant)
Local Gov't Half Cent	(0.1)	(0.1)	(0.1)	(0.1)
Local Option	(0.1)	(0.1)	(0.1)	(0.1)
Total Local Impact	(0.2)	(0.2)	(0.2)	(0.2)

	FY 2010-2011	FY 2011-2012	FY 2012-2013	FY 2013-2014
Total Impact	(0.8)	(0.9)	(0.9)	(1.0)

B. Private Sector Impact:

Purchasers of these items will benefit from the exemption of these items from taxes.

C. Government Sector Impact:

The Department of Revenue has indicated that this bill would have an insignificant impact on its operations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Turbine engines are classified by the type of fluid used to drive the engine. In general, the manufacturing process for all engines is the same and uses the same materials (cores, patterns, dies, and molds), although they may vary by type of metal. The exemption provided by this bill is limited to gas turbine engines; items used for the manufacture of other engines would not be eligible. The exemption would need to be prorated for companies that produce parts for more than one type of turbine.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

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



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (31) is added to section 206.01,
Florida Statutes, to read:

206.01 Definitions.—As used in this chapter:
(31) "Renewable feedstocks" mean crops and animal products
that may be used to produce fuel or energy.

Section 2. Subsection (5) of section 206.02, Florida
Statutes, is amended to read:

206.02 Application for license; temporary license; terminal



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suppliers, importers, exporters, blenders, biodiesel manufacturers, and wholesalers.—

(5) Each biodiesel manufacturer must meet the reporting, bonding, and licensing requirements prescribed for wholesalers by this chapter, except that biodiesel manufacturers are exempt from the bonding requirements of this chapter only for B100 and B99 biodiesel fuel that the biodiesel manufacturer makes from renewable feedstocks originating in this state.

Section 3. Subsection (8) of section 206.874, Florida Statutes, is added to read:

206.874 Exemptions.—

(8) B100 and B99 biodiesel fuel, of which at least 50 percent is made from renewable feedstocks originating in this state, is exempt from the taxes imposed by this part.

Section 4. Subsection (5) of section 206.9925, Florida Statutes, is amended to read:

206.9925 Definitions.—As used in this part:

(5) "Pollutants" includes any petroleum product as defined in subsection (4) as well as pesticides, ammonia, and chlorine; lead-acid batteries, including, but not limited to, batteries that are a component part of other tangible personal property; and solvents as defined in subsection (6), but the term excludes liquefied petroleum gas, medicinal oils, and waxes. Products intended for application to the human body or for use in human personal hygiene or for human ingestion are not pollutants, regardless of their contents. B100 or B99 biodiesel manufactured in this state is not a pollutant if at least 50 percent of the manufacturer's annual production of B100 or B99 is from renewable feedstocks originating in this state. For the



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purpose of the tax imposed under s. 206.9935(1), "pollutants" also includes crude oil.

Section 5. The Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to administer the provisions of this act. The emergency rules shall remain in effect for 6 months after the rules are adopted, and the rules may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rule.

Section 6. This act shall take effect January 1, 2012.

===== 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 biodiesel; amending s. 206.01, F.S.; defining the term "renewable feedstocks"; amending s. 206.02, F.S.; exempting certain biodiesel manufacturers from bonding requirements; amending s. 206.874, F.S.; exempting certain biodiesel manufacturers from specific taxes on diesel fuel; amending s. 206.9925, F.S.; redefining the term "pollutants" to exclude certain biodiesel; amending s. 526.202, F.S.; authorizing the Department of Revenue to adopt emergency rules to implement the provisions of this act; 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 Commerce and Tourism Committee

BILL: CS/SB 1284

INTRODUCER: Committee on Agriculture and Senator Bennett

SUBJECT: Biodiesel

DATE: April 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Spalla	AG	Fav/CS
2.	Pugh	Cooper	CM	Pre-meeting
3.			BC	
4.				
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:

Biodiesel is an alternative fuel produced from agricultural products such as soy beans, canola, camelina grass, mustard seeds, used vegetable-based cooking oils, and other organic products. Most alternative diesel fuel commercially available is a blend of 20-percent biodiesel and 80-percent regular diesel, denoted as "B20."

The State of Florida has promoted biodiesel in recent years by supporting grant programs and providing tax credits or exemptions to eligible businesses.

CS/SB 1284 attempts to further the biodiesel industry in Florida by eliminating a bond requirement and certain motor fuel taxes on biodiesel fuel. Specifically, the bill:

- Requires all diesel fuel sold in Florida to contain a minimum 2 percent of biodiesel effective December 31, 2011, and provides guidelines for that percentage to be increased to 5 percent;
- Exempts from taxation biodiesel fuel manufactured by a biodiesel manufacturer who produces at least 50 percent of its annual production of 100-percent biodiesel (or B100) from Florida renewable feedstocks;

- Eliminates the bond requirement for any biodiesel manufacturer who produces at least 50 percent of its annual production of 100-percent biodiesel (or B100) from Florida renewable feedstocks;
- Defines “renewable feedstocks”;
- Extends statutory provisions making it unlawful to sell or distribute gasoline that does not meet state standards to apply to the sale or distribution of diesel fuel;
- Provides reporting requirements to the Department of Agriculture and Consumer Services (DACS); and
- Expresses legislative findings about the importance of biodiesel.

CS/SB 1254 substantially amends ss. 206.01, 206.02, 206.874, 206.9925, 526.202, 526.203, and 526.205, F.S.

II. Present Situation:

Biodiesel background

In s. 206.86(14), F.S., “biodiesel” is defined as any product made from nonpetroleum-based oils or fats that is suitable for use in diesel-powered engines. Biodiesel also is included in the statutory definition of diesel fuel, in s. 206.86(1), F.S.

Some of the types of crops that might be used to make biodiesel or biofuels are switchgrass; sugarcane; miscanthus; sweet sorghum; soybeans; peanuts; canola; and elephantgrass, according to research conducted the by University of Florida Institute of Food and Agricultural Sciences.¹ Other studies indicate that used palm oil, canola oil, and other cooking oils are good sources.²

Various governmental entities and private companies have incorporated biodiesel in their transportation fleets, including:³

- Public bus fleets in Fort Lauderdale, Orlando, and Jacksonville;
- Florida Power & Light;
- Disney World and Universal Studios;
- TriRail in its trains;
- School buses in Manatee County; and
- Water taxis used in Port Everglades.

Fuel Taxation

The state imposes a tax on the sale, use, distribution, or consumption of motor fuel.⁴ Diesel fuel is addressed separately in law, taxed differently, and generally considered to be subject to a highway tax, imposed for the purpose of constructing and maintaining the highways of the state.⁵

¹ Reports available at: http://edis.ifas.ufl.edu/topic_series_production_of_biofuel. Site last visited April 6, 2011.

² “Sustainable Biodiesel Progress in Florida in the Next 10 Years,” by Dr. Randell Wedel. PowerPoint Presentation dated August 26-27, 2009. Available at: <http://stlucie.ifas.ufl.edu/pdfs/Biofuel%20Feedstocks/vonWedel%20USDA%20FtPrc%208-26-09.pdf>.

³ Ibid.

⁴ Chapter 206, F.S., provides for the taxation of motor and other fuels.

⁵ Part II of ch. 206, F.S.

Biodiesel manufacturers are subject to the same reporting and licensing requirements as wholesalers.⁶

The 2011 amount of state and local taxes per gallon of diesel fuel is 30 cents,⁷ and includes the following:

- A 4-cents-per-gallon excise tax;
- A 1-cent-per-gallon tax, known as the “ninth-cent fuel tax”;
- A 6-cents-per-gallon tax, known as a “local-option fuel tax”;
- A 6.8-cents-per-gallon State Comprehensive Enhanced Transportation System Tax;⁸ and
- A 12.2-cents-per-gallon state “fuel sales tax.”⁹

Section 206.874, F.S., provides for exemptions to these taxes on diesel fuel under certain conditions. Such conditions include:¹⁰

- The tax status of the person involved in the removal or entry of the diesel fuel;
- The delivery of diesel fuel out-of-state;
- Fuel limited to a specified “local use,” typically pertaining to off-road, non-highway activity, such as the use of diesel fuel for home heating, or for contained farming operations;
- Biodiesel fuel manufactured by a public or private secondary school that produces less than 1,000 gallons annually for the sole use at the school, by its employees, or its students;¹¹ and
- Dyed diesel fuel (fuel marked for nontaxable purposes) used in school buses to transport students and school employees. Pursuant to this provision, a school district is still required to register as a “local government user of diesel fuel,” and to remit a return, but is authorized to apply for credit.¹²

Each fuel supplier, importer, exporter, wholesaler, blender, and biodiesel manufacturer operating in Florida is required to post a bond with DOR in the approximate amount of three times the average monthly tax levied on its operation, not to exceed \$100,000, to assure compliance with tax reporting and payment requirements.¹³

Additionally, fuels are subject to Florida excise taxes, generally on a per-barrel basis, to help pay for environmental cleanup. The producers and importers of fuel products pay these excise taxes. The excise tax revenues are deposited in the Coastal Protection Trust Fund and Inland Protection Trust Fund, pursuant to Part IV of ch. 206, F.S. The minimum tax rate is different for different

⁶ Section 206.02(5), F.S.

⁷ DOR fuel tax tips sheet, available at <https://taxlaw.state.fl.us/wordfiles/MSF%20TIP%2010B05-02.pdf>. The federal tax on diesel fuel for 2011 is an additional 24.4 cents per gallon.

⁸ Section 206.4608, F.S., provides that this tax, based on the amount of local-option taxes assessed, is spent on approved road projects in the counties where the tax is collected, to the extent practicable.

⁹ Section 206.87(1), F.S.

¹⁰ Section 206.874, F.S.

¹¹ Section 206.874(7), F.S. This exemption currently applies at least to the Oak Hall School, a private school in Gainesville, which has an on-site operation to turn used cooking oil into biodiesel to supplement regular diesel fuel used in the school’s lawnmowers. See: <http://www.oakhall.org/default.aspx?RelID=609681&issearch=biodiesel>.

¹² Section 206.874(4)(a),(b), and (d), F.S.

¹³ Section 206.05, F.S.

types of pollutants, but will increase automatically if the balances in these trust funds drop below certain thresholds.

Pollutants, defined as any petroleum products and a host of other chemicals,¹⁴ are subject to an excise tax under Part IV, ch. 206, F.S., unless exempt under s. 206.9941, F.S. Biodiesel is not exempt, nor is it excluded in the definition of “pollutants.”

Promotion of Biodiesel by the federal government and other states

The federal government offers a number of incentives to promote the development of biodiesel:¹⁵

- The Alternative Fuel Infrastructure Tax Credit, equal to 30 percent of the cost of equipment to create B20 or other types of alternative fuels that was placed into service after 2005 but before 2011. For equipment placed into service in 2011, the tax credit is capped at \$30,000.
- Biodiesel Mixture Excise Tax Credit, equal to \$1 per gallon of pure biodiesel, agri-biodiesel, or renewable diesel blended with petroleum diesel to produce a mixture containing at least 0.1-percent diesel fuel for any biodiesel blender that is registered with the IRS. Only blenders that have produced and sold or used the qualified biodiesel mixture as a fuel in their trade or business are eligible for the tax credit, which expires December 31, 2011.
- Biodiesel Income Tax Credit, which may be claimed by any taxpayer that delivers pure, unblended biodiesel (B100) into the tank of a vehicle or uses B100 as an on-road fuel in his or her business. If the biodiesel was sold at retail, only the person that sold the fuel and placed it into the tank of the vehicle is eligible for the tax credit. The incentive is allowed as a credit against the taxpayer's federal income tax liability. This tax credit expires December 31, 2011.
- Small Agri-Biodiesel Producer Tax Credit of 10 cents per gallon is available to any agri-biodiesel producer that is registered with the IRS, which sells the fuel either wholesale or retail, has no more than 60 million gallons of productive capacity, and meets other criteria. This tax credit also expires December 31, 2011.
- A number of grants and loans for biodiesel producers.

The federal government has a regulatory component to promoting the use of biodiesel and other alternative fuels.¹⁶ The national RFS Renewable Fuel Standard (RFS) Program was developed to increase the volume of renewable fuel that is blended into traditional petroleum-based fuels, and was authorized by the Energy Policy Act of 2005. The Energy Independence and Security Act of 2007 increased and expanded these requirements. In 2010, 12.95 billion gallons of renewable fuel must be available for use, increasing to 36 billion gallons per year by 2022. Beginning in 2010, a certain percentage of the renewable fuel blended into transportation fuels must be cellulosic biofuel, biomass-based diesel, and advanced biofuel. The U.S. Environmental Protection Agency oversees the implementation and enforcement of these requirements.

¹⁴ Defined in s. 206.9925(5), F.S.

¹⁵ See <http://www.afdc.energy.gov/afdc/laws/laws/US/tech/3251>. Site last visited April 7, 2011.

¹⁶ See <http://www.afdc.energy.gov/afdc/laws/laws/US/reg/3838>. Site last visited April 7, 2011.

Every state offers one or more incentives to promote the development or use of biodiesel,¹⁷ from tax credits to grants. Two states – Minnesota and Oregon – currently require that all of the diesel fuel sold within their jurisdiction be blended with at least 5-percent biodiesel, while Washington and Pennsylvania require a 2-percent blending. Several other states are in the process of considering legislation requiring blended biodiesel or have recently passed the requirement.

Florida Incentives for Biodiesel and Alternative Fuels

In recent years, Florida has created or expanded a number of incentives to promote the development and use of alternative fuels.

The Florida Renewable Fuel Standard Act (act)¹⁸ contains a legislative finding that it is vital to the public interest and the state's economy to require that all gasoline sold in the state contain a percentage of agriculturally derived, denatured ethanol. The act also required that all gasoline sold in Florida, beginning December 31, 2010, be "blended," meaning it must contain a mixture of gasoline and ethanol. Finally, the act makes it unlawful to sell gasoline in Florida that fails to meet the requirements of the act.

Also available to alternative energy producers were several sales tax exemptions for machinery and equipment, but many of these specifically geared to biodiesel or other alternative energy producers expired last year. Still available are state incentive programs such as the:

- Qualified Target Industry tax refund program,¹⁹ which provides refunds of certain taxes paid to targeted industry sectors, including Clean Energy, which create at least 10 jobs paying at least 115 percent of the statewide or area private-sector wage, and meet other criteria;
- Quick Action Closing Fund,²⁰ which is a grant to eligible targeted businesses focusing on job creation that can demonstrate at least \$5-to-\$1 payback of the state's investment; and
- Innovation Incentive Program,²¹ which provides a grant for alternative or renewable energy projects that create 35 jobs paying 130 percent of the statewide and area private-sector wage, and meet other criteria.

The Department of Environmental Protection and the Governor's Energy and Climate Commission (commission)²² awarded more than \$42 million in state energy grants from FY 2006-2007 through FY 2008-2009 to renewable or alternative energy projects, while the Department of Agriculture has distributed up to \$25 million in state grants appropriated by the Legislature in 2007 through the Farm-to-Fuels program. Neither program has received state

¹⁷ See the interactive U.S. map on the Department of Energy website, at http://www.afdc.energy.gov/afdc/fuels/biodiesel_laws.html. Site last visited April 7, 2011.

¹⁸ Sections 526.201-526.207, F.S. (ch. 2008-227, L.O.F.)

¹⁹ Section 288.108, F.S.

²⁰ Section 288.1088, F.S.

²¹ Section 288.1089, F.S.

²² A listing of some of the renewable and alternative energy incentives offered by Florida, and the dollar amounts expended, is available at the commission's website. See http://www.myfloridaclimate.com/climate_quick_links/florida_energy_climate_commission/state_energy_initiatives. Site last visited April 7, 2011.

funding in recent years, although the commission has administered the federal energy grants available through the American Recovery and Reinvestment Act of 2009.²³

Pursuant to s. 403.973(3)(f), F.S., an expedited permitting process is available for projects resulting in the production of biofuels cultivated on a minimum of 1,000 acres for use in a biofuel or biodiesel processing facility or a facility generating renewable energy, as defined in s. 366.91(2)(d), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 206.01, F.S., to define “renewable feedstocks” to mean crops and animal products that may be used to produce fuel or energy.

Section 2 amends s. 206.02, F.S., to eliminate the requirement for a bond for a biodiesel manufacturer whose annual production of B100 is derived at least 50 percent from renewable feedstocks originating in Florida.

Section 3 amends s. 206.874, F.S., to create an exemption from the motor fuel taxes imposed by s. 206.87, F.S., for biodiesel fuel produced by a manufacturer whose annual production of B100 is derived at least 50 percent from renewable feedstocks originating in Florida.

Section 4 amends s. 206.9925, F.S., to amend the definition of “pollutants” to exclude biodiesel manufactured in this state by a manufacturer whose annual production of B100 is derived at least 50 percent from renewable feedstocks originating in Florida. This excludes such manufacturers from having to pay excise taxes into the Coastal Protection and Inland Protection trust funds.

Section 5 amends s. 526.202, F.S., to extend legislative findings concerning the importance of requiring gasoline offered for sale to contain a percentage of ethanol to include a finding that diesel offered for sale contain a certain, but unspecified, percentage of biodiesel.

Section 6 amends s. 526.203, F.S., to incorporate definitions for “biodiesel” and “diesel fuel” by reference to other sections of the Florida Statutes.

CS/SB 1284 also amends the definition of statutory “fuel standards” to require that all diesel fuel contain at least 2 percent biodiesel (B2), effective December 31, 2011. That percentage will increase to 5 percent (B5) when the annualized capacity of biodiesel production facilities in Florida reaches 233 million gallons, which is determined to be approximately 8 percent of the annual biodiesel consumption in this state.

The bill also:

- Requires DACS to notify all dealers and wholesalers when that goal has been attained;
- Requires all dealers and wholesalers to begin selling diesel fuel that contains a minimum of 5 percent of biodiesel no later than 2 months after receiving the DACS notice;

²³ See:

http://www.myfloridacclimate.com/climate_quick_links/florida_energy_climate_commission/arra_funding_and_opportunities
Site last visited April 7, 2011.

- Requires the dealers and wholesalers to provide DACS a certified fuel analysis of any biodiesel received, upon the agency's request;
- Creates an exemption from the requirements for using renewable or alternative fuels in gasoline-powered boats; and
- Requires each terminal supplier, importer, blender, and wholesaler to submit in their monthly report to the DOR the number of gallons of diesel and biodiesel sold.

Section 7 amends s. 526.205, F.S., to make it unlawful to sell or distribute diesel which fails to meet the state's requirements for the sale of liquid fuels. Additionally, it allows any terminal supplier, importer, blender, or wholesaler until September 30, 2011, to seek an extension from DACS from compliance with the new biodiesel requirements.

Section 8 provides an effective date of July 1, 2011.

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:

CS/SB 1284 potentially raises Commerce Clause issues.

Congress is expressly permitted by the U.S. Constitution to regulate interstate commerce, by the Commerce Clause (Article I, Section 8). The powers over commerce not delegated to the federal government by the U.S. Constitution are reserved to the states.

The states retain exclusive control over intrastate commerce - commerce that begins and ends entirely within the borders of a single state. In other words, states may control that commerce which is completely internal, which is carried on between one person and another in a state, and which does not extend to or affect other states.

The power of Congress generally does not extend to the purely internal commerce of the states, and Congress cannot, under the Commerce Clause, enact a regulation which by its terms applies to intrastate commerce unless the regulated activity exerts a substantial affect on interstate commerce.²⁴

²⁴ Interstate commerce is generally trade and other business activities between those located in different states, for example traffic in goods and travel of people between states. Black's Law Dictionary (8th ed. 2004), Commerce.

In fact, Congress may control commingled interstate and intrastate operations wherever the interstate and intrastate transactions are so related that the regulation of the one involves the control of the other; otherwise Congress would be denied the exercise of its constitutional authority and the states, not the nation, would be supreme within the national field.

Additionally, states may not enact legislation nominally of local concern, that in reality is aimed at interstate commerce or by its necessary operation is a means of gaining a local benefit by burdening those outside the state.²⁵ Any state or local regulation that discriminates against out-of-state commerce by providing an advantage to in-state commerce is suspect under the Dormant Commerce Clause of the U.S. Constitution.

A state or local regulation offering economic protectionism or isolation, whether by design or in effect is ripe for challenge under the Dormant Commerce Clause. For example, the U.S. Supreme Court held in *New Energy Company of Indiana v. Limbach*, 486 U.S. 269 (1988), that Ohio's tax credit for ethanol producers from Ohio, or for states granting a reciprocal tax credit for Ohio-produced ethanol, was constitutionally invalid under the Dormant Commerce Clause as an unlawful burden on interstate commerce.

It could be argued that, to the extent that producers of biodiesel made with at least 50-percent, Florida-grown renewable feedstocks gain a competitive pricing and regulatory advantage over out-of-state biodiesel producers without access to Florida-grown renewable feedstocks, this bill may enact a discriminatory burden on interstate commerce. If this is so, the bill could be ripe for a Dormant Commerce Clause challenge by an affected party.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Indeterminate. The Revenue Estimating Conference is scheduled to evaluate the fiscal impact of CS/SB 1284 at its April 11, 2011, meeting.

B. Private Sector Impact:

Manufacturers of biodiesel fuel and growers of renewable feedstock used for that purpose would realize financial savings of an indeterminate amount depending on their volume of production due to tax and bonding requirements being exempted by the bill.

C. Government Sector Impact:

DOR estimates it would incur a one-time expense of \$53,812 to implement the change in tax provisions brought about by the bill.

²⁵ Adapted from AMJUR COMMERCE § 29, AMJUR COMMERCE § 21

VI. Technical Deficiencies:

DOR has suggested that elimination of the bond requirement in s. 206.02, F.S., to assure payment of tax for each biodiesel manufacturer that is licensed as a wholesaler which processes at least 50 percent of its B100 biodiesel production from renewable feedstocks has the effect of removing a bond requirement on the manufacturer's other products, potentially exposing the state to a significant loss if the manufacturer defaults on payment of tax on products other than the exempt biodiesel.

Committee staff also suggests that the use of the phrase "B100 biodiesel production" is a limiting criterion for the various tax exemptions and other incentives in the bill, and possibly incongruent with the requirements elsewhere in the bill requiring sale of blended B2 biodiesel by the end of 2011.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Agriculture on March 21, 2011:

The CS defined "renewable feedstocks" and it deleted that section in the bill that would have exempted the cultivation of nonnative plants from compliance with certain statutory permit and bonding requirements.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Dockery) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 213.758, Florida Statutes, is amended to
read:

213.758 Transfer of tax liabilities.—

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

(a) "Business" means any activity regularly engaged in by
any person, or caused to be engaged in by any person, for the
purpose of private or public gain, benefit, or advantage. The



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term does not include occasional or isolated sales or transactions involving property or services by a person who does not hold himself or herself out as engaged in business. A discrete division or portion of a business is not a separate business and must be aggregated with all other divisions or portions that constitute a business if the division or portion is not a separate legal entity.

(b) "Financial institution" means a financial institution as defined in s. 655.005 and any person who controls, is controlled by, or is under common control with a financial institution as defined in s. 655.005.

(c) "Insider" means a person as defined in s. 726.102(7), and a manager of, or a managing member of, a person who controls a limited liability company or a relative thereof as defined in s. 726.102(11).

(d) ~~(a)~~ "Involuntary transfer" means a transfer of a business, assets of a business, or stock of goods of a business made without the consent of the transferor, including, but not limited to, a transfer:

1. That occurs due to the foreclosure of a security interest issued to a person who is not an insider ~~as defined in s. 726.102;~~

2. That results from an eminent domain or condemnation action;

3. Pursuant to chapter 61, chapter 702, or the United States Bankruptcy Code;

4. To a financial institution, ~~as defined in s. 655.005,~~ if the transfer is made to satisfy the transferor's debt to the financial institution; or



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5. To a third party to the extent that the proceeds are used to satisfy the transferor's indebtedness to a financial institution ~~as defined in s. 655.005~~. If the third party receives assets worth more than the indebtedness, the transfer of the excess may not be deemed an involuntary transfer.

(e) "Stock of goods" means the inventory of a business held for sale to customers in the ordinary course of business.

(f) "Tax" means any tax, interest, penalty, surcharge, or fee administered by the department pursuant to chapter 443 or any of the chapters specified in s. 213.05, excluding chapter 220, the corporate income tax code.

(g) ~~(b)~~ "Transfer" means every mode, direct or indirect, with or without consideration, of disposing of or parting with a business, assets of the business, or stock of goods of the business, and includes, but is not limited to, assigning, conveying, demising, gifting, granting, or selling, other than to customers in the ordinary course of business, to a transferee or to a group of transferees who are acting in concert. A business is considered transferred when there is a transfer of more than 50 percent of:

1. The business;

2. The assets of the business; or

3. The stock of goods of the business.

(2) A taxpayer engaged in a business who is liable for any tax arising from the operation of that business, ~~interest, penalty, surcharge, or fee administered by the department pursuant to chapter 443 or described in s. 72.011(1), excluding corporate income tax,~~ and who quits the a business without the benefit of a purchaser, successor, or assignee, or without



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71 transferring the business, assets of the business, or stock of
72 goods of a business to a transferee, must file a final return
73 for the business and make full payment of all taxes arising from
74 the operation of that business within 15 days after quitting the
75 business. ~~A taxpayer who fails to file a final return and make~~
76 ~~payment may not engage in any business in this state until the~~
77 ~~final return has been filed and all taxes, interest, or~~
78 ~~penalties due have been paid.~~ The Department of Legal Affairs
79 may seek an injunction at the request of the department to
80 prevent further business activity of a taxpayer who fails to
81 file a final return and make payment of the taxes associated
82 with the operation of the business until such taxes tax,
83 ~~interest, or penalties~~ are paid. A temporary injunction
84 enjoining further business activity shall ~~may~~ be granted by a
85 circuit court with jurisdiction over the taxpayer if the
86 department has provided at least 20 days' prior written notice
87 to the taxpayer without notice.

88 (3) A taxpayer who is liable for taxes with respect to a
89 ~~business, interest, or penalties levied under chapter 443 or any~~
90 ~~of the chapters specified in s. 213.05, excluding corporate~~
91 ~~income tax,~~ who transfers the taxpayer's business, assets of the
92 business, or stock of goods of the business, must file a final
93 return and make full payment within 15 days after the date of
94 transfer.

95 (4) (a) A transferee, or a group of transferees acting in
96 concert, of more than 50 percent of a business, assets of a
97 business, or stock of goods of a business is liable for any
98 unpaid tax, ~~interest, or penalties~~ owed by the transferor
99 arising from the operation of that business unless:



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100 1.a. The transferor provides a receipt or certificate of
101 compliance from the department to the transferee showing that
102 the transferor has not received a notice of audit and the
103 transferor has filed all required tax returns and has paid all
104 tax arising is not liable for taxes, interest, or penalties from
105 the operation of the business identified on the returns filed;
106 and

107 b. There were no insiders in common between the transferor
108 and the transferee at the time of the transfer; or

109 2. The department finds that the transferor is not liable
110 for taxes, interest, or penalties after an audit of the
111 transferor's books and records. The audit may be requested by
112 the transferee or the transferor and, if not done pursuant to
113 the certified audit program under s. 213.285, must be completed
114 by the department within 90 days after the records are made
115 available to the department. The department may charge a fee for
116 the cost of the audit if it has not issued a notice of intent to
117 audit by the time the request for the audit is received.

118 (b) A transferee may withhold a portion of the
119 consideration for a business, assets of the business, or stock
120 of goods of the business to pay the tax ~~taxes, interest, or~~
121 ~~penalties~~ owed to the state by the transferor taxpayer arising
122 from the operation of the business. The transferee shall pay the
123 withheld consideration to the state within 30 days after the
124 date of the transfer. If the consideration withheld is less than
125 the transferor's liability, the transferor remains liable for
126 the deficiency.

127 ~~(c) A transferee who acquires the business or stock of~~
128 ~~goods and fails to pay the taxes, interest, or penalties due may~~



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~~not engage in any business in the state until the taxes,~~
~~interest, or penalties are paid.~~ The Department of Legal Affairs
may seek an injunction at the request of the department to
prevent further business activity of a transferee who is liable
for unpaid tax of a transferor and who fails to pay or cause to
be paid the transferee's maximum liability for such tax due
until such maximum liability for the tax is, ~~interest, or~~
~~penalties are paid.~~ A temporary injunction enjoining further
business activity shall ~~may~~ be granted by a circuit court with
jurisdiction over the transferee if: ~~without notice.~~

1. The assessment against the transferee is final and
either:

a. The time for filing a contest under s. 72.011 has
expired; or

b. Any contest filed pursuant to s. 72.011 resulted in a
final and nonappealable judgment sustaining any part of the
assessment; and

2. The department has provided at least 20 days' prior
written notice to the transferee of its intention to seek an
injunction.

(5) The transferee, or transferees acting in concert, of
more than 50 percent of a business, assets of the business, or
stock of goods of a business who are liable for any tax pursuant
to this section shall be ~~are~~ jointly and severally liable with
the transferor for the payment of the tax ~~taxes, interest, or~~
~~penalties~~ owed to the state from the operation of the business
by the transferor up to the transferee's or transferees' maximum
liability for such tax due.

(6) The maximum liability of a transferee pursuant to this



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section is equal to the fair market value of the business,
assets of the business, or stock of goods of the business
~~property~~ transferred to the transferee or the total purchase
price paid by the transferee for the business, assets of the
business, or stock of goods of the business, whichever is
greater.

(a) The fair market value must be determined net of any
liens or liabilities, with the exception of liens or liabilities
owed to insiders.

(b) The total purchase price must be determined net of
liens and liabilities against the assets, with the exception of:

1. Liens or liabilities owed to insiders.

2. Liens or liabilities assumed by the transferee that are
not liens or liabilities owed to insiders.

(7) After notice by the department of transferee liability
under this section, the transferee has 60 days within which to
file an action as provided in chapter 72.

(8) This section does not impose liability on a transferee
of a business, assets of a business, or stock of goods of a
business pursuant to an involuntary transfer.

(9) The department may adopt rules necessary to administer
and enforce this section.

Section 2. Subsection (17) of section 213.053, Florida
Statutes, as amended by chapter 2010-280, Laws of Florida, is
amended to read:

213.053 Confidentiality and information sharing.—

(17) The department may provide to the person against whom
transferee liability is being asserted pursuant to s. 213.758 ~~or~~
~~212.10(1)~~ information relating to the basis of the claim.



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Section 3. Section 202.31, Florida Statutes, is repealed.

Section 4. Section 212.10, Florida Statutes, is repealed.

Section 5. This act shall take effect July 1, 2011.

===== 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 the transfer of tax liability;
amending s. 213.758, F.S.; providing definitions;
revising provisions relating to tax liability when a
person transfers or quits a business; providing that
the transfer of the assets of a business or stock of
goods of a business under certain circumstances is
considered a transfer of the business; requiring the
Department of Revenue to provide certain notification
to a business before a circuit court shall temporarily
enjoin business activity by that business; providing
that transferees of the business are liable for
certain taxes unless specified conditions are met;
requiring the department to conduct certain audits
relating to the tax liability of transferors and
transferees of a business within a specified time
period; requiring certain notification by the
Department of Revenue to a transferee before a circuit
court shall enjoin business activity in an action
brought by the Department of Legal Affairs seeking an
injunction; specifying a transferor and transferee of



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the assets of a business are jointly and severally
liable for certain tax payments up to a specified
maximum amount; specifying the maximum liability of a
transferee; providing methods for calculating the fair
market value or total purchase price of specified
business transfers to determine maximum tax liability
of transferees; amending s. 213.053, F.S.; authorizing
the Department of Revenue to provide certain tax
information to a transferee against whom tax liability
is being asserted pursuant to s. 213.758, F.S.;
repealing s. 202.31, F.S., relating to the tax
liability and criminal liability of dealers of
communications services who make certain transfers
related to a communications services business;
repealing s. 212.10, F.S., relating to a dealer's tax
liability and criminal liability for sales tax when
certain transfers of a business occur; 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 Commerce and Tourism Committee

BILL: SB 1384

INTRODUCER: Senator Altman

SUBJECT: Transfer of Tax Liabilities

DATE: April 11, 2011

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hrdlicka	Cooper	CM	Pre-meeting
2. _____	_____	JU	_____
3. _____	_____	BC	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

I. Summary:

SB 1384 consolidates and revises the statutes which deal with the transfer of tax liabilities.

In general, a person who buys a business (transferee) assumes the tax liabilities of the seller (transferor), unless an exception applies. Current law provides three different statutes relating to tax liability related to the transfer of a business to new ownership. This bill repeals two specific statutes (sales and communications) and amends the statute relating to taxes owed.

The bill revises the requirements for a transferee to take possession of a business without assuming any outstanding tax liabilities of a transferor. Current law provides that if the transferor provides a certificate from the Department of Revenue showing that no taxes are owed and the department conducts an audit finding no liability for taxes, the transferee can take possession without assuming any tax liability. This bill allows the transferee to take the business without assuming the transferor's liabilities under either of the following two circumstances:

- The transferee receives a certificate of compliance from the transferor showing that the transferor has not received notice of audit, has filed all required tax returns, has paid the tax due from those returns, and there are no insiders in common between the transferor and the transferee; or
- The Department of Revenue conducts an audit, at the request of the transferee or transferor, and finds that the transferor is not liable for any taxes.

The bill amends s. 213.758, F.S., and repeals ss. 212.10 and 202.31, F.S.

II. Present Situation:

Transfer of Tax Liabilities

Florida Statutes currently has three statutes which describe what is required when a business is transferred or sold as it relates to tax liability. Section 212.10, F.S., governs sales and use tax liability when a business is quit or sold.¹ In 2000, s. 202.31, F.S., was enacted to govern the transfer of communications services tax liability related to communications services businesses.² Section 213.758, F.S., was enacted in 2010 as a comprehensive statute to govern the transfer of tax liability for all taxes administered by the Department of Revenue (DOR), excluding the corporate income tax.³

Section 213.758, F.S.

A taxpayer who quits a business without selling, assigning, or transferring the business must make a final return and full payment for any taxes due, excluding corporate income tax, within 15 days of quitting the business.⁴ Similarly, a taxpayer who transfers a business must make a final return and full payment for any taxes due, excluding corporate income tax, within 15 days of the date of transfer.⁵

The transferee, or group of transferees, of more than 50 percent of a business is also liable for the taxes due by the transferor, unless the transferor provides the transferee a receipt or certificate from DOR showing that the transferor is not liable for taxes and DOR conducts an audit and finds that the transferor is not liable for taxes. DOR is permitted to charge a fee to perform these audits. The maximum liability for a transferee is the greater of the fair market value of the business or the purchase price paid. However, a transferee becomes liable for outstanding taxes only for voluntary transfers. The transferee may withhold a portion of the consideration to pay the taxes to pay to the department within 30 days of the date of transfer.⁶

Transferees or taxpayers who quit a business without paying all taxes due are prohibited from engaging in any business until the tax liability is paid. DOR may request the Department of Legal Affairs (DLA) to seek an injunction to prevent further business activity until all taxes due have been paid and the injunction may be granted without notice.

Sections 202.31 and 212.10, F.S.

Sections 202.31 and 212.10, F.S., govern the transfer of tax liability for communications and services tax and sales and use tax, respectively. The procedures pursuant to those statutes are substantially similar to those in s. 213.758, F.S. However, ss. 202.31 and s. 212.10, F.S., provide for misdemeanor criminal penalties for violations of the tax transfer provisions.⁷

¹ This statute has been in Florida law in some form since 1949. S. 10, ch. 26319, L.O.F.

² Sections 23, 58, ch. 2000-260, L.O.F. See also s. 38, ch. 2001-140, L.O.F.

³ Chapter 2010-166, L.O.F. For a list of all taxes administered by DOR, see s. 213.05, F.S. Section 220.829, F.S., governs the transfer of tax liability for corporate income taxes

⁴ Section 213.758(2), F.S., refers to taxes, interest, penalties, surcharges, or fees pursuant to ch. 443, F.S., or described in s. 72.011(1), F.S., excluding the corporate income tax.

⁵ Section 213.758(3), F.S., refers to taxes, interest, or penalties levied under ch. 443, F.S., or specified in s. 213.05, F.S., excluding the corporate income tax.

⁶ Section 213.758(1)(a) defines an “involuntary transfer” as a transfer due to the foreclosure by a non-insider, from eminent domain or condemnation actions, those involved in a bankruptcy proceeding, or to satisfy a debt to a financial institution.

⁷ Sections 212.10(5) and 202.31(5), F.S.

III. Effect of Proposed Changes:

Section 1 consolidates and revises the statutes which deal with the transfer of tax liabilities into s. 213.758, F.S..

Tax Liability

This bill allows the transferee to take possession of a business without assuming the transferor's outstanding tax liabilities under either of the following two circumstances:

- The transferee receives a certificate of compliance from the transferor showing that the transferor has not received notice of audit, has filed all required tax returns, has paid the tax due from those returns, and there are no insiders in common between the transferor and the transferee; or
- The Department of Revenue conducts an audit and finds that the transferor is not liable for any taxes. Either the transferee or transferor may request that the department conduct an audit, and if requested, the department must complete the audit within 90 days.

Section 213.758(6), F.S., is amended to clarify that the maximum tax liability of the transferee is the fair market value or purchase price paid for the business, whichever is greater, net of any liens or liability to non-insiders.

Injunctions

This bill requires 20 days written notice to a taxpayer before the Department of Legal Affairs may seek an injunction from a circuit court to enjoin further business activity by the taxpayer on the grounds of failure to pay taxes. Current law does not require notice before a court issues an injunction.

If a transferee is liable for unpaid tax, the bill requires that after receiving written notice by DOR of unpaid tax the transferee has 60 days to pay the tax, after which time they may not engage in any business activity within the until the tax liability is paid. However, a transferee may continue to do business if the transferee files an action as provided in ch. 72, F.S.; although a court may require the transferee to post a bond or other security.

The bill also requires 20 days written notice to a transferee before the Department of Legal Affairs may seek an injunction from a circuit court to enjoin further business activity by the transferee on the grounds of failure to pay taxes. Current law does not require a 60-day time period to pay taxes or a 20-day notice before a court issues an injunction.

Definitions

The bill creates definitions for the terms "business," "financial institution," "insider," "stock of goods," and "tax." The existing definition of "transfer" is expanded to include that a business is transferred when there is a transfer of more than 50 percent of the business, the assets of the business, or the stock of goods of the business.

Rulemaking

The bill removes the grant of rulemaking authority to DOR provided in s. 213.758(9), F.S.

Repeal of Statutes

Section 3 repeals s. 202.31, F.S. which relates to the transfer of sales and use tax liability, and Section 4 repeals s. 212.10, F.S., which relates to the transfer of communications services tax liability. With the creation of s. 213.758, F.S., in 2010 and the changes proposed in Section 1 of the bill, these two statutes are no longer necessary. The repeal of these statutes eliminates the misdemeanor penalty provisions for violations of these statutes.

Cross-References

Section 2 amends s. 213.053, F.S., to correct a cross-reference.

Effective Date

Section 5 provides an effective date of July 1, 2011.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Article VII, s. 18 of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

Subsection (b) of the provision prohibits the Legislature from “enacting, amending, or repealing any general law if the anticipated effect” is to reduce county or municipal aggregate revenue generating authority as it existed on February 1, 1989. The exception to this prohibition is if the Legislature passes such a law by 2/3 of the membership of each chamber.

Subsection (d) provides an exemption from this prohibition. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (which is \$1.88 million for FY 2011-12), are exempt.

The Revenue Estimating Conference estimated that the bill would have an indeterminate negative fiscal impact annually on local governments. It is unknown at this time if the bill would meet the exemption provided in subsection (d); however, the bill may be exempt from the mandates prohibition if the bill were to be passed by 2/3 of the membership of each chamber.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference met on March 11, 2011, and adopted an indeterminate negative fiscal impact on state and local revenues for the bill.

B. Private Sector Impact:

The bill clarifies the conditions under which a transferee may be liable for unpaid tax of a transferor.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 220.829, F.S., governs the transfer of tax liability for corporate income taxes.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.

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 Commerce and Tourism Committee

BILL: SB 1424

INTRODUCER: Senator Benacquisto

SUBJECT: Telemarketing

DATE: April 11, 2011

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. McCarthy	Cooper	CM	Pre-meeting
2. _____	_____	BC	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

I. Summary:

Section 501.604(10), F.S., exempts business-to-business sales, where:

- The commercial telephone seller has been operating continuously for at least 3 years under the same business name and has at least 50 percent of its dollar volume consisting of repeat sales to existing businesses;
- The purchaser business intends to resell or offer for purposes of advertisement or as a promotional item the property or goods purchased; or
- The purchaser business intends to use the property or goods purchased in a recycling, reuse, remanufacturing, or manufacturing process.

This bill deletes these conditions, thereby exempting all business-to-business sales from the Florida Telemarketing Act with the exceptions noted in the act relating to filing a notarized affidavit of exemption with the Department of Agriculture and Consumer Services (DACS), displaying the affidavit of exemption at its business location, regulations regarding the timing of calls, and blocking of the seller identity.

This bill substantially amends the following sections of the Florida Statutes: 501.604.

II. Present Situation:

The Florida Telemarketing Act requires non-exempt businesses and their salespersons that engage in the sale of consumer goods or services by telephone in Florida to register with DACS and pay a fee. A commercial telephone seller is a person who engages in commercial telephone solicitation on his or her own behalf or through salespersons. A salesperson is any individual employed, appointed, or authorized by a commercial telephone seller, regardless of whether the

commercial telephone seller refers to the individual as an agent, representative, or independent contractor, who attempts to solicit or solicits a sale on behalf of the commercial telephone seller.

Section 501.604(10), F.S., exempts business-to-business sales, where:

- The commercial telephone seller has been operating continuously for at least 3 years under the same business name and has at least 50 percent of its dollar volume consisting of repeat sales to existing businesses;
- The purchaser business intends to resell, or offer for purposes of advertisement or as a promotional item, the property or goods purchased; or
- The purchaser business intends to use the property or goods purchased in a recycling, reuse, remanufacturing, or manufacturing process.

However, exempt businesses must:

- file an affidavit of exemption with DACS;¹
- must display the affidavit of exemption at its business location;²
- comply with regulations regarding the timing of calls which prohibit commercial calls before 8 a.m. or after 9:00 p.m.;³ and
- avoid the intentional blocking of the seller identity - commercial telephone caller may not take any intentional action to prevent transmission of the telephone solicitor's name or telephone number to the party called when the equipment is capable to providing the information.⁴

III. Effect of Proposed Changes:

Section 1 amends s. 501.604(10), F.S., to exempt all business-to-business sales from complying with the Florida Telemarketing Act. However, these exempt businesses will still be required to comply with filing a notarized affidavit of exemption with DACS, display the affidavit of exemption at its business location, and comply with regulations regarding the timing of calls and blocking of the seller identity.

Section 2 provides an effective date July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹ Section 501.608(1)(b), F.S.

² Section 501.608(2), F.S.

³ Section 501.616(6), F.S.

⁴ Section 501.616(7), F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill has the potential to reduce fees to DACS depending on how many individuals it would effect. In its analysis of this bill, DACS has not shown any decrease in revenue based on this bill.⁵

B. Private Sector Impact:

Currently an applicant for licensure as a commercial telephone seller must pay a \$1,500 fee, and post a bond, letter of credit, or certificate of deposit in a minimum amount of \$50,000.⁶⁷ A salesperson must also pay a \$50 licensing fee if he is working for a non-exempt entity that falls under the telemarketing act.

This bill could eliminate the costs associated with registering with DACS under the Telemarketing Statute for those companies who would not currently have qualified under existing law. This bill would also eliminate the \$50 licensing fee per salesman.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

⁵ DACS analysis on file with the Senate Commerce and Tourism Committee dated March 3, 2011.

⁶ Section 501.605(5)(b), F.S.

⁷ Section 501.611(2), F.S.

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



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Ring) recommended the following:

Senate Amendment (with title amendment)

Between lines 33 and 34
insert:

Section 1. Subsection (8) of section 220.02, Florida
Statutes, is amended to read:

220.02 Legislative intent.—

(8) It is the intent of the Legislature that credits
against either the corporate income tax or the franchise tax be
applied in the following order: those enumerated in s. 631.828,
those enumerated in s. 220.191, those enumerated in s. 220.181,
those enumerated in s. 220.183, those enumerated in s. 220.182,



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those enumerated in s. 220.1895, those enumerated in s. 221.02, those enumerated in s. 220.184, those enumerated in s. 220.186, those enumerated in s. 220.1845, those enumerated in s. 220.19, those enumerated in s. 220.185, those enumerated in s. 220.1875, those enumerated in s. 220.192, those enumerated in s. 220.193, those enumerated in s. 288.9916, those enumerated in s. 220.1899, ~~and~~ those enumerated in s. 220.1896, and those enumerated in s. 220.1877.

Section 2. Paragraph (a) of subsection (1) of section 220.13, Florida Statutes, is amended to read:

220.13 "Adjusted federal income" defined.—

(1) The term "adjusted federal income" means an amount equal to the taxpayer's taxable income as defined in subsection (2), or such taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows:

(a) *Additions.*—There shall be added to such taxable income:

1. The amount of any tax upon or measured by income, excluding taxes based on gross receipts or revenues, paid or accrued as a liability to the District of Columbia or any state of the United States which is deductible from gross income in the computation of taxable income for the taxable year.

2. The amount of interest which is excluded from taxable income under s. 103(a) of the Internal Revenue Code or any other federal law, less the associated expenses disallowed in the computation of taxable income under s. 265 of the Internal Revenue Code or any other law, excluding 60 percent of any amounts included in alternative minimum taxable income, as defined in s. 55(b)(2) of the Internal Revenue Code, if the



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taxpayer pays tax under s. 220.11(3).

3. In the case of a regulated investment company or real estate investment trust, an amount equal to the excess of the net long-term capital gain for the taxable year over the amount of the capital gain dividends attributable to the taxable year.

4. That portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.181. This subparagraph shall expire on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

5. That portion of the ad valorem school taxes paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.182. This subparagraph shall expire on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

6. The amount of emergency excise tax paid or accrued as a liability to this state under chapter 221 which tax is deductible from gross income in the computation of taxable income for the taxable year.

7. That portion of assessments to fund a guaranty association incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year.

8. In the case of a nonprofit corporation which holds a pari-mutuel permit and which is exempt from federal income tax as a farmers' cooperative, an amount equal to the excess of the gross income attributable to the pari-mutuel operations over the attributable expenses for the taxable year.

9. The amount taken as a credit for the taxable year under s. 220.1895.



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10. Up to nine percent of the eligible basis of any designated project which is equal to the credit allowable for the taxable year under s. 220.185.

11. The amount taken as a credit for the taxable year under s. 220.1875. The addition in this subparagraph is intended to ensure that the same amount is not allowed for the tax purposes of this state as both a deduction from income and a credit against the tax. This addition is not intended to result in adding the same expense back to income more than once.

12. The amount taken as a credit for the taxable year under s. 220.192.

13. The amount taken as a credit for the taxable year under s. 220.193.

14. Any portion of a qualified investment, as defined in s. 288.9913, which is claimed as a deduction by the taxpayer and taken as a credit against income tax pursuant to s. 288.9916.

15. The costs to acquire a tax credit pursuant to s. 288.1254(5) that are deducted from or otherwise reduce federal taxable income for the taxable year.

16. The amount equal to the credit claimed for the taxable year under s. 220.1877. The addition in this subparagraph is intended to ensure that the same amount is not allowed for tax purposes of this state as both a deduction from income and a credit against the tax. This addition is not intended to result in adding the same expense back to income more than once.

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

And the title is amended as follows:

Between lines 2 and 3



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insert:

amending s. 220.02, F.S.; adding the tax credit
allowed under the Florida Public School Tax Credit
Program to the tax credits that are applied against
the corporate income tax; amending s. 220.13, F.S.;
redefining the term "adjusted federal income" to
include the public school funding tax credit;
prohibiting a taxpayer from receiving a credit greater
than the amount of the contribution;



801604

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete line 192
and insert:

Section 2. The Department of Revenue is authorized and all conditions are deemed met, to adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to administer the provisions of this act. The emergency rules shall remain in effect for 6 months after the rules are adopted and the rules may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

Section 3. This act shall take effect January 1, 2012.



801604

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

And the title is amended as follows:

Delete line 30

and insert:

limitation; authorizing the Department of Revenue to
adopt emergency rules to administer the act; 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 Commerce and Tourism Committee

BILL: SB 1542

INTRODUCER: Senator Siplin

SUBJECT: Corporate Income Tax Credits

DATE: April 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	Pre-meeting
2.			ED	
3.			BC	
4.				
5.				
6.				

I. Summary:

Florida currently offers state tax credits in exchange for business contributions to the Florida Tax Credit Scholarship Program, designed to assist low-income students who attend private schools. This program is capped at \$140 million for FY 10-11.

SB 1542 would create a similar credit against corporate income tax liabilities for businesses that make contributions to Florida public schools, to support educational expenses or tutoring, mentoring, or extracurricular programs, or other specified purposes.

The tax credit is equal to 100 percent of the contribution but may not exceed 75 percent of the contributor's tax liability after all other credits for which the contributor is eligible have been taken. The tax credits are capped at \$118 million per state fiscal year.

Recipient schools must use the contributions for the purposes selected by the contributors, except that any undesignated contributions may be used as determined by the schools, relying upon recommendations of the applicable school advisory councils. Also, each recipient school must annually report to the Department of Revenue (DOR) information about the amount and number of contributions it received the previous calendar year, and how much it spent.

Unused credits may be carried forward for up to 3 years, and a taxpayer's credits may not be transferred to another entity unless all of the original taxpayer's assets are transferred in the same transaction to the other entity.

SB 1542 creates s. 220.1877, F.S.

II. Present Situation:

The Corporate Income Tax Credit Scholarships for K-12 Students

The Legislature established the Corporate Income Tax Credit Scholarship Program in 2001¹ to expand educational opportunities for low-income students.² The program enables these students to attend private schools using scholarships financed with contributions from businesses, in exchange for those businesses receiving 100 percent of their contributions as a credit against their corporate income³ or insurance premium tax⁴ liabilities, as a credit against businesses eligible for direct payment of sales and use taxes,⁵ the excise taxes owed on oil or natural gas production,⁶ on malt beverages, and on other alcoholic beverages.⁷

Businesses participating in the scholarship program make contributions to non-profit scholarship funding organizations (SFOs), and receive tax credits equal to the amount of these contributions, not to exceed 75 percent of their corporate or premium insurance tax liabilities. The maximum amount of tax credits that may be granted annually under the program was capped originally at \$50 million, but over the years that cap has increased so that for FY 10-11, the cap is \$140 million.⁸

As of November 2010, there were 1,073 private schools in 60 counties serving 32,320 students who received scholarships under this program.⁹ More information is available on the 2009-2010 school year; according to a report compiled by the Florida Department of Education's school choice website:¹⁰

- 28,927 students received scholarships;
- 1,033 private schools – of which 79 percent were described as “religious” and 21 percent as “non-religious – participated in the program;
- Each scholarship was valued at \$3,950;
- A total of \$106 million in contributions were made by businesses, who later received tax credits; and
- Four SFOs participated in the 2009-2010 school year – Step Up For Students, based in Jacksonville; The Carrie Meek Foundation, based in Tampa; Lightbearers, Inc., based in Daytona Beach; and Educate Today, based in Tampa.

¹ Originally s. 220.187, F.S. (ch. 2000-225, L.O.F.); however, this section was transferred in 2010 to s. 1002.395, F.S. (ch. 2010-24, L.O.F.)

² Information in this section about the Corporate Income Tax Credit Scholarship Program was taken from Report No. 08-68 “The Corporate Income Tax Credit Scholarship Program Saves State Dollars,” prepared by the Office of Program Policy Analysis & Government Accountability. Published in December 2008.

³ Section 220.1875, F.S.

⁴ Section 624.51055, F.S.

⁵ Section 212.1831, F.S. Eligible companies are those whose operations do not collect sales taxes nor lend themselves to immediate computation of sales taxes owed. The best example is an interstate trucking company that leases its vehicles. Because the trucks may drive through multiple states as they deliver goods, the lessee must wait until the end of each month to calculate, for Florida tax purposes, how many miles were driven in Florida to compute the state sales tax owed on the lease.

⁶ Section 211.0251, F.S.

⁷ Section 561.1211, F.S.

⁸ Section 1002.395(5)(a)1., F.S. Subsequent subparagraphs describe how the cap is calculated in subsequent fiscal years.

⁹ See http://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ftc_report_nov2010.pdf.

¹⁰ See http://www.floridaschoolchoice.org/Information/CTC/files/ctc_fast_facts.pdf.

Tax Credit Information

Because the amount of tax credits is capped, corporations must apply, and DOR must approve, the tax credits prior to the companies, which made eligible contributions, claiming the credits on their tax returns.

According to information provided by DOR, for the state's 2010-11 fiscal year, where the credit allocation process for this scholarship program began on January 1, 2010, the following credit allocations were made to 104 different taxpayers:

- \$70.79 million for corporate income tax liability;
- \$21.90 million for insurance premium tax liability;
- \$38.9 million for the malt beverage excise tax liability; and
- \$8.14 million for the liquor and other alcoholic beverage excise tax liability.

DOR says most of the taxpayers have not yet filed their tax returns, because of the difference in tax year and fiscal year for corporations and because of the longer filing period for corporations.

Private Contributions to K-12 Public Schools in Florida

Sixty of Florida's 67 school districts have direct-support organizations called "education foundations" that serve as direct support organizations for the districts. The statewide Consortium of Florida Education Foundations (CFEF)¹¹ claims in its 2009-2010 annual report that nearly \$40 million was contributed to Florida public schools in FY 2008-2009. The CFEF supports programs promoting literacy and STEM (Science, Technology, Engineering & Math) education, as well as assistance for low-performing students and support for career and technical education.

Additionally, the state Department of Education reported that school districts maintain an account for "gifts, grants, and bequests," which likely includes contributions. The total reported in FY 2009-2010 was \$11,664,313.¹²

III. Effect of Proposed Changes:

SB 1542 creates the Florida Public School Tax Credit Program, by which businesses subject to the state corporate income or insurance premium tax may receive credits against those liabilities by contributing to Florida public schools. The program is capped at \$118 million per fiscal year. The tax credit is equal to 100 percent of the contribution but may not exceed 75 percent of the contributor's tax liability after all other credits for which the contributor is eligible have been taken.

Section 1: Creates s. 220.1877, F.S., which outlines a program awarding state tax credits for contributing tax credits to public schools to defray school expenses and sponsor other programs. SB 1542 includes definitions of terms used, and expresses a number of legislative findings about the importance of expanding educational opportunities and improving the quality of educational services in state, so that children will receive higher-quality educations.

¹¹ Website at <http://www.cfef.net/>.

¹² Information on file with the Senate Commerce Committee.

Uses of contributions

The contributions may be used to pay for a public school's educational expense or for the school's programs related to:

- Special assistance;
- Tutoring;
- The Foundation for Florida's Future;¹³
- Mentoring;
- Extracurricular activities;
- Character education; and
- Pay-to-play fees for sports programs.

The contributing business may designate the specific use to which its contribution must be applied. However, each public school that receives contributions not designated for a specific purpose can determine how the contributions are used. The school's advisory council may make recommendations as to how best to apply undesignated contributions.

All eligible contributions received by a public school shall be deposited in a manner consistent with s. 17.57(2), F.S.

Reporting Requirement

SB 1542 requires each public school that receives fees or a cash contribution to report to DOR, in a form prescribed by DOR, the following information;

- The total number of fee and cash contribution payments received during the previous calendar year;
- The total dollar amount of fees and contributions received during the previous calendar year; and
- The total dollar amount from fees and contributions received that were spent by the public school during the previous calendar year.

Administration of Tax Credits

The bill creates a tax credit equal to 100 percent of an eligible contribution to a Florida public school against any tax due in a taxable year from a contributing business. The credit is allowed against the corporate income tax liabilities taxes imposed in ch. 220, F.S., during the same taxable year as the contribution was made. However, such a credit may not exceed 75 percent of the tax due under this chapter for the taxable year, after the application of any other allowable credits by the taxpayer. This new tax credit must be reduced by the difference between the amount of federal corporate income tax owed by the contributing taxpayer, taking into account the credit, and the amount of federal corporate income tax without application of this credit.

The amount of new tax credits and carryforward tax credits available each fiscal year is capped at \$118 million, for this new program and for the tax credits available to insurance companies participating in the Corporate Income Tax Credit Scholarship Program for private school students, pursuant to s. 624.51055, F.S. Insurers who participate in the private-school scholarship program will not be able to participate in this new program.

¹³ Information about the foundation is at <http://www.foundationforfloridasfuture.org/>. Site last visited April 8, 2011.

DOR is authorized to apportion to each district school board the total dollar amount of tax credits available to taxpayers who make eligible contributions to a public school in the school board's district. The apportionment will be calculated based on multiplying each school district's percentage of the previous fiscal year's statewide total number of unweighted, full-time equivalent students times \$118 million. The applicable dollar amount resulting from the calculation for each school district will be apportioned to the school board for allocation by DOR to taxpayers in accordance with DOR rules adopted to implement this provision.

An eligible business who files a Florida consolidated return as a member of an affiliated group pursuant to s. 220.131(1), F.S., may be allowed the credit on a consolidated return basis; however, the total credit taken by the affiliated group is subject to the same 75- percent limitation. A business can only transfer its credits earned under this program to another entity if all of the business' assets are transferred in the same transaction to the other entity. Eligible taxpayers also may choose, beginning with the January 1, 2012, tax year for corporations, to rescind their share of the tax credit, with DOR approval, with the rescinded amount becoming available under the cap for other eligible taxpayers to claim, on a first-come, first-served basis.

Finally, a business may carry forward any unused credits, because of insufficient tax liability, for up to 3 years. This applies to tax credits awarded on the basis of contributions made after January 1, 2012.

DOR and the Department of Education are authorized to develop a cooperative agreement to assist in the administration of this new tax credit/scholarship program, and to adopt any necessary rules. Specifically, DOR is authorized to adopt rules to implement the new program, including rules establishing application forms and procedures, and governing the allocation of tax credits and carryforward credits on a first-come, first-served basis.

Preservation of Credits

SB 1542 specifies that if any provision or portion of the bill related to tax credits is held unconstitutional by any court or is otherwise declared invalid, the unconstitutionality or invalidity shall not affect any credits earned by any taxpayer, with respect to any contribution paid to a public school before the date of a determination of unconstitutionality or invalidity. Such credit shall be allowed as if a determination of unconstitutionality or invalidity had not been made, provided that nothing in this bill, or in combination with any other provision of law, results in the allowance of any credit to any taxpayer in excess of \$1 of credit for each dollar paid to a public school.

Section 2: Provides an effective date of July 1, 2011.

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 Revenue Estimating Conference has not met to evaluate SB 1542. The bill caps the annual amount of tax credits that could be awarded and claimed at \$118 million under the new Florida Public School Tax Credit Program and that portion of the separate Corporate Income Tax Credit Scholarship Program that is claimed by insurance companies against their premium insurance tax liabilities. As noted above in Section II, DOR has calculated that insurers who contributed to the private school scholarship program are eligible to receive nearly \$22 million in tax credits. This means that the new public school contribution program could actually generate only \$96 million for contributing businesses. If the full amount of \$118 million was contributed to public schools, then the contributing businesses would receive less than a \$1-to-\$1 exchange rate for their contributions.

B. Private Sector Impact:

Indeterminate, but likely positive for those businesses that choose to participate.

C. Government Sector Impact:

Indeterminate. DOR is likely to incur some costs in administering the new program.

VI. Technical Deficiencies:

DOR staff has identified a number of technical deficiencies related to accounting for the tax credits on tax returns. The sponsor's staff has indicated an amendment will be prepared to address these issues.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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



166334

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Detert) recommended the following:

Senate Amendment (with title amendment)

Delete lines 19 - 42
and insert:

448.110(5)(a).

Section 2. Present subsections (3) through (11) of section 448.110, Florida Statutes, are renumbered as subsections (4) through (12), respectively, a new subsection (3) is added to that section, and paragraph (a) of present subsection (4) and paragraph (a) of present subsection (6) of that section are amended, to read:

448.110 State minimum wage; annual wage adjustment;



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enforcement.—

(3) As used in this section, the term:

(a) "Adjusted real wage rate" means the wage rate establishing purchasing power parity with the base-period wage rate of \$6.15 set pursuant to subsection (4).

(b) "Federal minimum wage rate" means the minimum wage rate set by the Federal Government.

(c) "CPI-W" means the Consumer Price Index for Urban Wage Earners and Clerical Workers for the South Region, not seasonally adjusted, or a successor index as calculated by the United States Department of Labor.

(5)(4)(a) Beginning September 30, 2005, and annually on September 30 thereafter, the Agency for Workforce Innovation shall calculate an adjusted real state minimum wage rate by using increasing the state minimum wage by the rate of inflation for the 12 months before ~~prior to~~ September 1. In calculating the adjusted real state minimum wage rate, the agency shall calculate the rate of inflation by computing the percentage change in the CPI-W. Each year the rate of inflation is multiplied by the previous year's computed adjusted real wage rate. This amount shall be added to or subtracted from the previous year's computed adjusted real wage rate ~~use the~~ Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for the South Region or a successor index as calculated by the United States Department of Labor. The computed adjusted real wage rate becomes the Florida minimum wage, as defined in s. 448.109(1)(b), when both the previous year's Florida minimum wage rate and the current federal minimum wage rate are lower than the adjusted real wage



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rate. If the adjusted real wage rate is lower than the previous year's Florida minimum wage and lower than the federal minimum wage rate, then the higher of the two shall be the Florida minimum wage for the subsequent year. The adjusted real wage rate shall be the only basis used for calculating the subsequent year's adjusted real wage rate. Each Florida ~~adjusted state~~ minimum wage ~~rate~~ shall take effect on the following January 1, ~~with the initial adjusted minimum wage rate to take effect on~~ January 1, 2006.

(7)(6)(a) Any person aggrieved by a violation of this section may bring a civil action in a court of competent jurisdiction against an employer violating this section or a party violating subsection (6) ~~(5)~~. However, prior to bringing any claim for unpaid minimum wages pursuant to this section, the person aggrieved shall notify the employer alleged to have violated this section, in writing, of an intent to initiate such an action. The notice must identify the minimum wage to which the person aggrieved claims entitlement, the actual or estimated work dates and hours for which payment is sought, and the total amount of alleged unpaid wages through the date of the notice.

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

And the title is amended as follows:

Delete lines 5 - 7

and insert:

calculating the adjusted real wage rate and its application as the Florida minimum wage when both the previous year's Florida minimum wage and the Federal minimum wage are lower; providing definitions;



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conforming a cross-reference;

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 Commerce and Tourism Committee

BILL: SB 1610

INTRODUCER: Senator Detert

SUBJECT: State Minimum Wage

DATE: April 11, 2011

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hrdlicka	Cooper	CM	Pre-meeting
2. _____	_____	GO	_____
3. _____	_____	BC	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

I. Summary:

The Agency for Workforce Innovation is required to annually calculate and publish the state minimum wage. SB 1610 provides greater specificity to the Agency for Workforce Innovation to calculate the state minimum wage.

This bill amends ss. 448.109 and 448.110, F.S.

II. Present Situation:

A constitutional amendment to Florida's Constitution took effect on May 2, 2005, which established the state minimum wage.¹ The Legislature enacted the Florida Minimum Wage Act in 2005 to implement the constitutional provisions.²

The Agency for Workforce Innovation (AWI) is required to annually calculate and publish the state minimum wage. Current law requires employers to pay employees a minimum wage at an hourly rate published by AWI for all hours worked in Florida. Only those individuals entitled to receive the federal minimum wage under the federal Fair Labor Standards Act and its implementing regulations are eligible to receive the state minimum wage.

Minimum Wage Calculation

AWI must calculate an adjusted state minimum wage rate by increasing the state minimum wage by the rate of inflation for the 12 months prior to September 1. In calculating the adjusted state

¹ Section 24, Art. X, of the State Constitution.

² Chapter 2005-353, L.O.F.

minimum wage, AWI must use the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for the South Region.³ Neither the statute nor the Constitution specifically address deflation in the computation of the minimum wage.

In interpreting the intent of the Legislature to calculate a state minimum wage, AWI computes the percentage change in the CPI for the 12 months prior to September 1 and multiplies it times the prior year's computed Adjusted Real Wage Rate. This provides the amount to be added to, or subtracted from, the previous year's computed Adjusted Real Wage Rate.

The higher of the previous year's state minimum wage, the Adjusted Real Wage Rate, or the Federal minimum wage rate⁴ becomes the state minimum wage for the year. The state minimum wage takes effect on the following January 1, unless a new Federal minimum wage rate is issued and that rate is higher. For example, on July 24, 2009, the new Federal minimum wage rate of \$7.25 became the new adjusted state minimum wage rate because it was higher than the state minimum wage rate at the time of \$7.21.

AWI's method for calculating the state minimum wage rate is currently the subject of a lawsuit. Florida Legal Services and the National Employment Law Project recently filed the lawsuit on behalf of four individual workers and three organizations that represent low-wage employees.⁵ The plaintiffs claim that AWI should not have accounted for the decrease in the CPI (deflation) in 2009 when calculating future years' minimum wages. The case is currently pending.

III. Effect of Proposed Changes:

This bill amends the state minimum wage statutes to provide greater specificity to AWI in its calculation of the state minimum wage. The bill clarifies that the state minimum wage cannot drop when there is deflation, but that AWI should account for deflation when computing future rates. Additionally, the bill clarifies the relationship between the Federal minimum wage and the state minimum wage.

Section 2 amends s. 448.110, F.S., to provide greater specificity to AWI as to how to calculate the state minimum wage. AWI is directed to first calculate the difference between the CPI from August of the previous year and then August of the current year. The difference will be the rate of inflation or deflation. The difference is then applied to the previous year's wage rate calculation to create the Adjusted Real Wage Rate. This method allows for parity between the Adjusted Real Wage Rate and the cost of living.

The bill specifies that the Adjusted Real Wage Rate becomes the state minimum wage when both the previous year's state minimum wage and the Federal minimum wage are lower than the Adjusted Real Wage Rate.

Section 1 amends s. 448.109, F.S. to include a cross-reference.

Section 3 provides an effective date of July 1, 2011.

³ Section 448.110(4)(a), F.S.

⁴ 29 U.S.C. 206. See 29 U.S.C. 218(a), which permits a state minimum wage higher than the federal wage.

⁵ Cadet, et. al. v. Florida Agency for Workforce Innovation, 37 2011 CA 000072 (2nd Cir. Fla., 2011).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None. This bill does not change the manner in which the state minimum wage is currently calculated.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The Agency for Workforce Innovation reports that the current bill still does not provide enough clarity to the minimum wage rate calculation.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Delete lines 26 - 101
and insert:

Section 2. Subsections (1), (3), and (8) of section 83.806, Florida Statutes, are amended to read:

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

(1) The tenant shall be notified by written notice delivered in person or by first-class ~~certified~~ mail, along with a certificate of mailing, to the tenant's last known address and conspicuously posted at the self-service storage facility or on



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the self-contained storage unit.

(3) Any notice given pursuant to this section shall be presumed delivered when it is deposited with the United States Postal Service, ~~registered~~, and properly addressed with postage prepaid.

(8) In the event of a sale under this section, the owner

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

And the title is amended as follows:

Delete lines 8 - 9

and insert:

of mailing; allowing electronic mail notice;

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 Commerce and Tourism Committee

BILL: SB 1772

INTRODUCER: Senator Hays

SUBJECT: Self-service storage facilities

DATE: April 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McCarthy	Cooper	CM	Pre-meeting
2.			CA	
3.			JU	
4.				
5.				
6.				

I. Summary:

This bill changes the notice requirements related to enforcing an owner's lien against goods stored in a self-service storage facility. Specifically, it allows for postal notice by first-class mail, along with a certificate of mailing, rather than certified mail; allows electronic mail notice; and deletes the requirement that the sale or disposition of the property be advertised or posted in the neighborhood where the storage facility is located.

In addition, it expands the provision relating to the right to create contractual liens or limitations on liability.

This bill substantially amends the following sections of the Florida Statutes: 83.803, 83.806, and 83.808.

II. Present Situation:

The Florida Self-storage Facility Act (act) controls the relationship between the owner of a self storage facility and a tenant who has entered into an agreement with him. This act controls the enforcement of an owners lien, including the notice requirements for the advertisement of sale of the personal property of the tenant who is in default.¹

¹ Part III of ch. 83, F.S.

Currently the last known address is defined in s. 83.803, F.S., as the address provided by the tenant in the latest rental agreement or the address provided by the tenant by hand delivery, or certified mail in a subsequent written notice of a change of address.²

With respect to the enforcement of lien, the tenant must be notified by written notice delivered in person or by certified mail to the tenant's last known address, and conspicuously posted at the self-service storage facility or on the self-contained storage unit.³ The notice must include:

- An itemized statement of the owner's claim;
- A description of the personal property;
- A demand for payment within a specified time, not less than 14 days after delivery of the notice;
- A conspicuous statement that unless the claim is paid within the time stated in the notice the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place; and
- The name, street address, and telephone number of the owner whom the tenant may contact to respond to the notice.

Any notice given in the enforcement action is presumed delivered when it is deposited with the United States Postal Service, registered, and properly addressed with postage prepaid.⁴

After the expiration of the time given in the notice, an advertisement of the sale or other disposition must be published once a week for 2-consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located. Inasmuch as any sale may involve property of more than one tenant, a single advertisement may be used to dispose of property at any one sale.⁵

In the event of a sale, the owner must provide a notice of any balance remaining to the tenant either in person or by certified mail. The owner must also provide a notice of the amount of the sale proceeds to the tenant or secured lienholders in person or by certified mail.⁶

If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement shall be posted at least 10 days before the date of the sale or other disposition in not fewer than three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.⁷

Section 83.808, F.S., specifically provides that nothing in the Self-storage Facility Act should be construed as in any manner impairing or affecting the right of parties to create liens by special contract or agreement, or in any manner impair or affect any other lien arising at common law, in

² Section 83.303(6), F.S.

³ See U.S. Postal Service <http://www.usps.com/send/waystosendmail/extraservices/certifiedmailservice.htm> (last visited April 8, 2011).

⁴ See U.S. Postal Service <http://www.usps.com/send/waystosendmail/extraservices/registeredmailservice.htm> (last visited April 8, 2011).

⁵ Section 83.806(4), F.S.

⁶ Section 83.806(8), F.S.

⁷ Section 83.806(4)(b), F.S.

equity, or by any statute of this state, or any other lien not provided for with respect to the owner's lien.

III. Effect of Proposed Changes:

Section 1 amends s. 83.803, F.S., to expand the definition of last known address to include the street address, post office box, or electronic mail address provided by the tenant or in a subsequent written change of address notice provided by first-class mail, or electronic mail. The bill removes the provision for notice of change of address being provided by the tenant by certified mail.

Section 2 amends s. 83.806, F.S., to remove the requirement that a tenant be notified by certified mail of the owners claim. The bill also alters the criteria for the creation of the presumption that the notice required by the statute was delivered to the tenant by removing the requirement that the notice be sent by registered mail.

The bill deletes subsection (4), which requires a newspaper advertisement of the sale or other disposition of the property. Specifically, this subsection requires that the advertisement must be published once a week for 2-consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located. If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement must be posted at least 10 days before the date of the sale or other disposition in not fewer than three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.

The bill allows notice be given by first class mail rather than certified mail with respect to the notice of the amount of the sale proceeds or any balance remaining after the sale.

Section 3 amends s. 83.808, F.S., by clarifying that this statute does not impair or affect the right of parties to create liens or *limitations on liability* by special contract or agreement.

Section 4 provides an effective date of July 1, 2011.

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 will lower the costs for owners of self storage facilities with respect to providing the required notice to tenants and secured lienholders under the self storage facility act.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.



286294

LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Gaetz) recommended the following:

Senate Amendment

Delete lines 30 - 38
and insert:

Internet; and

2. Solicits the purchase of such good or service over the Internet through an initial merchant after the consumer has initiated a transaction with the initial merchant.

The term does not include the initial merchant, a subsidiary or corporate affiliate of the initial merchant, or a successor of the initial merchant.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce and Tourism (Gaetz) recommended the following:

Senate Amendment

Delete lines 71 - 108
and insert:

3. Sending a written notice to the consumer confirming a transaction by first-class United States mail or e-mail before processing the consumer's credit card, or otherwise charging the consumer, or shortly thereafter. Such notice must clearly and conspicuously disclose the following:

a. The good or service purchased.

b. The amount that the consumer will be charged.

c. The timing and frequency of charges.



143864

13 d. A short and plain statement disclosing the post-
14 transaction third-party seller's cancellation and refund policy.

15 e. A telephone number, mailing address, Internet address,
16 and e-mail address where the post-transaction third-party seller
17 can be contacted.

18 f. The name or brand name of the initial merchant, if
19 known.

20 g. The name or brand name of the post-transaction third-
21 party seller.

22 h. That the post-transaction third-party seller is an
23 unaffiliated and separate entity from the initial merchant.

24 i. That the consumer is being charged by the post-
25 transaction third-party seller for a transaction that is
26 separate from the consumer's transaction with the initial
27 merchant.

28 4. If the notice described in subparagraph 3. is sent by e-
29 mail, the only words appearing in the subject line shall be
30 "Notice that ...(name or brand name of post-transaction third-
31 party seller... is charging your ...(type of account)...."

32 (3) PROHIBITION ON DISCLOSING DATA.—An initial merchant may
33 not disclose a consumer's credit card number, debit card number,
34 bank account number, or other account number, or disclose other
35 consumer billing information, to a post-transaction third-party
36 seller.

37 (4) MECHANISM TO STOP RECURRING CHARGES REQUIRED.—A post-
38 transaction third-party seller may not:

39 (a) Charge a consumer without providing a simple mechanism
40 for the consumer to cancel the good or service, and stop
41 charges, within a reasonable time after delivery of the written



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notice confirming the transaction; or

(b) Change its vendor code, or otherwise materially change
the way the post-transaction third-party seller is identified on
the consumer's account, more than once per year, unless the
post-transaction third-party seller provides the consumer with
written notice of the change.

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 Commerce and Tourism Committee

BILL: SB 1884

INTRODUCER: Senator Gaetz

SUBJECT: Consumer protection

DATE: April 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McCarthy	Cooper	CM	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

This bill prohibits a post-transaction third-party seller from charging a consumer for a good or service sold over the Internet unless specific disclosures are made and the seller receives the informed consent of the consumer. It also requires a post-transaction third-party seller to provide a simple mechanism for a consumer to cancel a purchase of a good or service and stop any recurring charges. Finally, it prohibits an initial merchant from disclosing a consumers

“...credit card, debit card, bank account, or other account number or other billing information to a post-transaction third-party seller for use in an internet-based sale of any good or service from that post-transaction third-party seller.”

This bill is very similar to recently enacted federal law, enacted to counter “negative option marketing,” which refers to a category of commercial transactions in which sellers interpret a customer’s failure to take an affirmative action, either to reject an offer or cancel an agreement, as assent to be charged for goods or services.

By including these same protections in our statutes, Florida has jurisdiction to enforce the consumer protections provided in the act under state law.

The bill creates an undesignated section of law in the Florida Statutes.

II. Present Situation:

Florida Law

Currently Florida law does not specifically address unfair and deceptive practices with respect to internet sales practices.

Federal Law

Congress, based on the findings below, passed S. 3386: Restore Online Shoppers' Confidence act (act) in late 2010.¹ Congress found:

The Internet has become an important channel of commerce in the United States, accounting for billions of dollars in retail sales every year. Over half of all American adults have now either made an online purchase or an online travel reservation. Consumer confidence is essential to the growth of online commerce. To continue its development as a marketplace, the Internet must provide consumers with clear, accurate information and give sellers an opportunity to fairly compete with one another for consumers' business. An investigation by the Senate Committee on Commerce, Science, and Transportation found abundant evidence that the aggressive sales tactics many companies use against their online customers have undermined consumer confidence in the Internet and thereby harmed the American economy. The Committee showed that, in exchange for "bounties" and other payments, hundreds of reputable online retailers and websites shared their customers' billing information, including credit card and debit card numbers, with third party sellers through a process known as "data pass." These third party sellers in turn used aggressive, misleading sales tactics to charge millions of American consumers for membership clubs the consumers did not want. Third party sellers offered membership clubs to consumers as they were in the process of completing their initial transactions on hundreds of websites. These third party "posttransaction" offers were designed to make consumers think the offers were part of the initial purchase, rather than a new transaction with a new seller. Third party sellers charged millions of consumers for membership clubs without ever obtaining consumers' billing information, including their credit or debit card information, directly from the consumers. Because third party sellers acquired consumers' billing information from the initial merchant through "data pass," millions of consumers were unaware they had been enrolled in membership clubs. The use of a "data pass" process defied consumers' expectations that they could only be charged for a good or a service if they submitted their billing information, including their complete credit or debit card numbers. Third party sellers used a free trial period to enroll members, after which they periodically charged consumers until consumers affirmatively canceled the memberships. This use of "free-to-pay conversion" and "negative option" sales took advantage of consumers' expectations that they would have an

¹ Public Law No: 111-345.

opportunity to accept or reject the membership club offer at the end of the trial period.²

The act provides three important protections for online consumers. First, it would make it unlawful for a post-transaction third-party seller – a seller who markets goods and services online through an initial merchant after a consumer has initiated a transaction – to charge, or attempt to charge, a consumer for any good or service sold in an online transaction, unless:

- The seller clearly discloses to the consumer all the material terms of the transaction; and
- The seller has obtained the consumer's consent before charging their credit card, bank account, or other financial account. Importantly, as a part of that consent, such sellers must obtain directly from the consumer the full financial account number to be charged.

Second, it would make it unlawful for any online seller to transfer a consumer's financial account number to a third party seller.

Finally, the act would make it unlawful for a seller to charge, or attempt to charge, a consumer for any good or service with a negative option feature in an online transaction, unless:

- The seller clearly discloses to the consumer all the material terms of the transaction;
- The seller has obtained the consumer's consent before charging their credit card, bank account, or other financial account; and
- The seller provides a simple way for the consumer to stop charges.³

Violations of the act and its regulations are treated as unfair or deceptive acts or practices. The Federal Trade Commission is charged with enforcement of the act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission act (15 U.S.C. 41 et seq) were incorporated into and made part of this act. The act allows the attorney general of a state, or other authorized state officer, alleging a violation of the act or any regulation issued under the act to bring an action on behalf of the residents of the state in any United States district court for the district in which the defendant is found, resides, or transacts business, or wherever venue is proper under section 1391 of title 28, United States Code, to obtain appropriate injunctive relief. However, the state must provide notice to the FTC and a copy of the complaint immediately upon instituting an action. The act allows the FTC to intervene in the actions filed by the attorney general.

III. Effect of Proposed Changes:

Section 1 creates an undesignated section of law in the Florida Statutes, to prohibit a post-transaction third-party seller from charging a consumer for a good or service sold over the Internet unless specific disclosures are made and the seller receives the informed consent of the consumer. It also requires a post-transaction third-party seller to provide a simple mechanism for

² S. 3386(2).

³ Statement by FTC Chairman Jon Leibowitz Regarding House and Senate Passage of Legislation to Combat Deceptive Online Sales Tactics <http://www.ftc.gov/opa/2010/12/negoption.shtm> (last visited April 7, 2011).

a consumer to cancel a purchase of a good or service and stop any recurring charges. Finally, it prohibits an initial merchant from disclosing a consumer's:

“...credit card, debit card, bank account, or other account number or other billing information to a post-transaction third-party seller for use in an internet-based sale of any good or service from that post-transaction third-party seller.”

The bill creates the following definitions:

- “Initial merchant” means a person who has obtained a consumer's billing information directly from the consumer through an Internet transaction initiated by the consumer.
- “Post-transaction third-party seller” means a person who:
 - Sells, or offers for sale, any good or service on the Internet;
 - Solicits the purchase of such good or service on the Internet through an initial merchant after the consumer has initiated a transaction with the initial merchant; and
 - Is not:
 - The initial merchant;
 - A subsidiary or corporate affiliate of the initial merchant; or
 - A successor of the initial merchant.

A post-transaction third-party seller may not charge or attempt to charge any consumer's credit card, debit card, bank account, or other account for any good or service sold in a transaction effected on the internet unless:

- Before obtaining the consumer's billing information, the post-transaction third-party seller has clearly and conspicuously disclosed to the consumer all material terms of the transaction, including:
 - A description of the good or service being offered;
 - The fact that the post-transaction third-party seller is not affiliated with the initial merchant, which must include disclosure of the name of the post-transaction third-party seller in a manner that clearly differentiates the post-transaction third-party seller from the initial merchant;
 - The cost of the good or service; and
 - How and when charges will be imposed by the post-transaction third-party seller; and
- The post-transaction third-party seller has received the express informed consent for the charges from the consumer whose credit card, debit card, bank account, or other account will be charged by:
 - Obtaining from the consumer:
 - The full account number of the account to be charged, or other account information necessary to complete the transaction; and
 - The consumer's name and address and a means to contact the consumer.
 - Requiring the consumer to perform an additional affirmative action, such as clicking on a confirmation button or checking a box that clearly and conspicuously indicates the consumer's consent to be charged the amount disclosed; and
 - Sending a written notice to the consumer by first-class United States mail or electronic mail at least 20 days before charging the consumer, which notice

clearly and conspicuously confirms the transaction and discloses the following:

- The good or service purchased;
- The amount to be charged to the consumer;
- When the consumer will be charged and whether the charges are recurring;
- That the consumer may cancel at any time by calling a telephone number provided in the notice or may cancel in a writing sent to an address or electronic address provided in the notice;
- The name of the initial merchant and that the post-transaction third-party seller is a separate entity from the initial merchant; and
- That the consumer is being charged by the post-transaction third-party seller for a transaction that is separate from the transaction the consumer made with the initial merchant.

The written notice must include a simple mechanism for the consumer to cancel the good or service and stop recurring charges by telephone, electronic mail, or United States mail. If the notice is sent by electronic mail, the only words appearing in the subject line shall be “notice that we are charging your [insert type of account] account.”

The bill also prohibits disclosing data used to facilitate certain deceptive internet sales transactions. An initial merchant may not disclose a credit card, debit card, bank account, or other account number, or other billing information to a post-transaction third-party seller for use in an Internet-based sale of any good or service from that post-transaction third-party seller.

A post-transaction third-party seller may not charge a consumer unless it provides a simple mechanism for the consumer to stop recurring charges via telephone, electronic mail, and United States mail.

A person who violates this section commits an unfair and deceptive trade practice under part II of ch. 501, F.S., and is subject to any remedies or penalties available for a violation of that part.

By including in our statutes the same protections provided in federal law, Florida has jurisdiction to enforce these consumer protections in state courts.

Section 2 This act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This will create additional cost for the post-transaction third-party seller in that they will now have to provide notice and acquire additional information directly from the consumer.

The bill should create a more consumer friendly internet experience for Florida residents knowing that the initial merchant cannot simply transfer their information to a post-transaction third-party seller

C. Government Sector Impact:

To the extent that the Attorney General or state attorneys decide to pursue enforcement of the provisions of the act, there will be a corresponding impact on our court system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.