The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Wednesday, April 13, 2011
TIME: 9:15 —10:45 a.m.
PLACE: *James E. "Jim" King, Jr., Committee Room,* 401 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 1312** Agriculture / Siplin (Similar H 7219)	School Nutrition Programs; Cites this act as the "Healthy Schools for Healthy Lives Act." Transfers and reassigns functions and responsibilities, including records, personnel, property, and unexpended balances of appropriations and other resources for the administration of the school food and nutrition programs from the Department of Education to the Department of Agriculture and Consumer Services. Requires the Department of Agriculture and Consumer Services to conduct, supervise, and administer all school food and nutrition programs, etc. AG 03/28/2011 Fav/CS BGA 04/13/2011 BC RC	
2	**CS/SB 236** Environmental Preservation and Conservation / Hays (Similar CS/H 95)	State Parks; Provides for the parents of certain deceased veterans and the spouse and parents of law enforcement officers and firefighters who die in the line of duty to receive annual entrance passes to state parks at no charge. Designates the Jack Mashburn Marina at St. Andrews State Park in Bay County. Directs the Department of Environmental Protection to erect suitable markers. Exempts parks within the state park system which have free-roaming animal populations from the liability provisions. MS 03/10/2011 Favorable EP 03/23/2011 Fav/CS BGA 04/13/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**CS/SB 546** Health Regulation / Hays (Compare H 367)	Dentists; Prohibits contracts between health insurers and dentists from containing certain fee requirements set by the insurer under certain circumstances. Prohibits a contract from containing a provision that prohibits a dentist from billing a patient the difference between the amount reimbursed by the insurer and the dentist's normal rate for services under certain circumstances. Prohibits contracts between prepaid limited health service organizations and dentists from containing certain fee requirements set by the organization under certain circumstances, etc. BI 03/09/2011 Favorable HR 03/28/2011 Fav/CS BC	
4	**SB 762** Hays (Identical H 4117)	Florida Climate Protection Act; Repeals provisions relating to a cap-and-trade regulatory program to reduce greenhouse gas emissions from electric utilities. Conforms a cross-reference. CU 03/07/2011 Favorable EP 03/17/2011 Favorable BGA 04/13/2011 BC	
5	**SB 850** Hays (Similar CS/H 663)	State Forests; Provides for Wounded Warrior special hunt areas for certain disabled veterans. Provides for funding. Provides eligibility requirements. MS 03/23/2011 Favorable EP 03/30/2011 Favorable BGA 04/13/2011 BC	
6	**CS/SB 1072** Judiciary / Latvala (Identical H 951)	Recording of Real Property Documents; Establishes that certain electronic documents accepted for recordation are validly recorded. Provides legislative intent. Provides for prospective and retroactive application. JU 03/22/2011 Fav/CS BI 04/05/2011 Favorable BGA 04/13/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**CS/CS/SB 1290** Environmental Preservation and Conservation / Agriculture / Dean (Similar CS/CS/H 949, Compare H 7215, CS/S 2076)	Pest Control; Provides rule changes that allow operators to provide certain emergency notice to the Department of Agriculture and Consumer Services by facsimile or electronic means. Increases the minimum bodily injury and property damage insurance coverage required for pest control businesses. Provides for the certification of commercial wildlife trappers. Increases the minimum financial responsibility requirements for licensees that perform certain inspections, etc. AG 03/21/2011 Fav/CS EP 03/30/2011 Fav/CS BGA 04/13/2011 BC	
8	**CS/SB 1316** Banking and Insurance / Detert (Compare CS/CS/H 823)	Loan Processing; Specifies rulemaking powers of the Financial Services Commission. Prohibits acting as an in-house loan processor without a specified license. Provides that a loan originator license may not be issued to a person who has had an in-house loan processor license or its equivalent revoked in any jurisdiction. Requires that in order to renew a mortgage lender license a mortgage lender must authorize the Nationwide Mortgage Licensing System and Registry to obtain an independent credit report on each of the mortgage lender's control persons, etc. BI 03/22/2011 Fav/CS BGA 04/13/2011 BC RC	
9	**CS/SB 1332** Banking and Insurance / Richter (Similar CS/H 1121)	Financial Institutions; Authorizes the Office of Financial Regulation (OFR) to appoint provisional directors or executive officers. Specifies which accounting practice must be followed by financial institutions. Authorizes the OFR to conduct additional examinations of financial institutions if warranted. Revises the criteria for approval of a financial entity's plan of conversion. Provides for the transfer of assets from a federally chartered or out-of-state chartered institution. Revises provisions relating to banker's banks, etc. BI 03/16/2011 Fav/CS BGA 04/13/2011 BC RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**CS/SB 1428** Regulated Industries / Latvala (Compare H 1205, H 1437, S 1586)	Veterinary Practice; Defines the term "limited service veterinary vaccination clinic." Revises terminology. Requires that the Board of Veterinary Medicine establish minimum standards for limited service veterinary vaccination clinics rather than limited service veterinary medical practices. Deletes provisions that limit the practice privileges of out-of-state or foreign health care professionals or veterinarians who are in this state for a specific sporting event. RI 03/29/2011 Fav/CS BGA 04/13/2011 BC RC	
11	**CS/SB 1588** Criminal Justice / Latvala (Similar H 1333)	Licensed Security Officers; Provides that a person who engages in any activity for which a specified provision requires a license, but acts without having a license, commits a misdemeanor of the first degree. Authorizes the Department of Agriculture and Consumer Services to impose a civil penalty not to exceed a specified amount. Provides that a person who impersonates a security officer or other designated officer during the commission of a felony commits a felony of the second degree, etc. CM 03/29/2011 Fav/1 Amendment CJ 04/04/2011 Fav/CS BGA 04/13/2011 BC	
12	**CS/SB 1622** Children, Families, and Elder Affairs / Flores (Similar CS/H 1111)	Family Support; Designates the courts and other entities as the tribunals of the state and designates the Department of Revenue as the support enforcement agency of the state. Clarifies that the Uniform Interstate Family Support Act is not the exclusive method to establish or enforce a support order in this state. Provides procedures for determining which child support order is recognized as the controlling support order, etc. JU 03/22/2011 Favorable CF 03/28/2011 Fav/CS BGA 04/13/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	**SB 1826** Hays (Identical H 4083, Compare H 4073)	Workers' Compensation; Repeals provisions relating to the Workers' Compensation Administrator, to abolish the position. Deletes an obsolete transitional requirement for certain policies of the Florida Workers' Compensation Joint Underwriting Association. BI 03/29/2011 Favorable BGA 04/13/2011 BC RC	
14	**CS/SB 1836** Banking and Insurance / Diaz de la Portilla (Compare H 1235)	Captive Insurers; Exempts certain life or health insurers covering nonresidents from having to obtain a certificate of authority. Requires a captive insurer to obtain a license and to file evidence that a person or firm with whom it intends to conduct business is reputable. Provides that a certificate of insurance for an association captive insurer does not exceed the total funds of the association members. Requires a licensed captive insurer to maintain its principal place of business in this state and hold an annual meeting in this state, etc. BI 04/05/2011 Fav/CS BGA 04/13/2011 BC RC	
15	**CS/SB 1916** Commerce and Tourism / Detert (Compare CS/H 5007, H 7209, S 2122)	Department of Agriculture and Consumer Services; Renames the Division of Consumer Services within the department as the "Division of Consumer Protection." Revises the information that a person must supply in an application for licensure as a private investigator, private security service, or repossession service. Requires the department to investigate the mental fitness of an applicant of a Class "K" firearms instructor license. Requires an application for a security officer school or training facility to be verified under oath, etc. CM 03/29/2011 Fav/CS BGA 04/13/2011 BC RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	**CS/SB 2076** Agriculture / Agriculture (Similar H 7215, Compare CS/H 735, CS/CS/H 949, H 7217, CS/CS/S 1290, S 1810, S 2122)	Department of Agriculture and Consumer Services; Deletes provisions related to per diem and travel expenses for members of the Florida Commission on the Status of Women. Deletes the Division of Dairy within the Department of Agriculture and Consumer Services. Exempts certain direct-support organizations and citizen support organizations for the Department of Agriculture and Consumer Services from obtaining an independent audit, etc. AG 04/04/2011 Fav/CS BGA 04/13/2011 BC RC	

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1312

INTRODUCER: Agriculture Committee and Senator Siplin

SUBJECT: School Nutrition Programs

DATE: April 7, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Spalla	AG	**Fav/CS**
2.	Blizzard	DeLoach	BGA	**Pre-meeting**
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill creates the "Healthy Schools for Healthy Lives Act." It provides for a type two transfer of the administration of school food and nutrition programs from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACS). It provides for the administration of the U.S. Department of Agriculture child food and nutrition programs by the DACS. It also creates the Healthy Schools for Healthy Lives Council within the DACS.

This bill transfers 45 full-time equivalent positions and an estimated $810 million in federal funds and $16.8 million in general revenue from the DOE to the DACS for the administration of the school food and nutrition programs.

This bill substantially amends section 1003.453, Florida Statutes. The bill substantially amends, transfers, and renumbers the following sections of the Florida Statutes: 1006.06 to 570.981; 1006.0606 to 570.982; and 1010.77, F.S. to 570.983.

The bill creates section 570.98, Florida Statutes. The bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Both the federal and state governments have adopted policies for local school districts to operate school nutrition programs.[1] Federal regulations implementing the Richard B. Russell National School Lunch Act (7 C.F.R. § 210.3(b)) provide for the programs to be administered by a state's educational agency. This is the case in all but two of the 50 states.[2] Currently, the administration of school food and nutrition programs is divided between the DOE and the DACS. For instance, the School Lunch, Breakfast, and Summer Programs are administered by the DOE, while the commodity Food Distribution program, Disaster Feeding program, and the Emergency Food Assistance Program (EFAP) are managed by the DACS. In addition, the Marketing Division within the DACS administers the Fresh from Florida Kids and Xtreme Cuisine programs.

Florida Department of Education

The DOE is responsible for the administration, review, and evaluation of seven U.S. Department of Agriculture (USDA) funded child nutrition programs. During the 2009-2010 fiscal year, the following programs generated $745 million in reimbursements to program sponsors, which include all of Florida's 67 public school districts, 78 charter schools, 3 university schools, 49 private schools, and 49 residential facilities.

National School Lunch, School Breakfast, and After School Snack Programs – $718.6 Million in Reimbursements

The National School Lunch Program (NSLP) and School Breakfast Program provide non-profit school lunch programs with reimbursement for nutritious meals served to school children. Participating schools may also receive USDA commodity food through an agreement with the DACS. Section 1006.06, F.S., requires Florida public school districts to offer the breakfast program in all elementary public schools. Reimbursement is based on student income eligibility.

The After School Snack Program provides a snack to students who are served in an afterschool educational or enrichment program that is provided at the end of the school day. The school district must operate the NSLP before the After School Snack Program can be offered.

Special Milk Program – $31,295 in Reimbursements

The Special Milk Program provides milk to children in schools, child care institutions, and eligible camps that do not participate in other federal child nutrition meal service programs. The program reimburses schools and institutions for the milk they serve. Schools in the NSLP or School Breakfast Program may also participate in the Special Milk Program to provide milk to children in half-day pre-kindergarten and kindergarten programs through which children do not have access to the school meal programs.

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[1] The National School Lunch Act, as amended (42 U.S.C. 1751-1769), and the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773) and s. 1006.06, F.S.

[2] Letter from the U.S. Department of Agriculture (USDA) to the Commissioner of Education dated March 4, 2011. On file with the committee.

Summer Food Service Program – $22.7 Million in Reimbursements

The Summer Food Service Program provides reimbursement for sponsors to serve free meals to low-income children at participating sites during the summer months when schools are normally closed. The reimbursement rates for the Summer Food Service Program are slightly higher than the National School Lunch Program. Children who are 18 years of age or younger, or over 18 when determined to be mentally or physically handicapped, are eligible for the program. Sponsors of this program include school districts, community-based organizations, and county governments.

Seamless Summer Option – $1.8 Million in Reimbursements

School districts participating in the NSLP or School Breakfast Program are eligible to apply for the Seamless Summer Option to serve free meals to low-income children, 18 years old and under. This option reduces paperwork and administrative burdens, and reimbursement rates are the same as with NSLP and School Breakfast Program. Sponsors of this program are school districts.

Fresh Fruit and Vegetable Program – $2.7 Million in Reimbursements

The Fresh Fruit and Vegetable Program (FFVP) provides all children in participating schools with a variety of free fresh fruits and vegetables outside of the breakfast and lunch service. The FFVP currently operates in 26 districts and 133 schools throughout Florida.[3] The allocation for each school is between $50 and $75 per student. National allocations have not yet been released; however, Florida anticipates receiving approximately $6 million for the 2011-2012 FFVP. Unlike the other child nutrition programs, which are reimbursed by meals served, FFVP sponsors are reimbursed for operating and administrative costs in addition to the funds received for the purchase of fruits and vegetables.

DOE Administration of Child Nutrition Programs

The DOE employs 45 staff with an administrative budget of $6.5 million for the 2010-2011 fiscal year, to administer the school and child nutrition programs for the following sponsors.

- 248 NSLP sponsors, including 3,578 breakfast sites, 3,651 lunch sites, and 1,655 snack sites;
- 135 Summer Food Service Program and Seamless Summer Option sponsors;
- 18 Special Milk Program sponsors; and
- 133 elementary schools participating in the 2010-2011 FFVP.

Administrative services provided by the DOE include:

- Maintaining a web-based computer application to process $745 million of claims reimbursements, sponsor applications, administrative program reviews, and federal reports;
- Providing sponsor training and technical assistance in child nutrition, food safety, and administrative services for all sponsors;

[3] *Id.*

- Conducting on-site monitoring and administrative reviews of program administration and meal services for all sponsors;
- Evaluating and providing nutrient analysis of breakfast and lunch menus for all sponsors; and
- Providing outreach in the state to attract potential sponsors for the Summer Food Service Program and increase participation in the breakfast program.

To provide the services listed above effectively, DOE works with Florida Atlantic University to administer two grants: (1) $700,000 to deliver on-site training in a variety of areas, including producing and maintaining appropriate food service records, food preparation and safety, preparing and serving fresh fruits and vegetables, and the production of training videos; and (2) $900,000 to observe and evaluate the scope of difficulties related to compliance, provide technical assistance to individual sponsors, provide technical assistance to companies that contract to deliver food products and services, assist sponsors with completing paperwork and taking the steps necessary to achieve and maintain regulatory compliance related to Provision 2 (program in schools with a high proportion of students who are eligible for free and reduced-price meals that allows all students to receive free meals), and the maintenance and technical support of the DOE's financial software, used to measure critical indicators of the financial effectiveness of a sponsor's child nutrition program.

Other DOE Initiatives

The DOE established the Farm to School (F2S) Alliance to combat childhood obesity and meet the Healthier US School Challenge criteria, which is a statewide training initiative for school food service professionals on how to prepare and serve meals that comply with the 2005 Dietary Guidelines for Americans. The DOE provides outreach and information to approximately 800 small farmers, their families, and the communities they serve, on how to participate in child nutrition programs and form business relationships with schools. In addition, the DOE provides guidance and training to Florida school food service directors, their staff, and parent-teacher organizations regarding the benefits of using locally grown products, procurement of local produce, and the use of local products in the NSLP to meet the Healthier US School Challenge menu criteria.

The DOE works to facilitate interagency coordination between the USDA, Florida Department of Health, Florida Department of Children and Families, Florida Coordinated School Health Partnership, Coordinated School Health Initiatives, the Florida Food and Nutrition Advisory Council, and various other entities.

Integration into the Curriculum and Classroom

Nutrition education is provided through collaboration with the Office of Healthy Schools (OHS) within the DOE. The DOE's school food and nutrition programs partner with the OHS to assess and respond to the nutrition education and resource needs of school districts across the state. The OHS is partially funded with DOE school food and child nutrition administrative expense funds and employs a program director and nutrition coordinator. Through this partnership, the DOE integrates nutrition education into core subject areas like language arts and science. Examples of initiatives from this collaboration include:

- Participation in Celebrate Literacy Week: The OHS works in partnership with the Just Read, Florida! Office to promote literacy throughout the state by raising awareness of the nutrition-related programs and projects offered by the DOE, including the importance of school breakfast and school gardens. In January 2011, volunteers across 28 school districts and 1,100 classrooms read "Our Super Garden: Learning the Power of Healthy Eating by Eating What We Grow" by Anne Nagro.
- Seed Folks kits: In February 2011, the OHS, in partnership with the DOE's Language Arts Coordinator, Just Read, Florida!, and the Florida Department of Health's Comprehensive Cancer Control Program, provided Seed Folks kits, containing lesson plans and activities challenging language arts benchmarks, to middle school students.
- Gardening for Grades Regional Trainings: Through a partnership with the DOE's Science Coordinator, the OHS has collaborated with the Florida Agriculture in the Classroom Program to serve science teachers through nine regional Gardening for Grades training sessions in the spring of 2011. Gardening for Grades is a program funded by specialty crop grants, awarded by the DACS.
- Foods of the Month Kits: In March 2011, the OHS provided approximately 550 nutrition education resources specifically designed for the school cafeteria through the Foods of the Month (FOM) kits. FOM kits help schools enhance the nutrition education programming and improve dietary offerings in school meals by using the cafeteria as a learning laboratory.
- Healthy School District Trainings: Five regional Healthy School District Trainings will be conducted in March 2011, using the Coordinated School Health approach to provide district teams with the tools necessary to improve the health and wellness of their district's students and staff through Wellness Policy Committees and School Health Advisory Committees (SHACs).

The Department of Agriculture and Consumer Services

The DACS administers the commodity program portion of the National School Lunch Program and the Summer Food Service Program. Section 6(e) of the Richard B. Russell National School Lunch Act (NSLA), requires that no less than twelve percent of the federal support received by schools pursuant to the NSLA each year must be in the form of USDA food (commodities). Every year, the DACS receives an allocation from the USDA based on the number of meals served the previous year. As the state agency responsible for ordering the commodities for the schools, the DACS provides information to the schools on which foods the USDA intends to acquire, determines from the schools how much, if any, of each of the commodities available they would like to requisition, and orders the foods. The USDA is responsible for procuring and purchasing these commodities. During the 2010-2011 school year, the DACS provided over 69 million pounds of USDA food, valued at approximately $55.5 million, to about 193 participating schools (public school districts, private schools, residential child care institutions, etc.) throughout the state. An additional $4.4 million in fresh fruits and vegetables was also provided. During the 2011-2012 school year, the DACS will provide over 75 million pounds of USDA food, valued at over $66 million, in addition to another $3.1 million in fresh fruits and vegetables to participating Florida schools.

The DACS developed and maintains the Florida Farm to School Program website to bring schools and farmers together to determine each other's needs and how to best meet them. As a founding member of the Farm to School Alliance, the DACS participates and provides input at

F2S meetings. For the past three years, the DACS has participated in various panel presentations and exhibitions promoting the consumption of fresh produce at the Florida Small Farms and Alternative Enterprises conferences.

The DACS has been an active participant in the Florida School Nutrition Association annual conference. In addition to conducting workshops on the administration of the USDA foods, the DACS, in conjunction with the U.S. Department of Defense, is an exhibitor at the conference, promoting the consumption of fresh produce in schools and Florida fresh fruits and vegetables in particular.

Research suggests that taste preferences and eating habits are fully developed by the time a child is three years old. In keeping with the DACS' mission of providing healthy nutrition to children at an early stage, the DACS has developed the Fresh From Florida Kids Program. The program is designated to help parents develop healthy eating habits in their children who are just beginning to eat solid food and beyond.

The DACS also introduces children to good nutrition through the Xtreme Cuisine Program. Xtreme Cuisine Cooking School teaches children about nutrition and introduces them to the variety of fresh, nutritious foods available in Florida.

Office of Program Policy and Government Accountability (OPPAGA), Report No. 09-034

The OPPAGA reviewed Florida's school nutrition programs in January 2009. In the report, *No Changes Are Necessary to the State's Organization of School Nutrition Programs*, the OPPAGA found:

- The current structure aligns key program activities with the core missions of state agencies.
- There is no compelling reason to change the current structure of Florida's school nutrition programs.
- Changing the structure would not produce identifiable cost savings or other substantial benefits.
- Transferring programs and functions from one agency to another would likely result in short-term disruptions in services to school districts.

School Nutrition Program Transfers Experienced in Other States

Federal regulations implementing the Richard B. Russell National School Lunch Act (7 C.F.R. § 210.3(b)) provide for the NSLP to be administered by a state's educational agency. This is the case in all but two of the 50 states. In Texas and New Jersey, it was the desire to seek alternate agencies to administer the program. In 34 states, the commodity food program, which makes agricultural commodities available to sponsors, is administered by the education agency. The administration of the NSLP by an agency other than the state education agency requires a waiver by the Secretary of the USDA. USDA staff has been contacted for information regarding a

[4] http://www.oppaga.state.fl.us/Summary.aspx?reportNum=09-03

potential waiver. At this time, it is unknown if a waiver would be approved or if a transfer could be accomplished by the bill's effective date of July 1, 2011.[5]

Officials in Texas and New Jersey indicate that consolidating the federal programs into their agriculture departments had two primary benefits. First, it improved coordination between the various programs. Second, it increased program visibility and administrative support by functioning within a smaller agency, rather than as a no-curriculum program within the larger state education agency.[6] Texas and New Jersey officials also indicate that the primary disadvantage of consolidation was that it created transitional issues during the transfer. For example, when consolidation was being discussed, several education department staff became concerned about the future of their positions. Another challenge to consolidation is that it could create either data sharing or duplicate data reporting issues.[7]

III. Effect of Proposed Changes:

The bill transfers the administration of the National School Lunch Program and related food and nutrition programs from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACS).

The bill makes conforming changes to other sections of law to reflect the administration of these food and nutrition programs by the DACS. In particular, the DACS is required to administer all school food and nutrition programs, to cooperate with the federal government and its agencies and instrumentalities to receive the benefit of federal financial allotments, and to act as an agent of or contract with the federal government, another state agency, or any county or municipal government for the administration of the school food and nutrition programs.

The bill also requires the DACs to provide on its website a link to the nutritional content of foods and beverages.

The bill 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.

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[5] Department of Education legislative bill analysis, March 1, 2011, on file with the committee.
[6] Letter from the United States Department of Agriculture (USDA) to the Commissioner of Education dated March 4, 2011. On file with the committee.
[7] *Id.*

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill transfers 45 full-time equivalent positions and approximately $810 million in federal funds to the DACS from the DOE for the administration of the school and child nutrition programs. In addition, the DACS will receive an estimated $16.8 million in general revenue for the School Lunch Program state match. These funds will be included in the type two transfer from the DOE.

Department of Education

The DOE will no longer receive indirect funds derived from assessments on federal grants based on the current cost rate agreement with the U.S. Department of Education. Indirect earnings are used to support management activities throughout the department, including purchasing, accounting, human resources, grants management, and legal services. Per the DOE, $631,410 was attributed to indirect earnings from the school food and nutrition programs in Fiscal Year 2009-2010.

Department of Agriculture and Consumer Services[8]

The DACS estimates costs of nonrecurring expenditures in the amount of $108,400 for data circuit requirements and telephone and network wiring in order to implement the provisions in this bill. The DACS will absorb these costs through existing resources.

The administration of the NSLP by an agency other than the state education agency requires a waiver by the secretary of the USDA. If the state does not receive a waiver from the USDA, the USDA will not recognize the state law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DOE has raised concerns with the transfer, as follows: [9]

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[8] Department of Agriculture Fiscal Note, March 10, 2011, on file with the committee.
[9] Department of Education legislative bill analysis, March 1, 2011, on file with the committee.

- Loss of funding will affect the integration of nutrition education into the classroom. Reading child nutrition books in the classroom, Seed Folks kits containing lesson plans, gardening training sessions, and using the cafeteria as a training laboratory would be severely curtailed or eliminated.
- As with any change, there will be a disruption in services that DOE currently provides. For example, the distribution of monthly direct certification information of students who are eligible for free or reduced price meals because of eligibility for the Supplemental Nutrition Assistance Program through the Department of Children and Families will require changes in multiple agencies. All memorandums of understanding and grants will need to be revised and updated to reflect the transfer. The Dietetic Internship Program will require a recertification by the Commission on Accreditation for Dietetics Education and amended contracts with the various entities that provide instruction to the interns. The coordination with the Florida School Choice Program to increase the number of charter schools sponsoring NSLP would be affected.
- Transfer of these programs will create a financial cost to the State Administrative Fund for program operation to physically move the program from DOE to DACS. A physical program move could result in additional facilities renovation expenses to provide needed offices and technical support for the program. A relocation would likely result in short-term disruptions in services to school districts and additional workload relative to the moving process. Millions of dollars of program reimbursements could be delayed, causing fiscal concerns to sponsors. It is possible the program could remain housed in the Turlington Building, which would seem to negate any fiscal or policy benefit to transferring the program.
- Indirect earnings revenue is derived from assessments on federal grants based on the DOE's current approved Indirect Cost Rate Agreement with the United States Department of Education, dated May 5, 2010, for the period July 1, 2010, through June 30, 2013. The assessment is a percentage of total direct expenditures excluding capital expenditures, flow-through appropriations, and unallowable costs. Indirect earnings are used to support management activities that are department-wide in nature and include activities such as purchasing, accounting, human resources, grants management, and legal services. The DOE will lose $631,410 attributed to indirect earnings from school and child nutrition programs in the 2009-2010 fiscal year.
- The federal government has not approved regulations implementing the Richard B. Russell National School Lunch Act (7 C.F.R. § 210.3(b) providing for the NSLP to be administered by the state educational agency. This is the case in all but two of the 50 states. Texas and New Jersey sought and received alternative administration. In 34 states, the commodity food program, which makes agricultural commodities available to sponsors, is administered by the education agency. The administration of the NSLP by an agency other than the state education agency requires a waiver by the Secretary of the USDA. USDA staff has been contacted for information regarding a potential waiver. At this time, it is unknown if a waiver would be approved or if a transfer could be accomplished by the bill's effective date of July 1, 2011.
- On October 1, 1997, the Child and Adult Care Food Program (CACFP) was split and transferred from DOE. Chapter 97-260, Laws of Florida, transferred the Child Care Food Program (CCFP) from DOE to the Department of Health (DOH). The Adult Care Food Program (ACFP) was transferred from FDOE to the Department Elder Affairs (DOEA) as a result of a type two transfer under Section 20.06(2) Florida Statutes. As a result of the transfer of ACFP to DOEA, it was realized that ACFP, when separated from the Child Care

Food Program, could not earn sufficient state agency expenditure funds to administer the program. Therefore, on July 23, 1998, a cooperative agreement was established between DOE and DOEA to transfer funds from DOE to DOEA in the amount determined to be needed by DOEA to operate the State Administrative Expense Plan in excess of the amount determined by formula to operate AFCP. This agreement was established as temporary assistance until ACFP program generated sufficient funding to independently administer the program. The ACFP was not able to generate sufficient USDA funding. Therefore, it has obtained $200,000 in recurring general revenue to subsidize the administrative cost to operate ACFP. Currently, all states with the exception of Illinois and Florida operate ACFP and CCFP within the same agency, which is predominately the education agency.

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 the Agriculture Committee on March 28, 2011:

The Committee Substitute adds a section to create the Healthy Schools for Healthy Living Council within the Department of Agriculture and Consumer Services.

B. Amendments:

None.

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LEGISLATIVE ACTION

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

Senate Amendment (with title amendment)

Between lines 43 and 44
insert:

Section 4. Section 380.0685, Florida Statutes, is amended to read:

380.0685 State park in area of critical state concern in county which creates land authority; surcharge on admission and overnight occupancy.—The Department of Environmental Protection shall impose and collect a surcharge of 50 cents per person per day, or $5 per annual family auto entrance permit, on admission to all state parks in areas of critical state concern located in

597082

a county which creates a land authority pursuant to s. 380.0663(1), and a surcharge of $2.50 per night per campsite, cabin, or other overnight recreational occupancy unit in state parks in areas of critical state concern located in a county which creates a land authority pursuant to s. 380.0663(1); however, no surcharge shall be imposed or collected under this section for overnight use by nonprofit groups of organized group camps, primitive camping areas, or other facilities intended primarily for organized group use. Such surcharges shall be imposed within 90 days after any county creating a land authority notifies the Department of Environmental Protection that the land authority has been created. The proceeds from such surcharges, less a collection fee that shall be kept by the Department of Environmental Protection for the actual cost of collection, not to exceed 2 percent, shall be transmitted to the land authority of the county from which the revenue was generated. Such funds shall be used to purchase property in the area or areas of critical state concern in the county from which the revenue was generated. An amount not to exceed 10 percent may be used for administration and other costs incident to such purchases. However, the proceeds of the surcharges imposed and collected pursuant to this section in a state park or parks located wholly within a municipality, less the costs of collection as provided herein, shall be transmitted to that municipality <u>for use by the municipality for land acquisition or for beach renourishment or restoration, including, but not limited to, costs associated with any design, permitting, monitoring, and mitigation of such work, as well as the work itself</u>. <u>However, these funds may not be included in any</u>

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calculation used for providing state matching funds for local contributions for beach renourishment or restoration. The surcharges levied under this section shall remain imposed as long as the land authority is in existence.

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

And the title is amended as follows:

Between lines 12 and 13

insert:

amending s. 380.0685, F.S., relating to a surcharge imposed on admission fees to state parks in areas of critical state concern located in certain counties; providing for certain municipalities to use the proceeds of the surcharge for land acquisition or beach renourishment or restoration; providing limitations for purposes of determining state matching funds;

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 236

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Hays

SUBJECT: State Parks

DATE: April 6, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Yune	Carter	MS	**Favorable**
2.	Toman	Yeatman	EP	**Fav/CS**
3.	Pigott	DeLoach	BGA	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill adds the surviving spouse and parents of law enforcement officers or firefighters who have died in the line of duty to those eligible for gratis lifetime annual entrance passes to state parks. The bill also designates the marina at Grand Lagoon within St. Andrews State Park as the “Jack Mashburn Marina” and directs the Department of Environmental Protection (department) to erect appropriate signs and markers to reflect the new designation. Finally, the bill exempts state parks with free-roaming animal populations from the livestock owner liability provisions of section 588.15, Florida Statutes.

The bill provides an effective date of July 1, 2011.

The bill substantially amends section 258.0145(3), Florida Statutes.

II. Present Situation:

Annual Entrance Passes to State Parks

The Division of Recreation and Parks (division) within the Department of Environmental Protection offers for sale two types of Florida State Parks Annual Entrance Passes: the Family Annual Entrance Pass for $120 and the Individual Annual Entrance Pass for $60. Since July 1, 2010, the division has offered the following three discounts on annual entrance passes.

- Active duty members and honorably discharged veterans of the U.S. Armed Forces, National Guard, or reserve components thereof receive a 25 percent discount.
- Honorably discharged veterans who have service-connected disabilities receive lifetime family annual entrance passes at no charge.
- Surviving spouses of deceased members of the U.S. Armed Forces, National Guard, or reserve components thereof who have fallen in combat receive lifetime family annual entrance passes at no charge.

The division currently offers a discount of one-half off of the daily admission fee to Florida National Guard active members, spouses, and minor children. Other discounts presently offered by the division are one-half off of the daily admission fee for Florida residents participating in the Food Stamp program and one-half off of the base camping fee for Florida residents who are 65 years and older or who are 100 percent disabled.

D. D. "Jack" Mashburn and the Grand Lagoon at St. Andrews State Park

D. D. "Jack" Mashburn was born in Youngstown, Florida, in 1928 and continues to be politically active in his community, serving on multiple boards and commissions. He was instrumental in the funding of Bay High Stadium (now Tommy Oliver Stadium) and assisted in the original establishment of Panama City Beach, Long Beach, and Edgewater Beach. Mashburn served in the Florida House of Representatives during the 1953 Legislative Session, representing Bay County. During his tenure as Representative, he passed several important bills benefitting Bay County. One of his longest lasting efforts was spearheading the creation of St. Andrews State Park.

The marina at Grand Lagoon, commonly referred to as the "boat basin," is located within St. Andrews State Park. Established in 1954 on a former military reservation, the park features 1,260 acres and over 1.5 miles of beaches. Visitors can enjoy bicycling, campground rental, nature trails, picnicking, and wildlife viewing. Additionally, two fishing piers, a jetty, and a boat ramp provide access to the water for water sports and fishing.

Livestock Owner Liability and the Paynes Prairie Preserve State Park

Section 588.13, F.S., provides definitions for the classification of livestock including the following:

> (1) "Livestock" shall include all animals of the equine, bovine, or swine class, including goats, sheep, mules, horses, hogs, cattle, ostriches, and other grazing animals.
> (2) "Owner" shall include any person, association, firm, or corporation, natural or artificial, owning or having custody of or in charge of livestock.
> (3) Livestock "running at large" or "straying" shall mean any livestock found or being on any public land, or land belonging to a person other than the owner of the livestock, without the landowner's permission, and posing a threat to public safety.
> (4) "Public roads" as used herein shall mean those roads within the state which are, or may be, maintained by the state, a political subdivision of the state, or a municipality, including the full width of the right-of-way, except those maintained, and expressly exempted from provisions of this chapter, by ordinance of the county or municipality having jurisdiction.

Section 588.15, F.S., addresses owner liability of livestock that stray upon Florida's public roads. Specifically, the statute conveys that:

> Every owner of livestock who intentionally, willfully, carelessly, or negligently suffers or permits such livestock to run at large upon or stray upon the public roads of this state shall be liable in damages for all injury and property damage sustained by any person by reason thereof.

In March 2011, the department published a Livestock Management Plan for the Payne's Prairie Preserve State Park in Alachua County. In the plan, the department clarifies that American bison are members of the family Bovidae and are, therefore, classified as livestock rather than wildlife in Florida. The management plan further states that the:

> . . . classification of cattle, horses, and bison as livestock generates a level of responsibility for the [Florida Park Service] in the case of personal injury or property damage due to escape that does not exist for animals classified as wildlife.

III. Effect of Proposed Changes:

Section 1 amends s. 258.0145(3), F.S., to expand the current military state park fee discounts for surviving spouses to include parents of deceased members of the U.S. Armed Forces, National Guard, or any of their reserve components who have fallen in combat to receive lifetime family annual entrance passes at no charge as long as the proper documentation, a DD 1300,[1] is provided along with proof of parenthood. This section also adds the surviving spouse and parents of a law enforcement officer, as defined in s. 943.10(1), F.S., or a firefighter, as defined in s. 633.30(1), F.S., who has died in the line of duty to receive lifetime family annual entrance passes at no charge.

[1] A Department of Defense Form 1300 is a report of casualty form.

Section 2 designates the "boat basin" on Grand Lagoon at St. Andrews State Park in Bay County as the "Jack Mashburn Marina." It also directs the department to erect suitable markers for the designation.

Section 3 exempts property within the state park system which has free-roaming animal populations from the provisions of s. 588.15, F.S., related to livestock owner liability.

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:

Parents of deceased members of the U.S. Armed Forces, National Guard, or reserve components as well as parents and spouses of deceased members of law enforcement officers and firefighters will benefit from the waived entrance fees. Persons who may be injured or receive property damage as a result of livestock straying from state park property onto public roads will be unable to seek redress from the state park system.

C. Government Sector Impact:

During Fiscal Year 2009-10, state park fees generated an estimated $44.2 million in revenue, with annual entrance park pass sales accounting for $1.7 million in revenue. The department estimates that there will be an annual reduction in park fee revenue of up to $94,000 as a result of the additional persons who qualify for free lifetime annual entrance passes. However, the department states that the publicity and goodwill earned by the state is expected to offset the loss in revenues and result in increased visitation, which would generate additional economic benefit for local communities and the state.

For the most part, there would be no fiscal impact on local governments. However, according to the department's website, some counties impose a surcharge in addition to the division’s entrance fee. If the surcharges were waived, this may represent a potential reduction in revenue for the counties that impose the surcharge.

The department estimates the fiscal impact to be approximately $1,500 to change and erect signage to reflect the “Jack Mashburn Marina” designation at St. Andrews State Parkand can be absorbed within existing resources.

Staff contacted at the department were unaware of any instances of stray animals from state parks causing injury or property damage due to escape. Given the infrequency of such events, the fiscal impact is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/SB 236 by the Environmental Preservation and Conservation Committee on March 23, 2011:

- adds the surviving spouse and parents of a law enforcement officer or a firefighter who has died in the line of duty to those eligible for gratis lifetime annual entrance passes to state parks.
- provides that the marina commonly referred to as the ‘boat basin’ on Grand Lagoon at St. Andrews State Park in Bay is designated as “Jack Mashburn Marina.”
- directs the Department of Environmental Protection to erect suitable markers designating “Jack Mashburn Marina.”
- stipulates that property within the state park system that has free-roaming animal populations is exempt from the provision of s. 588.15, F.S., which addresses livestock owner liability.

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 Budget Subcommittee on General Government Appropriations

BILL: CS/SB 546

INTRODUCER: Health Regulation Committee and Senator Hays

SUBJECT: Dentists

DATE: April 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	**Favorable**
2.	Brown	Stovall	HR	**Fav/CS**
3.	Frederick	DeLoach	BGA	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill prohibits an insurer, health maintenance organization (HMOs), or prepaid limited health service organization from contracting with a licensed dentist to provide services to an insured or subscriber at a specified fee unless such services are “covered services” under the applicable contract. The bill prohibits an insurer from requiring that a contracted health care provider accept the terms of other practitioner contracts with a prepaid limited health service organization that is under common management and control with the contracting insurer. The bill also prohibits an insurer, HMO, or prepaid limited health services organization from requiring that a contracted dentist participate in a discount medical plan.

This bill substantially amends the following sections of the Florida Statutes: 627.6474, 636.035, and 641.315.

II. Present Situation:

Prohibition Against "All Products" Clauses in Health Care Provider Contracts

Section 627.6474, F.S., prohibits a health insurer from requiring that a contracted health care practitioner accept the terms of other practitioner contracts (including Medicare and Medicaid practitioner contracts) with the insurer or with an insurer, HMO, preferred provider organization, or exclusive provider organization that is under common management and control with the contracting insurer. The statute exempts practitioners in group practices who must accept the contract terms negotiated by the group. These contractual provisions are referred to as "all products" clauses, and, before being prohibited by the 2001 Legislature, typically required the health care provider, as a condition of participating in any of the health plan products, to participate in *all* of the health plan's current or future health plan products. The 2001 Legislature outlawed "all products" clauses after concerns were raised by physicians that the clauses: may force providers to render services at below market rates; harm consumers through suppressed market competition; may require physicians to accept future contracts with unknown and unpredictable business risk; and may unfairly keep competing health plans out of the marketplace.

Prepaid Limited Health Service Organizations Contracts

Prepaid limited health service organizations (PLHSO) provide limited health service to enrollees through an exclusive panel of providers in exchange for a prepayment, and are authorized in s. 636.003, F.S. Limited health services are: ambulance services, dental care services, vision care services, mental health services, substance abuse services, chiropractic services, podiatric care services, and pharmaceutical services.

Provider arrangements for prepaid limited health service organizations are authorized in s. 636.035, F.S., and are subject to the following statutory requirements:

- The provider contract must be in writing.
- The subscriber is not liable to providers for services rendered except for deductibles and copayments.
- If the PLHSO cannot meet its obligations to a provider, the subscriber is not liable for providing payment.
- The provider or PLHSO cancelling the provider contract must provide notice as detailed in statute.
- Prohibition against limiting the provider's ability to inform patients about medical treatment options.
- Prohibition against limiting the provider from contracting with other PLHSOs.
- Prohibition against "all products" clauses.

Health Maintenance Organization Provider Contracts

An HMO is an organization that provides a wide range of health care services, including emergency care, inpatient hospital care, physician care, ambulatory diagnostic treatment and preventive health care pursuant to contractual arrangements with preferred providers in a designated service area. Traditionally, an HMO member must use the HMO's network of health care providers in order for the HMO to make payment of benefits. The use of a health care provider outside the HMO's network generally results in the HMO limiting or denying the payment of benefits for out-of-network services rendered to the member.

Section 641.315, F.S., specifies requirements for the HMO provider contracts with "health care practitioners" as defined in s. 456.001(4), F.S. The requirements include provisions related to:

- Notice of the insurer or provider cancelling the provider contract.
- Procedures for billing and reimbursement.
- Prohibition against limiting the provider's ability to inform patients about medical treatment options.
- Prohibitions against limiting the provider or HMO from contracting with other parties.
- Procedures for authorizing the utilization of health care services.
- Prohibition against preventing providers from rendering services that are medically necessary and covered in a contracting hospital.
- Prohibition against "all products" clauses.

Discount Medical Plan Organizations

Discount medical plan organizations (DMPOs) offer a variety of health care services to consumers at a discounted rate. These plans are not health insurance and therefore do not pay for services on behalf of members; instead, the plans offer members access to specific health care products and services at a discounted fee. These health products and services may include, but are not limited to, dental services, emergency services, mental health services, vision care, chiropractic services, and hearing care. Generally, a DMPO has a contract with a provider network under which the individual providers render the medical services at a discount.

DMPOs are regulated by the Office of Insurance Regulation (OIR) under part II of ch. 636, F.S. That statute establishes licensure requirements, annual reporting, minimum capital requirements, authority for examinations and investigations, marketing restrictions, prohibited activities, and criminal penalties, among other regulations.

Before transacting business in Florida, a DMPO must be incorporated and possess a license as a DMPO.[1] As a condition of licensure, each DMPO must maintain a net worth requirement of $150,000. All charges to members of such plans must be filed with OIR and any charge to members greater than $30 per month or $360 per year must be approved by OIR before the charges can be used by the plan. All forms used by the organization must be filed with and approved by OIR.

[1] Section 636.204, F.S.

III. Effect of Proposed Changes:

Inclusion of PLHSOs In Prohibition Against "All Products" Health Care Provider Contracts

Under current law, a health insurer cannot require that a contracted health care practitioner accept the terms of other practitioner contracts (including Medicare and Medicaid practitioner contracts) with the insurer or with an insurer, HMO, preferred provider organization, or exclusive provider organization that is under common management and control with the contracting insurer. The bill adds to that list by prohibiting the insurer from requiring that a contracted health care provider accept the terms of other practitioner contracts with a PLHSO that is under common management and control with the contracting insurer.

Dentist Provider Contracts: Prohibition Against Specifying Fees for Non-Covered Services

The bill prohibits insurers, HMOs, and PLHSOs from executing a contract with a licensed dentist that requires the dentist to provide services to an insured or subscriber at a specified fee unless such services are "covered services" under the applicable contract. "Covered services" are defined as services reimbursable under the applicable contract at not less than 50 percent of the usual, customary, and reasonable fee of similar providers in the zip code area where the services are provided, subject to such contractual limitations on benefits, such as deductibles, coinsurance, and copayments, as may apply. Covered services do not include dental services that are provided by a dentist to an insured or subscriber not listed as a benefit that the insured or subscriber is entitled to receive under the contract. This will prevent contracts between dentists and insurers, HMOs, or PLHSOs from containing provisions that subject non-covered services to negotiated payment rates.

The bill prohibits contracts between dentists and insurers, HMOs, or PLHSOs from containing provisions that prevent the dentist from billing a patient the difference between the amount reimbursed by the insurer, HMO, or PLHSO and the dentist's normal rate for the services if the services are not covered services as defined in the bill.

The bill prohibits insurers, HMOs, and PLHSOs from requiring that a contracted dentist participate in a discount medical plan under part II of ch. 636, F.S., which regulates DMPOs.

The bill also addresses the criminal penalty specified in s. 624.15, F.S.[2,3] by limiting the exemption from the criminal penalty currently contained in s. 627.6474, F.S., to subsection (1) of s. 627.6474, F.S. The provisions of subsection (2) of s. 627.6474, F.S., as created by the bill, are not specifically exempted from the criminal penalty. This leaves the current-law exemption in

[2] Section 624.15, F.S., provides that, unless a greater specific penalty is provided by another provision of the Insurance Code or other applicable law or rule of the state, each willful violation of the Insurance Code is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S., and that each instance of such violation shall be considered a separate offense.

[3] Section 775.082, F.S., provides that a person convicted of a misdemeanor of the second degree may be sentenced to a term of imprisonment not exceeding 60 days. Section 775.083, F.S., provides that a person convicted of a misdemeanor of the second degree may be sentenced to pay a fine not exceeding $500 plus court costs.

place for the amended statutory provisions to which it currently applies, without applying the exemption to the bill's new provisions in subsection (2).

The bill provides an effective July 1, 2011, and the provisions in the bill apply to contracts entered into 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:

None.

B. Private Sector Impact:

Representatives of health insurers, HMOs, and PLHSOs assert that their policyholders and subscribers will pay higher costs for dental care if the Legislature prohibits these entities from contracting with dentists to provide services that are not covered at a negotiated fee. These representatives also assert that the bill unduly interferes with the freedom of two private entities to agree to their own contract terms.

Representatives of dentists assert that the Legislature should prohibit health insurers, HMOs, and PLHSOs from negotiating fees with dentists for services that are not covered because these provisions unfairly shift health care costs to dentists and potentially imperil the financial stability of dental practices. These representatives indicate that 18 other states have passed similar legislation.

C. Government Sector Impact:

According to the Office of Insurance Regulation, implementing the provisions of this bill will have no fiscal impact on the office, nor is there a direct impact on the costs that the state incurs for the state employees' Preferred Provider Organization, (PPO) or the HMO Plans. However, members of the state dental coverage plans, could be affected if dentists have the ability to bill and charge amounts above contracted rates when members are financially responsible for the service in question.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill defines covered services as "services reimbursable under the applicable contract at not less than 50 percent of the usual, customary, and reasonable fee of similar providers in the zip code area where the services are provided, subject to such contractual limitations on benefits, such as deductibles, coinsurance, and copayments, as may apply." The bill does not specify how the usual, customary, and reasonable fee of similar providers in the zip code area must be calculated, which will leave that determination to the parties in the contract and to other provisions of the Insurance Code that might apply to the calculation of usual, customary, and reasonable fees.[4]

The bill supplements the definition of covered services with the following provision: "However, covered services do not include *dental services that are provided by a dentist to an insured for dental services* that are not listed as a benefit that the insured is entitled to receive under the contract." [emphasis added] It might be clearer to word this provision as follows: "However, covered services do not include *dental services provided by a dentist to an insured which* are not listed as a benefit that the insured is entitled to receive under the contract." [emphasis added]

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 the Committee on Health Regulation on March 28, 2011:
The CS makes the following changes to the bill as filed:

- The bill as filed applied the exemption from criminal penalties in s. 627.6474, F.S., to the new subsection (2) of that statute created by the bill. The CS limits that exemption to the amended provisions of existing law in subsection (1) of s. 627.6474, F.S.
- The bill as filed specified that covered services do not include dental services that are provided by a dentist to an insured who has already met or exceeded the annual or other periodic payment maximum established by the contract. The CS does not contain this provision.
- The CS defines covered services, in part, as services reimbursable under the applicable contract at not less than 50 percent of the usual, customary, and reasonable fee of similar providers in the zip code area where the services are provided. The bill as filed did not contain this provision.
- The CS prohibits contracts between dentists and insurers, HMOs, or PLHSOs from containing provisions that prevent the dentist from billing a patient the difference between the amount reimbursed by the insurer, HMO, or PLHSO and the dentist's normal rate for the services if the services are not covered services. The bill as filed did not contain this provision.

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[4] Three sections of statute in the Insurance Code use all three terms – usual, customary, and reasonable – when placing conditions on provider fees or charges. *See* ss. 627.6044(1), 627.736(5)(a)1., and 641.51(5)(c), F.S.

- The CS prohibits insurers, HMOs, and PLHSOs from requiring that a contracted dentist participate in a discount medical plan under part II of ch. 636, F.S. The bill as filed did not contain this provision.

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 Budget Subcommittee on General Government Appropriations

BILL: SB 762

INTRODUCER: Senator Hays

SUBJECT: Florida Climate Protection Act

DATE: April 7, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	**Favorable**
2.	Wiggins	Yeatman	EP	**Favorable**
3.	Pigott	DeLoach	BGA	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

This bill repeals the Florida Climate Protection Act, which authorizes the Department of Environmental Protection (department) to adopt rules to create a cap-and-trade regulatory program to reduce greenhouse gas emissions. It also deletes a related provision on the recovery of costs associated with greenhouse gas registries.

The bill provides an effective date of July 1, 2011.

This bill substantially amends section 366.8255, Florida Statutes.

The bill repeals section 403.44, Florida Statutes.

II. Present Situation:

Section 403.44, F.S., known as the Florida Climate Protection Act, was created in 2008. The statute contains legislative findings that it is in the best interest of the state to document, to the greatest extent practicable, greenhouse gas emissions and to pursue a market-based emissions abatement program, such as cap and trade, to address greenhouse gas emissions reductions. It defines the following terms:

- "Allowance" means a credit issued by the department through allotments or auction, which represents an authorization to emit specific amounts of greenhouse gases, as further defined in department rule.

- "Cap and trade" or "emissions trading" means an administrative approach used to control pollution by providing a limit on total allowable emissions, providing for allowances to emit pollutants, and providing for the transfer of the allowances among pollutant sources as a means of compliance with emission limits.
- "Greenhouse gas" or "GHG" means carbon dioxide, methane, nitrous oxide, and fluorinated gases such as hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.
- "Leakage" means the offset of emission abatement that is achieved in one location subject to emission control regulation by increased emissions in unregulated locations.
- "Major emitter" means an electric utility regulated under ch. 403, F.S., which includes all electric utilities.

Initially, each major emitter was required to use The Climate Registry for purposes of emission registration and reporting. The department was required to establish the methodologies, reporting periods, and reporting systems that were to be used when major emitters report to The Climate Registry. In 2010, s. 2, ch. 2010-143, L.O.F., deleted these requirements.

The Florida Climate Protection Act authorizes the department to adopt rules for a cap-and-trade regulatory program to reduce greenhouse gas emissions from major emitters. It specifically provides that, when the department is developing the rules, it must consult with the Florida Energy and Climate Commission and the Florida Public Service Commission and may consult with the Governor's Action Team for Energy and Climate Change. The act provides that the department may not adopt rules until after January 1, 2010, and the rules may not become effective until ratified by the Legislature.

The act requires that the rules of the cap-and-trade regulatory program include the following provisions.

- A statewide limit or cap on the amount of greenhouse gases emitted by major emitters.
- Methods, requirements, and conditions for allocating the cap among major emitters.
- Methods, requirements, and conditions for emissions allowances and the process for issuing emissions allowances.
- The relationship between allowances and the specific amounts of greenhouse gas emissions they represent.
- The length of allowance periods and the time over which entities must account for emissions and surrender allowances equal to emissions.
- The timeline of allowances from the initiation of the program through 2050.
- A process for the trade of allowances between major emitters, including a registry, tracking, or accounting system for such trades.
- Cost containment mechanisms to reduce price and cost risks associated with the electric generation market in this state.
- A process to allow the department to exercise its authority to discourage leakage of GHG emissions to neighboring states attributable to the implementation of this program.
- Provisions for a trial period on the trading of allowances before full implementation of a trading system.

The statute requires that the following factors be considered in recommending and evaluating proposed features of the cap-and-trade system.

- The overall cost-effectiveness of the cap-and-trade system in combination with other policies and measures in meeting statewide targets.
- Minimizing the administrative burden to the state of implementing, monitoring, and enforcing the program.
- Minimizing the administrative burden on entities covered under the cap.
- The impacts on electricity prices for consumers.
- The specific benefits to the state's economy for early adoption of a cap-and-trade system for greenhouse gases in the context of federal climate change legislation and the development of new international compacts.
- The specific benefits to the state's economy associated with the creation and sale of emissions offsets from economic sectors outside of the emissions cap.
- The potential effects on leakage if economic activity relocates out of the state.
- The effectiveness of the combination of measures in meeting identified targets.
- The implications for near-term periods of long-term targets specified in the overall policy.
- The overall costs and benefits of a cap-and-trade system to the state economy.
- How to moderate financial impacts to low-income consumers that result from energy price increases.
- Consistency of the program with other state and possible federal efforts.
- The feasibility and cost-effectiveness of extending the program scope as broadly as possible among emitting activities and sinks in Florida.
- Evaluation of the conditions under which Florida should consider linking its trading system to the systems of other states or other countries and how that might be affected by the potential inclusion in the rule of a safety valve.

The act also states that, "recognizing that the international, national, and neighboring state policies and the science of climate change will evolve, prior to submitting the proposed rules to the Legislature for consideration," the department must submit the proposed rules to the Florida Energy and Climate Commission, which must review the proposed rules and submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the department. The report must address the following.

- The overall cost-effectiveness of the proposed cap-and-trade system in combination with other policies and measures in meeting statewide targets.
- The administrative burden to the state of implementing, monitoring, and enforcing the program.
- The administrative burden on entities covered under the cap.
- The impacts on electricity prices for consumers.
- The specific benefits to the state's economy for early adoption of a cap-and-trade system for greenhouse gases in the context of federal climate change legislation and the development of new international compacts.
- The specific benefits to the state's economy associated with the creation and sale of emissions offsets from economic sectors outside of the emissions cap.
- The potential effects on leakage if economic activity relocates out of the state.
- The effectiveness of the combination of measures in meeting identified targets.

- The economic implications for near-term periods of short-term and long-term targets specified in the overall policy.
- The overall costs and benefits of a cap-and-trade system to the economy of the state.
- The financial impacts to low-income consumers that result from energy price increases.
- The consistency of the program with other state and possible federal efforts.
- The evaluation of the conditions under which the state should consider linking its trading system to the systems of other states or other countries and how that might be affected by the potential inclusion in the rule of a safety valve.
- The timing and changes in the external environment, such as proposals by other states or implementation of a federal program that would spur reevaluation of the Florida program.
- The conditions and options for eliminating the Florida program if a federal program were to supplant it.
- The need for a regular reevaluation of the progress of other emitting regions of the country and of the world, and whether other regions are abating emissions in a commensurate manner.
- The desirability and possibility of broadening the scope of the state's cap-and-trade system at a later date to include more emitting activities as well as sinks in Florida, the conditions that would need to be met to do so, and how the program would encourage these conditions to be met, including developing monitoring and measuring techniques for land use emissions and sinks, regulating sources upstream, and other considerations.

Section 366.8255, F.S., authorizes an investor-owned electric utility to recover costs of compliance with federal, state, or local environmental laws or regulations. When the Florida Climate Protection Act was enacted in 2008, this section was amended to allow recovery of costs or expenses prudently incurred for the quantification, reporting, and third-party verification as required for participation in greenhouse gas emission registries for greenhouse gases.

III. Effect of Proposed Changes:

The bill repeals s. 403.44, F.S., known as the Florida Climate Protection Act, and deletes the provision in s. 366.8255, F.S., relating to recovery of costs associated with greenhouse gas registries.

The bill provides an effective date of July 1, 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:

Electric utilities will not incur costs of a state cap-and-trade program if this bill is passed. Consequently, ratepayers will not be required to pay for such costs.

C. Government Sector Impact:

According to the department, the provisions of section 403.44, Florida Statutes, have not been implemented. If this legislation is passed, the department will be able to avoid costs associated with rulemaking as required to implement the cap-and-trade regulatory program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 850

INTRODUCER: Senator Hays

SUBJECT: State Forests

DATE: April 6, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Flemming	Carter	MS	**Favorable**
2.	Wiggins	Yeatman	EP	**Favorable**
3.	Blizzard	DeLoach	BGA	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

This bill requires the Division of Forestry (division) within the Department of Agriculture and Consumer Services (department) to designate "Wounded Warrior special hunt areas" on state forest lands and provide hunt areas for disabled veterans.

This bill substantially amends section 589.19, Florida Statutes.

II. Present Situation:

The Division of Forestry manages and administers all state forests in the interest of the public.[1] The division is authorized to direct multiple-use management of forest lands owned by the state. Such use includes, but is not limited to: water resource protection; forest ecosystems protection; natural resource based, low impact recreation; and sustainable timber management for forest products.[2] Furthermore, the division cooperates with federal, state, and local government agencies, non-profit organizations, and other persons to apply for, solicit, and receive grants and funds from those agencies, organizations, firms and individuals.[3]

There are 35 state forests in Florida, totaling more than 1,052,000 acres.[4] Under the direction of the Fish and Wildlife Conservation Commission (commission), many state forests are open to

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[1] s. 589.21, F.S.
[2] s. 589.04(4), F.S.
[3] s. 589.04(1)(B), F.S.
[4] *State Forests in Florida*, DIVISION OF FORESTRY, http://www.fl-dof.com/state_forests/#history (last visited March 21, 2011).

regulated hunting and fishing.[5] Hunting requires a license and a permit and is allowed only in designated Wildlife Management Areas (WMAs) during specific seasons.[6] Fishing also requires a valid license.[7]

A veteran is defined in s. 1.01, F.S, as a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions only or who later received an upgraded discharge under honorable conditions.[8] Peacetime service means Army, Navy, Marines, Coast Guard, or Air Force service that is not during a wartime era, as defined in s. 1.01(14), F.S.[9] Additionally, the veteran must have a service-connected disability, as determined by the U.S. Department of Veterans Affairs, or have been discharged or released from military service because of a disability incurred or aggravated in the line of duty. According to the commission, the definition for "mobility impaired" includes the following:

- Paraplegic.
- Hemiplegic.
- Quadriplegic.
- Permanently dependent upon a wheelchair for ambulation.
- Permanently required to use assisting aids to walk.
- Permanently required to use braces or prostheses on both legs.
- Single-leg above the knee amputation.
- Other injuries that the Office of Veterans Affairs has identified as mobility impaired.[10]

Non-profit organizations such as Wounded Warrior Outdoors, Inc.,[11] and Wounded Warriors In Action[12] provide wounded servicemen and servicewomen with opportunities for outdoor recreational activities. In the past, such activities have included hunting and fishing excursions in various parts of the country. The organizations assert that such activities are therapeutic and an important part of physical and mental recovery. The funding required for specialized accommodations will be provided through the Friends of Florida State Forests Program (FFSF). The FFSF is a charitable not-for-profit corporation that supports programs within Florida's state forests and is governed by a board of directors representing all areas of the state. The FFSF, described in s. 589.012, F.S., was established within the department to provide support and assistance for existing and future programs of the division. These programs must be consistent with the division's mission statement. The purpose of the program is to:

- Conduct programs and activities related to environmental education, fire prevention, recreation, and forest management.
- Identify and pursue methods to provide resources and materials for these programs.

[5] *State Forest Recreation*, DIVISION OF FORESTRY, http://www.fl-dof.com/forest_recreation/index.html (last visited March 21, 2011).
[6] *Id.*
[7] *Id.*
[8] s. 1.01(14), F.S.
[9] s. 296.02(7), F.S.
[10] Florida Fish and Wildlife Conservation Commission Analysis, *Senate Bill 850* (March 4, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation).
[11] ABOUT WWO INC., http://www.woundedwarrioroutdoors.com/about.html (last visited March 21, 2011).
[12] ABOUT WWIA, http://www.woundedwarriorsinaction.org/about.html (last visited March 21, 2011).

- Establish a statewide method to integrate these resources and materials.[13]

Currently, the division provides a hunting area in Lake Wales Ridge State Forest for a nearby "Wounded Warrior" organization. The hunts typically last for a weekend or several days and include special accommodations as needed by the wounded warriors, such as turkey blinds with space for operation of a motorized wheelchair.

III. Effect of Proposed Changes:

This bill amends s. 589.19, F.S., to require the division to designate "Wounded Warrior special hunt areas" on state forest lands to provide hunt areas for disabled veterans. The general statewide hunting regulations will apply to these special hunt areas. A person is eligible to hunt in a Wounded Warrior special hunt area if he or she is a veteran as defined in s. 1.01, F.S., or has eligible peacetime service, as defined in s. 296.02, F.S., and has a service-connected disability as determined by the U.S. Department of Veterans Affairs or has been discharged or released from military service because of a disability incurred or aggravated in the line of duty. In addition, persons required to assist the veteran due to his or her disability are authorized to use such areas.

This bill provides that the funding required for specialized accommodations shall be provided through the Friends of Florida State Forests Program.

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:

This bill does not change any permitting or licensing requirements for hunting or fishing.

B. Private Sector Impact:

Friends of Florida State Forests will fund specialized accommodations needed in the Wounded Warrior special hunt areas.

[13] s. 589.012, F.S.

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.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1072

INTRODUCER: Judiciary Committee and Senator Latvala

SUBJECT: Recording of Real Property Documents

DATE: April 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Maclure	Maclure	JU	**Fav/CS**
2.	Arzillo	Burgess	BI	**Favorable**
3.	Frederick	DeLoach	BGA	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill provides that a document that was or is submitted by electronic means to the clerk of court or county recorder and accepted for recordation is valid, even if the document was received and recorded prior to the Department of State adopting rules relating to the electronic recording of documents. These documents are also considered valid notwithstanding any defects in, deviations from, or the inability to demonstrate strict compliance with the statutory or regulatory framework in effect at the time of recordation. The bill specifies that it intends to clarify existing law and applies prospectively and retroactively. In this manner, the bill is designed to ratify the validity of documents submitted by electronic means to clerks of court or county recorders prior to the state's full implementation of electronic recording of real property documents.

This bill creates section 695.28, Florida Statutes.

II. Present Situation:

Uniform Real Property Electronic Recording Act: Background[1]

Real estate transactions are some of the oldest forms of transactions governed by law. Over the years as literacy and technology have evolved, these transactions have moved from being conducted symbolically to being recorded through the use of paper deeds, mortgages, and leases. Today, electronic communications have become more prevalent and in many situations have replaced paper. However, there are certain barriers to using electronic communications to carry on real estate transactions. Many states have enacted statute of fraud requirements that inhibit the use of electronic communications. In 1677, the "statute of frauds" was enacted to declare all contracts that were not in writing and signed by the parties to be unenforceable.[2] These requirements have made it more difficult to develop electronic alternatives to paper transactions that are equally enforceable. According to the Property Records Industry Association (PRIA), there are more than 3,600 recording jurisdictions nationwide. Although many of these jurisdictions have shown an interest in converting from paper recording systems to electronic systems, only a small number of jurisdictions have actually done so due to the lack of clear authority for them to do so.[3]

In 1999, the National Conference of Commissioners on Uniform State Laws (NCCUSL)[4] attempted to rectify this problem:

> The first step to remedy this emerging problem took place in 1999 when the Uniform Law Commissioners promulgated the Uniform Electronic Transactions Act (UETA). This act adjusted statute of fraud provisions to include electronic "records" and "signatures" for the memorialization of all kinds of transactions, including basic transactions in real estate. It is possible to have sale contracts, mortgage instruments (in whatever form a jurisdiction uses) and promissory notes memorialized in electronic form with electronic signatures that will now be treated the equal of the same paper documents with manual signatures. This is the result of the wide-spread enactment of UETA and the subsequent enactment of the Electronic Signatures in Global and National Commerce Act (E-Sign) by Congress.
>
> Real estate transactions, however, require another step not addressed by either UETA or E-Sign. Real estate documents must be recorded on public records to be effective. Recording takes place in most states in a county office devoted to keeping these records. Recording protects current interests in real estate by clarifying who holds those interests. The chain of title leading to the current title-holder, meaning the historic record of documents relating to transactions for a

[1] The information contained in this portion of the Present Situation of this bill analysis is from the Uniform Real Property Electronic Recording Act, as well as materials on the website of the National Conference of Commissioners on Uniform State Laws.
[2] BLACK'S LAW DICTIONARY (9th ed. 2009).
[3] National Conference of Comm'rs on Uniform State Laws, *Why States Should Adopt the Uniform Real Property Electronic Recording Act (URPERA), available at* http://uniformlaws.org/Act.aspx?title=Real%20Property%20Electronic%20Recording%20Act (follow the "Why States Should Adopt URPERA" link) (last visited Mar. 20, 2011) [hereinafter *Why States Should Adopt URPERA*].
[4] The NCCUSL is an organization that "provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of the law." National Conference of Comm'rs on Uniform State Laws, *Uniform Law Commission*, http://www.nccusl.org/ (last visited Mar. 20, 2011).

specific piece of real estate, establishes the marketability of that piece of real estate by the current owner of interests in it. The real estate records establish this chain of title. State law governs these local recording offices, and there are requirements in the law of every state relating to the originality and authenticity of paper documents that are presented for recording. These are themselves "statute of fraud" provisions that must be specifically adjusted before electronic recording may take place. Neither UETA nor E-Sign help.[5]

In 2004, the NCCUSL finalized and approved the Uniform Real Property Electronic Recording Act (URPERA), in order to provide clear authority to recording jurisdictions that electronic recording is acceptable. The URPERA:

- Maintains conceptual and definitional consistency between URPERA and UETA and E-Sign.
- Equates electronic documents and electronic signatures to original paper documents and manual signatures, so that any requirement for originality is satisfied by an electronic document.
- Provides greater clarity for the authority to implement electronic recording when compared with existing law.
- Designates a state entity or commission responsible for setting statewide uniform standards and requires it to set uniform standards that must be implemented in every recording office that elects to accept electronic documents.
- Establishes the factors that must be considered when a state entity formulates, adopts, and promotes standards for effective electronic recording.
- Allows for cross-storage of electronic and paper documents.[6]

Currently, 26 states, including the District of Columbia and the U.S. Virgin Islands, have enacted the URPERA, and three other states have introduced URPERA legislation in 2011.[7]

Electronic Recording of Real Property Documents in Florida

Florida adopted the Uniform Electronic Transaction Act (UETA) in 2000,[8] based on the act promulgated by the NCCUSL. The NCCUSL, the PRIA and the Electronic Financial Services Council, believed that UETA authorized the electronic creation, submission, and recording of electronic documents affecting real property.[9]

In 2007, Florida enacted the Uniform Real Property Electronic Recording Act, codified in s. 695.27, F.S.[10] Under the law, the Department of State (department) is required to consult with

[5] National Conference of Comm'rs on Uniform State Laws, *Uniform Real Property Electronic Recording Act Summary*, http://uniformlaws.org/ActSummary.aspx?title=Real%20Property%20Electronic%20Recording%20Act (last visited Mar. 20, 2011).
[6] *Why States Should Pass URPERA*, *supra* note 3.
[7] National Conference of Comm'rs on Uniform State Laws, *Real Property Electronic Recording Act: Enactment Status Map*, http://uniformlaws.org/Act.aspx?title=Real%20Property%20Electronic%20Recording%20Act (last visited Mar. 20, 2011).
[8] Chapter 2000-164, s. 1, Laws of Fla., codified in s. 668.50, F.S.
[9] *See* Property Records Industry Ass'n, *PRIA and EFSC on Electronic Recordation of Scanned Land Documents* (2004), *available at* http://www.pria.us/files/public/Committees/Real_Property_Law/URPERA/2004/FloridaSummary12204.pdf (last visited March 20, 2011)..
[10] Chapter 2007-233, s. 1, Laws of Fla.

the Electronic Recording Advisory Committee (committee)[11] to adopt standards to implement the URPERA in Florida. The department and committee are charged with keeping the standards and practices of county recorders in Florida in harmony with the standards and practices of other states' recording offices, and keeping the technology used by recorders in this state compatible with technology used in other states.[12] In doing this, s. 695.27(5)(e), F.S., directs the department, in consultation with the committee, to consider the following elements when adopting, amending, or repealing standards:

- The standards and practices of other jurisdictions;
- The most recent standards adopted by national standard-setting bodies, such as the PRIA;
- The views of interested persons and governmental officials and entities;
- The needs of counties by varying size, population, and resources; and
- Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

In May 2008, the department adopted rules pertaining to real property electronic recording.[13]

According to the Real Property, Probate and Trust Law Section of The Florida Bar, some of the state's clerks of court and county recorders began accepting electronic recordings prior to the adoption of URPERA, under the assumption that UETA authorized the use of electronic recordings, and others began accepting electronic documents before DOS adopted its rules governing electronic filing.[14]

Clerks of Court and County Recorders in Florida

Clerks of court and county recorders are required to maintain a variety of court and official records. Court records maintained by a clerk of court include:

> the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, videotapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes, or stenographic tapes of court proceedings . . . .[15]

Court clerks also serve as county recorders.[16] Official records maintained by the clerk of court, acting as the county recorder, include recorded judgments, deeds, mortgages, claims of liens, death certificates, certificates of discharge from military service, maps, and other records.[17]

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[11] The committee terminated on July 1, 2010. Section 695.27(5)(f), F.S.
[12] Section 695.27(5)(e), F.S.
[13] See Rules 1B-31.001 and 1B-31.002, F.A.C.
[14] Real Property, Probate and Trust Law Section, The Florida Bar, *Legislative Position Request Form* (2009) (on file with the Senate Committee on Judiciary).
[15] Fla. R. Jud. Admin. 2.420(b)(1)(A).
[16] Section 28.222, F.S.
[17] *Id.*

III. Effect of Proposed Changes:

Electronic Recording of Real Property Documents

This bill creates s. 695.28, F.S., to provide that a document that is entitled to be recorded and that was or is submitted by electronic means and accepted by the clerk of court or county recorder for recordation is valid, even if the document was received and recorded before the Department of State (department) adopted rules relating to the electronic recording of documents. These documents are also considered valid notwithstanding any defects in, deviations from, or the inability to demonstrate strict compliance with the statutory or regulatory framework in effect at the time of recordation. The bill specifies that the newly created section of law does not alter the duty of the clerk of court or county recorder to comply with s. 695.27, F.S., or the rules adopted pursuant to that section.

The bill states that it is intended to clarify existing law and applies prospectively and retroactively. Some clerks of court and county recorders began accepting electronic recordings prior to the department adopting rules to implement the Uniform Real Property Electronic Recording Act (URPERA). According to the Real Property, Probate and Trust Law Section of the Florida Bar:

> The intent of the statute, of the rule and of the parties to the Electronic Documents was that they be valid, binding, validly filed and to provide constructive notice notwithstanding timing differences or the mechanism for converting the physical signature into an electronic signature.
>
> Because of the importance of a stable and certain record title and land conveyance system, this bill retroactively and prospectively ratifies the validity of all such electronic documents submitted to and accepted by a county recorder for recordation, notwithstanding those types of possible technical defects.[18]

The bill provides that, except as otherwise provided, the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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[18] Real Property, Probate and Trust Law Section, The Florida Bar, *White Paper: Bill Curing Certain Defects as to Electronic Documents and Electronically Recorded Documents* (2008) (on file with the Senate Committee on Judiciary).

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill provides that it is the Legislature's intent to clarify existing law and that the provisions of the bill apply prospectively and retroactively. Retroactive operation is disfavored by courts and generally "statutes are prospective, and will not be construed to have retroactive operation unless the language employed in the enactment is so clear it will admit of no other construction."[19] The Florida Supreme Court has articulated four issues to consider when determining whether a statute may be retroactively applied:

- Is the statute procedural or substantive?
- Was there an unambiguous legislative intent for retroactive application?
- Was a person's right vested or inchoate?
- Is the application of the statute to these facts unconstitutionally retroactive?[20]

The general rule of statutory construction is that a procedural or remedial statute may operate retroactively, but that a substantive statute may not operate retroactively without clear legislative intent. Substantive laws either create or impose a new obligation or duty, or impair or destroy existing rights, and procedural laws enforce those rights or obligations.[21] It appears that the bill is clarifying existing law, rather than creating new statutory rights, duties, or obligations.

Additionally, the bill makes it clear that it is the Legislature's intent to apply the law retroactively. "Where a statute expresses clear legislative intent for retroactive application, courts will apply the provision retroactively."[22] A court will not follow this rationale, however, if applying a statute retroactively will impair vested rights, create new obligations, or impose new penalties.[23] This bill does not appear to do any of these things. Accordingly, to that extent, the retroactive nature of the bill does not appear to pose significant constitutional concerns.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

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[19] Norman J. Singer and J.D. Shambie Singer, *Prospective or retroactive interpretation*, 2 SUTHERLAND STATUTORY CONSTR. s. 41:4 (6th ed. 2009).
[20] *Weingrad v. Miles*, 29 So. 3d 406, 409 (Fla. 3d DCA 2010) (internal citations omitted).
[21] *See Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994); *In re Rules of Criminal Procedure*, 272 So. 2d 65, 65 (Fla. 1972).
[22] *Weingrad*, 29 So. 3d at 410.
[23] *Id*. at 411.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on March 22, 2011:
The committee substitute:

- Removes from the original bill the provisions requiring certain governmental liens to be recorded in the official records and expanding the current mechanism under which a person can claim that property is a homestead and exempt from forced sale;
- Removes the provisions making conforming changes to the Uniform Real Property Electronic Recording Act and extending the existence of the Electronic Recording Advisory Committee to July 1, 2013; and
- Specifies that the changes made by the bill apply prospectively, as well as retroactively.

B. Amendments:

None.

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LEGISLATIVE ACTION

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

Senate Amendment

Delete lines 174 - 176
and insert:
(5) A person licensed or certified under this chapter who practices accepted pest control methods is immune from liability under s. 828.12.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 1290

INTRODUCER: Environmental Preservation and Conservation Committee; Agriculture Committee; and Senator Dean

SUBJECT: Pest Control

DATE: April 6, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Spalla	AG	**Fav/CS**
2.	Wiggins	Yeatman	EP	**Fav/CS**
3.	Blizzard	DeLoach	BGA	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill makes changes to the Florida Structural Pest Control Act. It authorizes the Department of Agriculture and Consumer Services (department) to issue a license to operate a customer contact center for the purpose of soliciting pest control business and coordinating services to consumers for one or more business locations. The bill also provides that a person cannot operate a customer contact center for a pest control business that is not licensed by the department and establishes a licensing fee and biennial renewal fee.

The bill establishes a limited certification for commercial wildlife management personnel within the department, authorizing persons to use nonchemical methods for controlling rodents. The certification process includes successful completion of an examination, an examination fee, annual recertification, late fees (when appropriate), continuing education classes, and proof of a certificate of insurance for minimum financial responsibility.

The bill increases the minimum requirements for insurance coverage to conduct pest control businesses. In addition, the bill expands the methods by which a pest control licensee may

contact the department regarding the location where fumigation will be taking place, to include notification by facsimile or other forms of electronic communication.

The bill will increase revenue to the General Inspection Trust Fund within the department by $21,000 in Fiscal Year 2011-2012, from fees generated through the pest control customer contact centers and through the limited certification for commercial wildlife management personnel.

This bill substantially amends the following sections of the Florida Statutes: 482.051, 482.071, and 482.226.

This bill creates sections 482.072 and 482.157, Florida Statutes.

II. Present Situation:

The practice of commercial pest control in Florida is regulated under the provisions of ch. 482, F.S., known as the Structural Pest Control Act, and Rule Chapter 5E-14, F.A.C. These regulations are administered and enforced by the Pest Control Section of the Bureau of Entomology and Pest Control within the Department of Agriculture and Consumer Services.

Pest control includes one or more of the following activities:

- The use of any method or device or the application of any substance to prevent, destroy, repel, mitigate, curb, control, or eradicate any pest in, on, or under a structure, lawn, or ornamental;
- The identification of or inspection for infestations or infections in, on, or under a structure, lawn, or ornamental;
- The use of any pesticide, economic poison, or mechanical device for preventing, controlling, eradicating, identifying, inspecting for, mitigating, diminishing, or curtailing insects, vermin, rodents, pest birds, bats, or other pests in, on, or under a structure, lawn, or ornamental;
- All phases of structural fumigation (includes boxcars, trucks, ships, airplanes, docks, warehouses, and common carriers); and
- The advertisement of, the solicitation of, or the acceptance of remuneration for any work, but does not include the solicitation of a bid from a licensee to be incorporated in an overall bid by an unlicensed primary contractor to supply services to another.[1]

Fumigation

Currently, to protect the health, safety, and welfare of the public, a pest control licensee must give the department an advance notice of at least 24 hours of the location where general fumigation will be taking place. In emergency cases, when a 24-hour notice is not possible, a licensee may provide notice by means of a telephone call and then follow up with a written confirmation providing the required information.

[1] http://www.flaes.org/aes-ent/licenseandcert.html.

Insurance Requirements

A pest control business licensee may not operate a pest control business without carrying the required insurance coverage and furnishing the department with a certificate of insurance that meets the requirements for minimum financial responsibility, as follows.

- Bodily injury: $100,000 for each person and $300,000 for each occurrence.
- Property damage: $50,000 each occurrence and $100,000 in the aggregate.[2]

These requirements have not been increased since 1992.

Customer Contact Centers

For structural pest control, the law provides that each pest control business location must be licensed by the department and that a Florida certified operator must be in charge of the pest control operations of the business location. Some pest control companies operate regional customer contact centers that solicit business and receive calls for the appropriate state or area in the region. Florida law currently requires pest control businesses doing business in the state to register and obtain a license to operate, but does not address pest control contact centers. Therefore, a customer contact center must obtain a pest control license, even though they are only receiving telephone calls and soliciting business.

Control of Rodents

In most cases of rodent infestation, the pest animals can be controlled without the use of poisons. Currently, there is no provision for a limited certification for commercial wildlife trapper personnel to use nonchemical methods to control rodents. For several years, the commission issued permits for persons engaged in the control of nuisance wildlife. Interest in the permitting system dwindled over the years, resulting in the discontinuation of permitting in 2008. Several persons still engaged in the control of nuisance wildlife have contacted the department asking to have a certification process reinstated, to assure that the nuisance animals are being handled humanely and the public is protected.

III. Effect of Proposed Changes:

Section 1 amends s. 482.051, F.S., to authorize that, in the event of an emergency requiring fumigation, pest control operators may provide notice of the fumigation location to the department by facsimile or other form of electronic communication.

Section 2 amends s. 482.071, F.S., to increase the minimum insurance requirements for a pest control licensee from $100,000 to $250,000. This change reflects the current levels of insurance offered by liability insurers.

Section 3 creates s. 482.072, F.S., to allow the establishment, inspection, and regulation of centralized pest control customer contact centers. This will allow licensed centers to solicit pest control business and provide service to customers for one or more business locations. It provides

[2] s. 482.071(4), F.S.

for the biennial renewal of the license. It also establishes a licensure fee of at least $600, but not more than $1,000 and renewal fees of at least $600, but not more than $1,000. This section also provides for the expiration of a license not renewed within 60 days of a renewal deadline. A license automatically expires if a licensee changes its customer contact center business location and requires issuance of a new license upon payment of a $250 fee. It authorizes the department to adopt rules establishing requirements and procedures for recordkeeping and monitoring customer contact center operations. It provides for disciplinary action for violations of ch. 482, F.S., or any rule adopted hereunder.

Section 4 creates s. 482.157, F.S., to establish a limited certification category for individual commercial wildlife trapper personnel engaged in the nonchemical control of wildlife to also control rodents, as defined in chapter 482, F.S. It requires an exam and establishes certification fees of at least $150, but not to exceed $300. This section also provides for recertification fees, classes, and late fees. The bill limits the scope of work permitted by certificate holders and clarifies that licensees and certificate holders who practice accepted pest control methods are immune from liability for violating animal cruelty laws. However, licensees and certificate holders are not exempt from the rules, orders, or regulations of the commission.

For clarity purposes, the bill includes the word "commensal" to describe rodent. According to Pest Management Professionals, "commensal" pets are species of wildlife which have adapted to and become partially dependent on the human-built environment for food, water, and sometimes shelter.[3]

Section 5 amends s. 482.226, F.S., to increase the minimum insurance requirements for a pest control licensee that performs wood-destroying organism inspections from $50,000 to $500,000. This change reflects the current levels of insurance offered by liability insurers.

Section 6 provides that 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.

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[3] IPM for Commensal Rodents-Curriculum for Bio-Integral Resource Center Pest Management Professionals, Global Environmental Options, March 2005, at http://www.birc.org/Rodent%20Curriculum.pdf.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Refer to Private Sector and Government Sector Impacts.

B. Private Sector Impact:

Pest control businesses that choose to obtain the license for a customer service center will incur the fees established by the bill. Pest control businesses that do not currently have the proposed minimum insurance requirements will be required to increase their insurance coverage and will incur additional costs.

Individuals who conduct wildlife management services and wish to obtain limited certification to control rodents will incur the fees associated with the limited certification.

C. Government Sector Impact:

The bill will increase revenue to the General Inspection Trust Fund by an estimated $21,000 in the 2011-2012 fiscal year, from fees generated through the pest control customer contact centers and through the limited certification category for commercial wildlife management personnel. The department estimates expenditures associated with the inspection and licensing of these programs to be $16,957 in the 2011-2012 fiscal year.

The department has indicated that the workload and cost to implement the provisions in this bill can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by the Environmental Preservation and Conservation Committee on March 30, 2011:
The CS/CS removes the option of using glue boards to control rodents. The CS/CS includes the word "commensal" to describe rodents. The CS/CS clarifies that the FWC's rules related to the taking of nuisance wildlife must be followed and does not allow the intentional taking of bats.

CS by the Agriculture Committee on March 21, 2011:
This CS makes technical changes to the bill that does not make any substantive changes.

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Budget Subcommittee on General Government Appropriations (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (14), (25), and (26) of section 494.001, Florida Statutes, are amended, new subsections (5), (11), and (17) are added to that section, present subsections (5) through (9) are renumbered as subsections (6) through (10), respectively, present subsections (10) through (14) are renumbered as subsections (12) through (16), respectively, present subsections (15) through (24) are renumbered as subsections (18) through (27), respectively, and present

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subsections (26) through (34) are renumbered as subsections (28) through (36), respectively, to read:

494.001 Definitions.—As used in ss. 494.001-494.0077, the term:

(5) “Contract loan processor” means an individual who is licensed under part II of this chapter as a loan originator, who is an independent contractor for a mortgage broker or mortgage lender, and who engages only in loan processing.

(11) “In-house loan processor” means an individual who is an employee of a mortgage broker or a mortgage lender who engages only in loan processing.

(16) ~~(14)~~ “Loan originator” means an individual who, directly or indirectly, solicits or offers to solicit a mortgage loan, accepts or offers to accept an application for a mortgage loan, negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, ~~processes a mortgage loan application,~~ or negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain. The term includes an individual who is required to be licensed as a loan originator under t~~he activities of a loan originator as that term is defined in~~ the S.A.F.E. Mortgage Licensing Act of 2008~~, and an individual acting as a loan originator pursuant to that definition is acting as a loan originator for purposes of this definition~~. The term does not include an employee of a mortgage broker or mortgage lender whose duties are limited to ~~who performs only administrative or clerical tasks, including quoting available interest rates,~~ physically handling a completed application form~~,~~ or transmitting a completed

application form to a lender on behalf of a prospective borrower.

(17) “Loan processing” means:

(a) Receiving, collecting, distributing, and analyzing information common for the processing of a mortgage loan; or

(b) Communicating with a consumer to obtain information necessary for the processing of a mortgage loan if such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

~~(25) “Person” has the same meaning as in s. 1.01.~~

(28) ~~(26)~~ “Principal loan originator” means the licensed loan originator in charge of, and responsible for, the operation of a mortgage lender or mortgage broker, including all of the activities of the mortgage lender’s or mortgage broker’s loan originators, in-house loan processors, and branch managers, whether employees or independent contractors.

Section 2. Subsection (2) of section 494.0011, Florida Statutes, is amended to read:

494.0011 Powers and duties of the commission and office.—

(2) ~~To administer ss. 494.001-494.0077,~~ The commission may adopt rules to administer parts I, II, and III of this chapter, including rules:

(a) Requiring electronic submission of any forms, documents, or fees required by this act.

(b) Relating to compliance with the S.A.F.E. Mortgage Licensing Act of 2008, including rules to:

1. Require loan originators, mortgage brokers, mortgage lenders, and branch offices to register through the registry.

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2. Require the use of uniform forms that have been approved by the registry, and any subsequent amendments to such forms if the forms are substantially in compliance with the provisions of this chapter. Uniform forms that the commission may adopt include, but are not limited to:

a. Uniform Mortgage Lender/Mortgage Broker Form, MU1.

b. Uniform Mortgage Biographical Statement & Consent Form, MU2.

c. Uniform Mortgage Branch Office Form, MU3.

d. Uniform Individual Mortgage License/Registration & Consent Form, MU4.

3. Require the filing of forms, documents, and fees in accordance with the requirements of the registry.

4. Prescribe requirements for amending or surrendering a license or other activities as the commission deems necessary for the office's participation in the registry.

5. Prescribe procedures that allow a licensee to challenge information contained in the registry.

6. Prescribe procedures for reporting violations of this chapter and disciplinary actions on licensees to the registry.

(c) Establishing time periods during which a loan originator, mortgage broker, or mortgage lender license applicant under part II or part III is barred from licensure due to prior criminal convictions of, or guilty or nolo contendere pleas by, any of the applicant's control persons, regardless of adjudication.

1. The rules must provide:

a. Permanent bars for felonies involving fraud, dishonesty, breach of trust, or money laundering;

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b. A 15-year disqualifying period for felonies involving moral turpitude;

c. A 7-year disqualifying period for all other felonies; and

d. A 5-year disqualifying period for misdemeanors involving fraud, dishonesty, or any other act of moral turpitude.

2. The rules may provide for an additional waiting period due to dates of imprisonment or community supervision, the commitment of multiple crimes, and other factors reasonably related to the applicant’s criminal history.

3. The rules may provide for mitigating factors for crimes identified in sub-subparagraph 1.b. However, the mitigation may not result in a period of disqualification less than 7 years. The rule may not mitigate the disqualifying periods in sub-subparagraphs 1.a., 1.c., and 1.d.

4. An applicant is not eligible for licensure until the expiration of the disqualifying period set by rule.

5. Section 112.011 is not applicable to eligibility for licensure under this part.

Section 3. Subsections (3), (4), (5), and (6) of section 494.00255, Florida Statutes, are amended, and paragraph (m) of subsection (1) is reenacted, to read:

494.00255 Administrative penalties and fines; license violations.—

(1) Each of the following acts constitutes a ground for which the disciplinary actions specified in subsection (2) may be taken against a person licensed or required to be licensed under part II or part III of this chapter:

(m) In any mortgage transaction, violating any provision of the federal Real Estate Settlement Procedures Act, as amended, 12 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, as amended, 15 U.S.C. ss. 1601 et seq.; or any regulations adopted under such acts.

(3) A mortgage broker or mortgage lender, as applicable, is subject to the disciplinary actions specified in subsection (2) for a violation of subsection (1) by:

(a) A control person of the mortgage broker or mortgage lender; ~~or~~

(b) A loan originator employed by or contracting with the mortgage broker or mortgage lender; or

(c) An in-house loan processor who is an employee of the mortgage broker or mortgage lender.

(4) A principal loan originator of a mortgage broker is subject to the disciplinary actions specified in subsection (2) for violations of subsection (1) by a loan originator or an in-house loan processor in the course of an association with the mortgage broker if there is a pattern of repeated violations by the loan originator or in-house loan processor or if the principal loan originator has knowledge of the violations.

(5) A principal loan originator of a mortgage lender is subject to the disciplinary actions specified in subsection (2) for violations of subsection (1) by a loan originator or an in-house loan processor in the course of an association with a mortgage lender if there is a pattern of repeated violations by the loan originator or in-house loan processor or if the principal loan originator has knowledge of the violations.

(6) A branch manager is subject to the disciplinary actions specified in subsection (2) for violations of subsection (1) by

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a loan originator or an in-house loan processor in the course of an association with the mortgage broker or mortgage lender if there is a pattern of repeated violations by the loan originator or in-house loan processor or if the branch manager has knowledge of the violations.

Section 4. Section 494.00331, Florida Statutes, is amended to read:

494.00331 Loan originator and loan processor employment.—

(1) LOAN ORIGINATORS.—An individual may not act as a loan originator unless he or she is an employee of, or an independent contractor for, a mortgage broker or a mortgage lender, and may not be employed by or contract with more than one mortgage broker or mortgage lender, or either simultaneously.

(2) CONTRACT LOAN PROCESSORS.—Subsection (1) ~~However, this provision~~ does not apply to a contract loan processor who has a declaration of intent to act solely as a contract loan processor on file with the office. The declaration of intent must be on a form as prescribed by commission rule ~~any licensed loan originator who acts solely as a loan processor and contracts with more than one mortgage broker or mortgage lender, or either simultaneously~~.

~~(2) For purposes of this section, the term “loan processor” means an individual who is licensed as a loan originator who engages only in:~~

~~(a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; or~~

~~(b) Communication with consumers to obtain the information necessary for the processing or underwriting of a loan, to the~~

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~~extent that such communication does not include offering or negotiating loan rates or terms or does not include counseling consumers about residential mortgage loan rates or terms.~~

~~(3) A person may not act as a loan processor unless the person is licensed as a loan originator under this chapter and has on file with the office a declaration of intent to engage solely in loan processing. The declaration of intent must be on such form as prescribed by the commission by rule.~~

(a) ~~(4)~~ A loan originator ~~that currently has a declaration of intent to engage solely in loan processing on file with the office~~ may withdraw his or her declaration of intent ~~to engage solely in loan processing~~. The withdrawal of declaration of intent must be on such form as prescribed by commission rule.

(b) ~~(5)~~ A declaration of intent or a withdrawal of declaration of intent is effective upon receipt by the office.

(c) ~~(6)~~ The fee earned by a contract loan processor may be paid to the company that employs the loan processor without violating the restriction in s. 494.0025(8) ~~(7)~~ requiring fees or commissions to be paid to a licensed mortgage broker or mortgage lender or a person exempt from licensure under this chapter.

(3) IN-HOUSE LOAN PROCESSORS.—An individual may not act as an in-house loan processor unless he or she is an employee of a mortgage broker or a mortgage lender and may not be employed by more than one mortgage broker or mortgage lender, or either, simultaneously. An in-house loan processor must work at the direction of and be subject to the supervision and instruction of a loan originator licensed under this part.

Section 5. Subsection (1) of section 494.0035, Florida Statutes, is amended to read:

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494.0035 Principal loan originator and branch manager for mortgage broker.—

(1) Each mortgage broker must be operated by a principal loan originator who shall have full charge, control, and supervision of the mortgage broker ~~business~~. The principal loan originator must have been licensed as a loan originator for at least 1 year before being designated as the principal loan originator, or must demonstrate to the satisfaction of the office that he or she has been actively engaged in a mortgage-related ~~mortgage broker-related~~ business for at least 1 year before being designated as a principal loan originator. Each mortgage broker must keep the office informed of the person designated as the principal loan originator as prescribed by commission rule. If the designation is inaccurate, the mortgage broker ~~business~~ shall be deemed to be operated under the full charge, control, and supervision of each officer, director, or ultimate equitable owner of a 10-percent or greater interest in the mortgage broker, or any other person in a similar capacity. A loan originator may not be a principal loan originator for more than one mortgage broker at any given time.

Section 6. Paragraph (c) of subsection (3) of section 494.0038, Florida Statutes, is amended to read:

494.0038 Loan origination and mortgage broker fees and disclosures.—

(3) At the time a written mortgage broker agreement is signed by the borrower or forwarded to the borrower for signature, or at the time the mortgage broker business accepts an application fee, credit report fee, property appraisal fee, or any other third-party fee, but at least 3 business days

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before execution of the closing or settlement statement, the mortgage broker shall disclose in writing to any applicant for a mortgage loan the following information:

(c) A good faith estimate that discloses settlement charges and loan terms~~, signed and dated by the borrower, which discloses the total amount of each of the fees the borrower may reasonably expect to pay if the loan is closed, including, but not limited to, fees earned by the mortgage broker, lender fees, third-party fees, and official fees, together with the terms and conditions for obtaining a refund of such fees, if any~~.

1. Any amount collected in excess of the actual cost shall be returned within 60 days after rejection, withdrawal, or closing.

2. At the time a good faith estimate is provided to the borrower, the loan originator must identify in writing an itemized list that provides the recipient of all payments charged the borrower, which, except for all fees to be received by the mortgage broker, may be disclosed in generic terms, such as, but not limited to, paid to lender, appraiser, officials, title company, or any other third-party service provider. This requirement does not supplant or is not a substitute for the written mortgage broker agreement described in subsection (1). The disclosure required under this subparagraph must be signed and dated by the borrower.

Section 7. Paragraph (a) of subsection (7) of section 494.00421, Florida Statutes, is amended to read:

494.00421 Fees earned upon obtaining a bona fide commitment.—Notwithstanding the provisions of ss. 494.001-494.0077, any mortgage broker which contracts to receive a loan

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origination fee from a borrower upon obtaining a bona fide commitment shall accurately disclose in the mortgage broker agreement:

(7)(a) The following statement, in at least 12-point boldface type immediately above the signature lines for the borrowers:

"You are entering into a contract with a mortgage broker to obtain a bona fide mortgage loan commitment under the same terms and conditions as stated hereinabove or in a separate executed good faith estimate form. If the mortgage broker obtains a bona fide commitment under the same terms and conditions, you will be obligated to pay the loan origination fees even if you choose not to complete the loan transaction. If the provisions of s. 494.00421, Florida Statutes, are not met, the loan origination fee can only be earned upon the funding of the mortgage loan. The borrower may contact the Office of Financial Regulation ~~Department of Financial Services~~, Tallahassee, Florida, regarding any complaints that the borrower may have against the loan originator. The telephone number of the office ~~department~~ is: ...(insert telephone number)...."

Section 8. Paragraph (e) of subsection (1) of section 494.00612, Florida Statutes, is amended to read:

494.00612 Mortgage lender license renewal.—

(1) In order to renew a mortgage lender license, a mortgage lender must:

(e) Authorize the registry to obtain an independent credit report on each of the mortgage lender's control persons ~~lender~~ from a consumer reporting agency, and transmit or provide access to the report to the office. The cost of the credit report shall

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be borne by the licensee.

Section 9. Subsection (13) is added to section 494.0067, Florida Statutes, to read:

494.0067 Requirements of mortgage lenders.—

(13) Each mortgage lender shall submit to the registry reports of condition which are in a form and which contain such information as the registry may require.

Section 10. 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 loan processing; amending s. 494.001, F.S.; creating and revising definitions; deleting a redundant definition; amending s. 494.0011, F.S.; specifying rulemaking powers of the Financial Services Commission; amending s. 494.00255, F.S.; including in-house loan processors in disciplinary provisions; amending s. 494.00331, F.S.; providing that specified provisions do not apply to a licensed contract loan processor who has on file with the office a declaration of intent to act solely as a contract loan processor; deleting a definition; providing restrictions on employment of persons licensed as in-house loan processors; amending s. 494.0035, F.S.; clarifying provisions concerning the operation of mortgage brokers; amending s. 494.0038,

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F.S.; revising provisions relating to disclosure of settlement charges and loan terms; amending s. 494.00421, F.S.; revising an agency reference in the mortgage broker agreement; providing that a borrower may contact the Office of Financial Regulation rather than the Department of Financial Services regarding any complaints against a loan originator; amending s. 494.00612, F.S.; requiring that in order to renew a mortgage lender license a mortgage lender must authorize the Nationwide Mortgage Licensing System and Registry to obtain an independent credit report on each of the mortgage lender’s control persons; amending s. 494.0067, F.S.; requiring each mortgage lender to submit certain reports to the registry as may be required; providing an effective date.

201126

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Budget Subcommittee on General Government Appropriations (Diaz de la Portilla) recommended the following:

Senate Amendment to Amendment (594020) (with directory amendment)

Between lines 16 and 17
insert:

(1) “Borrower” means a person obligated to repay a mortgage loan and includes, but is not limited to, a coborrower or~~,~~ cosignor~~, or guarantor~~.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======

And the directory clause is amended as follows:

Delete line 5
and insert:

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Section 1. Subsections (1), (14), (25), and (26) of section

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1316

INTRODUCER: Banking and Insurance Committee and Senator Detert

SUBJECT: Loan Processing

DATE: April 7, 2011 REVISED:

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

I. Summary:

This bill includes the following provisions relating to mortgage loan originators whose scope of work includes loan processing:

- Defines loan processing as it relates to mortgage lending.
- Allows licensed loan originators to work as contract loan processors or in-house loan processors.
- Creates an in-house loan processing license type with fewer requirements and lower fees than a loan originator license, in order to streamline license processing.
- Allows the department to not issue a license to an in-house loan processor applicant who has had a license revoked in any jurisdiction.
- Requires all loan processors to enroll in the national registry.
- Authorizes the registry to obtain independent credit reports on each of a mortgage lender's control persons and share those reports with the Office of Financial Regulation (office).
- Makes technical conforming changes to chapter 494, Florida Statutes, required by the federal Secure and Fair Enforcement Mortgage Licensing Act (SAFE) of 2008.

This bill substantially amends the following sections of the Florida Statutes: 494.001, 494.0011, 494.0018, 494.0025, 494.00255, 494.00312, 494.00331, 494.0035, 494.0038, 494.00421, 494.00611, 494.00612 and 494.0067.

The bill creates sections 494.00314 and 494.00315, Florida Statutes.

II. Present Situation:

The federal Secure and Fair Enforcement Mortgage Licensing Act (SAFE) was enacted in July 2008.[1] Under the SAFE Act, a loan processor who performs clerical or support duties at the direction and supervision of a state licensed loan originator is not required to be licensed. In 2009, the Florida Legislature adopted the minimum standards of the SAFE Act.[2] The SAFE Act minimum standards adopted by the Florida Legislature did not distinguish between in-house loan processors and contract loan processors, as all loan processors are required to be licensed as loan originators under ch. 494, F.S. The definition of a loan originator under s. 494.001(14), F.S., includes "process[ing] a mortgage loan application." In-house and contract loan processors are captured under this provision. Licensure as a loan originator under ch. 494, F.S., and the SAFE Act includes pre-licensure education, testing, credit history screening, and criminal background checks. To renew a license, the licensee must pay a fee, meet continuing education requirements, and undergo a criminal background check on an annual basis. Section 494.00611, F.S., allows the department to not issue a loan originator license if the applicant has had a licensed revoked in any jurisdiction.

The SAFE Act also required the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to establish and maintain a nationwide mortgage licensing system and registry for the residential mortgage industry.
Under the act, each mortgage lender must submit to the national mortgage licensing system and registry for the purpose of providing: uniform state licensing application and reporting requirements for residential mortgage loan originators; and a comprehensive database to find and track mortgage loan originators licensed by the states and mortgage loan originators that work for federally regulated depository institutions. Section 494.00612(e), F.S., allows the registry to obtain an independent credit report of a mortgage lender and provide the Office of Financial Regulation access to the reports.

In 2008, the U.S. Department of Housing and Urban Development (HUD) published its final rule amending parts of Regulation X of the Real Estate and Settlement Procedures Act (RESPA), substantially revising the Good Faith Estimate and required settlement disclosures.[3] The new Good Faith Estimate became effective January 1, 2010, and no longer requires the borrower's signature. Further, the HUD has indicated that the form cannot be altered to include a signature block.[4]

III. Effect of Proposed Changes:

This bill defines “contract loan processor” as a licensed loan originator under s. 494.00312 F.S., who is an independent contractor for a mortgage broker or a mortgage lender and has on file with the Office of Financial Regulation a letter of intent to engage only in loan processing. These requirements are consistent with the SAFE Act.

1 Title V of P.L. 110-289.

2 Ch. 2009-241.

3 RESPA: Rule to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs, 73 Fed. Reg. 22, 68204 (November 17, 2008).

4 See "New RESPA Rule FAQs (Updated 4-2-10)," Page 10, Question 28, available on HUD's website: http://www.hud.gov/offices/hsg/rmra/res/respa_hm.cfm.

The bill creates an "in-house loan processor" license for individuals who are employed by a mortgage broker or a mortgage lender and engage only in loan processing. This license type will not be subject to the same requirements of a loan originator, but will require an initial license fee and subsequent renewal fee and the completion of a background check. The bill allows the department to not issue a license to an in-house loan processor applicant who has had a license revoked in any jurisdiction. Creating this license type for this scope of work is a streamlining measure in line with the SAFE Act and does not decrease any consumer protections.

The SAFE Act provides that "[e]ach mortgage licensee shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require."[5] Although the SAFE Act applies to individual loan originators, the national system is being designed so that the reports are submitted by the businesses on behalf of the loan originators. Florida's 2009 legislation implemented this requirement for mortgage brokers (businesses) at s. 494.004(3), F.S., but it did not address it in the mortgage lenders' counterpart statute, s. 494.0067, F.S.[6] This bill addresses this discrepancy with regard to compliance with the SAFE Act. The bill also requires all loan processors be enrolled in the national registry.

The bill authorizes the registry to obtain independent credit reports on each of a mortgage lender's control persons and share those reports with the office. This will allow the office to ensure those controlling persons have no discrepancies regarding their credit history.

The bill removes the requirement in s. 494.0038(3)(c), F.S., that the borrower must sign and date the good faith estimate of settlement charges upon receipt. This change will conform ch. 494, F.S., to the requirements of RESPA and changes made by the HUD to the good faith estimate form.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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5 Title V of P.L. 110-289 Sec. 1505(e).

6 Ch. 2009-241, L.O.F.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

According to the Office of Financial Regulation, under the provisions of the bill, the estimated costs of fees associated with the licensure of the new in-house loan processor license will be $188, as compared to the $777 in costs of fees associated with the loan originator's license. The average annual renewal costs for an in-house loan processor's license will be $135, as compared to the annual $347 license renewal fees for loan originators.

B. Private Sector Impact:

Between October 1, 2010, and March 2, 2011, the Office of Financial Regulation received 15,549 loan originator applications. It is indeterminate how many licensed loan originators will opt for the in-house loan processor license. Given the in-house loan processor license does not require educational courses, there could be an impact on the schools that teach the licensure courses.

C. Government Sector Impact:

It is indeterminate what effect these changes could have. Due to the lesser requirements and lower fees, more people may apply for the in-house loan processor license who otherwise would have applied for the costlier loan originator license. With the in-house loan processor license, more people may choose to be licensed who previously were not licensed as loan originators to perform the scope of work.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Banking and Insurance on March 22, 2011

The CS makes the following changes:

- Clarifies the definition of "Contract Loan processor."
- Requires all loan processors take part in the national registry.
- Allows for the denial of a license if the applicant had a previous licensed revoked in another jurisdiction.

- Authorizes the registry to obtain independent credit reports on lender's control persons and share those reports with the Office.
- Changes the implementation date to January 1, 2012.

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 Budget Subcommittee on General Government Appropriations

BILL: CS/SB 1332

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Financial Institutions

DATE: April 8, 2011 REVISED:

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

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill creates mechanisms to protect state financial institutions from failure. Due to the increased number of failures of state financial institutions and the unique circumstances that have arisen due to these failures, the financial institutions code is amended in several ways. The bill permits the Office of Financial Regulation (office) to approve special stock offering plans, which is currently prohibited if the financial institution's stock falls below par value. Additionally, the bill authorizes the office to pre-approve shelf charters, which create a more efficient acquisition process for failing state financial institutions. The bill also allows the office to appoint provisional directors or executive officers, if the financial institution does not have the statutorily required amount of directors and/or executive officers. The bill changes examination requirements and other provisions for greater effectiveness of the office's regulation of financial institutions.

The bill implements several provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Wall Street Reform Act) passed by Congress on July 21, 2010.[1] The bill amends

[1] Public Law 111-203.

the financial institutions codes concerning interstate branching and banking, the use of credit ratings for evaluating investment risks, and derivative lending limits.

The bill amends the following sections of the Florida Statutes: 288.772, 288.99, 440.12, 440.20, 445.051, 489.503, 501.005, 501.165, 624.605, 626.321, 626.730, 626.9885, 655.005, 655.013, 655.044, 655.045, 655.41, 655.411, 655.414, 655.416, 655.417, 655.418, 655.4185, 655.419, 655.947, 657.038, 657.042, 657.063, 657.064, 658.12, 658.165, 658.28, 658.2953, 658.36, 658.41, 658.48, 658.53, and 658.67.

The bill creates section 655.03855, Florida Statutes.

The bill repeals the following sections of the Florida Statutes: 658.20(3), 658.295, 658.296, 658.65, 665.013(33), and 667.003(35).

II. Present Situation:

The Office of Financial Regulation is responsible for the regulation of state-chartered financial institutions pursuant to the provisions of the financial institutions codes.[2] The office does not have jurisdiction to regulate federally chartered or out-of-state chartered financial institutions. Since 2009, 45 Florida banks have closed, 29 of those in 2010 alone.[3]

Protection of Failing Financial Institutions

Undercapitalization of Financial Institutions

State financial institutions cannot issue stock at less than par value, and par value cannot fall below $1.[4] Any changes, increase or decrease, in capital stock must be approved by the office.[5] Par value of capital stock is the stock's face value and it sets the minimum price at which the financial institution may introduce shares. Historically, the market value of stock has not fallen below the par value. Recently, however, the falling values of stock have brought many state financial institutions below par value, but the office is unable to assist in raising stock prices because of its lack of statutory authority.

Shelf Charters

Currently, an individual can apply for prior approval with the office to become a director or executive officer of a financial institution.[6] The individual is required to submit an application and pay a filing fee of $7,500. Upon filing an application, the office must consider things such as the character and fitness of the applicant[7] and the applicant's expertise and ability to run a state

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[2] Chapters 655, 657, 658, 660, 663, 665, and 667, F.S.
[3] Federal Deposit Insurance Corporation, Failed Bank List, updated February 25, 2011, http://www.fdic.gov/bank/individual/failed/banklist.html (Last visited March 9, 2011).
[4] *See* s. 658.34, F.S.
[5] *See* s. 658.36, F.S.
[6] *See* s. 658.20(3), F.S.
[7] *See* s. 658.20(1)(a), F.S. ("Upon the filing of an application, the office shall make an investigation of: The character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors.")

financial institution.[8] Currently, business entities are not eligible for prior approval to merge or purchase a financial institution.[9] However, the ability of the office to allow prior approval of mergers and acquisitions of a failing financial institution would assist in the prevention of failures.

Provisional Directors and Executive Officers

Current law requires that a state financial institution maintain a minimum of five directors on its board of directors.[10] However, the financial institutions codes does not provide for enforcement of this requirement. While historically the statutorily required number of directors has not fallen below five, recently a state credit union was forced into conservatorship. Each of the credit union's board of directors resigned, but due to its lack of statutory authority, the office was unable to appoint directors and possibly prevent the conservatorship.

Examinations

The office is required to conduct an examination of each state financial institution every 18 months, but it may accept examinations by an appropriate federal regulator. In addition, the office is required to perform its own examination of each state financial institution every 36 months. Further, to ensure the safe and sound practice of state financial institutions, the office is permitted to perform examinations more frequently than every 36 months.[11] Therefore, the 36-month examination requirement creates duplication in the process because the federally performed exams are sufficient to be relied upon by the office, and the office maintains authority to perform examinations more frequently.

Definition of Related Interest

The financial institutions codes prevents executives and certain shareholders of a financial institution from unfairly acquiring loans and other financial assistance from their financial institution.[12] Nevertheless, many executives and stockholders have circumvented these laws by using relatives to obtain loans and other financial benefits. The current definition of related interest does not encompass family members, but rather is limited to those who control parts of

[8] *See* s. 658.21(4), F.S. ("The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation, and none of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896, relating to offenses related to financial institutions; or any similar state or federal law. At least two of the proposed directors who are not also proposed officers shall have had at least 1 year direct experience as an executive officer, regulator, or director of a financial institution within 3 years of the date of the application.")

[9] This is called a "shelf charter" because the charter sits on "the shelf" until the applicant is in the position to acquire a failing institution.

[10] *See* ss. 657.021 and 658.33, F.S.

[11] See s. 655.005, F.S. (""Unsafe or unsound practice" means any practice or conduct found by the office to be contrary to generally accepted standards applicable to the specific financial institution, or a violation of any prior order of a state or federal regulatory agency, which practice, conduct, or violation creates the likelihood of loss, insolvency, or dissipation of assets or otherwise prejudices the interest of the specific financial institution or its depositors or members. In making this determination, the office must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved.")

[12] *See* ss. 657.039 and 658.48, F.S.

the financial institution. Therefore, the office is limited in its enforcement, and cannot regulate those in control of financial institutions that circumvent the regulation through family members.

Determination of Capital and Liabilities

Current law contains broad language for calculating capital and liabilities held by an individual or financial institution.[13] However, the proper determination of whether an amount should be included or excluded from the calculation may depend on the specific type of capital or liability. Consequently, the use of these amounts of capital and liabilities may misrepresent the financial condition of the individual or financial institution.

Dodd-Frank Wall Street Reform and Consumer Protection Act

The Wall Street Reform Act was enacted to address the catalysts of the recent financial crisis by promoting stability and transparency in the financial system. Although the Wall Street Reform Act is primarily aimed at large national financial institutions, some of its provisions affect the regulation of state financial institutions.

Interstate Banking and Branching

Currently, the only means of an out-of-state financial institution to establish its initial presence in Florida is through the merger or acquisition of an existing Florida financial institution that is more than three years old.[14] Restrictions also apply to the ownership of remote financial service units by non-Florida financial institutions.[15] The enactment of the Wall Street Reform Act by Congress requires open borders for financial institutions. The Wall Street Reform Act preempts the type of restrictions currently in place in State law; so, an out-of-state bank can now establish a de novo branch,[16] rather than merge or acquire a state financial institution.

Conversions, Mergers and Acquisitions

Section 612 of the Wall Street Reform Act prohibits the conversion of a state or federal institution if the financial institution is subject to a cease and desist order issued by the appropriate regulatory agency, whether state or federal. However, an exception exists that requires notice of an application of conversion to the appropriate state regulatory agency by the appropriate federal agency after the conversion. The federal regulatory agency is required to introduce a plan to address the matter causing the cease and desist order by the state regulatory agency. The Wall Street Reform Act intends to prohibit financial institutions from "forum shopping" for regulators that are more lenient.[17] Florida law currently allows for the conversion of a financial institution's charter subject to certain considerations, but those considerations do not include the existence of cease and desist orders or other regulatory suspensions.[18]

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[13] *See* ss. 655.005, 658,038, 658.48, and 658.53, F.S.
[14] See s. 658.2953, F.S.
[15] See s. 658.65, F.S.
[16] Section 655.0385, F.S. defines de novo bank /branch as a bank/branch that is has been established no more than 2 years in the state.
[17] Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates, Dodd-Frank Act: Commentary and Insights, July 12, 2010.
[18] Section 655.411, F.S.

Lending Limits and Derivatives

Section 611 of the Wall Street Reform Act allows state financial institutions to engage in derivative transactions, only if the state in which the financial institution is chartered has enacted laws that take into consideration credit exposure to derivative transactions.[19] Current state law requires that financial institutions consider total liabilities of a person, including all loans endorsed or guaranteed. However, there is no requirement that the credit exposure of borrowers be considered in derivative transactions.

Credit Ratings

The Wall Street Reform Act eliminates the use of credit ratings for a determination of risk for investments.[20] The Wall Street Reform Act replaces the use of credit rating agencies with internal rating guidelines that each financial institution must develop to determine risk. Federal regulators no longer rely on credit rating agencies because of their conflicts of interest in determining credit rating grades.[21] However, state financial institutions are currently required to use credit ratings in assessing investment risks.[22]

III. Effect of Proposed Changes:

Protection of Failing Financial Institutions

Undercapitalization of Financial Institutions (Sections 12, 16, 25, and 27-28)

Although the market value of capital stock of financial institutions historically has not fallen below par value, this has been a growing problem for state financial institutions in recent years. The bill permits the office to approve special stock offering plans if the capital stock of a state financial institution falls below par value and it cannot reasonably issue capital stock to restore the value of the shares. The bill permits the office to approve a plan by a state financial institution that may call for stock splits, change voting rights, dividends, and the addition of new classes of stock. However, the plan must be approved by a majority vote of the financial institution's board of directors and holders of two-thirds of outstanding shares of capital stock. Nevertheless, the office is required to assess the fairness of benefits of the plan, and disallow a plan that would not effectively restore capital stock prices to sufficient levels. In emergency situations, a failing financial institution does not have to perform a vote for the plan to be approved by the office.[23]

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[19] Section 611, Dodd-Frank Wall Street Reform and Consumer Protection Act. Derivative is defined as a contract the value of which is based on the performance of an underlying financial asset, or other investment. It is not a stand-alone asset because it has no value of its own.

[20] Section 939, Dodd-Frank Wall Street Reform and Consumer Protection Act.

[21] American Bankers Association, Dodd-Frank Summary and Analysis, http://www.aba.com/regreform/default.htm (Last visited March 9, 2011).

[22] Sections 657.042 and 658.67, F.S. (None of the bonds or other obligations described in this section shall be eligible for investment by credit unions/any amount in any amount unless current as to all payments of principal and interest and unless rated in one of the four highest classifications, or, in the case of commercial paper, unless it is of prime quality and of the highest letter and numerical rating, as established by a nationally recognized investment rating service, or any comparable rating as determined by the office.).

[23] *See* s. 655.4185, F.S.

Shelf Charters (Section 12)

Section 658.4185(3), F.S., is created to expand the prior approval privilege from only officers to business entities. The bill allows holding companies to apply for prior approval to merge or acquire control of a failing financial institution. The bill mandates that an entity must file an application for prior approval and submit the $7,500 filing fee. This expansion creates a new pool of potential buyers of failing banks, and increases the available equity capital in the bidding process used to procure failing institutions by the Federal Deposit Insurance Corporation's bid process.

Provisional Directors and Executive Officers (Section 3)

The bill creates s. 655.03855, F.S.,[24] which allows the office to temporarily place a provisional director, for reasonable compensation by the financial institution, onto a state financial institution's board. Additionally, the bill allows the appointment of a provisional director if the director(s) are not equipped to operate the financial institution in a safe and sound manner. Nevertheless, prior to the placement of a provisional director, the office must allow the financial institution 30 days to acquire the minimum number of directors. Allowing the placement of provisional directors avoids a possible conservatorship of the state financial institution. The appointment of a provisional director also assists the office in the prevention of failure of the financial institution because the bill requires the provisional director to submit reports, if directed by the office, concerning the condition of the state financial institution and any corrective actions the director believes should be taken.

Examination Requirements (Section 5)

The bill eliminates the required examination of state financial institutions by the office every 36 months. The bill requires that the office perform examinations every 18 months, but the office may accept examinations conducted by the appropriate federal regulatory agency. This eliminates unnecessary examinations by the office, and allows the office to target examination resources to those state financial institutions that are near failure, or operating in a risky manner.

Definition of Related Interest (Section 1)

The bill moves the definition of "related interest" to s. 655.005,.F.S., and expands the definition of "related interest" to include relatives and those who reside in the same household of one who is in control of a financial institution. Consequently, the office can ensure that executives and shareholders do not attempt to circumvent caps and limits on lending.

Determination of Capital and Liability (Sections 1, 15, and 27-28)

The bill specifies the types of capital and liabilities that a financial institution must use in order to calculate total amounts of capital and liability. This ensures that capital and liability calculations are fairly and accurately determined.

[24] *See* s. 658.20(3), F.S. for original language. This section was moved from s. 658.20(3), F.S. and amended to include holding companies.

Dodd-Frank Wall Street Reform and Consumer Protection Act

The bill makes the following conforming changes to comply with the Wall Street Reform Act.

Interstate Banking and Branching (Sections 6, 9. 12, and 22-24)

The Wall Street Reform Act requires that state regulators allow for de novo banking for out-of-state financial institutions. To conform, the bill allows an out-of-state financial institution to establish a de novo bank without merging or acquiring a state financial institution.[25] The bill also allows for the creation of additional branches in accordance with state law as if the out-of-state financial institution was chartered in Florida. The bill removes restrictions on the ability of out-of-state financial institutions to establish remote financial service units within Florida.

Conversions, Mergers and Acquisitions (Sections 6-13)

The Wall Street Reform Act prohibits state regulatory agencies from accepting the conversion of a charter of a federal financial institution when the converting financial institution is subject to regulatory action or a cease and desist order.[26] To conform, the bill amends s. 655.411, F.S., by requiring the applicant to prove that the resulting financial institution will comply with all regulatory actions in effect before the date of conversion and that the appropriate federal regulatory agency does not object to the conversion.

Lending Limits and Derivatives (Sections 16 and 27)

The Wall Street Reform Act requires that in order to participate in the derivatives market, a state financial institution must consider borrower exposure in the evaluation of its risk.[27] To conform, the bill adds the evaluation exposure to risk in derivative transactions.

Credit Ratings (Sections 16 and 30)

The Wall Street Reform Act disallows the use of credit ratings in determining investment risk by requiring financial institutions to develop their own risk evaluations. To conform, the bill requires that all financial institutions develop and use internal policies and procedures to determine risk of investments, and prohibits the financial institution from using credit ratings as the sole means of determining investment risk.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[25] *See* s. 613, Dodd-Frank Wall Street Reform and Consumer Protection Act.
[26] *See* s. 612, Dodd-Frank Wall Street Reform and Consumer Protection Act.
[27] *See* ss. 610, 611, and 614, Dodd-Frank Wall Street Reform and Consumer Protection Act.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may assist undercapitalized financial institutions in raising capital by authorizing the sale of stock below par value.

The shelf-charter provisions may increase the pool of potential buyers of troubled institution and, therefore, avoid failures.

The streamlining of the examination process may reduce regulatory burden on financial institutions by eliminating potential duplication of effort by federal regulators.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Senate Banking and Insurance Committee on 3/16/2011:
The Committee Substitute makes technical conforming and clarifying changes to the definition of "Banker's Bank" to create uniformity with federal regulations and other technical conforming changes.

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 Budget Subcommittee on General Government Appropriations

BILL: CS/SB 1428

INTRODUCER: Regulated Industries Committee and Senator Latvala

SUBJECT: Veterinary Practice

DATE: April 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Frederick	DeLoach	BGA	**Pre-meeting**
3.			BC	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill renames the term "limited service veterinary medical practice" to "limited service veterinary vaccination clinic." The bill redefines the term to mean veterinary practice in which a veterinarian performs vaccinations or immunizations on multiple animals at a temporary location. In effect, the bill will not permit "limited service veterinary vaccination clinics" to offer parasite removal services, which is a service currently permitted to be performed in a "limited service veterinary medical practice." The bill requires the board to establish by rule minimum standards for limited-service veterinary vaccination clinics. The rules must be consistent with the type of limited veterinary vaccination service provided.

This bill removes the authority for business professionals and health care professionals, including veterinarians, who are licensed in another state or in a foreign jurisdiction, are in Florida for a specific sporting event, and are employed or designated by the sport's team, to practice on animals used in the sport.

This bill substantially amends the following sections of the Florida Statutes: 455.2185, 456.023, 474.202 and 474.215.

II. Present Situation:

Veterinary Medical Practice

The Board of Veterinary Medicine (board) within the Department of Business and Professional Regulation (department) is the agency charged with the regulation of the practice of veterinary medicine under ch. 474, F.S., known as the Veterinary Medical Practice Act (act). The legislative purpose for the act is to ensure that every veterinarian practicing in Florida meets minimum requirements for safe practice and veterinarians who are not normally competent or who otherwise present a danger to the public are disciplined or prohibited from practicing in Florida.[1]

The department is responsible for the licensing of veterinarians, while the board[2] within the department is responsible for adopting rules to establish fees and implement the provisions of ch. 474, F.S.

For a person to be licensed as a veterinarian he or she must apply to the department to take a licensure examination. The department must license each applicant who the board certifies has:

- Completed the application form and remitted an examination fee set by the board.[3]
- Graduated from a college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education or graduated from a college of veterinary medicine listed in the American Veterinary Medical Association Roster of Veterinary Colleges of the World and obtained a certificate from the Education Commission for Foreign Veterinary Graduates.
- Successfully completed the examination provided by the department for this purpose, or an examination determined by the board to be equivalent.
- Demonstrated knowledge of the laws and rules governing the practice of veterinary medicine in Florida in a manner designated by rules of the board.[4]

The department is prohibited from issuing a license to any applicant who is under investigation in any state or territory of the United States or in the District of Columbia for an act which would constitute a violation of ch. 474, F.S., until the investigation is complete and disciplinary proceedings have been terminated.[5]

An unlicensed doctor of veterinary medicine who has graduated from an approved college or school of veterinary medicine and has completed all parts of the examination for licensure is

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[1] Section 474.201, F.S.

[2] The board consists of seven members, who are appointed by the Governor, and are subject to confirmation by the Senate. Five members of the board must be licensed veterinarians and two members of the board must be laypersons who are not and have never been veterinarians or members of any closely related profession or occupation. *See* s. 474.204, F.S.

[3] For applicants taking the Laws and Rules examination that is not conducted by a professional testing service, the examination fee is $165.00, payable to the DBPR. For applicants taking the Laws and Rules examination that is conducted by a professional testing service, the examination fee is $151.50 payable to the department plus $13.50 payable to the testing service. Rule 61G18-12.002, F.A.C. The applicant for licensure must also pay an initial licensure fee of $200, if the person is licensed in the first 12 months of the biennium, or $100, if the person is licensed in the second 12 months of the biennium. Rule 61G18-12.007, F.A.C.

[4] Section 474.207, F.S.

[5] *Id.*

permitted, while awaiting the results of the examination for licensure or while awaiting issuance of the license, to practice under the immediate supervision of a licensed veterinarian. A person who fails any part of the examination may not continue to practice, except in the same capacity as other nonlicensed veterinary employees, until the person passes the examination and is eligible for licensure.[6]

An applicant may be eligible for temporary licensure if certain requirements are met. In order for the board to certify an applicant to the department for issuance of a temporary license to practice veterinary medicine, an applicant must demonstrate to the board that the applicant:

- Has filed an application for temporary licensure identifying the name and address of the owner of the animals to be treated, the type of animals to be treated and their injury or disease, the location the treatment is to be performed, and the names, addresses, and titles of all persons entering the state with the applicant to perform the treatment; or
- Has filed an application and is responding to an emergency for the treatment of animals of multiple owners.
- Has paid the temporary licensure fee.
- Holds an active license to practice veterinary medicine in another state of the United States and that any license to practice veterinary medicine that the person has ever held has never been revoked, suspended or otherwise acted against by the licensing authority.
- Is neither the subject of any pending prosecution nor has ever been convicted of any offense which is related to the practice of veterinary medicine; and
- Satisfies the qualifications for licensure by endorsement.[7]

A temporary license is valid for a period of 30 days from its issuance. A temporary license does not cover more than the treatment of the animals of the owner identified in the application. Upon expiration of the license, a new license is required.[8]

An applicant may also be eligible for licensure by endorsement if specific requirements are met. The department must issue a license by endorsement to any applicant who, upon applying to the department and remitting the requisite fee,[9] demonstrates to the board that she or he:

- Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of veterinary medicine in Florida; and
- Either holds, and has held for the 3 years immediately preceding the application for licensure, a valid, active license to practice veterinary medicine in another state of the United States, the District of Columbia, or a territory of the United States, provided that the requirements for licensure in the issuing state, district, or territory are equivalent to or more stringent than the requirements of ch. 474, F.S.; or meets the application and examination requirements under Florida law and has successfully completed a state, regional, national, or other

[6] *Id.*
[7] Rule 61G18-25.001, F.A.C.
[8] *Id.*
[9] The fee for licensure by endorsement is $500. Rule 61G18-12.011, F.A.C.

examination which is equivalent to or more stringent than the examination given by the department.[10]

The department is prohibited from issuing a license by endorsement to any applicant who is under investigation in any state, territory, or the District of Columbia for an act which would constitute a violation of ch. 474, F.S., until the investigation is complete and disciplinary proceedings have been terminated.

Under s. 474.213, F.S., a person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S. (maximum imprisonment of 5 years, maximum fine of $5,000, or penalties applicable for a habitual offender) if the person:

- Leads the public to believe that such person is licensed as a veterinarian, or is engaged in the licensed practice of veterinary medicine, without such person holding a valid, active license pursuant to ch. 474, F.S.;
- Uses the name or title "veterinarian" when the person has not been licensed pursuant to ch. 474, F.S.;
- Presents as her or his own the license of another;
- Gives false or forged evidence to the board or a member thereof for the purpose of obtaining a license;
- Uses or attempts to use a veterinarian's license which has been suspended or revoked;
- Knowingly employs unlicensed persons in the practice of veterinary medicine;
- Knowingly concealing information relative to violations of ch. 474, F.S.;
- Obtains or attempts to obtain a license to practice veterinary medicine by fraudulent representation;
- Practices veterinary medicine in Florida, unless the person holds a valid, active license to practice veterinary medicine pursuant to ch. 474, F.S.;
- Sells or offers to sell a diploma conferring a degree from a veterinary school or college, or a license issued pursuant to ch. 474, F.S., or procures such diploma or license with the intent that it shall be used as evidence of that which the document stands for by a person other than the one upon whom it was conferred or to whom it was granted; or
- Knowingly operates a veterinary establishment or premises without having a premise permit issued under s. 474.215, F.S.

Limited Service Veterinary Medical Practice

Section 474.202(6), F.S., defines the term "limited-service veterinary medical practice" to mean:

> offering or providing veterinary services at a location that has a primary purpose other than that of providing veterinary medical services at a permanent or mobile establishment permitted by the Board of Veterinary Medicine; provides veterinary medical services for privately owned animals that do not reside at that location; operates for a limited time; and provides limited types of veterinary medical services.

[10] Section 474.217, F.S.

Section 474.202(9), F.S., defines the term "practice of veterinary medicine" to mean:

> diagnosing the medical condition of animals and prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease thereof; performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of animals; or representing oneself by the use of titles or words, or undertaking, offering, or holding oneself out, as performing any of these functions. The term includes the determination of the health, fitness, or soundness of an animal.

Section 474.215(7), F.S., requires the board to establish by rule minimum standards for limited-service veterinary medical practices. The rules cannot restrict limited service veterinary medical practices and must be consistent with the type of limited veterinary medical service provided. The board has defined by rule minimum standards to include vaccinations, immunizations and preventative procedures for parasitic control[11] on multiple animals at a temporary location and for a limited time.[12] The rule defines the term "limited time" as no more than once every two weeks and no more than four hours in any one day for any single location where a clinic is held.[13]

According to the department, anyone, such as a retailer, may obtain a permit for limited service veterinary medical permit, but a licensed veterinarian must perform the services. These limited service clinics are inspected on a random basis. There has been an issue with these clinics not notifying the department before the clinic is conducted.

Mobile veterinarian clinics are licensed, must have a premises permit for the mobile unit, and must be inspected prior to providing veterinarian services. A "mobile veterinary establishment" and "mobile clinic" is:

> a mobile unit which contains the same treatment facilities as are required of a permanent veterinary establishment or which has entered into a written agreement with another veterinary establishment to provide any required facilities not available in the mobile unit. The terms do not refer to the use of a car, truck, or other motor vehicle by a veterinarian making a house call.[14]

General Provisions for Business and Health Professionals

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative frame-work for all of the professional boards housed under the department.

[11] According to the department, preventive services for parasitic control may require a prescription and testing to determine the health status of an animal.
[12] Rule 61G18-15.007, F.A.C.
[13] Rule 61G18-15.007(1), F.A.C.
[14] Section 474.202(7), F.S.

The general provisions for licensure, certification, education, examination, and penalties for the following medical professionals are provided under ch. 456, F.S. In addition, ch. 456, F.S., provides the authority of the following boards to regulate their respective professions.

Exemption for Out-of-state or Foreign Professionals

Sections 455.2185(1) and 456.023(1), F.S., permit professionals from another state, nation, or foreign jurisdiction who are licenses under ch. 455 and 456, F.S., respectively, to practice in Florida under limited circumstances. Such professionals are exempt from the license requirements under ch. 455 and 456, F.S., and the applicable professional practice act if that person:

- Holds, if so required in the jurisdiction in which that person practices, an active license to practice that profession.
- Engages in the active practice of that profession outside the state.
- Is employed or designated in that professional capacity by a sports entity visiting the state for a specific sporting event.

Sections 455.2185(2) and 456.023(2), F.S., limit the practice of the professional to the members, coaches, and staff of the team for which that professional is employed or designated and to any animals used if the sporting event for which that professional is employed or designated involves animals. Both sections practicing under authority of Sections 455.2185(2) and 456.023(2), F.S., also provide that these professionals do not have practice privileges in any licensed veterinary facility without the approval of that facility.

III. Effect of Proposed Changes:

Limited Service Veterinary Medical Practice

The bill amends s. 474.202(7), F.S., to rename the term “limited service veterinary medical practice” to “limited service veterinary vaccination clinic.” It also redefines the term to mean veterinary practice in which a veterinarian performs vaccinations or immunizations on multiple animals at a temporary location. The bill requires the board to establish by rule, minimum standards for limited-service veterinary vaccination clinics. The rules must be consistent with the type of limited veterinary vaccination service provided.

The bill amends s. 474.215(7), F.S., to require the board to establish by rule, minimum standards for limited-service veterinary vaccination clinics. It deletes the provision that requires the board to establish by rules, minimum standards for limited-service veterinary medical practices. The rules must be consistent with the type of limited veterinary vaccination service provided.

Rule 61G18-15.007, F.A.C., permits “limited-service veterinary medical practices” to perform preventive procedures for parasitic control. In effect, the bill would delete the board’s authority for this rule, and would not permit “limited service veterinary vaccination clinics” to offer parasite removal services, which is a service currently permitted to be performed in a “limited service veterinary medical practice.”

The department indicated that this bill would not affect mobile veterinary clinics or veterinarians who make house calls.

Exemption for Out-of-state or Foreign Professionals

The bill amends s. 455.2185, F.S., to delete the authority of a business professional, who is licensed in another state or foreign jurisdiction, is in Florida for a specific sporting event, and is employed or designated by the sport’s team, to practice on animals used in the sport.

The bill also amends s. 456.023, F.S., to delete the authority of a health care professional, who is licensed in another state or foreign jurisdiction, is in Florida for a specific sporting event, and is employed or designated by the sport’s team, to practice on animals used in the sport.

The bill deletes the provisions in ss. 455.2185 and 456.023, F.S., that prohibit these professionals from practicing in veterinary facilities without the approval of the facility, which is consistent with the above changes that prohibit the professionals from practicing on animals used by the sporting teams while in Florida.

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:

Sports teams from out-of-state or from foreign jurisdictions that participate in sporting events involving animals in Florida may incur additional costs associated with hiring a Florida-licensed veterinarian for veterinary services.

C. Government Sector Impact:

Implementation of the bill requires the Board of Veterinary Medicine to establish, by rule, minimum standards for limited-service veterinary vaccination clinics. According to the Department of Business and Professional Regulation, these rules can be established within existing resources. Additionally, implementation of the bill will require modifications to the department's LicenseEase computer system. These modifications include the creation of a limited service veterinary vaccination clinics license type and retirement of one existing license type. These changes can also be accomplished within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Regulated Industries on March 29, 2011:
The committee substitute (CS) does not create s. 474.202(7), F.S., to define the term "limited service veterinary vaccination clinic." Instead, the bill amends s. 474.202, F.S., to rename the term "limited service veterinary medical practice" to "limited service veterinary vaccination clinic."

The CS amends ss. 455.2185 and 456.023, F.S., to delete the authority of a professional who is licensed in another state or foreign jurisdiction, is in Florida for a specific sporting event, and is employed or designated by the sport's team, to practice on animals used in the sport and use veterinary facilities.

B. Amendments:

None.

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LEGISLATIVE ACTION

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

Senate Amendment

Delete lines 178 - 180
and insert:

<u>(h) A deep water seaport or railroad switching yard;</u>
<u>(i) A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas; or</u>
<u>(j) A public transportation facility as defined in s. 343.62, Florida Statutes.</u>

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1588

INTRODUCER: Criminal Justice Committee and Senator Latvala

SUBJECT: Licensed Security Officers

DATE: April 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McCarthy	Cooper	CM	**Fav/1 amendment**
2.	Erickson	Cannon	CJ	**Fav/CS**
3.	Pigott	DeLoach	BGA	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill increases and specifically establishes penalties for impersonating a security officer, private investigator, or recovery agent, as licensed by the Department of Agriculture and Consumer Services (department) under chapter 493, Florida Statutes. A person who engages in any activity for which chapter 493, Florida Statutes, requires a license, but acts without having a license, commits a first degree misdemeanor. For second or subsequent offenses, the person commits a third degree felony, and the department is authorized to impose a civil penalty not to exceed $10,000. However, penalties do not apply if the person engaged in unlicensed activity within 90 days after the expiration date of the person's license. The bill also provides penalties for activities relating to the impersonation of a licensed security officer, private investigator, or recovery agent.

The bill expands the authority of an armed licensed security officer and armed licensed security agency manager to allow them to detain a person on the premises of a critical infrastructure facility if the security officer has probable cause to believe that the person has committed or is committing a crime and for the purpose of ascertaining the person's identity and the circumstances of the activity that is the basis for the temporary detention. The bill provides procedures for notifying law enforcement and transferring of the detained person.

The bill also authorizes the security officer and security agency manager to search the person temporarily detained if they observe that the person is armed with a firearm, concealed weapon, or any destructive device that poses a threat to the safety of the security officer or security agency manager, or the detainee admits to the security officer or security agency manager that he or she is armed with a weapon.

This bill substantially amends section 493.6120, Florida Statutes.

The bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Private Security, Private Investigative, and Recovery Services

The Division of Licensing within the Department of Agriculture and Consumer Services is responsible for the regulation of licensing of private security, private investigative, and recovery services.[1] Section 493.6101(19), F.S., defines a "security officer" as:

> any individual who, for consideration, advertises as providing or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, chooses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof. The term also includes armored car personnel and those personnel engaged in the transportation of prisoners.

Section 493.6101(16), F.S., defines a "private investigator" as "any individual who, for consideration, advertises as providing or performs private investigation." Private investigation is defined as an investigation to obtain information on any of the following matters:

- Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.
- The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
- The credibility of witnesses or other persons.
- The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates.
- The location or recovery of lost or stolen property.
- The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property.

[1] The responsibility for regulating private investigative, private security, and recovery industries was assigned to the Department of State in 1965. In 2002, the Division of Licensing of the Department of State was transferred to the Department of Agriculture and Consumer Services, including the Concealed Weapons Permit Program. *See* ss. 1, 3-10, ch. 2002-295, L.O.F.

- The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation therefore.[2]

Section 493.6101(21), F.S., defines a “recovery agent” as “any individual who, for consideration, advertises as providing or performs repossessions.” Section 493.6101(20), F.S., defines “recovery agency” as “any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions.” Section 493.6101(22), F.S., defines “repossession” as recovery of motor vehicles, motor boats, airplanes, personal watercraft, all-terrain vehicles, farm equipment, industrial equipment, and motor homes “by an individual who is authorized by the legal owner, lienholder, or lessor to recover, or to collect money payment in lieu of recovery of, that which has been sold or leased under a security agreement that contains a repossession clause.”

Certain individuals are exempt from the licensing requirements for private security and private investigative services. These include local, state, and federal law enforcement officers, licensed insurance investigators, and individuals solely, exclusively, and regularly employed as unarmed investigators and security officers “in connection with the business of his or her employer, when there exists an employer-employee relationship.”[3]

Florida law establishes criteria for granting licenses for security, private investigative, and repossession services. Individuals seeking a license must clear a criminal background check as well as meet specific training and experience requirements, which vary by the type of license. In addition, the applicant must meet the following criteria:

- Be at least 18 years of age.
- Be of good moral character.
- Not have been adjudicated incapacitated, unless capacity has been judicially restored.
- Not have been involuntarily placed in a treatment facility for the mentally ill, unless competency has been judicially restored.
- Not have been diagnosed as having an incapacitating mental illness, unless a psychologist or psychiatrist licensed in this state certifies that she or he does not currently suffer from the mental illness.
- Not be a chronic and habitual user of alcoholic beverages to the extent that her or his normal faculties are impaired.
- Not have been committed under ch. 397, F,S., former ch. 396, F.S., or a similar law in any other state.
- Not have been found to be a habitual offender under s. 856.011(3), F.S., or a similar law in any other state.
- Not have had two or more convictions under s. 316.193, F.S., or a similar law in any other state within the 3-year period immediately preceding the date the application was filed, unless the individual establishes that she or he is not currently impaired and has successfully completed a rehabilitation course.
- Not have been committed for controlled substance abuse or have been found guilty of a crime under ch. 893, F.S., or a similar law relating to controlled substances in any other state

[2] Section 493.6101(17), F.S.
[3] Section 493.6102(1)-(4), F.S.

within a 3-year period immediately preceding the date the application was filed, unless the individual establishes that she or he is not currently abusing any controlled substance and has successfully completed a rehabilitation course.

- Be a citizen or legal resident alien of the United States or have been granted authorization to seek employment in this country by the United States Bureau of Citizenship and Immigration Services.[4]

License Classifications

Chapter 493, F.S., provides for many numerous classifications of licenses within the three general categories of licenses, as follows:[5]

PRIVATE INVESTIGATION	
Agency	Class "A"
Private Investigator	Class "C"
Armed Private Investigator	Class "C" & Class "G"
Branch Office	Class "AA"
Manager	Class "C" or Class "MA" or Class "M"
Intern	Class "CC"
PRIVATE SECURITY	
Agency	Class "B"
Security Officer	Class "D"
Armed Security Officer	Class "D" & Class "G"
Branch Office	Class "BB"
Manager	Class "MB" or Class "M"
REPOSSESSION ACTIVITY	
Agency	Class "R"
Recovery Agent	Class "E"
Branch Office	Class "RR"
Manager	Class "MR" or Class "E"
Intern	Class "EE"
COMBINED PRIVATE INVESTIGATION AND SECURITY	
Agency	Class "A" & Class "B"
Branch Office	Class "AB"
Manager	Class "M"
SCHOOLS	
Security Officer School or Training Facility	Class "DS"
Security Officer Instructor	Class "DI"
Recovery Agent School or Training Facility	Class "RS"
Recovery Agent Instructor	Class "RI"
FIREARMS	
Instructor	Class "K"
Statewide Firearm License	Class "G"
MANAGERS	
Private Investigative Agency or Branch	Class "C", "MA", or "M"
Private Security Agency or Branch	Class "MB" or "M"
Recovery Agency or Branch	Class "E" or "MR"
Armed Manager	Appropriate Manager's License and Class "G"

[4] Section 493.6106(1), F.S.
[5] *See* 5N-1.116(1), F.A.C.

D, MB, and G Licenses

Generally, an applicant for a Class "D" security officer license must complete a minimum of 40 hours of professional training at a school or training facility licensed by the department, which establishes by rule the general content and number of hours of each subject area to be taught. Class MB security officers may manage a security agency. Class G officers have special firearms training requirements and are authorized to carry their firearms on duty.

Class D and Class G security officers who are employed at seaports and who are given the power to detain persons are further required to be certified under the Maritime Transportation Security Act or s. 311.121, F.S.

The statutorily-specified certification curriculum for the seaport security officer training program includes no less than 218 hours of initial certification training that conforms to or exceeds model courses approved by the Federal Maritime Act under Section 109 of the Federal Maritime Transportation Security Act of 2002 for facility personnel with specific security duties.

Pursuant to s. 311.124, F.S., these particular Class D or G security officers are given the power to detain persons for a reasonable period of time if they have "probable cause to believe that a person is trespassing … in a designated restricted area" pending the arrival of a law enforcement officer. In addition, this action does not "render the security officer criminally or civilly liable for false arrest, false imprisonment, or unlawful detention." Furthermore, the seaport security officer must, upon detaining a person for trespass, immediately call a certified law enforcement officer to the scene.

To date, the department has not issued any revised licenses to a class "D" security officer stating that the person is certified as a seaport security officer.

Impersonating a Licensee

Section 493.6118(1), F.S., authorizes the department to "take disciplinary action" against "any unlicensed person engaged in activities regulated" in ch. 493, F.S., related to Private Security, Private Investigative, and Recovery Services. Grounds for such disciplinary action include:

- Conducting activities regulated under this chapter without a license or with a revoked or suspended license.
- Impersonating, or permitting or aiding and abetting an employee to impersonate, a law enforcement officer.
- Knowingly violating, advising, encouraging, or assisting the violation of any statute, court order, capias, warrant, injunction, or cease and desist order, in the course of business regulated under ch. 493, F.S.
- Violating any provision of ch. 493, F.S.

Section 493.6120, F.S., provides that any person who violates any provision of ch. 493, F.S., with one exception, [6] commits a first degree misdemeanor.[7] The department is authorized to institute judicial proceedings in the appropriate circuit court seeking enforcement of ch. 493, F.S., or any rule or order of the department.[8]

The Power to Detain

Section 812.015(3)(a), F.S., authorizes a law enforcement officer, a merchant, a farmer, or their employee or agent, who has probable cause to believe that a retail theft, farm theft, or trespass, has been committed by a person and, in the case of retail or farm theft, that the property can be recovered by taking the offender into custody may, for the purpose of attempting to effect such recovery or for prosecution, take the offender into custody and detain the offender in a reasonable manner for a reasonable length of time. In the event the merchant, merchant's employee, farmer, or a transit agency's employee or agent takes the person into custody, a law enforcement officer shall be called to the scene immediately after the person has been taken into custody. Detention provisions are also applicable to transit fare evasion.

Section 509.143, F.S., authorizes innkeepers and food service establishment operators to "take a person into custody and detain that person" if there is probable cause to believe the person is engaging in disorderly conduct that threatens the safety of the person or others. In these situations, a law enforcement agency must be immediately contacted.

"Citizen's Arrest"

A citizen has a common law right to make a "citizen's arrest" for a felony or a breach of the peace committed in his presence. The citizen may make such an arrest and justify his failure to obtain a warrant by proving the person's guilt.[9]

III. Effect of Proposed Changes:

Section 1 amends s. 493.6120, F.S., to increase and specifically establish penalties for impersonating a security officer, private investigator, or recovery agent, as licensed by the Department of Agriculture and Consumer Services under ch. 493, F.S. Specifically, a person who engages in any activity for which ch. 493, F.S., requires a license, but acts without having a license, commits a first degree misdemeanor. For a second or subsequent offense, the person commits a third degree felony,[10] and the department is authorized to impose a civil penalty not to exceed $10,000. However, penalties do not apply if the person engaged in unlicensed activity within 90 days after the expiration date of the person's license.

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[6] The exception is s. 493.6405(3), F.S., which deals with the sale of motor vehicles, mobile homes, motorboats, aircraft, personal watercraft, all-terrain vehicles, farm equipment, or industrial equipment by a recovery agent or intern.
[7] A first degree misdemeanor is punishable by up to one year in a county jail and a fine of up to $1,000 may also be imposed. ss. 775.082 and 775.083, F.S.
[8] Section 493.6121(7), F.S.
[9] *Phoenix v. State*, 455 So.2d 1024 (Fla.1984).
[10] 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. ss. 775.082 and 775.083, F.S.

The bill also provides that a person who, while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under ch. 493, F.S., knowingly and intentionally forces another person to assist the impersonator in an activity within the scope of duty of a professional licensed under ch. 493, F.S., commits a third degree felony. A person who impersonates a security officer or other designated officer during the commission of a felony commits a second degree felony[11] and a person who impersonates a security officer or other designated officer during the commission of a felony that results in death or serious bodily injury to another human being commits a first degree felony.[12]

Section 2 creates an undesignated section of the Florida Statutes to provide that an armed licensed security officer or an armed licensed security agency manager licensed under ch. 493, F.S., may temporarily detain a person on the premises of a critical infrastructure facility if the security officer or security agency manager has probable cause to believe that the person has committed or is committing a crime. The person may be temporarily detained for the purpose of ascertaining the person's identity and the circumstances of the activity that is the basis for the temporary detention. The security officer or security agency manager must notify the law enforcement agency as soon as possible, and the person may be detained until a responding law enforcement officer arrives at the critical infrastructure facility. The custody of any person temporarily detained must be immediately transferred to the responding law enforcement officer unless the law enforcement officer requests the security officer to assist in detaining the person.

The security officer or security agency manager may search the person detained if the security officer or security agency manager observes that the person is armed with a firearm, concealed weapon, or any destructive device that poses a threat to the safety of the security officer or security agency manager, or the detainee admits to the security officer or security agency manager that he or she is armed with a weapon. The security officer or security agency manager is required to seize any weapon discovered and transfer the weapon to the responding law enforcement officer.

This section defines the term "critical infrastructure facility" to mean any one of the following, *if* it employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized personnel *and* is determined by a state or federal authority to be so vital to the state that the incapacity or destruction of the facility would have a debilitating impact on security, state economic stability, state public health or safety, or any combination of those matters:

- A chemical manufacturing facility.
- A refinery.
- An electrical power generating facility, substation, switching station, electrical control center, or electrical transmission or distribution facility.
- A water intake structure, water treatment facility, wastewater treatment plant, or pump station.
- A natural gas transmission compressor station.

[11] A second degree felony is punishable by up to 15 years in state prison and a fine of up to $10,000 may also be imposed. ss. 775.082 and 775.083, F.S.
[12] A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to $10,000 may also be imposed. ss. 775.082 and 775.083, F.S

- A liquid natural gas terminal or storage facility.
- A telecommunications central switching office.
- A deep water seaport or railroad switching yard.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.

In addition, a security officer or manager must perform duties required under this new section in a uniform that bears at least one patch or emblem visible at all time clearly identifying the employing agency.

Section 3 provides the bill takes effect on July 1, 2011.

Other Potential Implications:

While a person may know that physical barriers and signage indicate that trespassing may be unlawful, they may be unaware that they are in a "critical infrastructure facility" where security personnel would have the lawful authority to detain and search them, if otherwise warranted. The designation of "critical infrastructure facility" is not necessarily public information.

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:

It is possible that a person who is detained under this bill could raise Fourth Amendment search and seizure issues. The bill statutorily authorizes one citizen, arguably "under color of law," to detain and search another citizen virtually *on behalf of* law enforcement. For that reason, security officers who undertake a detention and subsequent search under the parameters authorized in the bill should be aware that any evidence they seize may be later used as evidence in a criminal case and it should be handled accordingly.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

The bill creates misdemeanor and felony offenses for specific unlicensed activity violations of ch. 493, F.S., as it relates to private investigations, private security, and repossession services. The bill authorizes the Department of Agriculture and Consumer Services to impose a civil penalty when a person commits a second or subsequent offense or a third degree felony, not to exceed $10,000. The bill also provides that penalties do not apply if the person engaged in unlicensed activity is within a 90 day period of the expiration date of that person's license. All fees collected are to be deposited into the Fine and Forfeiture Fund by the clerk of the court in the county where the offense occurred, pursuant to s. 775.083, F.S. All revenues received by the clerk in the Fine and Forfeiture fund from court-related fees, fines, costs, and services charges are considered state funds and shall be remitted monthly to the Department of Revenue for deposit into the Clerks of the Court Trust Fund within the Justice Administrative Commission. The amount of fines to be potentially generated by the provisions of this bill are unknown at this time.

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates the bill will have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Criminal Justice on April 4, 2011:
Corrects a technical deficiency relating to a reference so as to provide that a security officer or manager must perform duties required under a new section created by the bill in a uniform that bears at least one patch or emblem visible at all time clearly identifying the employing agency.

B. Amendments:

None.

302658

LEGISLATIVE ACTION

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

Senate Amendment (with title amendment)

Between lines 1865 and 1866
insert:

Section 69. Paragraph (f) of subsection (2) of section 943.05, Florida Statutes, is amended to read:

943.05 Criminal Justice Information Program; duties; crime reports.—

(2) The program shall:

(f) Establish, implement, and maintain a system for transmitting to and between criminal justice agencies information about writs of bodily attachment issued in

302658

connection with a court-ordered child support <u>or alimony</u> obligation. Such information shall include, but not be limited to, information necessary to identify the respondents and serve the writs.

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

And the title is amended as follows:

Delete line 202

and insert:

the act; amending s. 943.05, F.S.; directing the Criminal Justice Information Program within the Department of Law Enforcement to establish, implement, and maintain a system for transmitting to and between criminal justice agencies information about writs of bodily attachment issued in connection with a court-ordered alimony obligation; providing a contingent 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 Budget Subcommittee on General Government Appropriations

BILL: CS/SB 1622

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Flores

SUBJECT: Family Support

DATE: April 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Connor	Maclure	JU	**Favorable**
2.	Daniell	Walsh	CF	**Fav/CS**
3.	Blizzard	DeLoach	BGA	**Pre-meeting**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill seeks to conform Florida's Uniform Interstate Family Support Act (UIFSA) under chapter 88, Florida Statutes, to the current version of UIFSA, which was amended in 2008 and for which implementing legislation is pending approval by Congress, to be eventually adopted in each state. The 2008 UIFSA amendments were made to fully incorporate the provisions promulgated by the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Convention) that impact existing state laws, including guidelines for the registration, recognition, enforcement, and modification of foreign support orders from other countries that are parties to the Hague Convention. Florida law currently has uniform standards for interstate enforcement of support orders, but not international enforcement.

This bill substantially amends the following sections of the Florida Statutes: 61.13, 88.1011, 88.1021, 88.1031, 88.2011, 88.2021, 88.2031, 88.2041, 88.2051, 88.2061, 88.2071, 88.2081, 88.2091, 88.3011, 88.3021, 88.3031, 88.3041, 88.3051, 88.3061, 88.3071, 88.3081, 88.3101, 88.3111, 88.3121, 88.3131, 88.3141, 88.3161, 88.3171, 88.3181, 88.3191, 88.4011, 88.5011, 88.5031, 88.5041, 88.5051, 88.5061, 88.5071, 88.6011, 88.6021, 88.6031, 88.6041, 88.6051, 88.6061, 88.6071, 88.6081, 88.6101, 88.6111, 88.6121, 88.9011, and 827.06.

This bill creates the following sections of the Florida Statutes: 88.1041, 88.2101, 88.2111, 88.6151, 88.6161, 88.7021, 88.7031, 88.7041, 88.7051, 88.7061, 88.7071, 88.7081, 88.7091, 88.7101, 88.7111, 88.7112, and 88.9021.

This bill repeals section 88.7011, Florida Statutes.

II. Present Situation:

Hague Convention[1]

With the rise of globalization, many families form and extend across national boundaries. In the United States, family law has traditionally been a subject of local or state concern, generating significant conflict of laws problems between states. Global movement further complicates the regulation of family relationships. The United States has a large and mobile population, with an estimated 6.6 million private citizens living abroad, and many of these Americans will face challenging international family law problems. National and local laws are inadequate to manage transnational family issues, especially in cases of international adoption or parental abduction but also in ordinary custody, child support or child protection matters. As the scale and frequency of global movement has increased, family and children's issues have also taken on a new relevance in foreign relations. The Hague Conference on Private International Law (the Conference) has responded to the new realities of globalized families with a series of treaties that foster international cooperation in cases involving children. The Conference is an intergovernmental organization, funded and governed by its members.[2] Its traditional purpose has been to work for the progressive unification of the rules of private international law, including family and children's law. The United States signed the 2007 Hague Convention on the International Recovery of Child Support and Other Family Maintenance (Hague Convention), and implementing legislation is proceeding toward adoption.[3]

Uniform Interstate Family Support Act

The Uniform Interstate Family Support Act (UIFSA) was originally enacted in 1996 (and amended subsequently) to address complications in enforcing child support orders across state lines.[4] In response to a congressional mandate,[5] all states enacted the original 1996 version of UIFSA. After the United States signed the Hague Convention in 2007, establishing numerous provisions of uniform procedure for the processing international child support cases, the National Conference of Commissioners on Uniform State Laws (NCCUSL) amended the 2001 version of UIFSA, which serves as the implementing language for the Hague Convention throughout the

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[1] Background on the Hague Convention was taken from the article by Ann Laquer Estin, *Families Across Borders: The Hague Children's Conventions and the Case for International Family Law in the United States*, 62 FLA. L. REV. 47 (2010).
[2] The Conference was founded as a permanent organization in 1955. Statute of the Hague Conference on Private International Law, July 15, 1955, T.I.A.S. No. 5710, 2997 U.N.T.S. 123.
[3] *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance*, reprinted in 47 I.L.M. (2008).
[4] National Conference of Commissioners of Uniform State Laws, *2008 Amendments to the Uniform Interstate Family Support Act*, 2 (2008).
[5] 42 U.S.C. s. 666.

states.[6] The UIFSA provides universal and uniform rules for the enforcement of family support orders by:

- Setting jurisdictional standards for state courts;
- Determining the basis for a state to exercise continuing exclusive jurisdiction over child support proceedings;
- Establishing rules to determine which state will issue the controlling order if there are proceedings in multiple jurisdictions; and
- Providing rules to modify or refuse to modify another state's child support order.[7]

The 2008 UIFSA amendments were made to fully incorporate the provisions of the Hague Convention that impact existing state laws, including guidelines for the registration, recognition, enforcement, and modification of foreign support orders from other countries that are parties to the Hague Convention.[8]

State Adoption of Amended UIFSA

Federal implementing legislation pending approval by Congress will require that the 2008 amended version of UIFSA be enacted in every jurisdiction as a condition for federal funds for state child support programs.[9] To date, Maine, Tennessee, Wisconsin, North Dakota and Nevada are the only states that have enacted the current version of UIFSA.[10] In addition to Florida, several states have introduced UIFSA enacting legislation this year. Those states are: Hawaii, Missouri, New Mexico, Utah, and Washington.[11]

Florida's UIFSA Statute

Along with the rest of the states, Florida enacted the original 1996 version of the UIFSA, which was codified in ch. 88, F.S., and remains current law. Its provisions provide the infrastructure to enforce child support laws uniformly among states to prevent parents from crossing state lines to avoid their support obligations. Some of the main concepts of UIFSA, as codified under Florida law, are outlined below.

Jurisdiction

Personal jurisdiction is the power of a court over the person of a defendant in contrast to the jurisdiction of a court over a person's property or property interest.[12] Under UIFSA, when a

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[6] National Conference of Commissioners of Uniform State Laws, *Interstate Family Support Act Amendments (2008) Summary*, *available at* http://www.nccusl.org/ActSummary.aspx?title=Interstate Family Support Act Amendments (2008) (last visited Mar. 16, 2011).
[7] *Id.*
[8] *Id.*
[9] *Id; see also* Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, Treaty Doc. 110-21, Exec. Rept. 111-2, 111th Congress 2d. Session (Jan. 22, 2010).
[10] Uniform Law Commission, *Interstate Family Support Act Amendments (2008): Enactment Status Map, available at* http://www.nccusl.org/Act.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20(2008) (last visited Mar. 16, 2011).
[11] *Id.*
[12] BLACK'S LAW DICTIONARY 1144 (7th ed. 1990).

Florida tribunal is exercising personal jurisdiction over a nonresident, that tribunal may apply special rules of evidence to receive evidence from another state and assistance with discovery to obtain discovery through a tribunal of another state.[13] There are also provisions for Florida courts to exercise jurisdiction to issue a support order during simultaneous proceedings in another state.[14] If support orders are issued by more than one state, there is a process to determine which one controls.[15]

General Application

Initiating tribunals have the duty to forward copies of the petition to establish a support order and its accompanying documents to the responding tribunal.[16] When acting as a responding tribunal, courts are directed to apply the procedural and substantive law generally applicable to similar proceedings originating in that state[17] and determine the duty of support and the amount payable in accordance with the law and support guidelines of that state.[18]

Establishment of Support Order

If a support order entitled to recognition under UIFSA has not been issued, a responding tribunal may issue a support order under certain conditions.[19]

Direct Enforcement of Income Withholding

An obligor is an individual who owes a duty of support and is liable under a support order.[20] An obligor may have his or her income withheld in order to make up for unpaid support. Employers are required to treat income-withholding orders from another state as it if had been issued by the state where he or she lives.[21]

Modification

After a child support order has been issued in one state, another state has the ability to modify the order if certain conditions are met.[22]

Determination of Parentage

A state court may serve as an initiating or responding tribunal in a proceeding to determine whether a petitioner or a respondent is the parent of a particular child.[23]

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[13] Sections 88.2011, 88.2021, 88.3161, and 88.3181, F.S.
[14] Section 88.2041, F.S.
[15] Section 88.2071, F.S.
[16] Section 88.3041, F.S.
[17] Section 88.3031(1), F.S.
[18] Section 88.3031(2), F.S.
[19] Section 88.4011, F.S.
[20] Section 88.1011(13)(a)-(c), F.S.
[21] Section 88.50211, F.S.
[22] Section 88.6111, F.S.
[23] Section 88.7011, F.S.

Grounds for Rendition

The Governor of this state has the ability to demand that the Governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to pay child support.[24]

III. Effect of Proposed Changes:

This bill seeks to conform Florida's Uniform Interstate Family Support Act (UIFSA) under ch. 88, F.S., to the current version of UIFSA, which was amended in 2008 and is pending ratification in Congress to be adopted by each state. The 2008 UIFSA amendments were made to fully incorporate the provisions promulgated by the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Convention) that impact existing state laws, including guidelines for the registration, recognition, enforcement, and modification of foreign support orders from other countries that are parties to the Hague Convention. Florida law accounts for interstate enforcement of support orders, but not international enforcement. Following is a section-by-section analysis of the bill.

General Provisions

Section 1 amends s. 88.1011, F.S., containing definitions, to redefine or delete a number of existing terms to conform to the most current version of UIFSA and to include foreign countries in addition to states and also define the following new terms: "Application"; "Central authority"; "Convention"; "Direct request"; "Foreign central authority"; "Foreign country"; "Foreign support agreement"; "Foreign support order"; "Foreign tribunal"; "Issuing foreign country"; "Outside this state"; "Person"; "Record"; and "United States Central Authority."

Section 2 amends s. 88.1021, F.S., to designate the Department of Revenue as the support enforcement agency of the state.

Section 3 amends s. 88.1031, F.S., to specify that the act does not provide the exclusive method of establishing or enforcing a support order or grant authority to render judgment relating to child custody.

Section 4 creates s. 88.1041, F.S., to apply the act to foreign proceedings.

Jurisdiction

Section 5 amends s. 88.2011, F.S., relating to bases for jurisdiction over a nonresident, to state that personal jurisdiction under the section does not extend to the modification of child support orders unless specified conditions are met. Sections 5 and 6 both assert what is commonly described as long-arm jurisdiction over a nonresident respondent for purposes of establishing a support order or determining parentage. To sustain a support order, the tribunal must be able to assert personal jurisdiction over the parties.[25]

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[24] Section 88.8011, F.S.

[25] National Conference of Commissioners of Uniform State Laws, *2008 Amendments to the Uniform Interstate Family Support Act*, 20 (2008).

Section 6 amends s. 88.2021, F.S., relating to jurisdiction over a nonresident, to specify that personal jurisdiction under the act continues as long as a tribunal has continuing jurisdiction to enforce its order.

Section 7 amends s. 88.2031, F.S., relating to forwarding proceedings between initiating and responding tribunals, to also refer to proceedings initiated in foreign countries.

Section 8 amends s. 88.2041, F.S., relating to simultaneous proceedings in another state, to include foreign countries.

Section 9 amends s. 88.2051, F.S., relating to continuing exclusive jurisdiction, to specify that except in very narrowly defined circumstances, the issuing tribunal retains continuing, exclusive jurisdiction over a child support order.[26]

Section 10 amends s. 88.2061, F.S., relating to continuing jurisdiction, to make adjustments that are the correlative of the continuing, exclusive jurisdiction described in the previous section. It makes the distinction between the jurisdiction "to modify a support order" established in the previous section and the "continuing jurisdiction to enforce" established in this section.[27]

Section 11 amends s. 88.2071, F.S., relating to controlling child support orders, to provide a procedure to identify one order that will be enforced in every state. It declares that if only one child support order exists, it is to be denominated the controlling order, irrespective of when and where it was issued and whether any of the individual parties or the child continues to reside in the issuing state. It also establishes the priority scheme for recognition and prospective enforcement of a single order among existing multiple orders regarding the same obligor, obligee, and child.[28]

Section 12 amends s. 88.2081, F.S., relating to child support orders for two or more obligees, to specify that it also applies to foreign countries.

Section 13 amends s. 88.2091, F.S., relating to credit for payments, to specify that the issuing tribunal is responsible for the overall control of the enforcement methods employed and for accounting for the payments made on its order from multiple sources.[29]

Section 14 creates s. 88.2101, F.S., relating to the application to a nonresident subject to personal jurisdiction, to specify that upon obtaining personal jurisdiction the tribunal may receive evidence from outside the state, communicate with a tribunal outside the state, and obtain discovery outside the state. In other respects, the tribunal will apply the law of the forum.

Section 15 creates s. 88.2111, F.S., relating to jurisdiction to modify spousal orders, to specify that the restriction on modification of an out-of-state spousal support order extends to foreign

[26] *Id.* at 27.
[27] *Id.* at 29.
[28] *Id.* at 32.
[29] *Id.* at 35.

countries. It also provides that the question of continuing, exclusive jurisdiction is to be resolved under the law of the issuing tribunal.[30]

Civil Provisions of General Application

Section 16 amends s. 88.3011, F.S., relating to proceedings under this act, to specify that all proceedings under this act also apply to foreign support orders.

Sections 17 and 18 amend ss. 88.3021 and 88.3031, F.S., to make technical changes.

Section 19 amends s. 88.3041, F.S., relating to the duties of the initiating tribunal, to facilitate enforcement even with states that have not implemented the updated version of UIFSA and with foreign countries.[31]

Section 20 amends s. 88.3051, F.S., relating to the duties and powers of the responding tribunal, to establish updated duties relating to responding tribunals.

Section 21 amends s. 88.3061, F.S., relating to inappropriate tribunals, to make a technical change.

Section 22 amends s. 88.3071, F.S., relating to the duties of the support enforcement agency, to specify that the obligee or the obligor may request services, and that request may be in the context of the establishment of an initial child support order, enforcement or review and adjustment of an existing child support order, or a modification of that order. It also directs the Department of Revenue, as the support enforcement agency, to make reasonable efforts to ensure that the order to be registered is the controlling one.[32]

Section 23 amends s. 88.3081, F.S., relating to the duty of the Governor and Cabinet, to allow the Governor and Cabinet to make reciprocal child support determinations regarding foreign countries.

Section 24 amends s. 88.3101, F.S., relating to the duties of the state information agency, to make technical changes and add a reference to foreign countries.

Section 25 amends s. 88.3111, F.S., to establish the requirements for drafting and filing interstate pleadings.[33]

Section 26 amends s. 88.3121, F.S., relating to pleadings and accompanying documents, to create an exception for providing certain information in the pleadings if its disclosure is likely to harm a party or child.

Sections 27 and 28 amend ss. 88.3131 and 88.3141, F.S., to make technical changes.

[30] *Id.* at 37.
[31] *Id.* at 41.
[32] *Id.* at 47.
[33] *Id.* at 51.

Section 29 amends s. 88.3161, F.S., relating to special rules of evidence, to make technical changes and specify that a voluntary acknowledgment of paternity is admissible to establish parentage.

Sections 30 and 31 amend ss. 88.3171 and 88.3181, F.S., to make technical changes.

Section 32 amends s. 88.3191, F.S., relating to receipt and disbursement of payments, to require that when all parties reside in this state, the Department of Revenue or a tribunal must direct support payments in another state if necessary and send an income-withholding order to the obligor's employer.

Establishment of Support Order

Section 33 amends s. 88.4011, F.S., relating to support order establishment, to authorize a responding tribunal of this state to issue temporary and permanent support orders binding on an obligor over whom the tribunal has personal jurisdiction when the person or entity requesting the order is "outside this state" (i.e., anywhere else in the world). It also specifies circumstances relating to parentage that make a support order appropriate.[34]

Direct Enforcement

Sections 34 and 35 amend ss. 88.5011 and 88.5031, F.S., to add more specific language to provisions regarding income-withholding orders.

Sections 36 and 37 amend ss. 88.5041, and 88.5051 F.S., to make technical changes to apply the sections to foreign countries.

Section 38 amends s. 88.5061, F.S., relating to a contest by the obligor, to provide more specific instructions for a contest by the obligor.

Sections 39 and 40 amend ss. 88.5071 and 88.6011, F.S., to make technical changes to apply the sections to foreign countries.

Enforcement and Modification

Section 41 amends s. 88.6021, F.S., relating to procedure to register an order for enforcement, to provide cross references and specify a process to be followed by a person requesting registration when two or more orders are in effect.

Section 42 amends s. 88.6031, F.S., relating to effect of registration for enforcement, to apply the section to foreign countries.

Section 43 amends s. 88.6041, F.S., relating to choice of law, to modify the conditions under which the law of the issuing state governs.

[34] *Id.* at 61.

Section 44 amends s. 88.6051, F.S., relating to notice of registration of an order, to make technical changes applying the section to foreign countries and specify notice requirements when two or more orders are in effect.

Section 45 amends s. 88.6061, F.S., relating to the procedure to contest validity or enforcement of a registered order, to provide cross references and make technical changes.

Sections 46 and 47 amend ss. 88.6071 and 88.6081 F.S., to make technical changes.

Section 48 amends s. 88.6101, F.S., relating to effect of registration for modification, to provide a cross reference and make a technical change.

Section 49 amends s. 88.6111, F.S., relating to modification of a child support order of another state, to provide cross references and create an exception relating to jurisdiction to modify an order when the parties and the child no longer reside in the issuing state and one party resides outside the United States.

Section 50 amends s. 88.6121, F.S., relating to recognition of an order modified in another state, to make technical changes.

Section 51 creates s. 88.6151, F.S., to provide standards of jurisdiction to modify a child support order of a foreign country.

Section 52 creates s. 88.6161, F.S., to specify a procedure to register a child support order of a foreign country for modification.

Section 53 repeals s. 88.7011, F.S., relating to a proceeding to determine parentage.

Provisions Specific to Foreign Countries

Section 54 creates s. 88.7021, F.S., providing that the section applies only to a support proceeding involving a foreign country in which the Hague Convention is in force with respect to the United States.

Section 55 creates s. 88.7031, F.S., to define the relationship between the Department of Children and Family Services (department) and the United States Central Authority. It recognizes the department as the agency designated by the United States Central Authority to perform specific functions under the Hague Convention.

Section 56 creates s. 88.7041, F.S., relating to the initiation by a governmental entity of support proceedings subject to the Hague Convention, to provide a list of requirements in such proceedings, and to list which support proceedings are available to an obligor under the Hague Convention. It also lists which support proceedings are available to an obligor against whom there is an existing support order.

Section 57 creates s. 88.7051, F.S., to specify provisions for a petitioner to file a direct request in a tribunal in this state seeking the establishment or modification of a support order or determination of parentage. The law of the state will apply in these proceedings. In direct request for enforcement of foreign support orders, an obligee or obligor who has benefitted from free legal assistance is also entitled to any free legal assistance provided under state law.

Section 58 creates s. 88.7061, F.S., relating to the registration of a foreign support order subject to the Hague Convention. It specifies that a party who is seeking recognition of a foreign support order is required to register the order with the state. The request for registration is required to be accompanied by an enumerated list of other documents.

Section 59 creates s. 88.7071, F.S., relating to a contest of the validity of a foreign support order subject to the Hague Convention. It provides that a contest to the recognition of a foreign support order must be filed within 30 days after the notice of the registration. If the contesting party lives outside the United States, he or she will have 60 days after the notice. It also lists possible bases for a contest, such as lack of basis for enforcement, questionable authenticity, etc.

Section 60 creates s. 88.7081, F.S., relating to the recognition and enforcement of a foreign support order subject to the Hague Convention. It provides that this state is required to recognize a foreign support order if the issuing tribunal had personal jurisdiction and the order is enforceable in the issuing country. This section also provides a process for when a tribunal of this state does not recognize a foreign support order. If the order is not recognized as a whole, any severable portions are to be recognized.

Section 61 creates s. 88.7091, F.S., relating to refusal of recognition and enforcement of a foreign support order subject to the Hague Convention. Grounds for refusal of a foreign support order include a determination that the order is incompatible with public policy, was obtained by fraud, etc.

Section 62 creates s. 88.7101, F.S., relating to foreign support orders subject to the Hague Convention. This section states that a direct request for recognition and enforcement of a foreign support order must be accompanied by the complete text of the foreign order and a record stating that the order is an enforceable decision in the issuing country. Grounds for refusal to recognize foreign orders are also listed.

Section 63 creates s. 88.7111, F.S., relating to modification of a foreign child support order subject to the Hague Convention. It provides that a tribunal in this state may not modify a foreign support order if the obligee remains a resident of the issuing country, except under specified circumstances.

Section 64 creates s. 88.7112, F.S., relating to jurisdiction to modify a spousal support order of a foreign country. This section provides that a tribunal of this state having personal jurisdiction over the parties may modify a spousal support order of a foreign tribunal under specified circumstances.

Section 65 amends s. 88.9011, F.S., to specify that in applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law among enacting states.

Section 66 creates s. 88.9021, F.S., to specify that the act applies to proceedings begun on or after the effective date, July 1, 2011.

Sections 67 and 68 amend ss. 61.13 and 827.06, F.S., relating to support of children, parenting and time-sharing, and nonsupport of dependents to provide cross references.

Section 69 provides that the act shall take effect upon the earlier of 90 days following Congress amending 42 U.S.C. s. 666(f) to allow or require states to adopt the 2008 version of UIFSA, or 90 days following the state obtaining a waiver of its state plan requirement under Title IV-D of the Social Security Act.

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:

Pursuant to federal law, Florida adopted the 1996 version of the Uniform Interstate Family Support Act (UIFSA) in order to continue to receive federal funding for state child support programs.[35] There is currently similar legislation pending in Congress to require adoption of the 2008 UIFSA revision represented in the bill.[36] Congress has the authority to act only pursuant to express or implied legislative authority in the Constitution.[37] Under the Tenth Amendment, all other powers are reserved to the states and the people. The authority to make laws relating to family issues is not delegated in the Constitution and is thus something that has traditionally been left to the discretion of the states. However, the Supreme Court has held that under its broad taxing and spending powers, "Congress may attach conditions on the receipt of federal funds, and has repeatedly employed the power 'to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory administrative objectives.'"[38] Therefore, it seems permissible for Congress to require the states to adopt this uniform act in the furtherance of the policy objective of international child support enforcement.

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[35] 42 U.S.C. s. 666.

[36] Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, Treaty Doc. 110-21, Exec. Rept. 111-2, 111th Congress 2d. Session (Jan. 22, 2010).

[37] U.S. CONST. art. 1, s. 1. states that "All legislative Powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and a House of Representatives."

[38] *South Dakota v. Dole*, 483 U.S. 203, 206 (1987) (holding that Congress had the authority to mandate a national minimum drinking age conditioned on federal funding).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals owing child support based on international orders will be more likely to have those orders enforced in Florida.

C. Government Sector Impact:

The bill may create some additional workload for Florida courts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Federal Funding

Federal law requires that states adopt the 1996 version of the Uniform Interstate Family Support Act (UIFSA) in order to receive federal funding. After the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Convention), UIFSA was amended in 2008 to incorporate the treaty created at Hague Convention. Currently, the U.S. Senate has not ratified the treaty and therefore the Hague Convention is not in effect in the United States.

This bill makes many changes to ch. 88, F.S., which is the section of law relating to UIFSA. Under the original version of the bill, the effective date was July 1, 2011. According to the Department of Revenue (DOR or department), a July 1, 2011, effective date would put Florida out of compliance with federal law, which would mean Florida would not receive federal IV-D matching funds or incentive payments.[39]

The Federal Office of Child Support Enforcement (OCSE or office) has stated that if a state adopts UIFSA, as amended in 2008, "verbatim" and with a provision that the effective date is delayed until the Hague Convention is ratified, then OCSE will approve the state's IV-D state plan.[40] According to DOR, there are currently only four states that have adopted UIFSA, as amended in 2008, and the law in each of those states incorporated a delayed effective date pending approval of the Hague Convention.[41]

[39] Florida Department of Revenue, *Senate Bill 1622 Analysis* (Mar. 21, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[40] Office of Child Support Enforcement, Administration for Children and Families, U.S. Dep't of Health and Human Servs., *Dear Colleague Letter DCL-08-41, Subject: Uniform Interstate Family Support Act 2008*, *available at* http://www.acf.hhs.gov/programs/cse/pol/DCL/2008/dcl-08-41.htm (last visited Mar. 24, 2011).
[41] Florida Department of Revenue, *supra* note 39.

After the adoption of amendment 829008, this bill provides a delayed effective date for the earlier of either 90 days following Congress amending 42 U.S.C. s. 666(f) to allow or require states to adopt the 2008 version of UIFSA, or 90 days following the state obtaining a waiver of its state plan requirement under Title IV-D of the Social Security Act. Accordingly, Florida will stay in compliance with federal law and will not jeopardize its federal funding.

Telephonic Testimony

The bill amends s. 88.3161(6), F.S., to require a tribunal to permit a party or witness outside this state to be deposed or to testify by telephone, audiovisual means, or other electronic means. Currently, UIFSA allows, but does not require, a tribunal to permit telephonic testimony. Allowing a party to provide telephonic testimony requires the consent of all parties involved in the proceeding.[42] To the extent that this bill requires a tribunal to permit such testimony over the objection of a party, it will conflict with the Florida rules of judicial administration, as well as Florida case law.

Determination of Paternity

According to DOR, the state is required by federal law to determine paternity in interstate initiating and responding cases.[43] Under current law, s. 88.7011, F.S., provides that a tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought to determine parentage. This bill repeals that section of law. The determination of parentage is still provided for under s. 88.3051, F.S., in the bill; however, this section of law only relates to the duties and powers of a responding tribunal. There is no corresponding provision in s. 88.3041, F.S., which relates to the duties of the initiating tribunal. Accordingly, it appears that if this bill becomes law, a tribunal of this state may only act as a responding tribunal in determination of parentage proceedings.

Legal Assistance

The bill creates s. 88.7051, F.S., which provides, in part, that in a direct request for recognition and enforcement of a foreign support order or agreement the obligee or obligor is entitled to benefit from free legal assistance provided for by the law of this state if the person was receiving free legal assistance in the issuing country. According to DOR, "the impact of this requirement, legally and fiscally, is unknown."[44]

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 Children, Families, and Elder Affairs on March 28, 2011:

The committee substitute amends the effective date of the bill to provide that it will take

[42] Fla. R. Jud. Admin. 2.530(d)(1); *M.S. v. Dep't of Children and Families*, 6 So. 3d 109 (Fla. 4th DCA 2009); *S.A. v. Dep't of Children and Families*, 961 So. 2d 1066 (Fla. 3d DCA 2007).

[43] Florida Department of Revenue, *supra* note 39; *see also* 45 C.F.R. s. 303.7.

effect upon the earlier of 90 days following Congress amending 42 U.S.C. s. 666(f) to allow or require states to adopt the 2008 version of UIFSA, or 90 days following the state obtaining a waiver of its state plan requirement under Title IV-D of the Social Security Act (rather than having an effective date of July 1, 2011).

B. Amendments:

None.

[44] Florida Department of Revenue, *supra* note 39.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1826

INTRODUCER: Senator Hays

SUBJECT: Workers' Compensation

DATE: April 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arzillo	Burgess	BI	**Favorable**
2.	Betta	DeLoach	BGA	**Pre-meeting**
3.			BC	
4.			RC	
5.				
6.				

I. Summary:

This bill removes outdated and obsolete language relating to workers' compensation under chapter 627, Florida Statutes. The bill repeals obsolete language creating a workers' compensation administrator that has not been filled within the Office of Insurance Regulation (office). The bill also removes outdated language for rerating workers' compensation policies to conform to the tier system created in 2004.

This bill substantially amends section 627.312, Florida Statutes.

The bill repeals section 627.092, Florida Statutes.

II. Present Situation:

Workers' Compensation Administrator

Section 627.092, F.S. creates the position of Workers' Compensation Administrator within the office to monitor insurance company compliance with workers' compensation laws. Currently, the office does not have an employee designated as the Workers' Compensation Administrator because the Department of Financial Services (DFS) is responsible for overall monitoring and auditing of the performance of workers' compensation insurance companies.[1]

[1] *See* ch. 440, F.S.

Florida Workers' Compensation Joint Underwriting Association (FWCJUA)

The Florida Workers' Compensation Joint Underwriting Association was created in 1993 and began writing claims on January 1, 1994. The FWCJUA is an insurer of last resort, which provides workers' compensation insurance for those employers who cannot obtain it in the private market. Until July 2003, the FWCJUA had three rating plans for various classifications of risk.[2] All three plans had to maintain actuarially sound rates but the rate charged varied depending on the plan, in accordance with the risk characteristics of the employers obtaining workers' compensation insurance.

In 2003, the Legislature established Subplan D within the FWCJUA. This Subplan provided workers' compensation coverage for small employers, with 15 or fewer employees, and charitable organizations. However, rates for Subplan D were capped as a percentage over the voluntary market rates and were not required to be actuarially sound.[3] Consequently, in 2004, Subplan D generated a substantial deficit. In order to fix the deficit, employers in Subplan D were additionally assessed.

In response, the Legislature passed legislation in 2004 to segregate Subplan D from the base before the employers in the Subplan were assessed.[4] The changes were meant to reduce and eliminate the deficit in Subplan D and to ensure that no future deficits in the FWCJUA occurred. Therefore, the employers in Subplan D were not assessed for the Subplan D deficit.

In addition to funding Subplan D, the Legislature created a three-tier rating system to replace the subplan rating system. The tiers better defined employer risk to ensure the employers were placed in the correct risk pool.[5] The new rating system provides the FWCJUA with a premium better associated with the employers' risk.[6]

Section 627.312(2), F.S., was enacted to guide the transition from the Subplan rating system to the tier rating system by the FWCJUA. This section required FWCJUA policies in effect between May 28, 2004,[7] and June 30, 2004,[8] to be transferred from the subplan rating system to the tier rating system and rerated for premium purposes.[9]

III. Effect of Proposed Changes:

Section 1 repeals s. 627.092, F.S., because the office does not monitor or audit workers' compensation insurance companies and does not employ a Workers' Compensation Administrator. The DFS maintains the Bureau of Monitoring and Audit within the Division of Workers' Compensation which performs the functions set out for the Workers' Compensation Administrator in s. 627.092, F.S. This section repeals obsolete language.

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[2] The risk ratings were: Subplan A, Subplan B and Subplan C.
[3] Rates for policies in Subplan D were priced at the voluntary market rate with a surcharge not to exceed 25%. However, the surcharge for those organizations exempt from federal income tax under 501(c)(3) was not to exceed 10%.
[4] *See* ch. 2004-266, L.O.F. *See also* HB 1251 (2004).
[5] *See* id.
[6] Each of the tiers are now required to be actuarially sound.
[7] The date HB 1251 (2004) became law.
[8] The date HB 1251 (2004) was enacted.

Section 2 deletes language from s. 627.312, F.S., because it is obsolete. Section 627.312(2), F.S., was created to transition the workers' compensation insurance plans under the FWCJUA from the Subplan system to the tier system. The law required that all plans in effect between March 28 and June 30, 2004, were rerated and transferred to the tier system. FWCJUA rerated and transitioned all of its policies by July 1, 2004. Therefore, the bill deletes this obsolete language.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Budget Subcommittee on General Government Appropriations (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Delete lines 23 - 66
and insert:

Section 1. Subsection (8) of section 624.402, Florida Statutes, is amended to read:

624.402 Exceptions, certificate of authority required.—A certificate of authority shall not be required of an insurer with respect to:

(8) An insurer domiciled outside the United States covering only persons who, at the time of issuance or renewal, are nonresidents of the United States.

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(a) In order to qualify for this exemption, the insurer:

1. Must register with the office via a letter of notification upon commencing business from this state.

2. Must provide the following information to the office annually by March 1:

a. The name of the insurer; the country of domicile; the address of the insurer's principal office and office in this state; the names of the owners of the insurer and their percentage of ownership; the names of the officers and directors of the insurer; the name, e-mail, and telephone number of a contact person for the insurer; and the number of individuals who are employed by the insurer or its affiliates in this state;

b. The type of products offered by the insurer;

c. A statement from the applicable regulatory body of the insurer's domicile certifying that the insurer is licensed or registered in that domicile; and

d. A copy of the filings required by the applicable regulatory body of the insurer's domicile.

3. Or any affiliated person as defined in s. 624.04 under common ownership or control with the insurer, may not solicit, sell, or accept an application for any insurance policy or contract to be delivered or issued for delivery to any individual other than a nonresident.

(b) All policies or certificates delivered to nonresidents in this state must include the following statement in a contrasting color and at least 10-point type: "The policy providing your coverage and the insurer providing this policy have not been approved by the Florida Office of Insurance Regulation".

(c) If the insurer ceases to do business from this state, the insurer must agree to provide written notification to the office within 30 days after cessation.

(d) Subject to the limitations contained in this subsection, services, including those listed in s. 624.10, may be provided by the insurer or an affiliated person as defined in s. 624.04 under common ownership or control with the insurer.

(e) An alien insurer transacting insurance in this state without complying with this subsection is in violation of this chapter and subject to the penalties under s. 624.15.

(f) An insurer that holds a certificate of authority in this state may issue and deliver policies to nonresidents at temporary or secondary addresses in this state, along with a notice that the policy form and rate is not subject to the approval of the Office of Insurance Regulation.

(g) The term "nonresident" means an individual who resides in and maintains a physical place of domicile in a country other than the United States, which he or she recognizes as and intends to maintain as his or her permanent home. The term does not include an unauthorized immigrant present in the United States. Notwithstanding any other provision of law, it is conclusively presumed that an individual is a resident of the United States if such individual:

1. Has had his or her principal place of domicile in the United States for 180 days or more in the 365 days before issuance or renewal the policy;

2. Has registered to vote in any state;

3. Has made a statement of domicile in any state; or

4. Has filed for homestead tax exemption on property in any

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state.

~~(a) Life insurance policies or annuity contracts issued by an insurer domiciled outside the United States covering only persons who, at the time of issuance, are not residents of the United States and are not nonresidents illegally residing in the United States, provided:~~

~~1. The insurer must currently be an authorized insurer in its country of domicile as to the kind or kinds of insurance proposed to be offered and must have been such an insurer for not fewer than the immediately preceding 3 years, or must be the wholly owned subsidiary of such authorized insurer or must be the wholly owned subsidiary of an already eligible authorized insurer as to the kind or kinds of insurance proposed for a period of not fewer than the immediately preceding 3 years. However, the office may waive the 3-year requirement if the insurer has operated successfully for a period of at least the immediately preceding year and has capital and surplus of not less than $25 million.~~

~~2. Before the office may grant eligibility, the requesting insurer shall furnish the office with a duly authenticated copy of its current annual financial statement, in English, and with all monetary values therein expressed in United States dollars, at an exchange rate then-current and shown in the statement, in the case of statements originally made in the currencies of other countries, and with such additional information relative to the insurer as the office may request.~~

~~3. The insurer must have and maintain surplus as to policyholders of not less than $15 million. Any such surplus as to policyholders shall be represented by investments consisting~~

~~of eligible investments for like funds of like domestic insurers under part II of chapter 625; however, any such surplus as to policyholders may be represented by investments permitted by the domestic regulator of such alien insurance company if such investments are substantially similar in terms of quality, liquidity, and security to eligible investments for like funds of like domestic insurers under part II of chapter 625.~~

~~4. The insurer must be of good reputation as to the providing of service to its policyholders and the payment of losses and claims.~~

~~5. To maintain eligibility, the insurer shall furnish the office within the time period specified in s. 624.424(1)(a) a duly authenticated copy of its current annual and quarterly financial statements, in English, and with all monetary values therein expressed in United States dollars, at an exchange rate then-current and shown in the statement, in the case of statements originally made in the currencies of other countries, and with such additional information relative to the insurer as the office may request.~~

~~6. An insurer receiving eligibility under this subsection shall agree to make its books and records pertaining to its operations in this state available for inspection during normal business hours upon request of the office.~~

~~7. The insurer shall provide to the applicant for the policy or contract a copy of the most recent quarterly financial statements of the insurer providing, in clear and conspicuous language:~~

~~a. The date of organization of the insurer.~~

~~b. The identity of and rating assigned by each recognized~~

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~~insurance company rating organization that has rated the insurer or, if applicable, that the insurer is unrated.~~

~~c. That the insurer does not hold a certificate of authority issued in this state and that the office does not exercise regulatory oversight over the insurer.~~

~~d. The identity and address of the regulatory authority exercising oversight of the insurer.~~

~~This paragraph does not impose upon the office any duty or responsibility to determine the actual financial condition or claims practices of any unauthorized insurer, and the status of eligibility, if granted by the office, indicates only that the insurer appears to be financially sound and to have satisfactory claims practices and that the office has no credible evidence to the contrary.~~

~~(b) If at any time the office has reason to believe that an insurer issuing policies or contracts pursuant to this subsection is insolvent or is in unsound financial condition, does not make reasonable prompt payment of benefits, or is no longer eligible under the conditions specified in this subsection, the office may conduct an examination or investigation in accordance with s. 624.316, s. 624.3161, or s. 624.320 and, if the findings of such examination or investigation warrant, may withdraw the eligibility of the insurer to issue policies or contracts pursuant to this subsection without having a certificate of authority issued by the office.~~

~~(c) This subsection does not provide an exception to the agent licensure requirements of chapter 626. Any insurer issuing~~

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~~policies or contracts pursuant to this subsection shall appoint the agents that the insurer uses to sell such policies or contracts as provided in chapter 626.~~

~~(d) An insurer issuing policies or contracts pursuant to this subsection is subject to part IX of chapter 626, Unfair Insurance Trade Practices, and the office may take such actions against the insurer for a violation as are provided in that part.~~

~~(e) Policies and contracts issued pursuant to this subsection are not subject to the premium tax specified in s. 624.509.~~

~~(f) Applications for life insurance coverage offered under this subsection must contain, in contrasting color and not less than 12-point type, the following statement on the same page as the applicant's signature:~~

~~This policy is primarily governed by the laws of a foreign country. As a result, all of the rating and underwriting laws applicable to policies filed in this state do not apply to this coverage, which may result in your premiums being higher than would be permissible under a Florida-approved policy. Any purchase of individual life insurance should be considered carefully, as future medical conditions may make it impossible to qualify for another individual life policy. If the insurer issuing your policy becomes insolvent, this policy is not covered by the Florida Life and Health Insurance Guaranty Association. For information concerning individual~~

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~~life coverage under a Florida-approved policy, consult your agent or the Florida Department of Financial Services.~~

~~(g) All life insurance policies and annuity contracts issued pursuant to this subsection must contain on the first page of the policy or contract, in contrasting color and not less than 10-point type, the following statement:~~

~~The benefits of the policy providing your coverage are governed primarily by the law of a country other than the United States.~~

~~(h) All single-premium life insurance policies and single-premium annuity contracts issued to persons who are not residents of the United States and are not nonresidents illegally residing in the United States pursuant to this subsection shall be subject to the provisions of chapter 896.~~

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

And the title is amended as follows:

Delete lines 2 - 5

and insert:

An act relating to insurance; amending s. 624.402, F.S.; revising provisions relating to certain insurers serving nonresidents domiciled outside the United States who are exempt from requirements to obtain a certificate of authority; amending s. 628.901, 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 Budget Subcommittee on General Government Appropriations

BILL: CS/SB 1836

INTRODUCER: Banking and Insurance Committee and Senator Diaz de la Portilla

SUBJECT: Captive Insurers

DATE: April 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow/Johnson	Burgess	BI	**Fav/CS**
2.	Frederick	DeLoach	BGA	**Pre-meeting**
3.			BC	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill provides an exemption from certificate of authority requirements for life and health insurers domiciled outside of the U.S. covering only persons who, at the time of issuance or renewal, are nonresidents of the U.S. but residing legally in the U.S., under certain conditions. Currently, life insurance policies or annuity contracts issued by an insurer domiciled outside of the U.S. covering only persons who, at the time of issuance, are not residents of the U.S. are exempt from the certificate of authority requirements if certain requirements are met. The bill substantially reduces the requirements that these life insurance policies or annuity contracts must meet to be exempt from regulation by the Office of Insurance Regulation (office).

This bill provides definitions under Part V of chapter 628, Florida Statutes, relating to captive insurers. Section 628.901, Florida Statutes, defines a "captive insurer" as a domestic insurer that is owned by, or is under common ownership with, a specific corporation or group of corporations for which the captive insurer provides insurance coverage. The bill deletes the current definition of captive insurer and provides that "captive insurer" means a pure captive insurer or an association captive insurer domiciled in this state. The bill adds a definition for "pure captive insurer" to mean a company that insures the risks of its parent, affiliated companies, controlled unaffiliated businesses, or a combination thereof. The bill defines "association" as an association

of nursing homes, hospitals, skilled nursing facilities, assisted living facilities, or continuing care retirement communities. The bill defines "association captive insurer" as a company that insures risks of the member organizations of the association and their affiliated companies.

The bill adds certain information that an association captive insurer must include in its application to the office for a license. The bill requires that a captive insurer must maintain its principal place of business in Florida and hold at least one annual meeting in Florida for, depending on the structure of the insurer, the board of directors, the subscriber's advisory committee, or the managing board.

The bill removes the current law requirement that, in addition to meeting the capital and surplus requirements applicable to captive insurers, a captive insurer must also meet the same level of capital and reserves that are specified for various lines of insurance written in this state, as contained in sections 624.407 and 624.408, Florida Statutes.

This bill substantially amends the following sections of the Florida Statutes: 624.402, 628.901, 628.905, and 628.909.

The bill creates section 628.908, Florida Statutes.

The bill repeals section 628.903, Florida Statutes.

II. Present Situation:

The Office of Insurance Regulation regulates and licenses insurers and other risk-bearing entities that do business in Florida.[1] Regulatory oversight includes licensure, approval of rates and policy forms, market conduct and financial exams, solvency oversight, administrative supervision, and licensure of viatical settlement and premium finance companies, as provided in the Florida Insurance Code or ch. 636, F.S.[2]

The Florida Insurance Code contains provisions designed to prevent insurers from becoming insolvent and to protect and provide recovery for policyholders in the event of insolvency. These provisions include minimum capital and surplus requirements[3] and financial reporting requirements.[4] In addition, five guaranty funds are established under ch. 631, F.S., to ensure that policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding covered claims, up to limits provided by law. Generally, entities subject to regulation under the insurance code are subject to assessments of the applicable guaranty association.

[1] Risk-bearing entities include, but are not limited to multiple-employer welfare arrangements, commercial self-insurance funds, warranty associations, health maintenance organizations, prepaid limited health service organizations, prepaid health clinics, and continuing care facilities.

[2] Section 20.121(3)(a)2., F.S.

[3] Section 624.4095, F.S.

[4] Section 624.424, F.S.

Certificate of Authority Exemptions

Section 624.401, F.S., requires insurers and other risk-bearing entities to obtain a certificate of authority prior to engaging in insurance transactions unless specifically exempted. Section 624.402, F.S., exempts various insurers from obtaining a certificate of authority if certain conditions are met. For example, life insurance policies or annuity contracts issued by an insurer domiciled outside of the U.S. covering only persons who, at the time of issuance, are not residents of the U.S. are exempt from the certificate of authority requirements if certain requirements are met.

Captive Insurance

A captive insurer is an insurance company that primarily or exclusively insures a business entity, or entities, that owns or is an affiliate of the captive insurer. The insured business entities pay premiums to the captive insurer for specified insurance coverages. A captive insurance arrangement can provide a number of benefits, depending on the type of business arrangement, the domicile of the insured business and the captive insurer, and the coverages involved. Some benefits of captive insurance may include:

- *Lower insurance cost:* Two elements that an arm's length insurer must recover are acquisition cost (often in the form of agent commissions and advertising) and profit. A captive insurer would not need to factor these elements into the premium it charges.
- *Potential tax savings:* The premium paid by the insured entity is a deductible expense for Federal income tax purposes, and, under some circumstances, a portion of the captive insurer's income from the collected premium may not be recognized as taxable. Further, a captive insurer may be domiciled in a country where its investment income may receive more favorable tax treatment than in the U.S.
- *More tailored insurance plan:* A captive insurer may be able to create overall savings through coverage and policy provisions that are unique to the individual business being insured.
- *Cohesion of interest:* Because the control of the insured and the insurer would reside in a single entity, there could be a reduction in some of the areas of potential disagreement over claim verification, investigation and valuation.

In Florida, captive insurance is regulated by the Office of Insurance Regulation under Part V of ch. 628, F.S. Section 628.901, F.S., defines a "captive insurer" as domestic insurer established under Part I of ch. 628, F.S., [5] to insure the risks of a specific corporation or group of corporations under common ownership owned by the corporation or corporations from whom it accepts risk under a contract of insurance.

Section 628.907, F.S., requires all captive insurers to maintain unimpaired paid-in capital of at least $500,000 and unimpaired surplus of at least $250,000. Section 628.909, F.S., further

[5] Part I of ch. 628, F.S., is entitled "STOCK AND MUTUAL INSURERS: ORGANIZATION AND CORPORATE PROCEDURES."

requires that all captive insurers are also subject to the same level of capital[6] and reserves[7] that are specified for various lines of insurance written in this state.

Section 628.903(2), F.S., defines an "industrial insured captive insurer" as a captive insurer that:

- Has as its stockholders or members only industrial insureds[8] that are insured by the captive.
- Provides insurance only to the industrial insureds that are its stockholders or members and affiliates of its parent cooperation.
- Provides reinsurance to insurers only on risks written by such insurers for the industrial insureds who are stockholders or members and affiliates of the industrial insured captive or its parent company.
- Maintains unimpaired capital and surplus of at least $20 million.

The industrial insured captive insurer must maintain unimpaired capital and surplus of at least $20 million. Other than the requirements for captive insurers and industrial insured captive insurers, current law does not delineate any other type of captive insurance.

III. Effect of Proposed Changes:

Certificate of Authority Exemptions (Section 1)

The bill amends s. 624.402, F.S., to provide an exemption from certificate of authority requirements for life and health insurers domiciled outside of the U.S. and covering only persons who, at the time of issuance or renewal, are nonresidents of the U.S. but residing legally in the U.S., if the insurer meets the following conditions:

- The insurer does not solicit business from U.S. residents.
- The insurer registers with the office.
- The insurer provides the following information to the office on annual basis:
  - Names of the owners, officers and directors and number of employees;
  - Types of products offered;
  - A statement from the applicable regulatory body of the insurer's domicile certifying that the insurer is licensed or registered in that domicile;
  - A copy of filings required by the insurer's domicile;
- The insurer is also required to include a disclosure in all certificates issued in Florida indicating that the policy has not been approved by the office.
- The insurer is required to provide written notice to the office within 30 days after ceasing operations.

Finally, the section defines a "nonresident" as a person who has not had his or her principal place of domicile in the U.S. for 180 days during the 365 days prior to purchasing or renewing the

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[6] Sections 624.407, F.S.
[7] Sections 624,408, F.S.
[8] Section 628.903(1), F.S. An industrial insured must have gross assets in excess of $50 million, at least 100 full-time employees, and pay annual premiums of at least $200,000 for each line of insurance.

policy; registered to vote in any state; made a statement of domicile in any state; or filed for homestead tax exemption on property in any state.

Captive Insurance (Sections 2-6)

The bill amends s. 628.901, F.S., which defines “captive insurer.” The bill changes the section title from “ ‘Captive insurer’ defined” to “Definitions.” It amends the definition of a “captive insurer” to mean a pure captive insurer or an association captive insurer domiciled in this state and formed or licensed under the captive insurance part of ch. 628, F.S. The bill provides that “pure captive insurer” means a company that insures the risks of its parent, affiliated companies, controlled unaffiliated businesses, or a combination thereof. “Association” is defined as a legal association of nursing homes, hospitals, skilled nursing facilities, assisted living facilities, or continuing care retirement communities. An “association captive insurer” is defined as a company that insures risks of the member organizations of the association and their affiliated companies.

The bill deletes s. 628.903, F.S., wherein the terms “industrial insured” and “industrial insured captive insurer” are currently defined, and incorporates the current definitions, without substantive change, into the amended s. 628.901, F.S.

The bill adds the following items to the information that an association captive insurer must provide in its application for a license.

- Evidence demonstrating that it intends to employ or contract with a reputable person or firm that possesses the appropriate expertise, experience, and character to manage the association captive insurer.
- If the association captive insurer operates with separate cells or segregated accounts, a certificate of insurance used to satisfy financial responsibility laws shall be issued in an amount not exceeding the total funds in the segregated accounts or separate cells of each member organization of the association.

The bill requires that a captive insurer must:

- Maintain its principal place of business in Florida; and
- Hold at least one annual meeting in Florida for, depending on the structure of the insurer, the board of directors, the subscriber’s advisory committee, or the managing board.

The bill removes the requirement that, in addition to meeting the capital and surplus requirements applicable to captive insurers, a captive insurer must also meet the same level of capital and reserves that are specified for various lines of insurance written in this state, as contained in ss. 624.407 and 624.408, F.S.

Section 7 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 substantially changes the capital and surplus requirements for captive insurers by removing the current requirement that, in addition to meeting the capital and surplus requirements applicable to captive insurers, a captive insurer must also meet the same level of capital and reserves that are specified for various lines of insurance written in this state, as contained in ss. 624.407 and 624.408, F.S. This could make it less costly to create a captive insurer and may allow a captive to provide coverage at a lower premium. This provision may also have an impact on the level of assurance that a captive insurer is able to meet its claims obligations.

The bill exempts health and health insurers domiciled outside of the U.S. covering only persons who, at the time of issuance or renewal, are nonresidents of the U.S. but residing legally in the U.S. if the insurer meets the certain conditions. Presently, life insurance policies or annuity contracts sold to nonresidents are able to be exempt from regulation by the office, if conditions that are more stringent are met. These provisions will allow nonresident consumers access to additional insurance coverage.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The original filed bill and the committee substitute bill are entitled, “An act relating to captive insurance.” However, the committee substitute bill addresses three subject areas, namely captive insurance, life insurance, and health insurance.

VII. Related Issues:

The bill prohibits a captive insurer, except an industrial captive insurer, from insuring any risk other than those of its parent or affiliated companies. The bill defines a "captive insurer" to be a pure captive insurer or an association captive insurer. The bill defines a pure captive insurer as a company that insures the risks of its parent, affiliated companies, *controlled unaffiliated businesses*, or a combination thereof. The bill does not define "controlled unaffiliated business."

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Banking and Insurance Committee on April 5, 2011:
The original bill defined seven new types of captive insurance that do not exist in current law and specified new filing requirements, fees, capital requirements, surplus requirements, reporting requirements, loss reserve provisions, stock conversion and merger provisions, and other provisions for the new types of captive insurers. The bill retains two of the newly defined types of captive insurance: association captive insurer and pure captive insurer. The CS definition for pure captive insurer remains the same as that in the original bill, but the CS narrows considerably the definition of "association."

The bill exempts life and health insurers domiciled outside of the U.S. covering only persons who, at the time of issuance or renewal, are nonresidents of the U.S. but residing legally in the U.S. if the insurer meets the certain conditions.

B. Amendments:

None.

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LEGISLATIVE ACTION

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

Senate Amendment (with title amendment)

Between lines 604 and 605 insert:

Section 15. Section 493.6120, Florida Statutes, is amended to read:

493.6120 Violations; penalty.—

(1)(a) Except as provided in paragraph (c), a person who engages in any activity for which this chapter requires a license and who does not hold the required license commits a misdemeanor of the first degree, punishable as provided in s.

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775.082 or s. 775.083.

(b) A second or subsequent violation of paragraph (a) is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and the department may seek the imposition of a civil penalty not to exceed $10,000.

(c) Paragraph (a) does not apply if the person engages in unlicensed activity within 90 days after the date of the expiration of his or her license.

(2)(a) A person who, while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under this chapter, knowingly and intentionally forces another person to assist the impersonator in an activity within the scope of duty of a professional licensed under this chapter commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who violates paragraph (a) during the course of committing a felony commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A person who violates paragraph (a) during the course of committing a felony that results in death or serious bodily injury to another human being commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) ~~(1)~~ Any person who violates any provision of this chapter except s. 493.6405, subsection (1), or subsection (2) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) ~~(2)~~ Any person who is convicted of any violation of this

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chapter is ~~shall~~ not ~~be~~ eligible for licensure for a period of 5 years.

(5) ~~(3)~~ Any person who violates or disregards any cease and desist order issued by the department commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In addition, the department may seek the imposition of a civil penalty not to exceed $5,000.

(6) ~~(4)~~ Any person who was an owner, officer, partner, or manager of a licensed agency at the time of any activity that is the basis for revocation of the agency or branch office license and who knew or should have known of the activity, shall have his or her personal licenses or approval suspended for 3 years and may not have any financial interest in or be employed in any capacity by a licensed agency during the period of suspension.

Section 16. Protecting critical infrastructure facilities.—

(1) A licensed security officer who possesses a valid Class “G” license, or a licensed security agency manager who possesses a valid Class “G” license, who is on duty, in uniform, providing security services on the premises of a critical infrastructure facility, and has probable cause to believe that a person has committed or is committing a crime against the licensed security officer’s client or patrons thereof, may temporarily detain the person for the purpose of ascertaining his or her identity and the circumstances of the activity that is the basis for the temporary detention. The security officer may detain the person in a reasonable manner until the responding law enforcement officer arrives at the premises of the client and is in the presence of the detainee.

(2) When temporarily detaining a person, the licensed

security officer or security agency manager shall notify the appropriate law enforcement agency as soon as reasonably possible. Temporary detention of a person by a licensed security officer or security agency manager must be done solely for the purpose of detaining the person before the arrival of a law enforcement officer. Custody of any person being temporarily detained shall be immediately transferred to the responding law enforcement officer.

(3) A licensed security officer or security agency manager may not detain a person under this section after the arrival of a law enforcement officer unless the law enforcement officer requests the security officer to continue detaining the person. The responsibilities of the licensed security officer or security agency manager do not extend beyond the place where the person was first detained or in the immediate vicinity.

(4) A person may not be temporarily detained under this section longer than is reasonably necessary to effect the purposes of this section.

(5) If a licensed security officer or security agency manager while detaining a person pursuant to this section observes that the person temporarily detained is armed with a firearm, concealed weapon, or any destructive device that poses a threat to the safety of the security officer or any person for whom the security officer is responsible for providing protection, or the detainee admits to having a weapon in his or her possession, the security officer or security agency manager may conduct a search of the person and his or her belongings only to the extent necessary for the purpose of disclosing the presence of a weapon. If the search reveals such a weapon, the

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weapon shall be seized and transferred to the responding law enforcement officer.

(6) As used in this section, the term "critical infrastructure facility" means any one of the following, if it employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized personnel and is determined by a state or federal authority to be so vital to the state that the incapacity or destruction of the facility would have a debilitating impact on security, state economic stability, state public health or safety, or any combination of those matters:

(a) A chemical manufacturing facility;

(b) A refinery;

(c) An electrical power generating facility, substation, switching station, electrical control center, or electrical transmission or distribution facility;

(d) A water intake structure, water treatment facility, wastewater treatment plant, or pump station;

(e) A natural gas transmission compressor station;

(f) A liquid natural gas terminal or storage facility;

(g) A telecommunications central switching office;

(h) A deep water seaport or railroad switching yard; or

(i) A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.

(7) Class "D" and Class "MB" licensees shall perform duties regulated under this section in a uniform that bears at least one patch or emblem visible at all times clearly identifying the employing agency.

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

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And the title is amended as follows:

Between lines 50 and 51

insert:

amending s. 493.6120, F.S.; providing that a person who engages in any activity for which ch. 493, F.S., requires a license, but acts without having a license, commits a misdemeanor of the first degree; providing that a person commits a felony of the third degree for a second or subsequent offense of engaging in activities without a license; authorizing the Department of Agriculture and Consumer Services to impose a civil penalty not to exceed a specified amount; providing that penalties do not apply if the person engaged in unlicensed activity within 90 days after the expiration date of the person's license; providing that a person who, while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under ch. 493, F.S., knowingly and intentionally forces another person to assist the impersonator in an activity within the scope of duty of a professional licensed under ch. 493, F.S., commits a felony of the third degree; providing that a person who impersonates a security officer or other designated officer during the commission of a felony commits a felony of the second degree; providing that a person who impersonates a security officer or other designated officer during the commission a felony that results in death or serious bodily injury to another human being

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commits a felony of the first degree; authorizing a licensed security officer or a licensed security agency manager to detain a person on the premises of a critical infrastructure facility if the security officer has probable cause to believe that the person has committed or is committing a crime and for the purpose of ascertaining the person's identity and the circumstances of the activity that is the basis for the temporary detention; providing that the person may be detained until a responding law enforcement officer arrives at the critical infrastructure facility; requiring the security officer to notify the law enforcement agency as soon as possible; requiring that custody of any person temporarily detained be immediately transferred to the responding law enforcement officer; prohibiting a licensed security officer or security agency manager from detaining a person after the arrival of a law enforcement officer unless the law enforcement officer requests the security officer to assist in detaining the person; authorizing the security officer to search the person detained if the security officer observes that the person temporarily detained is armed with a firearm, concealed weapon, or any destructive device that poses a threat to the safety of the security officer, or the detainee admits to the security officer that he or she is armed with a weapon; requiring the security officer to seize any weapon discovered and transfer the weapon to the responding law enforcement officer; defining

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the term “critical infrastructure facility”; providing identification requirements for licensed security officers;

188670

LEGISLATIVE ACTION

Senate	.	House
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	.	
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The Committee on Budget Subcommittee on General Government Appropriations (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1054 - 1061
and insert:

Section 31. Paragraph (b) of subsection (1) and subsection (8) of section 501.160, Florida Statutes, is amended to read:

501.160 Rental or sale of essential commodities during a declared state of emergency; prohibition against unconscionable prices.—

(1) As used in this section:

(b) It is prima facie evidence that a price is unconscionable if:

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1. The amount charged represents a gross disparity between the price of the commodity or rental or lease of any dwelling unit or self-storage facility that is the subject of the offer or transaction and the average price at which that commodity or dwelling unit or self-storage facility was rented, leased, sold, or offered for rent or sale in the usual course of business during the 30 days immediately prior to a declaration of a state of emergency, unless ~~and~~ the increase in the amount charged is ~~not~~ attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of any dwelling unit or self-storage facility, or regional, national or international market trends; or

2. The amount charged grossly exceeds the average price at which the same or similar commodity was readily obtainable in the trade area during the 30 days immediately prior to a declaration of a state of emergency, unless ~~and~~ the increase in the amount charged is ~~not~~ attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of any dwelling unit or self-storage facility, or regional, national or international market trends.

(8) Any violation of this section may be enforced by the ~~Department of Agriculture and Consumer Services, the~~ office of the state attorney~~,~~ or the Department of Legal Affairs.

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

And the title is amended as follows:

Delete line 100

and insert:

declared state of emergency; authorizing regional

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comparison with respect to market trends; amending s. 501.605,

202956

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Budget Subcommittee on General Government Appropriations (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Between lines 1100 and 1101
insert:

Section 34. Subsection (2) of section 525.01, Florida Statutes, is amended to read:

525.01 Gasoline and oil to be inspected.—

(2) All petroleum fuels are ~~shall be~~ subject to inspection and analysis by the department. Before selling or offering for sale in this state any petroleum fuel, all manufacturers, terminal suppliers, wholesalers, and importers as defined in s. 206.01 ~~jobbers~~ shall file with the department:

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(a) An affidavit stating that they desire to do business in this state, and the name and address of the manufacturer of the petroleum fuel.

(b) An affidavit stating that the petroleum fuel is in conformity with the standards prescribed by department rule.

Section 35. Section 526.06, Florida Statutes, is amended to read

526.06 Mixing, blending, compounding, or adulteration of liquid fuels of same manufacturer prohibited~~; sale of gasoline blended with ethanol.~~ A ~~It is unlawful for any~~ person may not ~~to~~ mix, blend, compound, or adulterate the liquid fuel, lubricating oil, grease, or similar product of a manufacturer or distributor with a liquid fuel, lubricating oil, grease, or similar product of the same manufacturer or distributor of a character or nature different from the character or nature of the liquid fuel, lubricating oil, grease, or similar product so mixed, blended, compounded, or adulterated, and expose for sale, offer for sale, or sell the same as the unadulterated product of such manufacturer or distributor or as the unadulterated product of any other manufacturer or distributor. However, ~~nothing in~~ this chapter does not ~~shall be construed to~~ prevent the lawful owner of such products from applying his, her, or its own trademark, trade name, or symbol to any product or material. ~~Ethanol-blended fuels which contain unleaded gasoline and up to 10 percent denatured ethanol by volume may be sold at retail service stations for use in motor vehicles. To provide retail service stations flexibility during the transition period to ethanol-blended fuels, the T50 and TV/L specifications for gasoline containing between 9 and 10 percent ethanol shall be~~

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~~applied to all gasoline containing between 1 and 10 percent ethanol by volume provided the last three or fewer deliveries contained between 9 and 10 percent ethanol by volume. If there is no reasonable availability of ethanol or the price of ethanol exceeds the price of gasoline, the T50 and TV/L specifications for gasoline containing between 9 and 10 percent ethanol shall be applicable for gasoline containing between 1 and 10 percent ethanol for up to three deliveries of fuel.~~

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

And the title is amended as follows:

Delete line 107

and insert:

application as a salesperson; amending s. 525.01, F.S.; revising requirements for petroleum fuel affidavits; amending s. 526.06, F.S.; revising prohibited acts related to certain mixing, blending, compounding, or adulterating of liquid fuels; deleting certain provisions authorizing the sale of ethanol-blended fuels for use in motor vehicles; amending s. 539.001,

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1916

INTRODUCER: Commerce and Tourism Committee and Senator Detert

SUBJECT: Department of Agriculture and Consumer Services

DATE: April 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McCarthy	Cooper	CM	**Fav/CS**
2.	Blizzard	DeLoach	BGA	**Pre-meeting**
3.			BC	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill changes the name of the Division of Consumer Services within the Department of Agriculture and Consumer Services (department) to the Division of Consumer Protection. The bill deletes the authority for the department to enforce the prohibition against unconscionable prices relating to the rental or sale of essential commodities during a declared state of emergency (also known as the statutory "Price Gouging" restriction). The bill transfers department responsibilities under the Motor Vehicle Warranty Enforcement Act (or "Lemon Law") to the Attorney General.

The bill requires applicants for certain licenses to meet the following citizenship and residency qualifications.

- Applicants for an armed security guard or firearms instructor license must be a U.S. citizen or permanent legal resident alien. An applicant who is a permanent resident alien must also provide proof that the applicant has resided in the state of residence shown on the application for at least 90 consecutive days before the date the application is submitted.

- Applicants for a security guard, private investigator, or recovery agent license must be a U.S. citizen or permanent resident alien or submit proof of current employment authorization issued by the U.S. Citizenship and Immigration Services.

The bill extends the Class "K" firearms instructor license period from two to three years.

Consistent with other licensing and registration provisions in chapter 501, Florida Statutes, this bill removes the requirement to provide a social security number for licenses and registration through the department, consistent with the restrictions imposed by the Federal Privacy Act. In lieu of a social security number, the bill requires commercial telephone sellers[1] and telemarketing salespersons,[2] to provide "other valid form of identification."

This bill also deletes the requirement that the seller of a business opportunity, registered under chapter 559, Florida Statutes, provide the social security numbers of the seller's agents to the department.

The bill makes technical and conforming changes to the current law relating to licenses for security guards, private investigators, and recovery agents.

Consolidation of the Lemon Law and Price Gouging Programs into the Department of Legal Affairs provides a recurring cost savings of $386,415 in the General Inspection Trust Fund within the Department of Agriculture and Consumer Services. In addition, implementation of this bill provides a recurring general revenue savings of $58,667. Recurring revenues within the General Inspection Trust Fund will be reduced by $248,617.

This bill substantially amends the following sections of the Florida Statutes: 14.26, 20.14, 213.053, 320.275, 320.90, 366.85, 493.6105, 493.6106, 493.6107, 493.6108, 493.6111, 493.6113 493.6115, 493.6118, 493.6121, 493.6202, 493.6203, 493.6302, 493.6303, 493.6304, 493.6401, 493.6402, 493.6406, 496.404, 496.411, 496.412, 496.419, 501.015, 501.017, 501.145, 501.160, 501.605, 501.607, 539.001, 559.805, 559.904, 559.928, 559.935, 570.29, 570.544, 681.102, 681.103, 681.108, 681.109 681.1095, 681.1096, 681.112, 681.117, and 849.0915.

II. Present Situation:

Price Gouging

Section 501.160, F.S., governs the the rental or sale of essential commodities during a declared state of emergency and provides a prohibition against unconscionable prices, also known as price gouging. This statute requires the department, the office of the state attorney, or the Department of Legal Affairs to enforce the provisions of this section.[3]

[1] Section 501.605, F.S.
[2] Section 501.607, F.S.
[3] Section 501.160(8), F.S.

Lemon Law

Section 681.10, F.S., is the Florida “Motor Vehicle Warranty Enforcement Act” (act). The intent of this act is that a good faith motor vehicle warranty complaint by a consumer be resolved by the manufacturer within a specified period of time; however, it is not the intent of the Legislature that a consumer establish the presumption of a reasonable number of attempts as to each manufacturer that provides a warranty directly to the consumer. The act provides the statutory procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, for a motor vehicle which cannot be brought into conformity with the warranty provided for in this chapter.[4]

Private Security, Private Investigative, and Recovery Services

The Division of Licensing of the Department of Agriculture and Consumer Services is responsible for the regulation of licensing of private security, private investigative and recovery services, and firearms instructors as well as the agencies and schools who provide training for these groups.[5]

A **security officer** is defined as:

> any individual who, for consideration, advertises as providing or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof. The term also includes armored car personnel and those personnel engaged in the transportation of prisoners.[6]

A “**private investigator**” is defined as “any individual who, for consideration, advertises as providing or performs private investigation.”[7] Private investigation is defined as an investigation to obtain information on any of the following matters:

- Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.
- The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
- The credibility of witnesses or other persons.

[4] Section 681.101, F.S.

[5] Chapter 493, F.S. Regulating private investigative, private security, and recovery industries was assigned to the Department of State in 1965. In 2002, the Division of Licensing of the Department of State was transferred to the Department of Agriculture and Consumer Services, including the Concealed Weapons Permit Program. See ss. 1, 3-10, ch. 2002-295, L.O.F.

[6] Section 493.6101(19), F.S.

[7] Section 493.6101(16), F.S.

- The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates.
- The location or recovery of lost or stolen property.
- The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property.
- The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation therefore.[8]

A "**recovery agent**" is defined as "any individual who, for consideration, advertises as providing or performs repossessions."[9] "Recovery agency" is defined as "any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions."[10] "Repossession" means recovery of motor vehicles, motor boats, airplanes, personal watercraft, all-terrain vehicles, farm equipment, industrial equipment, and motor homes:

> "…by an individual who is authorized by the legal owner, lienholder, or lessor to recover, or to collect money payment in lieu of recovery of, that which has been sold or leased under a security agreement that contains a repossession clause."[11]

Certain individuals are exempt from the licensing requirements for private security and private investigative services. These include local, state, and federal law enforcement officers, licensed insurance investigators and individuals solely, exclusively, and regularly employed as unarmed investigators and security officers "in connection with the business of his or her employer, when there exists an employer-employee relationship."[12]

Florida law establishes criteria for granting licenses for security, private investigative, and repossession services. Individuals seeking a license must clear a criminal background check as well as meet specific training and experience requirements, which vary by the type of license. In addition, the applicant must:

- Be at least 18 years of age;
- Be of good moral character;
- Not be adjudicated incapacitated;
- Not be a chronic and habitual user of alcoholic beverages to the extent normal facilities are impaired;
- Not have been committed for abuse of controlled substances or found guilty of a crime under ch. 893, F.S.; and
- Be a citizen or legal resident alien of the U.S or have been granted authorization to seek employment in this country by the United States Bureau of Citizenship and Immigration Services.[13]

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[8] Section 493.6101(17), F.S.
[9] Section 493.6101(21), F.S.
[10] Section 493.6101(20), F.S.
[11] Section 493.6101(22), F.S.
[12] Section 493.6102(1)-(4), F.S.
[13] Section 493.6106(1), F.S.

Aliens

A Permanent Resident Alien is an alien admitted to the United States as a lawful permanent resident. Permanent residents are also commonly referred to as immigrants; however, the Immigration and Nationality Act (INA) broadly defines an immigrant as any alien in the United States, except one legally admitted under specific nonimmigrant categories.[14] An illegal alien who entered the United States without inspection, for example, would be strictly defined as an immigrant under the INA but is not a permanent resident alien.[15]

Non-permanent resident aliens are citizens of another country who reside in the U.S. under a Conditional Resident Alien Card, Temporary Resident Card, work visa, student visa or some other permit for some specified period of time.

However, there are more than 75 classifications of nonimmigrant visas – each based on the reason for entering the United States and having different terms of admission. The U. S. Citizenship and Immigration Services data further indicates that in 2004, the United States received almost 173 million nonimmigrant visits.[16]

License Classifications

Chapter 493, F.S., provides for the following classification of licenses issued by the Division of Licensing of the department:[17]

PRIVATE INVESTIGATION	
Agency	Class “A”
Private Investigator	Class “C”
Armed Private Investigator	Class “C” & Class “G”
Branch Office	Class “AA”
Manager	Class “C” or Class “MA” or Class “M”
Intern	Class “CC”
PRIVATE SECURITY	
Agency	Class “B”
Security Officer	Class “D”
Armed Security Officer	Class “D” & Class “G”
Branch Office	Class “BB”
Manager	Class “MB” or Class “M”
REPOSSESSION ACTIVITY	
Agency	Class “R”
Recovery Agent	Class “E”
Branch Office	Class “RR”
Manager	Class “MR” or Class “E”
Intern	Class “EE”

[14] INA section 101(a)(15)
[15] See http://www.visaportal.com/glossary/term.asp?id=45.
[16] U.S. Citizenship and Immigration Services, Temporary Migration to the United States: Nonimmigrant Admissions Under U. S. Immigration Law, January 2006.
[17] See. 5N-1.116(1), F.A.C.

COMBINED PRIVATE INVESTIGATION AND SECURITY	
Agency	Class “A” & Class “B”
Branch Office	Class “AB”
Manager	Class “M”
SCHOOLS	
Security Officer School or Training Facility	Class “DS”
Security Officer Instructor	Class “DI”
Recovery Agent School or Training Facility	Class “RS”
Recovery Agent Instructor	Class “RI”
FIREARMS	
Instructor	Class “K”
Statewide Firearm License	Class “G”
MANAGERS	
Private Investigative Agency or Branch	Class “C”, “MA”, or “M”
Private Security Agency or Branch	Class “MB” or “M”
Recovery Agency or Branch	Class “E” or “MR”
Armed Manager	Appropriate Manager’s License and Class “G

Class G or K Licenses

In addition to the general application requirements, applicants for a Class “G” statewide firearms license or a Class “K” firearms instructor, must satisfy minimum training criteria for firearms. However, the department can waive this requirement for a Class “K” license if the applicant can show proof that he or she is an active law enforcement officer currently certified under the Criminal Justice Standards and Training Commission or has completed the training required for that certification within the last 12 months, or if the applicant submits one of the following certificates.

- The Florida Criminal Justice Standards and Training Commission Firearms Instructor’s Certificate;
- The National Rifle Association Police Firearms Instructor’s Certificate;
- The National Rifle Association Security Firearms Instructor’s Certificate; or
- A Firearms Instructor’s Certificate from a federal, state, county, or municipal police academy in this state recognized as such by the Criminal Justice Standards and Training Commission or by the Department of Education.

III. Effect of Proposed Changes:

Sections 1 through 4, 6, **24 through 26, 39, 40, and 49** change references to the Division of Consumer *Services* within the Department of Agriculture and Consumer Services to the Division of Consumer *Protection*, within the following statutes.

- Section 14.26, Citizen’s Assistance Office
- Section 20.14, Department of Agriculture and Consumer Services
- Section 213.053, Confidentiality and information sharing
- Sections 320.275, Automobile Dealers Industry Advisory Board

- Section 366.85, Responsibilities of Division of Consumer Services
- Sections 496.404, 496.412, 496.411, Solicitation of Funds
- Section 570.29, 570.544, Department of Agriculture and Consumer Services
- Section 849.0915, Referral Selling

Section 5 amends s. 320.90, F.S., to delete the requirement that the department distribute, upon request and free of charge, a "motor vehicle consumer rights pamphlet" developed by the Department of Highway Safety and Motor Vehicles.

Section 7 amends s. 493.6105, F.S., to change application requirements for security, private investigator, or recovery licenses, and the related businesses or schools.

The section also amends current law by deleting the requirement that an application be notarized and requires that it be verified by the applicant under oath as provided in s. 92.525, F.S.

In lieu of the applicant providing his residence addresses for the 5 years immediately preceding the submission of the application, and the list of occupations over the same period, the applicant will only be required to submit their current residence address and mailing address.

Consistent with applications for other categories of licensees, this section reduces from two to one the number of photographs applicants for private investigator, private investigator intern, recovery agent, recovery agent intern, statewide firearms license (Class "C," "CC," "E", "EE," "G"), must supply with their application.

This section expands the amount of information related to previous convictions that applicants must submit for licensure. For all licenses the statement of all criminal convictions must include all criminal convictions, findings of guilt, and pleas of guilty or nolo contendere, regardless of adjudication of guilt. An applicant for a Class "G" statewide firearms license or a Class "K" firearms instructor license who is younger than 24 years of age must also include a statement regarding any finding of having committed a delinquent act in any state, territory, or country which would be a felony if committed by an adult and which is punishable by imprisonment for a term exceeding 1 year.

The section also clarifies the need for confirmation from the Florida Criminal Justice Standards and Training Commission that the applicant possesses an active firearms instructor certification if that document has been submitted by the applicant with the application.

Section 8 amends s. 493.6106, F.S., as it relates to citizenship and residency qualifications for all licenses for security guard, private investigator, and recovery agents, to include related businesses and schools, to require all applicants be either a citizen or a permanent legal resident alien of the U.S. or have appropriate authorization issued by the United States Citizenship and Immigration Services of the United States Department of Homeland Security.

A new provision is created to require individual licensees – not businesses or schools – to require applicants who are not U.S. citizens to provide proof of current employment authorization or proof that they are a permanent resident alien. These individual licenses include:

- Class “C” - Private Investigator
- Class “CC” - Private Investigator Intern
- Class “D” - Security Officer
- Class “DI” - Security Officer Instructor
- Class “E” - Recovery Agent
- Class “EE” - Recovery Agent Intern
- Class “M’- Combined Private Investigator and Security Manager
- Class “MA” - Private Investigative Agency or Branch
- Class “MB” - Private Security Manager
- Class “MR” - Manager Recovery Agency or Branch
- Class “RI” - Recovery Agent Instructor

This section also requires applicants for a Class “G’ statewide firearms license or a Class“K” firearms instructor license who are not a U.S. citizen to submit proof that he or she is deemed a permanent legal resident alien together with additional documentation establishing that he or she has resided in the state shown on the application for at least 90 consecutive days before the date that the application is submitted.

In addition, an applicant for an agency or school license who is not a U.S. citizen or permanent resident alien is required to submit documentation issued by the U.S. citizenship and Immigration Servies stating that he or she is lawfully in the U.S. and is authorized to own and operate the type of agency or school for which he or she is applying.

Finally, an applicant will be denied licensure for a Class “G” statewide firearms license, or Class “K’ firearms instructor license, if he or she is otherwise prohibted from purchasing or possessing a firearm under federal or state law.

Section 9 amends s. 493.6107, F.S., to allow the department to accept personal checks or funds by electronic transfer in payment of application fees when the application is approved, except for applicants for Class “G” statewide firearms license and Class “M” manager license who must pay the fee when the application is made.

Section 10 amends s. 493.6108, F.S., to make technical corrections and adds the requirement that the department must investigate the mental history and current mental and emotional fitness of any Class “K” firearms instructor license application before it may issue a license. It also authorizes the department to deny a Class “K” firearms instructor license to anyone who has a history of mental illness or drug or alcohol abuse.

Section 11 amends s. 493.6111(2), F.S., to extend the license period for a Class “K” firearms instructor licensee from two to three years.

Section 12 deletes the requirement that a Class “A” or Class “R” licensee submit certification of insurance with their renewal application pursuant to s. 493.6110, F.S. This is a correction to make s. 493.6113, F.S., match the requirement in s. 493.6110, F.S.

This section also provides that each Class “K” firearms instructor licensee renewing his license must provide proof that he remains certified to provide firearms instruction.

Section 13 corrects a cross-reference in s. 493.6115, F.S, necessitated by changes made in Section 7 of the bill.

Section 14 amends s. 493.6118(1), F.S., to establishe grounds for disciplinary action for a Class “G” statewide firearms licensee or a Class “K” firearms instructor licensee who is prohibited from purchasing or possessing a firearm by state or federal law.

Section 15 deletes s. 493.6121(6), F.S., which is a reference to an obsolete a program operated by Florida Department of Law Enforcement for providing criminal history record information.

Section 16 amends s. 493.6202, F.S., to allow the department to accept personal checks and electronic funds transfers for application fees at the time the application is approved except that the application for a Class “G” statewide firearms license, Class “C” Private Investigator, Class “CC” Private Investigator Intern, Class “M” manager, or Class “MA” manager license must pay the license fee at the time the application is made.

Section 17 amends s. 493.6203, F.S., to specify that experience in performing bodyguard services is not creditable toward the rquirements to become a private investigator.

This section also requires that all professional training required for a Class “CC” Private Investigator Intern license be completed before submission of an application to the department, effective January 1, 2012. In addition, it makes provisions for those applicants who apply between the effective date of this bill and of this section.

Section 18 amends s. 493.6302, F.S., to allow for payment of application fees by personal check or electronic funds transfer at the time the application is approved except that the applicant of a Class “D” Security Officer, Class “G” statewide firearms license, Class “M,” or Class “MB” Private Secruity Agency or Branch license must pay the license fee at the time the application is made.

Section 19 amends s. 493.6303, F.S., to require that all professional training required for a Class “D” Security Officer license be completed before submission of an application to the department, effective January 1, 2012. In addition, it makes provisions for those applicants who apply between the effective date of this bill and of this section.

Section 20 amends s. 493.6304, F.S., to delete the requirement that an application for the security officer school be notarized and instead require that it be verified by the applicant under oath as provided in s. 92.525, F.S.

Section 21 amends s. 493.6401, F.S., to replace the term “repossessor” with “recovery agent” school or training facility, consistent with other provisions in the chapter.

Section 22 amends s. 493.6402, F.S., to replace the term “license repossessor” with “license-recovery agent,” consistent with other provisions in this section. The section is also amended to allow the department to accept personal checks and electronic funds transfers for applications when they are approved except for a Class “E” Recovery Agent, Class “EE,” or Class “MR,” license that must pay at the time application is made.

Section 23 amends s. 493.6406, F.S., to replace the term “repossessor services” with “recovery agent services,” consistent with other provisions in the chapter. This section also deletes the requirement that an application for a recovery agent be notarized and instead requires that the application be verified by the applicant under oath as provided in s. 92.525, F.S.

Section 27 amends s. 496.419, F.S., to change the action of the department from “canceling” to “revoking” an exemption granted under s. 496.406, F.S., for registration relating to the soliciation of funds. This change reflects the nomenclature preferred by the department.

Section 28 amends s. 501.015, F.S., to replace the obsolete reference to “occupational license” with “business tax receipt.”

Section 29 amends s. 501.017, F.S., relating to health studios, to clarify the size of the type to be used in the contract.

Section 30 amends s. 501.145, F.S., relating to the Bedding Label Act, to delete an unnecessary definition for “department,” which is not used in the act.

Section 31 amends s. 501.160, F.S., to delete authority for the department to enforce the the prohibition against unconscionable prices relating to the rental or sale of essential commoditites during a declared state of emegency (also known as the statutory “Price Gouging” restriction).

Section 32 amends s. 501.605, F.S., to delete a requirement that commercial telephone sellers provide their social security number to the department as part of the application and requires instead that another valid form of identification be provided. This is consistent with other licensing and registration provisions in ch. 501, F.S.

Section 33 amends s. 501.607, F.S., to delete a requirement that a salesperson submit, as part of their application for a license, their social security number, and requires instead that another valid form of identification be provided. This is consistent with other licensing and registration provisions in ch. 501, F.S.

Section 34 amends s. 539.001, F.S., to replace the obsolete reference to “occupational license” with “business tax receipt.”

Section 35 amends s. 559.805, F.S., to clarify provisions relating to advertisements by sellers of travel, and to delete the requirement that the social security number of the registered agents of a seller of a business opportunity be on file with the department.

Section 36 amends s. 559.904, F.S., to replace the obsolete reference to “occupational license” with “business tax receipt.”

Section 37 amends s. 559.928, F.S., to replace the obsolete reference to "occupational license" with "business tax receipt."

Section 38 amends s. 559.935, F.S., to replace the obsolete reference to "occupational license" with "business tax receipt."

Sections 41 through 48 transfer the department responsibilities for enforcement of the Motor Vehicle Warranty Enforcement Act (or Lemon Law) to the Attorney General. The following sections of the statutes are amended to effect this change: 681.102, 681.103, 681.108, 681.109, 681.1095, 681.1096, 681.112, and 681.117 F.S.

Section 45 amends s. 681.1095, F.S., to decrease from 30 to 15 the number of days the appealing party has in which to provide a copy of the settlement or the order or judgment of the court to the department. This section also authorizes the Department of Legal Affair to adopt rules to administer this section.

Section 46 amends s. 681.1096, F.S., to correct a cross-reference, necessitated by changes made in Section 41 of the bill.

Section 50 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 extension of the license period from two to three years for a Class "K" firearms instructor license will reduce the fees generated by the department by approximately $5,200 in the Division of Licensing Trust Fund in fiscal year 2011-2012.[18]

The current consumer fee of $2 collected from motor vehicle dealers for administration of the Lemon Law will continue to be deposited into the Motor Vehicle Warranty Trust Fund within the DLA. One-fourth of this fee will no longer be transferred from the

[18] DACS analysis dated March 22, 2011, on file with the Senate Commerce and Tourism Committee.

Motor Vehicle Warranty Trust Fund within the DLA to the General Inspection Trust Fund within the DACS for services performed to carry out the Lemon Law.

B. Private Sector Impact:

The bill reduces the renewal costs to licensees by extending the class "K" firearms instructor license period from two to three years.

C. Government Sector Impact:

Lemon Law and Price Gouging

Consolidation of the Lemon Law and Price Gouging Programs into the Department of Legal Affairs provides a recurring cost savings of $386,415 in the General Inspection Trust Fund within the DACS. In addition, implementation of this bill provides a recurring general revenue savings of $58,667. Recurring revenues within the General Inspection Trust Fund will be reduced by $248,617.

Private Security, Investigative and Recover Services

The department will incur fewer administrative costs with respect to changes made to ch. 493, F.S., in that applicants will have to complete their training before they apply for a license. This eliminates the processing of numerous suspensions that took effect by operation of law due to licensees not meeting their training requirements, as specified under current law.

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 Commerce and Tourism Committee on March 29, 2011:
The CS amends:

- s. 320.90, F.S., to delete the requirement that the Department of Agriculture and Consumer Services (DACS) distribute, upon request and free of charge, a "motor vehicle consumer rights pamphlet" developed by the Department of Highway Safety and Motor Vehicles;
- s. 559.928., F.S. to replace the obsolete reference to "occupational license" with "business tax receipt," and to delete the requirement that the social security number of the registered sellers of travel be submitted to DACS on the required annual affidavit;

- s. 559.935, F.S., to replace the obsolete reference to "occupational license" with "business tax receipt"; and
- s. 570.29, F.S., to change references to the Division of Consumer *Services* to the Division of Consumer *Protection.*

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Budget Subcommittee on General Government Appropriations (Hill) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (2) of section 20.14, Florida Statutes, is amended to read:

20.14 Department of Agriculture and Consumer Services.—There is created a Department of Agriculture and Consumer Services.

(2) The following divisions of the Department of Agriculture and Consumer Services are established:

(a) Administration.

(b) Agricultural Environmental Services.

(c) Animal Industry.

(d) Aquaculture.

(e) Consumer Services.

~~(f) Dairy Industry.~~

(f) ~~(g)~~ Food Safety.

(g) ~~(h)~~ Forestry.

(h) ~~(i)~~ Fruit and Vegetables.

(i) ~~(j)~~ Licensing.

(j) ~~(k)~~ Marketing and Development.

(k) ~~(l)~~ Plant Industry.

(l) ~~(m)~~ Standards.

Section 2. Subsection (5) of section 193.461, Florida Statutes, as amended by section 1 of chapter 2010-277, Laws of Florida, is amended to read:

193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.—

(5) For the purpose of this section, "agricultural purposes" includes, but is not limited to, horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used principally for the production of tropical fish; aquaculture; sod farming; and all forms of farm products, as defined in s. 823.14(3)(c), and farm production.

Section 3. Subsection (2) of section 215.981, Florida Statutes, is amended to read:

215.981 Audits of state agency direct-support organizations and citizen support organizations.—

(2) Notwithstanding the provisions of subsection (1),

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direct-support organizations and citizen support organizations for the Department of Environmental Protection or direct-support organizations and citizen support organizations for the Department of Agriculture and Consumer Services which ~~that~~ are not for profit and which ~~that~~ have annual expenditures of less than $300,000 are not required to have an independent audit. The department shall establish accounting and financial management guidelines for those organizations under the department's jurisdiction. Each year, the department shall conduct operational and financial reviews of a selected number of direct-support organizations or citizen support organizations which fall below the audit threshold established in this subsection.

Section 4. Paragraph (b) of subsection (2) of section 253.02, Florida Statutes, is amended to read:

253.02 Board of trustees; powers and duties.—

(2)

(b) The authority of the board of trustees to grant easements for rights-of-way over, across, and upon uplands the title to which is vested in the board of trustees for the construction and operation of electric transmission and distribution facilities and related appurtenances is hereby confirmed. The board of trustees may delegate to the Secretary of Environmental Protection the authority to grant such easements on its behalf. All easements for rights-of-way over, across, and upon uplands the title to which is vested in the board of trustees for the construction and operation of electric transmission and distribution facilities and related appurtenances which are approved by the Secretary of

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Environmental Protection pursuant to the authority delegated by the board of trustees shall meet the following criteria:

1. Such easements shall not prevent the use of the state-owned uplands adjacent to the easement area for the purposes for which such lands were acquired and shall not unreasonably diminish the ecological, conservation, or recreational values of the state-owned uplands adjacent to the easement area.

2. There is no practical and prudent alternative to locating the linear facility and related appurtenances on state-owned upland. For purposes of this subparagraph, the test of practicality and prudence shall compare the social, economic, and environmental effects of the alternatives.

3. Appropriate steps are taken to minimize the impacts to state-owned uplands. Such steps may include:

a. Siting of facilities so as to reduce impacts and minimize fragmentation of the overall state-owned parcel;

b. Avoiding significant wildlife habitat, wetlands, or other valuable natural resources to the maximum extent practicable; or

c. Avoiding interference with active land management practices, such as prescribed burning.

4. Except for easements granted as a part of a land exchange to accomplish a recreational or conservation benefit or other public purpose, in exchange for such easements, the grantee pays an amount equal to the market value of the interest acquired. In addition, for the initial grant of such easements only, the grantee shall provide additional compensation by vesting in the board of trustees fee simple title to other available uplands that are 1.5 times the size of the easement

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acquired by the grantee. The Secretary of Environmental Protection shall approve the property to be acquired on behalf of the board of trustees based on the geographic location in relation to the land proposed to be under easement and a determination that economic, ecological, and recreational value is at least equivalent to the value of the lands under proposed easement. Priority for replacement uplands shall be given to parcels identified as inholdings and additions to public lands and lands on a Florida Forever land acquisition list. However, if suitable replacement uplands cannot be identified, the grantee shall provide additional compensation for the initial grant of such easements only by paying to the lead manager of the state-owned lands or, when there is no lead manager, by paying to the department an amount equal to two times the current market value of the state-owned land or the highest and best use value at the time of purchase, whichever is greater. When determining such use of funds, priority shall be given to forest-management objectives, parcels identified as inholdings and additions to public lands, and lands on a Florida Forever land acquisition list.

Section 5. Subsection (5) of section 261.04, Florida Statutes, is amended to read:

261.04 Off-Highway Vehicle Recreation Advisory Committee; members; appointment.—

(5) The members of the advisory committee shall serve without compensation~~, but shall be reimbursed for travel and per diem expenses as provided in s. 112.061,~~ while in the performance of their official duties.

Section 6. Subsection (4) of section 482.051, Florida

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Statutes, is amended to read:

482.051 Rules.—The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter. Prior to proposing the adoption of a rule, the department shall counsel with members of the pest control industry concerning the proposed rule. The department shall adopt rules for the protection of the health, safety, and welfare of pest control employees and the general public which require:

(4) That a licensee, before performing general fumigation, notify in writing the department inspector having jurisdiction over the location where the fumigation is to be performed, which notice must be received by the department inspector at least 24 hours in advance of the fumigation and must contain such information as the department requires. However, in an authentic and verifiable emergency, when 24 hours' advance notification is not possible, advance telephone, facsimile, or any form of acceptable electronic communication ~~telegraph notice~~ may be given; but such notice must be immediately followed by written confirmation providing the required information.

Section 7. Subsection (4) of section 482.071, Florida Statutes, is amended to read:

482.071 Licenses.—

(4) A licensee may not operate a pest control business without carrying the required insurance coverage. Each person making application for a pest control business license or renewal thereof must furnish to the department a certificate of insurance that meets the requirements for minimum financial responsibility for bodily injury and property damage consisting

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of:

(a) Bodily injury: $250,000 ~~$100,000~~ each person and $500,000 ~~$300,000~~ each occurrence; and property damage: $250,000 ~~$50,000~~ each occurrence and $500,000 ~~$100,000~~ in the aggregate; or

(b) Combined single-limit coverage: $500,000 ~~$400,000~~ in the aggregate.

Section 8. Section 482.072, Florida Statutes, is created to read:

482.072 Customer contact centers for pest control business.—

(1) The department may issue a license to a qualified business to operate a customer contact center to solicit pest control business, or to provide services to customers for one or more business locations licensed under s. 482.071. A person may not operate a customer contact center for a pest control business that is not licensed by the department.

(2)(a) Before operating a customer contact center, and biennially thereafter, a pest control business shall apply to the department for a license under this chapter, or a renewal thereof, for each location of a customer contact center, on or before an anniversary date set by the department for the location of the customer contact center. An application must be submitted in the format prescribed by the department.

(b) The department shall establish a fee of at least $600, but not more than $1,000, for the issuance of the initial license for a customer contact center, and a renewal fee of at least $600, but not more than $1,000, for the renewal of the license. However, until rules for renewal fees are adopted, the initial licensing fee and renewal fee are each $600. The department shall establish a grace period, not to exceed 30 calendar days after the license's anniversary renewal date, and shall assess a late fee of $150, in addition to the renewal fee, for a license that is renewed after the grace period.

(c) A license automatically expires 60 calendar days after the anniversary renewal date unless the license is renewed before that date. When a license expires, it may be reinstated only upon reapplication and payment of the license renewal fee and a late renewal fee.

(d) A license automatically expires if a licensee changes the address of the location of its customer contact center for a pest control business. The department shall issue a new license upon payment of a $250 fee. The new license automatically expires 60 calendar days after the anniversary renewal date of the former license unless the license is renewed before that date.

(e) The department may not issue or renew a license to operate a customer contact center unless the licensee for the pest control business for which the center solicits business is owned in common by a person or business entity recognized by this state.

(f) The department may deny a license or refuse to renew a license if the applicant or licensee, or one or more of the applicant's or licensee's directors, officers, owners, or general partners, are or have been directors, officers, owners, or general partners of a pest control business that meets the conditions as described in s. 482.071(2)(g).

(g) Sections 482.091 and 482.152 do not apply to a person who solicits pest control services or provides customer service in a licensed customer contact center unless the person performs the pest control work as defined in s. 482.021(22)(a)-(d), executes a pest control contract, or accepts remuneration for such work.

(h) Section 482.071(2)(e) does not apply to a license issued under this section.

(3)(a) The department shall adopt rules establishing requirements and procedures for recordkeeping and for monitoring the operations of a customer contact center in order to ensure compliance with this section and the rules adopted in accordance with this section.

(b) Notwithstanding any other provision in this section:

1. A licensee of a customer contact center is subject to disciplinary action under s. 482.161 for a violation of this section or adopted rule which is committed by a person who solicits pest control services or provides customer service in a customer contact center.

2. A licensee of a pest control business may be subject to disciplinary action under s. 482.161 for a violation that is committed by a person who solicits pest control services or provides customer service in a customer contact center operated by a licensee if the licensee participates in the violation.

Section 9. Section 482.157, Florida Statutes, is created to read:

482.157 Limited certification for commercial wildlife management personnel.—

(1) The department shall establish a limited certificate that authorizes a person who engages in the commercial trapping

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of wildlife to use nonchemical methods, including traps, glue boards, mechanical or electronic devices, or exclusionary techniques to control commensal rodents.

(2) A person that seeks a limited certificate under this section is required to pass an examination given by the department. Each application for examination must be accompanied by an examination fee set by rule of the department, in an amount of at least $150, but not more than $300. The department shall provide the appropriate reference materials for the examination and shall make the examination readily available to applicants at least quarterly or as necessary in each county. Before the department issues a limited certificate under this section, each person that applies for the certificate shall furnish proof of having a certificate of insurance which states that the person’s employer meets the requirements for minimum financial responsibility for bodily injury and property damage as required by s. 482.071(4).

(3) An application for recertification must be made annually and be accompanied by a recertification fee of at least $75, but not more than $150, as established by rule. The application must also be accompanied by proof of completion of four classroom hours of acceptable continuing education and proof of insurance. The department shall assess a late fee of $50, in addition to the renewal fee, after a grace period not exceeding 30 calendar days after the recertification renewal date. A certificate automatically expires 180 calendar days after the recertification date if the renewal fee has not been paid. After expiration, the department shall issue a new certificate if the applicant successfully passes the examination

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and pays the renewal fee and late fee.

(4) Certification under this section does not authorize:

(a) The use of pesticides or chemical substances, other than adhesive materials, to control rodents or other nuisance wildlife in, on, or under structures;

(b) Operation of a pest control business; or

(c) Supervision of an uncertified person using nonchemical methods to control rodents.

(5) A person who is certified under this chapter and who practices accepted methods of pest control is immune from liability under s. 828.12.

(6) The provisions of this chapter do not exempt any person from the rules or orders of the Fish and Wildlife Conservation Commission.

Section 10. Subsection (6) of section 482.226, Florida Statutes, is amended to read:

482.226 Wood-destroying organism inspection report; notice of inspection or treatment; financial responsibility.—

(6) Any licensee that performs wood-destroying organism inspections in accordance with subsection (1) must meet minimum financial responsibility in the form of errors and omissions (professional liability) insurance coverage or bond in an amount no less than $500,000 ~~$50,000~~ in the aggregate and $250,000 ~~$25,000~~ per occurrence, or demonstrate that the licensee has equity or net worth of no less than $500,000 ~~$100,000~~ as determined by generally accepted accounting principles substantiated by a certified public accountant’s review or certified audit. The licensee must show proof of meeting this requirement at the time of license application or renewal

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thereof.

Section 11. Subsection (6) of section 482.243, Florida Statutes, is amended to read:

482.243 Pest Control Enforcement Advisory Council.—

(6) The meetings, powers and duties, procedures, and recordkeeping~~, and reimbursement of expenses of members of the council~~ shall be in accordance with the provisions of s. 570.0705 relating to advisory committees established within the department.

Section 12. Paragraph (a) of subsection (1) of section 487.041, Florida Statutes, is amended, and paragraphs (h), (i), and (j) are added to that subsection, to read:

487.041 Registration.—

(1)(a) Effective January 1, 2009, each brand of pesticide, as defined in s. 487.021, which is distributed, sold, or offered for sale, except as provided in this section, within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state must be registered in the office of the department, and such registration shall be renewed biennially. Emergency exemptions from registration may be authorized in accordance with the rules of the department. The registrant shall file with the department a statement including:

1. The name, business mailing address, and street address of the registrant.

2. The name of the brand of pesticide.

3. An ingredient statement and a complete, current copy of the label ~~labeling~~ accompanying the brand of ~~the~~ pesticide, which must conform to the registration, and a statement of all

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claims to be made for it, including directions for use and a guaranteed analysis showing the names and percentages by weight of each active ingredient, the total percentage of inert ingredients, and the names and percentages by weight of each "added ingredient."

(h) All registration fees, including supplemental fees and late fees, are nonrefundable.

(i) For any currently registered pesticide product brand that undergoes label revision during the registration period, the registrant shall submit to the department a copy of the revised label along with the cover letter detailing changes before the sale or distribution of a product brand with the revised label in this state. If the label revisions require notification of an amendment review by the United States Environmental Protection Agency, the registrant shall submit an additional copy of the label marked to identify those revisions.

(j) Effective January 1, 2013, all payments of any pesticide-registration fees, including supplemental fees and late fees, shall be submitted electronically using the department's website to register a brand of a pesticide product.

Section 13. Subsection (5) of section 487.0615, Florida Statutes, is amended to read:

487.0615 Pesticide Review Council.—

(5) Members of the council shall receive no compensation for their services~~, but are entitled to be reimbursed for per diem and travel expenses as provided in s. 112.061~~.

Section 14. Subsection (7) is added to section 500.70, Florida Statutes, to read:

500.70 Tomato food safety standards; inspections;

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penalties; tomato good agricultural practices; tomato best management practices.—

(7) Any person who produces, harvests, packs, or repacks tomatoes in this state and does not hold a food permit issued under s. 500.12, shall annually register the location of each tomato farm, tomato greenhouse, tomato packinghouse, or tomato repacker by August 1 on a form prescribed by the department. Any person who produces, harvests, packs, or repacks tomatoes at more than one location may submit one registration for all such locations, but must provide the physical address of each location. The department may set by rule an annual registration fee not to exceed $500. The money collected from the registration fee payments shall be deposited into the General Inspection Trust Fund.

Section 15. Subsection (5) of section 527.22, Florida Statutes, is amended to read:

527.22 Florida Propane Gas Education, Safety, and Research Council established; membership; duties and responsibilities.—

(5) Council members shall receive no compensation or honorarium for their services~~, and are authorized to receive only per diem and reimbursement for travel expenses as provided in s. 112.061~~.

Section 16. Subsection (3) of section 559.9221, Florida Statutes, is amended to read:

559.9221 Motor Vehicle Repair Advisory Council.—The Motor Vehicle Repair Advisory Council is created to advise and assist the department in carrying out this part.

(3) The members of the council shall receive no compensation for their services~~, except that they may receive~~

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~~per diem and travel expenses as provided in s. 112.061~~.

Section 17. Subsections (16) and (28) of section 570.07, Florida Statutes, are amended to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(16) To enforce the state laws and rules relating to:

(a) Fruit and vegetable inspection and grading;

(b) Pesticide spray, residue inspection, and removal;

(c) Registration, labeling, inspection, sale, composition, formulation, including nutrient content and release rates, distribution, and analysis of commercial stock feeds and commercial fertilizers;

(d) Classification, inspection, and sale of poultry and eggs;

(e) Registration, inspection, and analysis of gasolines and oils;

(f) Registration, labeling, inspection, and analysis of pesticides;

(g) Registration, labeling, inspection, germination testing, and sale of seeds, both common and certified;

(h) Weights, measures, and standards;

(i) Foods, as set forth in the Florida Food Safety Act;

(j) Inspection and certification of honey;

(k) Sale of liquid fuels;

(l) Licensing of dealers in agricultural products;

(m) Administration and enforcement of all regulatory legislation applying to milk and milk products, ice cream, and frozen desserts;

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(n) Recordation and inspection of marks and brands of livestock; and

(o) All other regulatory laws relating to agriculture.

In order to ensure uniform health and safety standards, the adoption of standards and fines in the subject areas of paragraphs (a)-(n) is expressly preempted to the state and the department. Any local government enforcing the subject areas of paragraphs (a)-(n) must use the standards and fines set forth in the pertinent statutes or any rules adopted by the department pursuant to those statutes. A county that has adopted an ordinance regulating the sale of urban turf fertilizer before January 1, 2011, is not subject to paragraph (c). If the county amends or changes any portion of the ordinance after January 1, 2011, the provisions of paragraph (c) apply.

(28) For the purpose of pollution control and the prevention of wildfires ~~purposes~~, to regulate open burning connected with rural land-clearing, agricultural, or forestry operations~~, except fires for cold or frost protection~~.

Section 18. Subsection (9) of section 570.0705, Florida Statutes, is amended to read:

570.0705 Advisory committees.—From time to time the commissioner may appoint any advisory committee to assist the department with its duties and responsibilities.

(9) Members of each advisory committee shall receive no compensation for their services~~, but shall be entitled to reimbursement for per diem and travel expenses as provided in s. 112.061~~.

Section 19. Section 570.074, Florida Statutes, is amended

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to read:

570.074 Department of Agriculture and Consumer Services; energy and water policy ~~coordination~~.—The commissioner may create an Office of Energy and Water ~~Coordination~~ under the supervision of a senior manager exempt under s. 110.205 in the Senior Management Service. The commissioner may designate the bureaus and positions in the various organizational divisions of the department which ~~that~~ report to this office relating to any matter over which the department has jurisdiction in matters relating to energy and water policy affecting agriculture, application of such policies, and coordination of such matters with state and federal agencies.

Section 20. Section 570.18, Florida Statutes, is amended to read:

570.18 Organization of departmental work.—In the assignment of functions to the ~~12~~ divisions of the department created in s. 570.29, the department shall retain within the Division of Administration, in addition to executive functions, those powers and duties enumerated in s. 570.30. The department shall organize the work of the other ~~11~~ divisions in such a way as to secure maximum efficiency in the conduct of the department. The divisions created in s. 570.29 are solely to make possible the definite placing of responsibility. The department shall be conducted as a unit in which every employee, including each division director, is assigned a definite workload, and there shall exist between division directors a spirit of cooperative effort to accomplish the work of the department.

Section 21. Subsection (2) of section 570.23, Florida Statutes, is amended to read:

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570.23 State Agricultural Advisory Council.—

(2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS~~;~~ ~~COMPENSATION~~.—The meetings, powers and duties, procedures, and recordkeeping of the State Agricultural Advisory Council~~, and per diem and reimbursement of expenses of council members,~~ shall be governed by the provisions of s. 570.0705 relating to advisory committees established within the department.

Section 22. Subsection (6) of section 570.29, Florida Statutes, is repealed.

Section 23. Subsection (2) of section 570.38, Florida Statutes, is amended to read:

570.38 Animal Industry Technical Council.—

(2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS~~;~~ ~~COMPENSATION~~.—The meetings, powers and duties, procedures, and recordkeeping of the Animal Industry Technical Council~~, and per diem and reimbursement of expenses of council members,~~ shall be governed by the provisions of s. 570.0705 relating to advisory committees established within the department.

Section 24. Paragraph (d) of subsection (3) of section 570.382, Florida Statutes, is amended to read:

570.382 Arabian horse racing; breeders' and stallion awards; Arabian Horse Council; horse registration fees; Florida Arabian Horse Racing Promotion Account.—

(3) ARABIAN HORSE COUNCIL.—

(d) Members of the council shall receive no compensation for their services~~, except that they shall receive per diem and travel expenses as provided in s. 112.061 when actually engaged in the business of the council~~.

Section 25. Section 570.40, Florida Statutes, is repealed.

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Section 26. Section 570.41, Florida Statutes, is repealed.

Section 27. Subsection (2) of section 570.42, Florida Statutes, is amended to read:

570.42 Dairy Industry Technical Council.—

(2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS; COMPENSATION.—The meetings, powers and duties, procedures, and recordkeeping of the Dairy Industry Technical Council~~, and per diem and reimbursement of expenses of council members,~~ shall be governed by the provisions of s. 570.0705 relating to advisory committees established within the department.

Section 28. Subsections (6) and (7) are added to section 570.50, Florida Statutes, to read:

570.50 Division of Food Safety; powers and duties.—The duties of the Division of Food Safety include, but are not limited to:

(6) Inspecting dairy farms of the state, enforcing those provisions of chapter 502 which are authorized by the department and related to the supervision of milking operations, and enforcing rules adopted under such provisions.

(7) Inspecting milk plants, milk product plants, and plants engaged in the manufacture and distribution of frozen desserts and frozen dessert mixes; analyzing and testing samples of milk, milk products, frozen desserts, and frozen dessert mixes collected by it; and enforcing those provisions of chapters 502 and 503 which are authorized by the department.

Section 29. Subsection (2) of section 570.543, Florida Statutes, is amended to read:

570.543 Florida Consumers' Council.—The Florida Consumers' Council in the department is created to advise and assist the

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department in carrying out its duties.

(2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS~~;~~ ~~COMPENSATION~~.—The meetings, powers and duties, procedures, and recordkeeping of the Florida Consumers' Council~~, and per diem and reimbursement of expenses of council members,~~ shall be governed by the provisions of s. 570.0705 relating to advisory committees established within the department. The council members or chair may call no more than two meetings.

Section 30. <u>Subsection (3) of section 570.954, Florida Statutes, is repealed.</u>

Section 31. Subsection (2) of section 571.28, Florida Statutes, is amended to read:

571.28 Florida Agricultural Promotional Campaign Advisory Council.—

(2) MEETINGS; POWERS AND DUTIES; PROCEDURES; RECORDS~~;~~ ~~COMPENSATION~~.—The meetings, powers and duties, procedures, and recordkeeping of the Florida Agricultural Promotional Campaign Advisory Council~~, and per diem and reimbursement of expenses of council members,~~ shall be governed by the provisions of s. 570.0705 relating to advisory committees established within the department.

Section 32. Subsection (6) of section 573.112, Florida Statutes, as amended by section 11 of chapter 2010-227, Laws of Florida, is amended to read:

573.112 Advisory council.—

(6) No member or alternate member of the council shall receive a salary~~, but shall be reimbursed for travel expenses while on council business as provided in s. 112.061~~. The department may employ necessary personnel, including

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professional and technical services personnel, and fix their compensation and terms of employment and may incur expenses to be paid from moneys collected as herein provided.

Section 33. Subsection (3) of section 576.091, Florida Statutes, is amended to read:

576.091 Fertilizer Technical Council.—

(3) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS~~; REIMBURSEMENTS~~.—The meetings, powers and duties, procedures, and recordkeeping~~, and reimbursement of expenses of members and alternate members of the council~~ shall be in accordance with the provisions of s. 570.0705 relating to advisory committees established within the department.

Section 34. Subsection (2) of section 580.151, Florida Statutes, is amended to read:

580.151 Commercial Feed Technical Council.—

(2) POWERS AND DUTIES; PROCEDURES; RECORDS~~; COMPENSATION~~.—The meetings, powers and duties, procedures, and recordkeeping of the Commercial Feed Technical Council~~, and per diem and reimbursement of expenses of council members,~~ shall be governed by the provisions of s. 570.0705 relating to advisory committees established within the department.

Section 35. Subsection (2) of section 581.186, Florida Statutes, is amended to read:

581.186 Endangered Plant Advisory Council; organization; meetings; powers and duties.—

(2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS~~; COMPENSATION~~.—The meetings, powers and duties, procedures, and recordkeeping of the Endangered Plant Advisory Council~~, and per diem and reimbursement of expenses of council members,~~ shall be

governed by the provisions of s. 570.0705 relating to advisory committees established within the department.

Section 36. Subsection (3) of section 586.161, Florida Statutes, is amended to read:

586.161 Honeybee Technical Council.—

(3) MEETINGS; POWERS AND DUTIES; PROCEDURES; RECORDS~~;~~ ~~COMPENSATION~~.—The meetings, powers and duties, procedures, and recordkeeping of the Honeybee Technical Council~~, and per diem and reimbursement of expenses of council members,~~ shall be governed by the provisions of s. 570.0705 relating to advisory committees established within the department.

Section 37. Section 590.015, Florida Statutes, is amended to read:

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

(1) "Broadcast burning" means the burning of agricultural or natural vegetation by allowing fire to move across a predetermined area of land, but the term does not include the burning of vegetative debris that is piled or stacked.

(2) ~~(1)~~ "Department ~~Division~~" means ~~the Division of Forestry of~~ the Department of Agriculture and Consumer Services.

(3) ~~(2)~~ "Fire management services" means presuppression fireline plowing, prescribed burning assistance, contract prescribed burning, prescribed and wildfire management training, and other activities associated with prevention, detection, and suppression of wildfires.

(4) ~~(3)~~ "Fuel reduction" means the application of techniques that reduce vegetative fuels, and may include prescribed burning, manual and mechanical clearing, and the use of herbicides.

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(5) "Open burning" means any outdoor fire or open combustion of material which produces visible emissions.

(6) ~~(4)~~ "Wildfire" means any vegetative fire that threatens to destroy life, property, or natural resources.

(7) ~~(5)~~ "Wild land" means any public or private managed or unmanaged forest, urban/interface, pasture or range land, recreation lands, or any other land at risk of wildfire.

Section 38. Subsections (1) and (4) of section 590.02, Florida Statutes, are amended, and new subsection (9) and (10) are added to that section to read:

590.02 Division powers, authority, and duties; liability; building structures; Florida Center for Wildfire and Forest Resources Management Training.—

(1) The division has the following powers, authority, and duties:

(a) To enforce the provisions of this chapter;

(b) To prevent, detect, suppress, and extinguish wildfires wherever they may occur on public or private land in this state and to do all things necessary in the exercise of such powers, authority, and duties;

(c) To provide firefighting crews, who shall be under the control and direction of the division and its designated agents;

(d) To appoint center managers, forest area supervisors, forestry program administrators, a forest protection bureau chief, a forest protection assistant bureau chief, a field operations bureau chief, deputy chiefs of field operations, district managers, forest-operations administrators senior forest rangers, investigators, forest rangers, firefighter rotorcraft pilots, and other employees who may, at the

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division's discretion, be certified as forestry firefighters pursuant to s. 633.35(4). Other provisions of law notwithstanding, center managers, district managers, forest protection assistant bureau chief, and deputy chiefs of field operations shall have Selected Exempt Service status in the state personnel designation;

(e) To develop a training curriculum for forestry firefighters which must contain the basic volunteer structural fire training course approved by the Florida State Fire College of the Division of State Fire Marshal and a minimum of 250 hours of wildfire training;

(f) To make rules to accomplish the purposes of this chapter;

(g) To provide fire management services and emergency response assistance and to set and charge reasonable fees for performance of those services. Moneys collected from such fees shall be deposited into the Incidental Trust Fund of the division; and

(h) To require all state, regional, and local government agencies operating aircraft in the vicinity of an ongoing wildfire to operate in compliance with the applicable state Wildfire Aviation Plan.

(4)(a) The department may build structures, notwithstanding chapters 216 and 255, not to exceed a cost of $50,000 per structure from existing resources on forest lands, federal excess property, and unneeded existing structures. These structures must meet all applicable building codes.

(b) Notwithstanding s. 553.80(1), the Florida Building Code as it pertains to wildfire and law enforcement facilities under the jurisdiction of the department shall be enforced exclusively by the department.

(9)(a) Notwithstanding ss. 273.055 and 287.16, the department may retain, transfer, warehouse, bid, destroy, scrap, or otherwise dispose of surplus equipment and vehicles that are used for wildland firefighting.

(b) All money received from the disposition of state-owned equipment and vehicles that are used for wildland firefighting shall be retained by the department. Money received pursuant to this section is appropriated for and may be disbursed for the acquisition of exchange and surplus equipment used for wildland firefighting, and for all necessary operating expenditures related to such equipment, in the same fiscal year and the fiscal year following the disposition. The department shall maintain records of the accounts into which the money is deposited.

(10)(a) The division has exclusive authority to require and issue authorizations for broadcast burning, agricultural pile burning, and silvicultural pile burning. An agency, commission, department, county, municipality, or other political subdivision of the state may not adopt laws, rules, or policies pertaining to broadcast burning, agricultural pile burning, and silvicultural pile burning unless an emergency order has been declared in accordance with s. 252.38(3).

(b) The division may delegate to a county or municipality its authority, as delegated by the Department of Environmental Protection pursuant to ss. 403.061(28) and 403.081, to require and issue authorizations for the burning of yard trash and debris from land-clearing operations in accordance with s.

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590.125(6).

Section 39. Section 590.125, Florida Statutes, is amended to read:

590.125 Open burning authorized by the division.—

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

(a) "Certified pile burner" means an individual who successfully completes the division's pile burning certification program and possesses a valid pile burner certification number. ~~"Prescribed burning" means the controlled application of fire in accordance with a written prescription for vegetative fuels under specified environmental conditions while following appropriate precautionary measures that ensure that the fire is confined to a predetermined area to accomplish the planned fire or land-management objectives.~~

(b) "Certified prescribed burn manager" means an individual who successfully completes the certified prescribed burning ~~certification~~ program of the division and possesses a valid certification number.

~~(c) "Prescription" means a written plan establishing the criteria necessary for starting, controlling, and extinguishing a prescribed burn.~~

(c) ~~(d)~~ "Extinguished" means: ~~that no spreading flame for~~

1. Wild land burning or certified prescribed burning, and no spreading flames ~~visible flame, smoke, or emissions for vegetative land-clearing debris burning,~~ exist.

2. Vegetative land-clearing debris burning or pile burning, and no visible flames exist.

3. Vegetative land-clearing debris burning or pile burning in an area designated as smoke-sensitive by the division and no

visible flames, smoke, or emissions exist.

(d) “Land-clearing operation” means the uprooting or clearing of vegetation in connection with the construction of buildings and rights-of-way, land development, and mineral operations. The term does not include the clearing of yard trash.

(e) “Pile burning” means the burning of silvicultural, agricultural, or land-clearing and tree-cutting debris originating onsite, which is stacked together in a round or linear fashion, including, but not limited to, a windrow.

(f) “Prescribed burning” means the controlled application of fire by broadcast burning in accordance with a written prescription for vegetative fuels under specified environmental conditions while following appropriate precautionary measures that ensure that the fire is confined to a predetermined area to accomplish the planned fire or land-management objectives.

(g) “Prescription” means a written plan that establishes the criteria necessary for starting, controlling, and extinguishing a prescribed burn.

(h) “Yard trash” means vegetative matter resulting from landscaping and yard maintenance operations and other such routine property-cleanup activities. The term includes materials such as leaves, shrub trimmings, grass clippings, brush, and palm fronds.

(2) NONCERTIFIED BURNING.—

(a) Persons may be authorized to burn wild land or vegetative land-clearing debris in accordance with this subsection if:

1. There is specific consent of the landowner or his or her

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designee;

2. Authorization has been obtained from the division or its designated agent before starting the burn;

3. There are adequate firebreaks at the burn site and sufficient personnel and firefighting equipment for the control of the fire;

4. The fire remains within the boundary of the authorized area;

5. An authorized person ~~Someone~~ is present at the burn site until the fire is extinguished;

6. The division does not cancel the authorization; and

7. The division determines that air quality and fire danger are favorable for safe burning.

(b) A person who burns wild land or vegetative land-clearing debris in a manner that violates any requirement of this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) CERTIFIED PRESCRIBED BURNING; LEGISLATIVE FINDINGS AND PURPOSE.—

(a) The application of prescribed burning is a land management tool that benefits the safety of the public, the environment, and the economy of the state. The Legislature finds that:

1. Prescribed burning reduces vegetative fuels within wild land areas. Reduction of the fuel load reduces the risk and severity of wildfire, thereby reducing the threat of loss of life and property, particularly in urban areas.

2. Most of Florida’s natural communities require periodic fire for maintenance of their ecological integrity. Prescribed

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burning is essential to the perpetuation, restoration, and management of many plant and animal communities. Significant loss of the state's biological diversity will occur if fire is excluded from fire-dependent systems.

3. Forestland and rangeland constitute significant economic, biological, and aesthetic resources of statewide importance. Prescribed burning on forestland prepares sites for reforestation, removes undesirable competing vegetation, expedites nutrient cycling, and controls or eliminates certain forest pathogens. On rangeland, prescribed burning improves the quality and quantity of herbaceous vegetation necessary for livestock production.

4. The state purchased hundreds of thousands of acres of land for parks, preserves, wildlife management areas, forests, and other public purposes. The use of prescribed burning for management of public lands is essential to maintain the specific resource values for which these lands were acquired.

5. A public education program is necessary to make citizens and visitors aware of the public safety, resource, and economic benefits of prescribed burning.

6. Proper training in the use of prescribed burning is necessary to ensure maximum benefits and protection for the public.

7. As Florida's population continues to grow, pressures from liability issues and nuisance complaints inhibit the use of prescribed burning. Therefore, the division is urged to maximize the opportunities for prescribed burning conducted during its daytime and nighttime authorization process.

(b) Certified prescribed burning pertains only to broadcast

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burning for purposes of silviculture, wildland fire hazard reduction, wildlife management, ecological maintenance and restoration, and range and pasture management. It must be conducted in accordance with this subsection and:

1. May be accomplished only when a certified prescribed burn manager is present on site with a copy of the prescription from ignition of the burn to its completion.

2. Requires that a written prescription be prepared before receiving authorization to burn from the division.

3. Requires that the specific consent of the landowner or his or her designee be obtained before requesting an authorization.

4. Requires that an authorization to burn be obtained from the division before igniting the burn.

5. Requires that there be adequate firebreaks at the burn site and sufficient personnel and firefighting equipment for the control of the fire.

6. Is considered to be in the public interest and does not constitute a public or private nuisance when conducted under applicable state air pollution statutes and rules.

7. Is considered to be a property right of the property owner if vegetative fuels are burned as required in this subsection.

(c) Neither a property owner nor his or her agent is liable pursuant to s. 590.13 for damage or injury caused by the fire or resulting smoke or considered to be in violation of subsection (2) for burns conducted in accordance with this subsection unless gross negligence is proven.

(d) Any certified burner who violates this section commits

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a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(e) The division shall adopt rules for the use of prescribed burning and for certifying and decertifying certified prescribed burn managers based on their past experience, training, and record of compliance with this section.

(4) CERTIFIED PILE BURNING; LEGISLATIVE FINDINGS AND PURPOSE.—

(a) Certified pile burning pertains to the disposal of piled, naturally occurring debris from an agricultural, silvicultural, or temporary land-clearing operation. A land-clearing operation is temporary if it operates for 6 months or less. Certified pile burning must be conducted in accordance with this subsection, and:

1. A certified pile burner must ensure, before ignition, that the piles are properly placed and that the content of the piles is conducive to efficient burning.

2. A certified pile burner must ensure that the piles are properly extinguished no later than 1 hour after sunset. If the burn is conducted in an area designated as smoke-sensitive by the division, a certified pile burner shall ensure that the piles are properly extinguished at least 1 hour before sunset.

3. A written pile burn plan must be prepared before receiving authorization from the division to burn.

4. The specific consent of the landowner or his or her agent must be obtained before requesting authorization to burn.

5. An authorization to burn must be obtained from the division or its designated agent before igniting the burn.

6. There must be adequate firebreaks and sufficient

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personnel and firefighting equipment at the burn site to control the fire.

(b) If a burn is conducted in accordance with this subsection, the property owner and his or her agent are not liable under s. 590.13 for damage or injury caused by the fire or resulting smoke, and are not in violation of subsection (2), unless gross negligence is proven.

(c) A certified pile burner who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(d) The division shall adopt rules regulating certified pile burning. The rules shall include procedures and criteria for certifying and decertifying certified pile burn managers based on past experience, training, and record of compliance with this section.

(5) ~~(4)~~ WILDFIRE HAZARD REDUCTION TREATMENT BY THE DIVISION.—The division may conduct fuel reduction initiatives, including, but not limited to, burning and mechanical and chemical treatment, on any area of wild land within the state which is reasonably determined to be in danger of wildfire in accordance with the following procedures:

(a) Describe the areas that will receive fuels treatment to the affected local governmental entity.

(b) Publish a treatment notice, including a description of the area to be treated, in a conspicuous manner in at least one newspaper of general circulation in the area of the treatment not less than 10 days before the treatment.

(c) Prepare~~,~~ and send ~~the county tax collector shall include with the annual tax statement,~~ a notice to ~~be sent to~~

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all landowners in each area ~~township~~ designated by the division as a wildfire hazard area. The notice must describe particularly the area to be treated and the tentative date or dates of the treatment and must list the reasons for and the expected benefits from the wildfire hazard reduction.

(d) Consider any landowner objections to the fuels treatment of his or her property. The landowner may apply to the director of the division for a review of alternative methods of fuel reduction on the property. If the director or his or her designee does not resolve the landowner objection, the director shall convene a panel made up of the local forestry unit manager, the fire chief of the jurisdiction, and the affected county or city manager, or any of their designees. If the panel's recommendation is not acceptable to the landowner, the landowner may request further consideration by the Commissioner of Agriculture or his or her designee and shall thereafter be entitled to an administrative hearing pursuant to the provisions of chapter 120.

(6) DIVISION APPROVAL OF LOCAL GOVERNMENT OPEN-BURNING-AUTHORIZATION PROGRAMS.—

(a) A county or municipality may exercise the division's authority, if delegated by the division under this subsection, to issue authorizations for the burning of yard trash or debris from land-clearing operations. A county's or municipality's existing or proposed open-burning-authorization program must:

1. Be approved by the division. The division may not approve a program if it fails to meet the requirements of subsections (2) and (4) and any rules adopted in accordance with those subsections.

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2. Provide by ordinance or local law the requirements for obtaining and performing a burn authorization that complies with subsections (2) and (4) and any rules adopted in accordance with those subsections.

3. Provide for the enforcement of the program's requirements.

4. Provide financial, personnel, and other resources needed to carry out the program.

(b) If the division determines that a county's or municipality's open-burning-authorization program does not comply with subsections (2) and (4) and any rules adopted in accordance with those subsections, the division shall require the county or municipality to take necessary corrective actions within a reasonable period, not to exceed 90 days.

1. If the county or municipality fails to take the necessary corrective actions within the required period, the division shall resume administration of the open-burning-authorization program in the county or municipality and the county or municipality shall cease administration of its program.

2. Each county and municipality administering an open-burning-authorization program must cooperate with and assist the division in carrying out the powers, duties, and functions of the division.

3. A person who violates the requirements of a county's or municipality's open-burning-authorization program, as provided by ordinance or local law enacted pursuant to this subsection, commits a violation of this chapter, punishable as provided in s. 590.14.

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<u>(7)</u>~~(5)~~ DUTIES OF AGENCIES.—The Department of Education shall incorporate, where feasible and appropriate, the issues of fuels treatment, including prescribed burning, into its educational materials.

Section 40. Section 590.14, Florida Statutes, is amended to read:

590.14 Notice of violation; penalties.—

(1) If a division employee determines that a person has violated chapter 589<u>,</u> ~~or~~ this chapter, <u>or any rule adopted by the division to administer provisions of law which confer duties upon the division, the employee of the division</u> ~~he or she~~ may issue a notice of violation indicating the statute <u>or rule</u> violated. This notice <u>shall</u> ~~will~~ be filed with the division and a copy forwarded to the appropriate law enforcement entity for further action if necessary.

(2) In addition to any penalties provided by law, any person who causes a wildfire or permits any authorized fire to escape the boundaries of the authorization or to burn past the time of the authorization is liable for the payment of all reasonable costs and expenses incurred in suppressing the fire or $150, whichever is greater. All costs and expenses incurred by the division shall be payable to the division. When such costs and expenses are not paid within 30 days after demand, the division may take proper legal proceedings for the collection of the costs and expenses. Those costs incurred by an agency acting at the division's direction are recoverable by that agency.

(3) The department may also impose an administrative fine, not to exceed $1,000 per violation of any section of chapter 589 or this chapter <u>or violation of any rule adopted by the division</u>

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to administer provisions of law which confer duties upon the division. The fine shall be based upon the degree of damage, the prior violation record of the person, and whether the person knowingly provided false information to obtain an authorization. The fines shall be deposited in the Incidental Trust Fund of the division.

(4) A person commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, if the person:

(a) Fails to comply with any rule or order adopted by the division to administer provisions of law conferring duties upon the division; or

(b) Knowingly makes any false statement or representation in any application, record, plan, or other document required by this chapter or any rules adopted under this chapter.

(5) It is the intent of the Legislature that a penalty imposed by a court under subsection (4) be of a severity that ensures immediate and continued compliance with this section.

(6) ~~(4)~~ The penalties provided in this section shall extend to both the actual violator and the person or persons, firm, or corporation causing, directing, or permitting the violation.

Section 41. Subsection (4) of section 597.005, Florida Statutes, is repealed.

Section 42. Subsection (2) of section 599.002, Florida Statutes, is amended to read:

599.002 Viticulture Advisory Council.—

(2) The meetings, powers and duties, procedures, and recordkeeping of the Viticulture Advisory Council~~, and per diem and reimbursement of expenses of council members,~~ shall be

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governed by the provisions of s. 570.0705 relating to advisory committees established within the department.

Section 43. Subsection (4) is added to section 616.17, Florida Statutes, to read:

616.17 Minimum exhibits.—

(4) A fair, as defined in this chapter, which provides any of the exhibits as set forth in subsection (1) or other exhibits or concessions, whether such exhibits or concessions are provided directly or through an agreement with a third party, is not subject to criminal penalties or civil damages arising out of the personal injury or death of any person, or property damage, resulting from such exhibits or concessions. This subsection does not apply if the personal injury, death, or property damage was due to an act or omission that was committed by the fair association in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. This subsection does not apply to a third party providing exhibits or concessions.

Section 44. Paragraph (a) of subsection (1) and subsection (3) of section 616.252, Florida Statutes, are amended to read:

616.252 Florida State Fair Authority; membership; number, terms, compensation.—

(1)(a) The authority shall be composed of 22 ~~21~~ members. The Commissioner of Agriculture, or her or his designee, shall serve as a voting member. There shall also be a member who is the member of the Board of County Commissioners of Hillsborough County representing the county commission district in which the Florida State Fairgrounds is located, who shall serve as a voting member. There shall also be an appointed youth member who

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is an active member of the Florida Future Farmers of America or of a 4-H Club, and who shall serve as a nonvoting member. The Commissioner of Agriculture shall appoint each other member of the authority. Each member appointed by the Commissioner of Agriculture shall serve at the pleasure of the Commissioner of Agriculture. The term of each member appointed by the Commissioner of Agriculture shall be 4 years, but the term of the nonvoting youth member shall be for 1 year ~~except, to provide staggered terms, 9 of the members shall be initially appointed for a 2-year term and 10 of the members shall be initially appointed for a 3-year term~~. Members may be appointed for more than one term. Any vacancy shall be filled for the remainder of the unexpired term pursuant to the method provided in this section for appointment. Six of the members may be from Hillsborough County. The Commissioner of Agriculture shall appoint and set the compensation of an executive director. The executive director shall serve at the pleasure of the Commissioner of Agriculture.

(3) Members of the authority are ~~shall~~ not ~~be~~ entitled to compensation for their services as members and may not~~, but shall~~ be reimbursed for travel expenses. Except for the nonvoting youth member, each member ~~as provided in s. 112.061 and~~ may be compensated for any special or full-time service performed in the authority's ~~its~~ behalf as officers or agents of the authority.

Section 45. Paragraph (c) of subsection (2) of section 812.014, Florida Statutes, is amended to read:

812.014 Theft.—

(2)

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(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at $300 or more, but less than $5,000.

2. Valued at $5,000 or more, but less than $10,000.

3. Valued at $10,000 or more, but less than $20,000.

4. A will, codicil, or other testamentary instrument.

5. A firearm.

6. A motor vehicle, except as provided in paragraph (a).

7. Any commercially farmed animal, including any animal of the equine, bovine, or swine class, or other grazing animal, including bee colonies of registered bee keepers and ~~including~~ aquaculture species raised at a certified aquaculture facility. If the property stolen is aquaculture species raised at a certified aquaculture facility, then a $10,000 fine shall be imposed.

8. Any fire extinguisher.

9. Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).

11. Any stop sign.

12. Anhydrous ammonia.

However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the

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offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property is valued at $5,000 or more, but less than $10,000, as provided under subparagraph 2., or if the property is valued at $10,000 or more, but less than $20,000, as provided under subparagraph 3. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 46. Paragraphs (f) and (g) of subsection (1) of section 812.015, Florida Statutes, are amended to read:

812.015 Retail and farm theft; transit fare evasion; mandatory fine; alternative punishment; detention and arrest; exemption from liability for false arrest; resisting arrest; penalties.—

(1) As used in this section:

(f) "Farmer" means a person who is engaging in the growing or producing of farm produce, milk products, <u>honey,</u> eggs, or meat, either part time or full time, for personal consumption or for sale and who is the owner or lessee of the land or a person designated in writing by the owner or lessee to act as her or his agent. No person defined as a farm labor contractor pursuant to s. 450.28 shall be designated to act as an agent for purposes of this section.

(g) "Farm theft" means the unlawful taking possession of any items that are grown or produced on land owned, rented, or leased by another person. <u>The term also includes equipment and associated materials used to grow or produce farm products as defined in s. 823.14(3)(c).</u>

Section 47. This act shall take effect October 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 Department of Agriculture and Consumer Services; amending s. 20.14, F.S.; deleting the Division of Dairy within the Department of Agriculture and Consumer Services; amending s. 193.461, F.S.; redefining the term "agricultural purposes" as it relates to agricultural lands; amending s. 215.981, F.S.; exempting certain direct-support organizations and citizen support organizations for the Department of Agriculture and Consumer Services from obtaining an independent audit; amending s. 253.02, F.S.; providing for the grantee of easements for electrical transmission to pay the lead manager of the state-owned lands or, when there is no lead manager, the Department of Environmental Protection, if suitable replacement uplands cannot be identified; amending s. 261.04, F.S.; deleting provisions related to per diem and travel expenses for members of the Off-Highway Vehicle Recreation Advisory

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Committee within the Division of Forestry; amending s. 482.051, F.S.; providing rule changes that allow operators to provide certain emergency notice to the Department of Agriculture and Consumer Services by facsimile or electronic means; amending s. 482.071, F.S.; increasing the minimum insurance coverage for bodily injury and property damage required for pest control businesses; creating s. 482.072, F.S.; providing for licensure by the department of pest control customer contact centers; providing application requirements; providing for fees, licensure renewal, penalties, licensure expiration, and transfer of licenses; requiring the department to adopt rules; providing for disciplinary action; creating s. 482.157, F.S.; providing for the certification of commercial wildlife trappers; providing requirements for certification, examination, and fees; limiting the scope of work permitted by certificate holders; clarifying that certificateholders who practice accepted pest control methods are immune from liability for violating laws prohibiting cruelty to animals; providing that the provisions of s. 482.157, F.S., do not exempt any person from the rules or orders of the Fish and Wildlife Conservation Commission; amending s. 482.226, F.S.; increasing the minimum financial responsibility requirements for licensees that perform wood-destroying organism inspections; amending s. 482.243, F.S.; deleting provisions relating to reimbursement

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for expenses for members of the Pest Control Enforcement Advisory Council within the department; amending s. 487.041, F.S.; providing that registration, supplemental, and late fees related to the registration of pesticide brands with the department are nonrefundable; providing requirements for label revisions of pesticide brands; providing requirements for label revisions that must be reviewed by the United States Environmental Protection Agency; requiring payments of pesticide registration fees to be submitted electronically; amending s. 487.0615, F.S.; deleting references relating to per diem and travel for the Pesticide Review Council within the Department of Agriculture and Consumer Services; amending s. 500.70, F.S.; requiring certain persons that produce, harvest, pack, or repack tomatoes to register each location of a tomato farm, tomato greenhouse, tomato packinghouse, or tomato repacker by a specified date on a form prescribed by the department; requiring the department to set a registration fee; providing for funds collected to be deposited into the General Inspection Trust Fund; amending s. 527.22, F.S.; deleting provisions relating to per diem and travel expenses for members of the Florida Propane Gas Education, Safety, and Research Council within the department; amending s. 559.9221, F.S.; deleting provisions relating to per diem and travel expenses for members of the Motor Vehicle Repair Advisory Council within the department;

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amending s. 570.07, F.S.; revising the department’s authority to enforce laws relating to commercial stock feeds and commercial fertilizer; providing a limited exemption to counties that have existing ordinances regulating the sale of urban turf fertilizers; revising the powers and duties of the department regarding pollution control and the prevention of wildfires; amending s. 570.0705, F.S.; deleting provisions relating to per diem and travel expenses for members of any advisory committee that the Commissioner of Agriculture may appoint; amending s. 570.074, F.S.; revising the name of the Office of Water Coordination to the Office of Energy and Water; amending s. 570.18, F.S.; conforming provisions to changes made by the act; amending s. 570.23, F.S.; deleting provisions relating to per diem and travel expenses for members of the State Agricultural Advisory Council within the department; repealing s. 570.29(6), F.S., relating to the Division of Dairy Industry within the department; amending s. 570.38, F.S.; deleting provisions relating to per diem and travel expenses for members of the Animal Industry Technical Council within the department; amending s. 570.382, F.S.; deleting provisions relating to per diem and travel expenses for members of the Arabian Horse Council within the department; repealing s. 570.40, F.S., relating to the powers and duties of the Division of Dairy within the department; repealing s. 570.41, F.S., relating to the qualifications and

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duties of the Director of the Division of Dairy within the department; amending s. 570.42, F.S.; deleting provisions relating to per diem and travel expenses for members of the Dairy Industry Technical Council within the department; amending s. 570.50, F.S.; requiring the Division of Food Safety within the department to inspect dairy farms and enforce the provisions of ch. 502, F.S.; requiring the Division of Food Safety to inspect milk plants, milk product plants, and plants engaged in the manufacture and distribution of frozen desserts and frozen dessert mixes; requiring the Division of Food Safety to analyze and test samples of milk, milk products, frozen desserts, and frozen dessert mixes; amending s. 570.543, F.S.; deleting provisions relating to per diem and travel expenses for members of the Florida Consumers' Council within the department; repealing s. 570.954(3), F.S., relating to the requirement that the Department of Agriculture and Consumer Services coordinate with and solicit the expertise of the state energy office when developing the farm-to-fuel initiative; amending s. 571.28, F.S.; deleting provisions relating to per diem and travel expenses for members of the Florida Agricultural Promotional Campaign Advisory Council within the department; amending s. 573.112, F.S.; deleting provisions relating to per diem and travel expenses for members of the advisory council that administers the marketing order that is issued to the department; amending s.

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576.091, F.S.; deleting provisions relating to per diem and travel expenses for members of the Fertilizer Technical Council within the department; amending s. 580.151, F.S.; deleting provisions relating to per diem and travel expenses for members of the Commercial Feed Technical Council within the department; amending s. 581.186, F.S.; deleting provisions relating to per diem and travel expenses for members of the Endangered Plant Advisory Council within the department; amending s. 586.161, F.S.; deleting provisions relating to per diem and travel expenses for members of the Honeybee Technical Council within the department; amending s. 590.015, F.S.; defining the terms “department,” “open burning,” and “broadcast burning” as they relate to forest protection; redefining the term “fire management services”; amending s. 590.02, F.S.; authorizing forest-operations administrators to be certified as forestry firefighters; authorizing the Department of Agriculture and Consumer Services to have exclusive authority over the Florida Building Code as it pertains to wildfire and law enforcement facilities under the jurisdiction of the department; authorizing the department to retain, transfer, warehouse, bid, destroy, scrap, or dispose of surplus equipment and vehicles used for wildland firefighting; authorizing the department to retain any moneys received from the disposition of state-owned equipment and vehicles used for wildland firefighting; providing that moneys received may be used for the acquisition

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of exchange and surplus equipment used for wildland firefighting and all necessary operating expenditures related to the equipment; requiring the department to maintain records of the accounts into which the money is deposited; giving the Division of Forestry exclusive authority to require and issue authorizations for broadcast burning, agricultural pile burning, and silvicultural pile burning; preempting other governmental entities from adopting laws, rules, or policies pertaining to broadcast burning, agricultural pile burning, or silvicultural pile burning unless an emergency order has been declared; authorizing the department to delegate its authority to a county or municipality to issue authorizations for the burning of yard trash and debris from land clearing operations; amending s. 590.125, F.S.; defining and redefining terms relating to open-burning authorizations by the division; specifying purposes of certified prescribed burning; requiring the authorization of the division for certified pile burning; providing pile burning requirements; limiting the liability of property owners or agents engaged in pile burning; providing penalties for violations by certified pile burners; requiring the division to adopt rules to regulate certified pile burning; revising notice requirements for wildfire hazard reduction treatments; providing for approval of local governments’ open-burning-authorization programs; providing program

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requirements; authorizing the division to resume administration of a local government's program under certain circumstances; providing penalties for violations of a local government's open-burning requirements; amending s. 590.14, F.S.; authorizing an employee of the division to issue a notice of violation for any rule adopted by the division; authorizing the department to impose an administrative fine for a violation of any rule adopted by the division; providing a criminal penalty; providing legislative intent; repealing s. 597.005(4), F.S., deleting provisions relating to per diem and travel expenses for members of the Aquaculture Review Council within the department; amending s. 599.002, F.S.; deleting provisions relating to per diem and travel expenses for members of the Viticulture Advisory Council within the department; amending s. 616.17, F.S.; providing immunity from liability for damages resulting from exhibits and concessions at public fairs; providing exceptions for immunity from liability; amending s. 616.252, F.S.; providing for the appointment of a youth member to serve on the Florida State Fair Authority as a nonvoting member; providing a term of service for the youth member of the Florida State Fair Authority; prohibiting reimbursement for travel expenses for members of the Florida State Fair Authority; excluding the youth member from compensation for special or full-time service performed on behalf of the authority; amending

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s. 812.014, F.S.; providing that it is a grand theft of the third degree and a felony of the third degree if bee colonies of a registered bee keeper are stolen; amending s. 812.015, F.S.; redefining the term “farmer” as it relates to a person who grows or produces honey; redefining the term “farm theft” to include the unlawful taking possession of equipment and associated materials used to grow or produce farm products; 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 Budget Subcommittee on General Government Appropriations

BILL: CS/SB 2076

INTRODUCER: Agriculture Committee

SUBJECT: Department of Agriculture and Consumer Services

DATE: April 8, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Spalla	AG	**Fav/CS**
2.	Blizzard	DeLoach	BGA	**Pre-meeting**
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill addresses issues relating to agriculture and certain powers and duties of the Department of Agriculture and Consumer Services (DACS). The bill provides for the following.

- Deletes statutory references to the Division of Dairy Industry;
- Deletes the powers and duties for the Division of Dairy Industry;
- Adds powers and duties related to the regulation of dairy products to the Division of Food Safety;
- Allows the lead land manager, instead of the Department of Environmental Protection (DEP), to receive the proceeds from the sale of easements for the construction of electric transmission and distribution facilities on Board of Trustees-owned lands;
- Allows the department to enter into agreements for the exploration and sale of oil, gas, and/or other mineral interests on Board of Trustee lands managed by the department. Requires the Board of Trustees, or its designee, to review oil, gas, and mineral leases;
- Sets the annual financial audit threshold for the department's direct-support organizations and citizen support organizations to match those citizen organizations of the DEP;
- Establishes a Certified Pile Burner program in statute;

- Provides civil liability protection for the Certified Pile Burner Program;
- Allows the department to be cost-effective in the utilization of surplus funds for the purchase of firefighting equipment;
- Allows the department to obtain building permits to build wildfire equipment storage facilities using an alternate regulatory process;
- Specifies who shall be present on burn sites for authorized, non-certified burns;
- Revises the department's authority to enforce laws relating to commercial stock feeds and commercial fertilizer. Provides a limited exemption to counties that have existing ordinances regulating the sale of urban turf fertilizers;
- Requires payment for registration fees of anyone who produces, harvests, packs or repacks tomatoes and does not hold a food permit;
- Authorizes the Commissioner of Agriculture to create an Office of Energy and Water and designates the bureaus and positions that report to that office with regard to energy and water policy issues that affect agriculture;
- Deletes provisions that allow department advisory committee members to receive reimbursement for per diem and travel costs;
- Increases the minimum requirements for certificates of insurance for pest control licensees;
- Establishes a new statutory section that allows a licensed pest control business to operate a centralized customer service center for multiple business locations owned by the same owner;
- Establishes a limited certification category authorizing persons to use nonchemical methods for controlling rodents in lieu of licensure;
- Increases minimum requirements for certificates of insurance for pest control licensees that provide wood destroying organism protection;
- Provides that late fees for pesticide registrations are not capped at $250;
- Requires that changes to pesticide labels submitted for registration be clearly marked, and that effective January 1, 2013, all pesticide registration fees be paid through the department's electronic commerce portal;
- Adds the appointment of a non-voting youth member who is active in the Future Farmers of America or a 4-H Club to the Florida State Fair Authority; and
- Provides criminal charges for the theft of bee colonies owned by registered beekeepers.

This bill will increase revenues in the General Inspection Trust Fund within the DACS by an estimated $21,000 in the 2011-2012 fiscal year, from fees generated through the pest control customer contact centers and through the commercial wildlife management personnel limited certification. The department estimates expenditures associated with the inspection and licensing of these programs to be $16,957 in the 2011-2012 fiscal year. The consolidation of the Division of Dairy Industry into the Division of Food Safety provides a recurring cost savings of $239,496 in general revenue.

This bill amends sections 14.24, 20.14, 215.981, 253.02, 261.04, 482.051, 482.071, 482.226, 482.243, 487.041, 487.0615, 500.70, 527.22, 559.9221, 570.07, 570.0705, 570.074, 570.23, 570.38, 570.382, 570.42, 570.50, 570.543, 571.28, 573.112, 576.091, 580.151, 581.186, 586.161, 589.101, 590.015, 590.02, 590.125, 590.14, 599.002, 616.252, 812.014, and 812.015 of the Florida Statutes.

The bill creates sections 482.072 and 482.157, Florida Statutes.

The bill repeals the following sections of the Florida Statutes: 570.29(6), 570.40, 570.41, 570.954(3), and 597.005(4).

II. Present Situation:

Division of Dairy Industry

The Division of Dairy Industry is currently a separate entity within the Department of Agriculture and Consumer Services. It ensures that dairy products purchased by Florida consumers are wholesome, produced under sanitary conditions, and correctly labeled. The division regulates the production, transporting, processing, distribution, and labeling of milk and milk products. It establishes standards for these products, whether they originate in Florida or other states. The division enforces laws and rules that regulate standards for milk, milk products, ice cream and frozen desserts, and the interstate shipment of milk.

Tomato Food Safety

Legislation enacted in 2007,[1] which amended ch. 500 and 570, F.S., authorized the department to regulate food safety at tomato farms and packing houses. In 2010, the Legislature enacted legislation[2] creating s. 500.70, F.S., authorizing the department to adopt rules establishing food safety standards to safeguard the public health and promote the public welfare by protecting the consuming public from injury caused by the adulteration or the microbiological, chemical, or radiological contamination of tomatoes. The law also required the rules to apply to the producing, harvesting, packing, and repacking of tomatoes for sale for human consumption by a tomato farm, tomato greenhouse, or tomato packinghouse or repacker in this state. The law specifically authorized the rules to establish standards for:

- Registration with the department of persons who produce, harvest, pack or repack tomatoes in the state, such as farms, who do not hold a food permit issued under s. 500.12, F.S.
- Proximity of domestic animals and livestock to the production areas for tomatoes;
- Food safety-related use of water for irrigation during production and washing of tomatoes after harvest;
- Use of fertilizers;
- Cleaning and sanitation of containers, materials, equipment, vehicles, and facilities, including storage and ripening areas;
- Health, hygiene, and sanitation of employees who handle tomatoes;
- Training and continuing education of persons who produce, harvest, pack, or repack tomatoes in the state, and their employees who handle tomatoes; and
- Labeling and recordkeeping, including standards for identifying and tracing tomatoes for sale for human consumption.

[1] Chapter 2007-067, L.O.F.
[2] Chapter 2010-25, L.O.F.

Tomato farms are required to register with the department. There are currently 28 registered farms, some of which are multiple locations of the same company name. The department has the statutory authority to establish standards for registration and to set registration costs for the tomato food safety program, but it does not have statutory authority to require registration or payment of said registration costs.

Board of Trustees Lands

The Division of State Lands within the Department of Environment Protection serves as staff to the Board of Trustees of the Internal Improvement Trust Fund, which consists of the Governor and Cabinet. Currently, the proceeds of the sale of easements encumbering Board of Trustees lands managed by DACS go to DEP. This bill allows the particular state agency that is the lead managing agency to receive the proceeds.

The DACS may currently lease the Board of Trustees' 25 percent interest in oil, gas, and minerals in Blackwater River State Forest. Since the last legislative update of this issue, the state of Florida has acquired the remaining 75 percent interest from the federal government on most Board of Trustees owned lands leased to DACS, giving the Board of Trustees 100 percent interest. This bill allows DACS to enter into oil, gas, and other mineral leases on Board of Trustee owned lands leased to DACS and requires the Board of Trustees, or its designee, to review oil, gas, and mineral leases.

Prescribed Fire

Prescribed fire in Florida is a very important and valuable land management tool. The Florida Division of Forestry through the Forest Protection Bureau oversees one of the most active prescribed fire programs in the country. In an average year the division will issue 120,000 authorizations allowing people and agencies to prescribe burn their land. Currently, the power to authorize certain types of burning is preempted to the department, and people seeking to burn are often required to obtain an authorization to burn from both the department and a local government. Prescribed fire in Florida is governed by ch. 590, F.S., and Florida Administrative Code Chapter 5I-2.

In 2005 and 2006, the Division of Forestry, in cooperation with University of Florida's Institute of Food and Agricultural Sciences, developed a certification program for Florida Pile Burners. Florida Administrative Code Chapter 5I-2 outlines the steps necessary to become certified and also what is necessary to keep that certification. The purpose behind the development and implementation of the program was to raise the overall quality of the open burning program in Florida. Currently, the statutes do not specify who must be present on a burn site for authorized, non-certified burns. There is also not a provision for civil liability protection for the program. In addition, there is no statutory authority for the department to delegate its burn authorization authority for issuance of open burning authorizations to local governments. Some local governments have the interest and ability to implement a burn authorization program with guidance from the department.

Florida Building Code

With certain exceptions, each local government and each legally constituted enforcement district with statutory authority regulates building construction.[3] Therefore, the department must obtain building permits through local governments. The Florida Building Code has been revised several times in recent years and, according to the department, this has created confusion among local governments regarding code interpretation and led to a cumbersome and costly process for the department as they construct facilities for wildfire equipment in different parts of the state. The bill allows the department to obtain building permits using an alternative regulatory process that is a more efficient method of obtaining building permits in a shorter timeframe and at a lesser cost. Agencies currently using the alternate regulatory process are the Department of Corrections, the Department of Transportation, the Department of Children and Families, and the Department of Juvenile Justice.

Firefighting Equipment

Prior to 2006, when the law[4] was changed, the department had the authority to use monies acquired from the disposition of surplus firefighting equipment to reinvest in other firefighting equipment. Since 2006, the department has had to seek a special appropriation before the funds can be reinvested in other equipment. Also, current law[5] requires that all replaced equipment be reported for disposal within 45 days of being replaced. Additionally, current law[6] requires the Department of Management Services to approve the disposal of any motor vehicles or aircraft. Due to the very nature of emergency response, the department's equipment needs vary from year to year. Because funding for replacement equipment is inadequate, the department has requested the flexibility to retain replaced equipment to meet future emergency needs and for use as backup for the frontline equipment. The bill allows the department to retain the monies acquired from the sale of state-owned firefighting equipment and vehicles. The monies received are to be used for the acquisition of exchange and surplus equipment, and for necessary operating cost related to the equipment.

Agricultural Water Policy

The Commissioner of Agriculture has the authority to create an Office of Water Coordination[7] and to designate the bureaus and positions that report to that office regarding water policy and water issues that affect agriculture and are within the department's jurisdiction. The department established the Office of Agricultural Water Policy (OAWP) in 1995. The OAWP facilitates communication and coordination among federal, state, and local agencies, environmental representatives, and the agriculture industry on agricultural water resource issues, related to both quality and quantity. A primary function of the OAWP is to develop and assist with the implementation of Best Management Practices (BMPs), in order for agricultural producers to meet their obligation under the Florida Watershed Restoration Act to reduce agricultural pollutant loadings to impaired waters within a basin for which DEP has adopted a Basin

[3] s. 553.80(1), F.S.
[4] Chapter 2006-122, s. 40, L.O.F.
[5] s. 287.16, F.S.
[6] s. 273.055, F.S.
[7] s. 570.074, F.S.

Management Action Plan. The OAWP also facilitates and assists in the development of other watershed protection plans throughout the state, including the Lake Okeechobee, St. Lucie Watershed, and Caloosahatchee Watershed protection plans, among others. The OAWP is also very involved in Everglades restoration efforts and in other federal matters, such as the discussion/debate over EPA numeric nutrient criteria for Florida.

Florida's "Farm to Fuel" initiative seeks to enhance the market for and promote the production, and distribution of, renewable energy from Florida-grown crops, agricultural wastes and residues, and other biomass. In the process, it is designed to give Florida agricultural producers alternative crops to grow to keep their farms and ranches viable. Current statute requires the department to coordinate with and solicit the expertise of the state energy office within DEP when developing and implementing this initiative. Because the state energy office is no longer in DEP, this requirement is no longer necessary in statute. The bill changes the Office of Agricultural Water Policy to the Office of Energy and Water, expanding the duties of the office to include energy matters that affect agriculture.

Per Diem and Travel Expenses for Advisory Committees

Section 112.061, F.S., establishes standard travel reimbursement rates, procedures, and limitations applicable to all public officers, employees, and authorized persons whose travel is authorized and paid by a public agency. This allows members of select statutorily created advisory councils to receive compensation for per diem and travel expenses. They organize and host the meetings of the councils, and have in the past been provided with per diem and travel expenses in accordance with these provisions. According to a September 11, 2007, response to a Joint Legislative Sunset Committee request, the department indicated that it had approximately 50 advisory boards, councils, or committees in Fiscal Year 2006-07 that incurred travel, staff, and other expenses totaling $220,067. Eliminating the requirement to pay for travel and per diem costs for the members of these numerous select advisory committees will provide a reduction in costs.

Pest Control

For structural pest control, the law provides that each pest control business location must be licensed by the department and that a Florida certified operator must be in charge of the pest control operations of the business location. Some pest control companies operate regional customer contact centers that solicit business and receive calls for the appropriate state/area in the region. Florida law currently requires pest control businesses doing business in the state to register and obtain a license to operate, but does not address pest control contact centers. Therefore, a customer contact center must obtain a pest control license, even though they are only receiving telephone calls and soliciting business. Allowing a licensed pest control business to operate a centralized customer service center for multiple business locations owned by the same owner will allow licensees a more efficient means of providing service to customers while still protecting customers through specific requirements for licensure and accountability.

A pest control business licensee may not operate a pest control business without carrying the required insurance coverage and furnishing the department with a certificate of insurance that meets the requirements for minimum financial responsibility for bodily injury: $100,000 each person and $300,000 each occurrence; and property damage: $50,000 each occurrence and

$100,000 in the aggregate.[8] These minimum requirements for insurance coverage to conduct pest control business have not been increased since 1992. These minimums need to be increased to reflect current levels of insurance offered by liability insurers and to provide better protection to Florida consumers.

Currently, there is no provision for a limited certification for commercial wildlife trapper personnel to use nonchemical method to control rodents. For several years, the Florida Fish and Wildlife Conservation Commission has issued permits for persons engaged in the control of nuisance wildlife. Interest in the permitting system dwindled over the years, resulting in permitting being discontinued in 2008. Several persons still engaged in the control of nuisance wildlife have contacted the department asking to have a certification process reinstated to assure that the nuisance animals are being handled humanely and the public is protected.

To protect the health, safety and welfare of the public, a pest control licensee must give the department advance notice of at least 24 hours of the location where general fumigation will be taking place. In emergency cases, when a 24-hour notice is not possible, a licensee may provide notice by means of a telephone call and then follow up with a written confirmation providing the required information.

Pesticide Registration

Currently, each brand of pesticide distributed, sold, or offered for sale in the state must be registered biennially by the department.[9] The registrant must supply the department with such information as: the name and address of the registrant, the pesticide brand name, an ingredient statement, and a copy of the labeling. Registrants are required to pay a fee per brand of pesticide and another fee for each special local needs label and experimental use permit. The department may also assess a supplemental fee to offset the costs of testing for food safety for pesticide brands that contain an active ingredient for which the U.S. Environmental Protection Agency has established a food tolerance limit.[10] The department is authorized to assess late fees for registrations[11] that are not timely renewed. Fees collected through the pesticide registration program are deposited into the General Inspection Trust Fund and used to carry out the provisions of the registration program.

Florida Fair Authority

The Florida State Fair Authority (authority) is an instrument of the state, under the supervision of the Commissioner of Agriculture (Commissioner). The authority, composed of 21 members, is responsible for staging an annual fair to serve the entire state. The Commissioner, or his/her designee, serves as a voting member. There is also a member who serves as a member of the Board of County Commissioners of Hillsborough County, the district where the state fairgrounds are located. The Commissioner appoints the remaining members of the authority. Each member serves a 4-year term and may be appointed for more than one term.

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[8] s. 482.071(4), F.S.
[9] The registration requirement also applies to pesticide brands delivered for transportation or transported in intrastate commerce or between points within the state through any point out of the state.
[10] Per 40 C.F.R., part 180
[11] These include pesticide brands, special local need labels, and/or experimental use permits.

Apiary

Florida law currently provides criminal charges[12] for the theft of any commercially farmed animal, such as horses, cows, sheep, swine, or other grazing animals, including aquaculture. The bill amends current law to include the theft of bee colonies of registered beekeepers. Current law defines "farm theft" as the unlawful taking possession of any items that are grown or produced on land, owned, rented, or leased by another person. The bill amends the definition of "farm theft" to include the equipment and associated materials used to grow or produce the farm products as defined in the Florida Right to Farm Act.[13] The definition of "farmer" is also amended to include those persons who produce honey.

III. Effect of Proposed Changes:

Section 1 amends s. 14.24, F.S., to delete provisions that authorize members of the Florida Commission on the Status of Women to be reimbursed for per diem and travel expenses incurred when meeting.

Section 2 amends s. 20.14, F.S., to delete a reference to the Dairy Industry.[14]

Section 3 amends s. 215.981, F.S., to exempt certain direct-support organizations and citizen support organizations for the department from obtaining an independent audit if they are not for profit and have annual expenditures of less than $300,000.

Section 4 amends s. 253.02, F.S., to require a grantee of easements for electrical transmission to pay the lead manager of a state owned land or, when there is no lead manager, the Department of Environmental Protection if suitable replacement uplands cannot be identified. The proceeds must be deposited into the managing agency's designated fund benefitting state conservation land management.

Section 5 amends s. 261.04, F.S., to delete provisions that authorize members of the Off-Highway Vehicle Recreation Advisory Committee to be reimbursed for per diem and travel expenses incurred while participating in business involving the advisory committee.

Section 6 amends s. 482.051, F.S., to authorize a rule change. In the event of an emergency requiring fumigation, pest control operators may provide emergency notice of the fumigation location to the department by facsimile or other form of electronic means.

Section 7 amends s. 482.071, F.S., to increase the minimum bodily injury and property damage insurance coverage required for a pest control business.

Section 8 creates s. 482.072. F.S., to allow the establishment, inspection, and regulation of centralized pest control customer contact centers. This allows licensed centers to solicit pest

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[12] Grand theft of the third degree and a felony of the third degree, punishable by imprisonment not exceeding 5 years, $5,000 fine or, for habitual offenders, for a term of imprisonment not exceeding 10 years.
[13] s. 823.14(3)(c), F.S.
[14] Division of the Department of Agriculture and Consumer Services

control business and to provide service to customers for one or more business locations. It provides for the biennial renewal of the license. It also establishes a licensure fee of at least $600, but not more than $1,000 and renewal fees of at least $600, but not more than $1,000. This section also provides for the expiration of a license not renewed within 60 days of a renewal deadline. A license automatically expires if a licensee changes its customer contact center business location and requires issuance of a new license upon payment of a $250 fee. It authorizes the department to adopt rules establishing requirements and procedures for recordkeeping and monitoring customer contact center operations. It provides for disciplinary action for violations of chapter 482, F.S., or any rule adopted hereunder.

Section 9 creates s. 482.157, F.S., to establish a limited certification category for individual commercial wildlife trapper personnel engaged in the nonchemical control of wildlife to also control rodents, as defined in chapter 482, F.S. It requires an exam and establishes certification fees of at least $150, but not to exceed $300. This section also provides for recertification fees, classes, and late fees. The bill limits the scope of work permitted by certificate holders and clarifies those licensees and certificate holders who practice accepted pest control methods are immune from liability for violating animal cruelty laws. It also provides that this section does not exempt any person from the rules, orders, or regulations of the Florida Fish and Wildlife Conservation Commission.

Section 10 amends s. 482.226, F.S., to increase the minimum insurance requirements for a pest control licensee that performs wood-destroying organism inspections from $50,000 to $500,000 in the aggregate and from $25,000 to $250,000 per occurrence. This change reflects the current levels of insurance offered by liability insurers.

Section 11 amends s. 482.243, F.S., to delete provisions that authorize the members of the Pest Control Enforcement Advisory Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the advisory council.

Section 12 amends s. 487.041, F.S., to provide that fees relating to the registration of pesticide brands are non-refundable. When a currently registered pesticide brand undergoes a label revision, the registrant must submit to the department a copy of the revised label along with a cover letter detailing the changes that were made to the label. It provides requirements for label revisions that must be reviewed by the U.S. Environmental Protection Agency. It also allows payments of pesticide registration fees to be submitted electronically, effective January 1, 2013.

Section 13 amends s. 487.0615, F.S., to delete provisions that authorize the members of the Pesticide Review Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 14 amends s. 500.70, F.S., to require persons who produce, harvest, pack, or repack tomatoes, but who do not hold a food permit, to register and submit an address for each company location annually by August 1. It authorizes the department to set by rule an annual registration fee not to exceed $500. It also requires that registration fees be deposited into the General Inspection Trust Fund.

Section 15 amends s. 527.22, F.S., to delete provisions that authorize the members of the Florida Propane Gas Education, Safety, and Research Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 16 amends s. 559.9221, F.S., to delete provisions that authorize the members of the Motor Vehicle Repair Advisory Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the advisory council.

Section 17 amends s. 570.07, F.S., to revise the authority of the department to enforce laws relating to commercial stock feeds and commercial fertilizer. It provides a limited exemption to counties that have existing ordinances regulating the sale of urban turf fertilizers. It also revises the authority of the department regarding pollution control and the prevention of wildfires, in order to regulate open burning connected with land-clearing, agricultural, or forestry operations.

Section 18 amends s. 570.0705, F.S., to delete provisions that authorize the members of advisory committees appointed by the Commissioner of Agriculture to be reimbursed for per diem and travel expenses incurred while participating in business involving the advisory committees.

Section 19 amends s. 570.074, F.S., to rename the Office of Water Coordination to the Office of Energy and Water.

Section 20 amends s. 570.23, F.S., to delete provisions that authorize the members of the State Agricultural Advisory Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the advisory councils.

Section 21 repeals subsection 570.29(6), F.S., relating to a reference to the Division of Dairy Industry in the DACS' list of departmental divisions.

Section 22 amends s. 570.38, F.S., to delete provisions that authorize the members of the Animal Industry Technical Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 23 amends s. 570.382, F.S., to delete provisions that authorize the members of the Arabian Horse Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 24 repeals s. 570.40, F.S., relating to the powers and duties of the Division of Dairy Industry.

Section 25 repeals s. 570.41, F.S., relating to the qualifications and duties of the director of the Division of Dairy Industry.

Section 26 amends s. 570.42, F.S., to delete provisions that authorize the members of the Dairy Industry Technical Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 27 amends s. 570.50, F.S., to amend the powers and duties of the Division of Food Safety to include inspecting dairy farms and enforcing the provisions of Chapter 502, F.S. It authorizes the division to inspect milk plants, milk product plants, and plants engaged in the manufacture and distribution of frozen desserts and frozen desserts mix. It also authorizes the division to analyze and test samples of milk, milk products, frozen desserts, and frozen desserts mix.

Section 28 amends s. 570.543, F.S., to delete provisions that authorize the members of the Florida Consumers' Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 29 repeals subsection 570.954(3), F.S., relating to the requirement that the department coordinate with and solicit the expertise of the state energy office within the DEP when developing and implementing its farm-to-fuel initiative.

Section 30 amends s. 571.28, F.S., to delete provisions that authorize the members of the Florida Agricultural Promotional Campaign Advisory Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the advisory council.

Section 31 amends s. 573.112, F.S., to delete provisions that authorize the members of marketing order advisory councils appointed by the department to be reimbursed for per diem and travel expenses incurred while participating in business involving the advisory council.

Section 32 amends s. 576.091, F.S., to delete provisions that authorize the members of the Fertilizer Technical Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 33 amends s. 580.151, F.S., to delete provisions that authorize the members of the Commercial Feed Technical Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 34 amends s. 581.186, F.S., to delete provisions that authorize the members of the Endangered Plant Advisory Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the advisory council.

Section 35 amends s. 586.161, F.S., to delete provisions that authorize the members of the Honeybee Technical Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 36 amends s. 589.101, F.S., to authorize the department to enter into gas, oil, and other mineral leases on Board of Trustees owned lands leased to the department. It requires the Board of Trustees of the Internal Improvement Trust Fund, or its designee, to review proposed leases.

Section 37 amends s. 590.015, F.S., to delete a definition for "division," meaning the Division of Forestry, and inserting "department." It amends the definition of fire management to include prescribed burning assistance and provides definitions for "open burning" and "broadcast burning."

Section 38 amends s. 590.02, F.S., to change the name of the Division of Forestry to the Florida Forest Service. It provides that the Florida Forest Service has the following power, authority, and duty to:

- Provide firefighting crews, who shall be under its control and direction;
- Authorize forest operations administrators to be certified as forestry firefighters; and
- Employ aviation managers, Florida Forest Service training coordinators, and deputy chiefs of field operations who shall have Selected Exempt Service status.

The bill authorizes the department to:

- Enforce the Florida Building code as it pertains to wildfire and law enforcement facilities under the jurisdiction of the department;
- Retain, transfer, warehouse, bid, destroy, scrap or otherwise dispose of surplus wildland firefighting equipment and vehicles;
- Retain all moneys received from the disposition of state-owned wildland firefighting equipment and vehicles. Monies received may be used to acquire exchange and surplus wildland firefighting equipment and for operating expenditures related to the equipment.

  The bill gives the Florida Forest Service exclusive authority to require issue authorizations for broadcast burning, and agricultural and silvicultural pile burning. It preempts other governmental entities from adopting laws, regulations, rules, or policies pertaining to broadcast burning, or agricultural or silvicultural pile burning unless an emergency order has been declared. It authorizes the department to delegate its authority to a county or municipality to issue authorizations for the burning of yard trash and debris from land clearing operations.

Section 39 amends s. 590.125, F.S., to:

- Revise terminology for open burning authorizations; It adds definitions for "certified pile burner," "land-clearing operation," "pile burning," "prescribed burning," "prescription," and "yard trash."
- Specify purposes of certified prescribed burning;
- Require the authorization of the Florida Forest Service for certified pile burning;
- Provide pile burning requirements;
- Limit the liability of property owners or their agents engaged in pile burning;
- Provide penalties for violations by certified pile burners;
- Authorize the Florida Forest Service to adopt rules regulating certified pile burning;
- Revise notice requirements for wildfire hazard reduction treatments;
- Provide for approval of local government open burning authorization programs and program requirements;
- Authorize the Florida Forest Service to close local government programs under certain circumstances and assume administration of those open burning authorization programs; and
- Provide penalties for violations of local government open burning requirements.

Section 40 amends s. 590.14, F.S., to authorize an administrative fine, not to exceed $1,000 per violation for violation of any Florida Forest Service rule. It provides penalties for failure to comply with any rule or order adopted by the Florida Forest Service and for knowingly making any false statement or representation on applications, records, plans, or any other required documents. It also provides legislative intent that a penalty imposed by a court be of a severity that ensures immediate and continued compliance with this section.

Section 41 repeals subsection 597.005(4), F.S., relating to provisions that authorize the members of the Aquaculture Review Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the council.

Section 42 amends s. 599.002, F.S., to delete provisions that authorize the members of the Viticulture Advisory Council to be reimbursed for per diem and travel expenses incurred while participating in business involving the advisory council.

Section 43 amends s. 616.252, F.S., to provide for appointment of a youth member who is an active member of the Florida Future Farmers of America or of a 4-H Club to serve on the Florida State Fair Authority as a non-voting member. It provides a term of one year for a youth member of the Authority and excludes youth members from compensation for special or full-time service performed on behalf of the Authority.

Section 44 amends s. 812.014, F.S., to provide penalties for the theft of bee colonies of registered beekeepers.

Section 45 amends s. 812.015, F.S., to amend the definitions of “farmer” and “farm theft.”

Section 46 provides that this act shall take effect October 1, 2011.

Other Potential Implications:

None.

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:

Please refer to Private Sector Impact and Government Sector Impact.

B. Private Sector Impact:

There are currently 28 registered tomato farms; some with multiple locations of the same company name. This bill authorizes the department to set by rule an annual registration fee not to exceed $500.

Pest control businesses that choose to obtain the license for a customer service center will incur a fee of at least $600, but no more than $1,000. Pest control businesses that do not currently have the proposed minimum insurance requirements will have to increase their insurance coverage from $50,000 to $500,000 in the aggregate and from $25,000 to $250,000 per occurrence.

Individuals who conduct wildlife management services and wish to obtain limited certification to control rodents will incur fees of at least $150, but not to exceed $300 associated with the limited certification.

Persons and companies registering pesticides will be required to pay current fees using the electronic commerce site. Some firms may have to adjust their registration processing to accommodate this change. Ultimately, the reduction in postage and paperwork should reduce their costs.

Persons serving on advisory committees for DACS will be responsible for covering any travel expenses they incur while performing the duties associated with said service.

The bill provides civil liability protection to certified pile burners. Persons wishing to obtain an authorization for open burning will no longer be required to obtain two permits. Persons who fail to comply with rules adopted by the department relating to the Florida Forest Service may be charged with civil or criminal charges.

C. Government Sector Impact:

Provisions in this bill will impact revenues to and expenditures by the Department of Agriculture and Consumer Services as shown in the following tables.

REVENUE	FY 2011-12	FY 2012-13	FY 2013-14
Food Safety Registration of Tomato Farms	$0	$2,500	$3,000
Pest Control Registration Customer Contact Center License* Limited Certification Wildlife Limited Certification Exam** Limited Certification Renewal***	 $6,000 $15,000 $0	 $0 $7,500 $7,500	 $6,000 $7,500 $7,500
TOTAL:	**$21,000**	**$16,359**	**$21,000**

*Based on 10 licenses issued per year at $600 each, renewing biennially.
**Based on 100 exams the first year, 50 the second and third years, at $150 each.
***Based on 100 renewals at $75 each.

EXPENDITURES	FY 2011-12	FY 2012-13	FY 2013-14
Food Safety: Registration of Tomato Farms*	$0	$150	$175
Pest Control Registration: Inspections* License Issuance**	 $15,860 $1,097	 $15,860 $499	 $15,860 $1,595
TOTAL	**$16,957**	**$16,359**	**$ 17,455**

*FY 09-10 unit cost per inspection, 20 inspections at $793.
**FY 09-10 unit cost per license, 110 inspections at $9.97 the first year, 50 inspections the second year, and 160 inspections the third year.

Division of Dairy Industry

Consolidation of the Division of Dairy Industry into the Division of Food Safety within the DACS provides a recurring cost savings of $239,465 in general revenue. Inspections of dairy farms, milk plants, milk product plants, and other specified functions of the Division of Dairy Industry will continue to be conducted by the Division of Food Safety.

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 Agriculture Committee on April 4, 2011:

Committee Substitute for Senate Bill 2076 is different from Senate Bill 2076 in that it:

- Revises the Department of Agriculture and Consumer Services' authority to enforce laws relating to commercial stock feeds and commercial fertilizer by providing a limited exemption to counties that have existing ordinances regulating the sale of urban turf fertilizers.

- Deletes Section 6, which repealed subsection 472.007(5), F.S., thereby allowing members of the Board of Professional Surveyors and Mappers to continue to be reimbursed for per diem and travel expenses incurred while participating in business involving the board.

- Requires the Board of Trustees of the Internal Improvement Trust Fund, or its designee, to review oil, gas, and mineral leases that are created pursuant to s. 589.101, F.S.

B. Amendments:

None.