

**SB 914** by **Latvala**; (Identical to H 0953) State Contracting

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**CS/CS/SB 956** by **CA, EP, Bean**; (Similar to CS/CS/1ST ENG/H 0791) Coastal Management

**CS/CS/SB 1014** by **BI, HP, Garcia**; (Similar to H 0765) Pharmacy Benefit Managers

**CS/SB 1098** by **RI, Dean**; (Similar to CS/CS/H 1235) Florida Homeowners' Construction Recovery Fund

**CS/SB 1210** by **BI, Bean**; (Similar to CS/CS/1ST ENG/H 0633) Division of Insurance Agents and Agency Services

**SB 1582** by **Dean**; (Similar to CS/H 7093) Rehabilitation of Petroleum Contamination Sites

196092	A	S	RCS	AGG, Legg	Delete L.496 - 497:	04/02 03:49 PM
740840	A	S	RS	AGG, Simpson	btw L.582 - 583:	04/02 03:49 PM
186992	SA	S	RCS	AGG, Simpson	Delete L.1393 - 1451:	04/02 03:49 PM

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**  
**APPROPRIATIONS SUBCOMMITTEE ON GENERAL**  
**GOVERNMENT**  
**Senator Hays, Chair**  
**Senator Thompson, Vice Chair**

**MEETING DATE:** Wednesday, April 2, 2014  
**TIME:** 1:00 —3:00 p.m.  
**PLACE:** *Toni Jennings Committee Room, 110 Senate Office Building*

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 914</b> Latvala (Identical H 953)	State Contracting; Revising the criteria for evaluating a proposal to include consideration of prior relevant experience of the vendor; revising the criteria for evaluating a response to an agency's invitation to negotiate to include consideration of prior relevant experience of the vendor, etc.  GO 03/13/2014 Favorable AGG 04/02/2014 Favorable AP	Favorable Yeas 12 Nays 0
2	<b>CS/CS/SB 956</b> Community Affairs / Environmental Preservation and Conservation / Bean (Similar CS/H 791)	Coastal Management; Authorizing the Department of Environmental Protection to grant areawide permits for certain structures; requiring the department to promote the public use of aquatic preserves and their associated uplands; authorizing the department to receive gifts and donations for certain purposes; authorizing the department to grant privileges or concessions for the accommodation of visitors in and use of aquatic preserves and their associated uplands provided certain conditions are met, etc.  EP 03/13/2014 Fav/CS CA 03/25/2014 Fav/CS AGG 04/02/2014 Favorable AP	Favorable Yeas 12 Nays 0
3	<b>CS/CS/SB 1014</b> Banking and Insurance / Health Policy / Garcia (Similar H 765)	Pharmacy Benefit Managers; Specifying contract terms that must be included in a contract between a pharmacy benefit manager and a pharmacy; providing restrictions on the inclusion of prescription drugs on a list that specifies the maximum allowable cost for such drugs; requiring a contract between a pharmacy benefit manager and a pharmacy to include an appeal process, etc.  HP 03/19/2014 Fav/CS BI 03/25/2014 Fav/CS AGG 04/02/2014 Favorable AP	Favorable Yeas 12 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**Appropriations Subcommittee on General Government  
Wednesday, April 2, 2014, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>CS/SB 1098</b> Regulated Industries / Dean (Similar CS/H 1235)	Florida Homeowners' Construction Recovery Fund; Revising conditions under which a claimant is eligible to seek recovery from the recovery fund; revising the form required to be provided by a contractor which explains a consumer's rights under the recovery fund; prohibiting fund disbursements from exceeding a specified amount for each Division I claim and each Division II claim, etc.  RI 03/20/2014 Fav/CS AGG 04/02/2014 Favorable AP	Favorable Yeas 11 Nays 0
5	<b>CS/SB 1210</b> Banking and Insurance / Bean (Similar CS/CS/H 633, Compare H 471, CS/CS/H 565, CS/H 743, H 759, CS/CS/S 708, CS/S 1260)	Division of Insurance Agents and Agency Services; Revising the name of the division; requiring a branch place of business to have an agent in charge; limiting the types of business that may be transacted by certain agents; revising terminology relating to investigations conducted by the Department of Financial Services and the Office of Insurance Regulation with respect to individuals and entities involved in the insurance industry; revising a prohibition against unlicensed transaction of life insurance, etc.  BI 03/11/2014 Fav/CS AGG 04/02/2014 Favorable AP	Favorable Yeas 12 Nays 0
6	<b>SB 1582</b> Dean (Similar H 7093)	Rehabilitation of Petroleum Contamination Sites; Revising legislative findings and intent regarding the Petroleum Restoration Program and the rehabilitation of contamination sites; providing requirements for site rehabilitation contracts and procedures for payment of rehabilitation work under the Petroleum Restoration Program; limiting eligibility for funding under the Early Detection Incentive Program, etc.  EP 03/20/2014 Favorable AGG 04/02/2014 Fav/CS AP	Fav/CS Yeas 11 Nays 0

Other Related Meeting Documents

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: SB 914

INTRODUCER: Senator Latvala

SUBJECT: State Contracting

DATE: April 1, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McKay</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 914 requires state agencies to consider the prior relevant experience of a vendor when evaluating the responses to a request for proposal or invitation to negotiate. Currently, state agencies may consider prior relevant experience but are not required by law to do so.

The bill does not have a fiscal impact on the state.

**II. Present Situation:**

**State Procurement of and Contracts for Personal Property and Services**

Chapter 287, F.S., regulates state agency<sup>1</sup> procurement of personal property<sup>2</sup> and services.<sup>3</sup> The Department of Management Services (DMS) is responsible for overseeing state purchasing activity including professional and contractual services as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.<sup>4</sup> The Division of

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<sup>1</sup> As defined in s. 287.012(1), F.S., “agency” means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges.

<sup>2</sup> Personal property” is not independently defined for purposes of ch. 287, F.S., but the chapter title for Chapter 287, F.S., is “Procurement of Personal Property and Services.” Additionally, the definition of “commodity” in s. 287.012(5), F.S., is “any of the various supplies, materials, goods, merchandise, food, equipment, information technology, and other personal property, including a mobile home, trailer, or other portable structure that has less than 5,000 square feet of floor space, purchased, leased, or otherwise contracted for by the state and its agencies.” This definition is used in Part I of Ch. 287, F.S., “Commodities, Insurance, and Contractual Services.”

<sup>3</sup> Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

<sup>4</sup> See ss. 287.032 and 287.042, F.S.

State Purchasing in the DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.

Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals (RFP), which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate (ITN), which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.<sup>5</sup>

Criteria used to evaluate proposals received pursuant to a request for proposals must include, but are not limited to:

- Price;
- Renewal price, if renewal is contemplated; and
- Consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor.<sup>6</sup>

In invitations to negotiate, the criteria to be used in determining the acceptability of the reply and guiding the selection of the vendors with which the agency will negotiate must be specified in the ITN.<sup>7</sup>

Contracts for commodities or contractual services in excess of \$35,000 must be procured utilizing a competitive solicitation process.<sup>8</sup> However, specified contractual services and commodities are not subject to competitive solicitation requirements.<sup>9</sup>

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by the DMS, a water management district, or certain other agencies.<sup>10</sup>

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<sup>5</sup> See ss. 287.012(6) and 287.057, F.S.

<sup>6</sup> Section 287.057(1)(b)3., F.S.

<sup>7</sup> Section 287.057(1)(c)3., F.S.

<sup>8</sup> Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

<sup>9</sup> See s. 287.057(3)(f), F.S.

<sup>10</sup> See s. 287.042(2)(c), F.S.

**III. Effect of Proposed Changes:**

The bill amends the existing agency competitive procurement law in ch. 287, F.S., to require agencies to consider the prior relevant experience of a vendor when evaluating responses to a request for proposal or invitation to negotiate. Currently, agencies may consider prior relevant experience of a vendor but are not required by law to do so.

**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. Statutes Affected:**

This bill substantially amends section 287.057 of the Florida Statutes.

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/02/2014	.	
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Appropriations Subcommittee on General Government (Latvala)  
recommended the following:

**Senate Amendment (with title amendment)**

Between lines 111 and 112

insert:

Section 2. Section 287.0836, Florida Statutes, is created  
to read:

287.0836 Sustainable transportation services procurement.-  
An agency must consider the following criteria when evaluating a  
proposal or reply received pursuant to a request for a proposal  
or an invitation to negotiate for services related to cargo,





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11 freight, or package delivery:

12 (1) Whether the vendor uses alternative fuels, including  
13 natural gas fuel as defined in s. 377.810.

14 (2) The fuel efficiency of the vehicles used by the vendor.

15

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

17 And the title is amended as follows:

18 Delete line 8

19 and insert:

20 experience of the vendor; creating s. 287.0836, F.S.;

21 requiring an agency to consider specified criteria

22 when evaluating a proposal or reply received for

23 procurement of specified transportation services;

24 providing an effective date.

By Senator Latvala

20-01398-14

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A bill to be entitled

An act relating to state contracting; amending s. 287.057, F.S.; revising the criteria for evaluating a proposal to include consideration of prior relevant experience of the vendor; revising the criteria for evaluating a response to an agency's invitation to negotiate to include consideration of prior relevant experience of the vendor; providing an effective date.

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

Section 1. Subsection (1) of section 287.057, Florida Statutes, is amended to read:

287.057 Procurement of commodities or contractual services.—

(1) The competitive solicitation processes authorized in this section shall be used for procurement of commodities or contractual services in excess of the threshold amount provided for CATEGORY TWO in s. 287.017. Any competitive solicitation shall be made available simultaneously to all vendors, must include the time and date for the receipt of bids, proposals, or replies and of the public opening, and must include all contractual terms and conditions applicable to the procurement, including the criteria to be used in determining acceptability and relative merit of the bid, proposal, or reply.

(a) *Invitation to bid.*—The invitation to bid shall be used when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications

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

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defining the actual commodity or group of commodities required.

1. All invitations to bid must include:

a. A detailed description of the commodities or contractual services sought; and

b. If the agency contemplates renewal of the contract, a statement to that effect.

2. Bids submitted in response to an invitation to bid in which the agency contemplates renewal of the contract must include the price for each year for which the contract may be renewed.

3. Evaluation of bids must include consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor.

4. The contract shall be awarded to the responsible and responsive vendor who submits the lowest responsive bid.

(b) *Request for proposals.*—An agency shall use a request for proposals when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables. Various combinations or versions of commodities or contractual services may be proposed by a responsive vendor to meet the specifications of the solicitation document.

1. Before issuing a request for proposals, the agency must determine and specify in writing the reasons that procurement by invitation to bid is not practicable.

2. All requests for proposals must include:

a. A statement describing the commodities or contractual services sought;

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

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59           b. The relative importance of price and other evaluation  
60 criteria; and

61           c. If the agency contemplates renewal of the contract, a  
62 statement to that effect.

63           3. Criteria that will be used for evaluation of proposals  
64 ~~must shall~~ include, but are not limited to:

65           a. Price, which must be specified in the proposal;

66           b. If the agency contemplates renewal of the contract, the  
67 price for each year for which the contract may be renewed; ~~and~~  
68 c. Consideration of the total cost for each year of the  
69 contract, including renewal years, as submitted by the vendor;  
70 ~~and-~~

71           d. Consideration of prior relevant experience of the  
72 vendor.

73           4. The contract shall be awarded by written notice to the  
74 responsible and responsive vendor whose proposal is determined  
75 in writing to be the most advantageous to the state, taking into  
76 consideration the price and other criteria set forth in the  
77 request for proposals. The contract file shall contain  
78 documentation supporting the basis on which the award is made.

79           (c) *Invitation to negotiate.*—The invitation to negotiate is  
80 a solicitation used by an agency which is intended to determine  
81 the best method for achieving a specific goal or solving a  
82 particular problem and identifies one or more responsive vendors  
83 with which the agency may negotiate in order to receive the best  
84 value.

85           1. Before issuing an invitation to negotiate, the head of  
86 an agency must determine and specify in writing the reasons that  
87 procurement by an invitation to bid or a request for proposal is

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

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88 not practicable.

89           2. The invitation to negotiate must describe the questions  
90 being explored, the facts being sought, and the specific goals  
91 or problems that are the subject of the solicitation.

92           3. The criteria that will be used for determining the  
93 acceptability of the reply and guiding the selection of the  
94 vendors with which the agency will negotiate must be specified.  
95 The evaluation criteria must include consideration of prior  
96 relevant experience of the vendor.

97           4. The agency shall evaluate replies against all evaluation  
98 criteria set forth in the invitation to negotiate in order to  
99 establish a competitive range of replies reasonably susceptible  
100 of award. The agency may select one or more vendors within the  
101 competitive range with which to commence negotiations. After  
102 negotiations are conducted, the agency shall award the contract  
103 to the responsible and responsive vendor that the agency  
104 determines will provide the best value to the state, based on  
105 the selection criteria.

106           5. The contract file for a vendor selected through an  
107 invitation to negotiate must contain a short plain statement  
108 that explains the basis for the selection of the vendor and that  
109 sets forth the vendor's deliverables and price, pursuant to the  
110 contract, along with an explanation of how these deliverables  
111 and price provide the best value to the state.

112           Section 2. This act shall take effect July 1, 2014.

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



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Ethics and Elections, *Chair*  
Budget - Subcommittee on General Government  
Appropriations  
Budget - Subcommittee on Transportation, Tourism,  
and Economic Development Appropriations  
Community Affairs  
Environmental Preservation and Conservation  
Rules  
Judiciary  
Appropriations  
Select Committee on Gaming

**SENATOR JACK LATVALA**  
20th District

March 13, 2014

The Honorable Alan Hays, Chairman  
Senate Appropriations Subcommittee on  
General Government  
404 S. Monroe St., 201 Capitol  
Tallahassee, FL 32399-1100

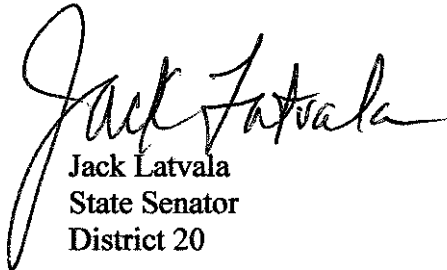
Dear Chairman Hays:

I respectfully request that my bill, SB 914/State Contracting, be placed on the agenda of the Senate Appropriations Subcommittee on General Government at the earliest possible time. It was referred favorably by the Senate Committee on Governmental Oversight and Accountability on March 13.

This bill will revise the criteria for evaluating a proposal for a state contract to include consideration of prior relevant experience of the vendor.

Please contact me if you have any questions regarding this request. I appreciate your consideration.

Sincerely,

  
Jack Latvala  
State Senator  
District 20

JL:tc

CC: Jamie DeLoach, Staff Director; Lisa Waddell, Administrative Assistance

SENATE APPROPRIATIONS  
RECEIVED  
14 MAR 17 AM 10:20  
SENATE STAFF DIR. STAFF

**REPLY TO:**

- 26133 U.S. Highway 19 North, Suite 201 Clearwater, FL 33763 (727) 793-2797
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**Don Gaetz**  
President of the Senate

**Garrett Richter**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/CS/SB 956

INTRODUCER: Community Affairs Committee; Environmental Preservation and Conservation Committee; and Senator Bean

SUBJECT: Coastal Management

DATE: April 1, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gudeman</u>	<u>Uchino</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Favorable</u>
4.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 956 authorizes the Department of Environmental Protection (DEP) to grant areawide and general permits for coastal construction activities. With respect to areawide permits, the DEP must consult with the Florida Fish and Wildlife Conservation Commission (FWC) for each areawide permit proposed. The bill requires the DEP to adopt rules to establish the criteria and guidelines for areawide and general permits.

The bill allows the DEP to receive gifts and donations for the administration, development, improvement, promotion, and maintenance of aquatic preserves, as well as for the future acquisition or development of aquatic preserves. In addition, the bill allows the DEP to promote the public use of aquatic preserves by authorizing privileges or concessions for visitor accommodations. The bill provides for transparency and public input regarding privileges and concessions.

The DEP estimates a reduction in revenue from reduced permit fees of approximately \$66,000 in the Permit Fee Trust Fund. Since the fund currently collects over \$12 million annually, this reduction is insignificant. The state should realize an indeterminate positive fiscal impact from promoting the public use of aquatic preserves. The DEP will need additional resources for this purpose. See Section V. Fiscal Impact Statement.

## II. Present Situation:

### Coastal Construction Control Line

Florida's coastline spans more than 1,260 miles; 825 miles of which are considered sandy beaches fronting the Atlantic Ocean, the Gulf of Mexico and the Straits of Florida.<sup>1</sup> Florida's beach and dune system are vital components of the delicate coastal ecosystem, providing habitat to hundreds of species of plants and animals. The beach and dune system is also critical in protecting uplands and coastal development during storm events.<sup>2</sup> Florida's beaches are a primary tourist destination, attracting 38 million visitors in 2012 and providing \$55 billion in sales to the state's economy.<sup>3</sup>

In 1965, the Legislature enacted the Florida Beaches and Shores Preservation Act (Act). The Act authorized the former Department of Natural Resources (DNR) to regulate construction and physical activity on or seaward of the state's beaches and required individuals, municipalities, and counties to obtain a permit for any coastal construction seaward of the mean high water line.<sup>4</sup>

In 1970, the Legislature established a setback line for coastal construction and excavation. The coastal construction setback line prohibited coastal construction and excavation within 50 feet of the mean high water line at any riparian coastal location fronting the Gulf of Mexico and Atlantic Ocean. The law provided waivers and variances for the setback requirement and provided an exemption for shore protection structures.<sup>5</sup>

Section 161.053, F.S., enacted in 1971, required setback lines on a county by county basis along the sandy beaches of the Atlantic Ocean and the Gulf of Mexico. The DNR was required to conduct a comprehensive engineering study and topographic survey to establish the setback lines necessary for the protection of upland properties and to control coastal erosion. The law required that a public hearing be held for each setback line established and that the established setback lines be recorded in the public records of the county and municipality affected.<sup>6</sup>

In 1978, s. 161.052, F.S., was amended to change the construction setback lines to Coastal Construction Control Lines (CCCL) and provided the DNR with authority to issue permits for construction activities that previously required a waiver or variance.

The CCCL requirements, established in s. 161.053, F.S., were significantly amended in 1996, to exempt proposed construction located seaward of the CCCL and landward of existing armoring from specific siting and design criteria. The law also allowed the DEP to grant areawide permits to local governments, governmental agencies, and utilities for specific activities, including, but

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<sup>1</sup> DEP, *Statistical Abstract, Geographical Summary*, <http://www.dep.state.fl.us/secretary/stats/geographical.htm> (last visited Mar. 10, 2014).

<sup>2</sup> DEP, *Beaches and Coastal Systems*, <http://dep.state.fl.us/beaches/> (last visited Mar. 10, 2014).

<sup>3</sup> Florida Shore and Beach Preservation Association, *Healthy Beaches Drive Florida's Economy*, available at <http://www.fsbpa.com/EconomicFactSheet.pdf> (last visited Mar. 10, 2014).

<sup>4</sup> Chapter 65-408, Laws of Fla.

<sup>5</sup> Chapter 70-231, Laws of Fla.

<sup>6</sup> Chapter 71-136, Laws of Fla.

not limited to, road repairs, utility repairs and replacements, beach cleaning, and emergency response. To qualify for an areawide permit, the statute requires that the activities “will not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites.”<sup>7</sup> The DEP is authorized to establish rules and criteria to administer this section; however, rules have not been adopted for areawide permits.

Section 161.053, F.S., also provides the DEP with the authority to issue general permits. General permits may be issued where a general permit line has been established and the activity “will not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites.”<sup>8</sup> Activities that may be authorized under a general permit include: dune walkovers, decks, fences, landscaping, sidewalks, driveways, pool resurfacing, minor pool repairs, and other nonhabitable structures. A single-family habitable structure may qualify for a general permit as long as it does not advance the existing line of construction and satisfies all siting and design requirements. Multi-family habitable structures do not qualify for a general permit. The DEP adopted Rule 62B-34, F.A.C., to establish the criteria and guidelines for the issuance of a general permit.

### **Aquatic Preserves**

The Florida Aquatic Preserve Act was enacted in 1975 to set aside and protect state-owned submerged lands that have “exceptional biological, aesthetic, and scientific value.”<sup>9</sup> There are 41 aquatic preserves protecting approximately 2.2 million acres in Florida.<sup>10</sup>

Aquatic preserves serve many valuable ecological and economic functions. The aquatic preserves provide nurseries for juvenile fish and other aquatic life, maintain water quality, and provide habitat for shorebirds. The aquatic preserves are also valuable tourist destinations, providing a host of outdoor activities such as fishing, diving, snorkeling, swimming, bird watching, and boating.<sup>11</sup>

The DEP is responsible for managing the state’s aquatic preserves by maintaining a healthy balance of resource protection and promoting public access to the preserves.<sup>12</sup> The DEP adopted Rule Chapters 18-18 and 18-20, F.A.C., which specify the additional resource protections, management criteria, and regulations related to human activity that are permitted within an aquatic preserve.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 161.053, F.S., to require the DEP to adopt rules for areawide and general permits. The bill expands the types of activities allowed under each type of permit.

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<sup>7</sup> Chapter 96-371, Laws of Fla.

<sup>8</sup> Rule 62B-34.010(7), F.A.C., defines the general permit line as “the line that defines the seaward limit where General Permits can be issued for activities authorized by this rule chapter, is established pursuant to the provisions of s. 161.053(18), F.S., and is recorded in the official records of the county.”

<sup>9</sup> Sections 258.35-394, and 258.40-46, F.S.

<sup>10</sup> DEP, *Florida’s Aquatic Preserves*, <http://www.dep.state.fl.us/coastal/programs/aquatic.htm> (last visited Mar. 3, 2014).

<sup>11</sup> DEP, *Florida’s Aquatic Preserves, Protecting Our Most Valued Resource: A Program Overview*, available at [http://www.dep.state.fl.us/coastal/downloads/Aquatic\\_Preserve\\_Overview\\_Jun06.pdf](http://www.dep.state.fl.us/coastal/downloads/Aquatic_Preserve_Overview_Jun06.pdf) (last visited Mar. 3, 2014).

<sup>12</sup> Sections 258.35-258.394 and 258.40-258.46, F.S.

For areawide permits, the bill authorizes construction of minor structures and specifies dune restoration and on-grade walkovers qualify under this type of permit. The DEP must consult with the FWC for each proposed areawide permit.<sup>13</sup>

For general permits, the bill expands the types of activities to include dune restoration, construction of swimming pools associated with single-family habitable structures that do not advance the existing line of construction and comply with siting and design requirements, and minor reconstruction of existing coastal armoring structures.

**Section 2** creates s. 258.435, F.S., promoting the use of aquatic preserves and their associated uplands. The bill allows the DEP to receive gifts and donations in order to promote the use of aquatic preserves. The funds received are to be deposited into the Land Acquisition Trust Fund for the administration, development, improvement, promotion, and maintenance of the preserves and their associated uplands. The gifts and donations may also be used for future acquisitions or development of aquatic preserves and their associated uplands.

The bill authorizes the DEP to grant a privilege or concession for the accommodation of visitors to an aquatic preserve as long as the privilege or concession does not interfere with the public's access to the preserve and is compatible with the preserve's management plan. It specifies that, in granting a concession, the DEP must base their decision on business plans, qualifications, approach, and specified expectations or criteria. A privilege or concession may not be assigned or transferred by the recipient without consent from the DEP. The public is afforded transparency and input measures, as the bill requires the DEP website to display proposed concession agreements, and allows for the public to comment on proposed concession agreements prior to execution of an agreement.

**Section 3** provides an effective date of July 1, 2014.

#### **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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<sup>13</sup> Currently, the FWC is responsible for reviewing and commenting on administrative permits for coastal construction activities and reviewing beach lighting ordinances. This provision of the bill allows FWC to retain their involvement in the permitting process, which is of particular relevance with respect to swimming pools associated with single-family homes that produce an illuminating artificial light that may interfere with sea turtle nesting.



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

None.

**B. Private Sector Impact:**

CS/CS/SB 956 could reduce permit fee costs to the private sector due to the decrease in required individual permits.<sup>14</sup>

Private entities that enter into agreements with the DEP to provide vending services, accommodations, and recreational opportunities within an aquatic preserve will experience an indeterminate positive fiscal impact.<sup>15</sup>

**C. Government Sector Impact:**

The bill will reduce revenues from permit fees within the Permit Fee Trust Fund. Activities that currently require administrative permits may now qualify for general permits or areawide permits. The DEP estimates approximately \$66,000 in reduced revenues based on the number of permit applications and permit application fees from 2013.<sup>16</sup>

Conversely, local governments that apply for coastal construction permits will realize a cost savings as the number of required individual permits will decrease.

The DEP will need additional funding to promote the public use of Florida's aquatic preserves. The department has requested \$250,000 in the agency's Fiscal Year 2014-2015 Legislative Budget Request to implement a targeted and creative ecotourism and marketing initiative. This issue has been included in both the Senate (SB 2500, as introduced) and House (HB 5001, as introduced) general appropriation bills.

The state will realize an indeterminate, positive fiscal impact from promoting the public use of aquatic preserves and their associated uplands. The DEP agency analysis includes examples of revenue generated from agreements with private entities. For example, at Little St. George Island, the DEP contracts with a concessionaire to provide an "all inclusive" primitive camping experience. The five year agreement allows the state to receive 13 percent of all gross receipts, excluding sales tax, providing approximately \$148,000 over five years. At St. Joseph Bay Aquatic Preserve, the DEP contracts with a private entity to provide kayak and paddle boat excursions. The five year agreement allows for the state to receive 10 percent of gross revenue per year, providing approximately \$50,000 over the next five years.<sup>17</sup>

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<sup>14</sup> DEP, *Senate Bill 956 Agency Analysis*, 7 (Mar. 2014).

<sup>15</sup> *Id.* at 5-6.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill authorizes the DEP to grant areawide permits for construction of minor structures, including dune restoration and on-grade dune walkovers, which expands the allowable activities under an areawide permit. The statute states an areawide permit may be granted to local governments, governmental agencies, and utility companies as long as the activity does “not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites.” The DEP has not defined “dune restoration” in statute or rule; therefore, it is unclear if this type of activity will cause measureable interference with the beach dune system and marine turtles. The bill requires the DEP to adopt rules to establish the criteria and guidelines for areawide permit applications, which may resolve this issue.

The bill allows swimming pools to be permitted under a general permit as long as they do not advance the existing line of construction and “will not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites.” Rule 62B-33.002(60)(c) F.A.C., specifies a structure is considered a “major structure” if “as a result of design, location, or size [it] could cause an adverse impact to the beach and dune system.” Rule 62B-33.002(60)(c)1, F.A.C., clarifies a swimming pool is considered a “nonhabitable major structure.” The swimming pool provision in the bill could necessitate changes be made to the swimming pool criteria established in rule.

**VIII. Statutes Affected:**

This bill substantially amends section 161.053 of the Florida Statutes.

This bill creates section 258.435 of the Florida Statutes.

**IX. Additional Information:**

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

**CS/CS by Community Affairs on March 25, 2014:**

Requires the DEP to consult with FWC on each proposed areawide permit. With respect to the granting of concessions and privileges in aquatic preserves, the DEP would consider specified criteria, post proposed concession agreements on the DEP website, and ensure that the public has the opportunity for input.

**CS by Environmental Preservation and Conservation on March 13, 2014:**

- Requires the DEP to adopt rules to establish criteria and guidelines for areawide and general permits;
- Allows the DEP to issue a general permit for dune reconstruction, construction of swimming pools associated with single family habitable structures, and minor reconstruction of existing coastal armoring structures; and

- Deletes the term “lease” from the types of agreements the DEP may grant for visitor accommodations to aquatic preserves.

B. Amendments:

None.

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

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By the Committees on Community Affairs; and Environmental Preservation and Conservation; and Senator Bean

578-03195-14

2014956c2

1 A bill to be entitled  
 2 An act relating to coastal management; amending s.  
 3 161.053, F.S.; authorizing the Department of  
 4 Environmental Protection to grant areawide permits for  
 5 certain structures; requiring the department to adopt  
 6 rules; creating s. 258.435, F.S.; requiring the  
 7 department to promote the public use of aquatic  
 8 preserves and their associated uplands; authorizing  
 9 the department to receive gifts and donations for  
 10 certain purposes; authorizing the department to grant  
 11 privileges or concessions for the accommodation of  
 12 visitors in and use of aquatic preserves and their  
 13 associated uplands provided certain conditions are  
 14 met; prohibiting a grantee from assigning or  
 15 transferring such privileges or concessions without  
 16 the department's consent; requiring information on  
 17 proposed concession agreements to be posted on the  
 18 department's website upon submittal and 60 days before  
 19 execution; providing an effective date.

20  
 21 Be It Enacted by the Legislature of the State of Florida:

22  
 23 Section 1. Subsections (17) and (18) of section 161.053,  
 24 Florida Statutes, are amended to read:  
 25 161.053 Coastal construction and excavation; regulation on  
 26 county basis.—

27 (17) The department may grant areawide permits to local  
 28 governments, other governmental agencies, and utility companies  
 29 for special classes of activities in areas under their general

Page 1 of 4

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

578-03195-14

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30 jurisdiction or responsibility or for the construction of minor  
 31 structures, if these activities or structures, due to the type,  
 32 size, or temporary nature of the activity or structure, will not  
 33 cause measurable interference with the natural functioning of  
 34 the beach-dune system or with marine turtles or their nesting  
 35 sites. Such activities or structures must comply with this  
 36 section and may include, but are not limited to: road repairs,  
 37 not including new construction; utility repairs and  
 38 replacements, or other minor activities necessary to provide  
 39 utility services; beach cleaning; dune restoration; on-grade  
 40 walkovers for enhancing accessibility or usage in compliance  
 41 with the Americans with Disabilities Act; and emergency  
 42 response. The department shall may adopt rules to establish  
 43 criteria and guidelines for permit applicants. The department  
 44 shall consult with the Florida Fish and Wildlife Conservation  
 45 Commission on each proposed areawide permit and must require  
 46 notice provisions appropriate to the type and nature of the  
 47 activities for which the areawide permits are sought.

48 (18) (a) The department may grant general permits for  
 49 projects, including dune restoration, dune walkovers, decks,  
 50 fences, landscaping, sidewalks, driveways, pool resurfacing,  
 51 minor pool repairs, and other nonhabitable structures, if the  
 52 projects, due to type, size, or temporary nature, will not cause  
 53 a measurable interference with the natural functioning of the  
 54 beach-dune system or with marine turtles or their nesting sites.  
 55 Multifamily habitable structures do not qualify for general  
 56 permits. However, single-family habitable structures and  
 57 swimming pools associated with such single-family habitable  
 58 structures that do not advance the line of existing construction

Page 2 of 4

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

578-03195-14

2014956c2

59 and satisfy all siting and design requirements of this section  
60 and minor reconstruction for existing coastal armoring  
61 structures may be eligible for a general permit.

62 (b) The department shall ~~may~~ adopt rules to establish  
63 criteria and guidelines for permit applicants.

64 (c) ~~(a)~~ Persons wishing to use the general permits must, at  
65 least 30 days before beginning any work, notify the department  
66 in writing on forms adopted by the department. The notice must  
67 include a description of the proposed project and supporting  
68 documents depicting the proposed project, its location, and  
69 other pertinent information as required by rule, to demonstrate  
70 that the proposed project qualifies for the requested general  
71 permit. Persons who undertake projects without proof of notice  
72 to the department, but whose projects would otherwise qualify  
73 for general permits, shall be considered to have undertaken a  
74 project without a permit and are subject to enforcement pursuant  
75 to s. 161.121.

76 (d) ~~(b)~~ Persons wishing to use a general permit must provide  
77 notice as required by the applicable local building code where  
78 the project will be located. If a building code does not require  
79 ~~requires no~~ notice, a ~~any~~ person wishing to use a general permit  
80 must, at a minimum, post a sign describing the project on the  
81 property at least 5 days before commencing construction. The  
82 sign must be at least 88 square inches, with letters no smaller  
83 than one-quarter inch.

84 Section 2. Section 258.435, Florida Statutes, is created to  
85 read:

86 258.435 Use of aquatic preserves for the accommodation of  
87 visitors.-

578-03195-14

2014956c2

88 (1) The Department of Environmental Protection shall  
89 promote the public use of aquatic preserves and their associated  
90 uplands. The department may receive gifts and donations to carry  
91 out the purposes of this part. Money received in trust by the  
92 department by gift, devise, appropriation, or otherwise, subject  
93 to the terms of such trust, shall be deposited into the Land  
94 Acquisition Trust Fund and appropriated to the department for  
95 the administration, development, improvement, promotion, and  
96 maintenance of aquatic preserves and their associated uplands  
97 and for any future acquisition or development of aquatic  
98 preserves and their associated uplands.

99 (2) The department may grant a privilege or concession for  
100 the accommodation of visitors in and the use of aquatic  
101 preserves and their associated state-owned uplands if the  
102 privilege or concession does not deny or interfere with the  
103 public's access to such lands and is compatible with the aquatic  
104 preserve's management plan as approved by the Acquisition and  
105 Restoration Council. A concession must be granted based on  
106 business plans, qualifications, approach, and specified  
107 expectations or criteria. A privilege or concession may not be  
108 assigned or transferred by the grantee without the consent of  
109 the department.

110 (3) In order to provide transparency to the public,  
111 information on proposed concession agreements will be posted on  
112 the department's website upon submission to the department and  
113 60 days before execution. The public shall be afforded the  
114 opportunity to comment on proposed concession agreements before  
115 execution.

116 Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-2-14  
Meeting Date

Topic SS / SB 956

Bill Number 956  
*(if applicable)*

Name Mark Thomasson

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Director

Address 2600 Blair Stone Road

Phone 245-8035

*Street*  
Ithaca FL 32399  
*City* *State* *Zip*

E-mail mark.thomasson@dep.state.fl.us

Speaking:  For  Against  Information

Representing DEP

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

April 2, 2014  
*Meeting Date*

Topic Coastal Management

Bill Number SB ~~956~~ 956  
*(if applicable)*

Name Mary Jean Yan

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Legislative Director

Address 3324 Charleston Rd  
*Street*

Phone 850/519-7859

Tallahassee FL 32309  
*City State Zip*

E-mail maryjeanyan@comcast.net

Speaking:  For  Against  Information

Representing Audubon Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/2/14  
Meeting Date

Topic SB 956 Relating to Coastal Management Bill Number SB 956  
(if applicable)

Name Andrew Ketchel Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Deputy Legislative Affairs Director - Dept. of Environmental Protection

Address 3400 Commonwealth Dr. Phone 245-2092  
Street

Tallahassee FL 32303 E-mail \_\_\_\_\_  
City State Zip

Speaking:  For  Against  Information

Representing DEP

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)





## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Health Policy, *Chair*  
Appropriations  
Appropriations Subcommittee on Education  
Appropriations Subcommittee on Health  
and Human Services  
Commerce and Tourism  
Communications, Energy, and Public Utilities  
Governmental Oversight and Accountability

**SELECT COMMITTEE:**  
Select Committee on Patient Protection  
and Affordable Care Act

**SENATOR AARON BEAN**

4th District

March 27, 2014

Senator Alan Hays  
Chairman, Appropriations Subcommittee on General Government  
320 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Hays:

This letter is to request that CS/CS/SB 956 relating to Coastal Management be placed on the agenda of the next possible committee meeting.

Thank you for your consideration of this request. Please feel free to contact me if you need additional information.

Respectfully,

A handwritten signature in cursive script that reads "Aaron Bean".

Aaron Bean  
State Senator, 4<sup>th</sup> District

Cc: Jamie DeLoach, Staff Director  
Lisa Waddell, Committee Administrative Assistant

**REPLY TO:**

- 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
- 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/CS/SB 1014

INTRODUCER: Senate Banking and Insurance Committee; Health Policy Committee; and Senator Garcia

SUBJECT: Pharmacy Benefit Managers

DATE: April 3, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peterson</u>	<u>Stovall</u>	<u>HP</u>	<b>Fav/CS</b>
2.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<b>Fav/CS</b>
3.	<u>Shettle</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Favorable</b>
4.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1014 creates provisions governing pharmacy benefit managers (PBMs). A PBM contracts with plan sponsors, such as employers and insurers, to manage the cost and quality of the plans' drug benefits and may provide a variety of related services. Maximum-allowable cost (MAC) is the payment for the unit ingredient costs for off-patent prescription drugs (generics). The PBM or an insurer may develop a MAC list based on a proprietary survey of wholesale prices and other factors. The purpose of the MAC list is to ensure that the pharmacy or their buying groups are motivated to seek and purchase generic drugs at the lowest price in the marketplace. The bill creates definitions of "maximum allowable cost," "plan sponsor," and "pharmacy benefit manager." The bill establishes criteria for a PBM to place a particular generic drug on a MAC list and may result in some drugs being removed from the MAC list and being subject to higher reimbursement rates. The bill sets out required provisions, disclosures, and conditions for contracts entered into between a pharmacy benefit manager and a pharmacy, and between a PBM and a plan sponsor related to drug pricing and claims adjudication.

According to the Division of State Group Insurance of the Department of Management Services, the implementation of this bill would negatively affect the State Employees' Health Insurance Trust Fund by approximately \$3.4 million for Fiscal Year 2014-15. An impact conference has been scheduled for April 7, 2014, to determine the estimated impact to the State Group Health Insurance Program. The impact on local governments, insurers, and private sector employers that

use PBMs for providing drug benefits for workers' compensation or health insurance is indeterminate at this time.

## II. Present Situation:

### Pharmacy Regulation

Pharmacies and pharmacists are regulated under the Florida Pharmacy Act (the Act) in ch. 465, F.S.<sup>1</sup> The Board of Pharmacy (the board) is created within the Department of Health (DOH) to adopt rules to implement provisions of the Act and take other actions according to duties conferred on it in the Act.<sup>2</sup>

Several pharmacy types are specified in law and are required to be permitted or registered under the Act:

- Community pharmacy – a location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.
- Institutional pharmacy – a location in a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility where medical drugs are compounded, dispensed, stored, or sold. The Act further classifies institutional pharmacies according to the type of facility or activities with respect to the handling of drugs within the facility.
- Nuclear pharmacy – a location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold, excluding hospitals or the nuclear medicine facilities of such hospitals.
- Internet pharmacy – a location not otherwise permitted under the Act, whether within or outside the state, which uses the internet to communicate with or obtain information from consumers in this state in order to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state.
- Non-resident pharmacy – a location outside this state, which ships, mails, or delivers, in any manner, a dispensed drug into this state.
- Special pharmacy – a location where medicinal drugs are compounded, dispensed, stored, or sold if such location is not otherwise defined which provides miscellaneous specialized pharmacy service functions.

Each pharmacy is subject to inspection by the DOH and disciplined for violations of applicable state or federal laws relating to a pharmacy. Any pharmacy located outside this state which ships, mails, or delivers, in any manner, a dispensed drug into this state is considered a nonresident pharmacy, and must register with the board as a nonresident pharmacy.<sup>3,4</sup>

### Pharmacy Benefit Managers and Pharmacies

Advances in pharmaceuticals have transformed health care over the last several decades. Many health care problems are prevented, cured, or managed effectively using prescription drugs. As a

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<sup>1</sup> Other pharmacy paraprofessionals, including pharmacy interns and pharmacy technicians, are also regulated under the Act.

<sup>2</sup> Section 465.005, F.S.

<sup>3</sup> Section 465.0156, F.S.

<sup>4</sup> However, the board may grant an exemption from the registration requirements to any nonresident pharmacy, which confines its dispensing activity to isolated transactions. *See s. 465.0156(2), F.S.*

result, national expenditures for retail prescription drugs have grown from \$120.9 billion in 2000 to \$263.3 billion in 2012.<sup>5</sup> Health plan sponsors, which include commercial insurers, private employers, and government plans, such as Medicaid and Medicare, spent \$216.5 billion on prescription drugs in 2012 and consumers paid \$46.8 billion out of pocket for prescription drugs that year.<sup>6</sup>

As expenditures for drugs have increased, plan sponsors have looked for ways to manage the cost and quality of the plans' drug benefits, and have turned to PBMs who act as clearinghouses for plans, covered individuals, and retail pharmacies, and may provide a variety of related services. The range of services include developing and managing pharmacy networks, developing drug formularies, providing mail order and specialty pharmacy services, rebate negotiation, therapeutic substitution, disease management, utilization review, support services for physicians and beneficiaries, and processing and auditing claims. In 2007, there were approximately 70 PBMs operating in the United States and managing prescription drug benefits for an estimated 95 percent of health beneficiaries nationwide.<sup>7</sup> Recent industry mergers have reduced the number of large PBMs to two which together control 60 percent of the market and provide benefits for approximately 240 million people.<sup>8</sup>

Health plan sponsors contract with PBMs to provide specified services, which may include some or all of the services described. Payments for the services are established in contracts between health plan sponsors and PBMs. For example, contracts will specify how much health plan sponsors will pay PBMs for brand name and generic drugs. These prices are typically set as a discount off the average wholesale price (AWP)<sup>9</sup> for brand-name drugs and at a MAC<sup>10</sup> for generic drugs (and sometimes brand drugs that have generic versions), plus a dispensing fee.

The MAC represents the upper limit price that a plan will pay or reimburse for generic drugs and sometimes brand drugs that have generic versions available (multisource brands). A MAC pricing list creates a standard reimbursement amount for identical products. A MAC pricing list is a common cost management tool that is developed from a proprietary survey of wholesale prices existing in the marketplace, taking into account market share, inventory, reasonable profits margins, and other factors. The federal government and state Medicaid programs use a similar tool. The purpose of the MAC pricing list is to ensure that the pharmacy or their buying groups are always motivated to seek and purchase generic drugs at the lowest price in the marketplace. If a pharmacy procures a higher-priced product, the pharmacy may not make as much profit or in some instances may lose money on that specific purchase. If a pharmacy purchases generic drugs at more favorable price, they will be more likely to make a profit.

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<sup>5</sup> Centers for Medicare and Medicaid Services, *National Health Expenditures Web Tables, Table 16, Retail Prescription Drugs Aggregate, Percent Change, and Percent Distribution, by Source of Funds: Selected Calendar Years 1970-2012*, available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/downloads/tables.pdf> (last visited March 17, 2014).

<sup>6</sup> *Id.*

<sup>7</sup> Office of Program Policy Analysis & Government Accountability, *Legislature Could Consider Options to Address Pharmacy Benefit Manager Business Practices*, Report No. 07-08 (Feb. 2007), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0708rpt.pdf> (last visited March 17, 2014).

<sup>8</sup> *Id.*

<sup>9</sup> AWP is the retail list price (sticker price) or the average price that manufacturers recommend wholesalers sell to physicians, pharmacies and others, such as hospitals.

<sup>10</sup> MAC is a price set for generic drugs and is the maximum amount that the plan sponsor will pay for a specific drug.

The shift to generic drugs has saved consumers more than a \$1 trillion over a decade, but it has adversely affected independent pharmacists according to recent news articles. In 2000, about 50 percent of U.S. prescription drugs were generic. Now, generics represent about 84 percent of the market, according to IMS Health Incorporated. The increasing use of generics is pushing the dollar volume of prescription-drug sales down. In response, drugstores want lawmakers to require the PBMs to share pricing information that would help drugstores negotiate bigger reimbursements and avoid dispensing drugs that are money losers.<sup>11</sup> Contracts also generally include fees for processing claims submitted by pharmacies (usually based on a rate per claim) and fees for providing services such as disease management or utilization review.<sup>12</sup> In addition, contracts generally specify whether and how the PBM will pass manufacturer rebates on to the health plan sponsors.<sup>13</sup> The contracts can also include performance guarantees, such as claims processing accuracy or amount of rebates received.<sup>14</sup>

### **Federal Pharmacy Benefits Managers Transparency Requirements**

On March 23, 2010, President Obama signed into law Public Law No. 111-148, the Patient Protection and Affordable Care Act (PPACA), and on March 30, 2010, President Obama signed into law Public Law No. 111-152, the Health Care and Education Affordability Reconciliation Act of 2010, amending PPACA. The law<sup>15</sup> requires Medicare Part D plans and qualified health plan issuers who have their own PBM or contract with a PBM to report to the federal Department of Health and Human Services (HHS) aggregate information about rebates, discounts, or price concessions that are passed through to the plan sponsor or retained by the PBM. In addition, the plans must report the difference between the amount the plan pays the PBM and the amount that the PBM pays its suppliers (spread pricing). The reported information is confidential, subject to certain limited exceptions.

### **State and Federal Studies on Pharmacy Benefit Managers**

#### *Federal Studies*

Concerns have been raised that a PBM that owns a pharmacy (whether retail or mail) may have a greater ability to influence which drugs are dispensed under the plans it administers than a PBM that does not own a pharmacy. If plan sponsor contracts with PBMs do not properly align the incentives of PBMs with those of the plans, this lack of alignment could create a conflict of interest. Potential conflicts of interest should be rare, however, if competition among PBMs provides plan sponsors with alternatives. At the request of Congress, the Federal Trade Commission (FTC) collected aggregate data on prices, generic substitution and dispensing rates, savings due to therapeutic drug switches (“therapeutic interchange”), and repackaging practices. In response, the FTC analyzed data on PBM pricing, generic substitution, therapeutic

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<sup>11</sup> Timothy W. Martin, *Drugstores Press for Pricing Data*, Wall Street Journal, March 27, 2013.

<sup>12</sup> If the PBM owns the mail order or specialty pharmacy, claims processing fees may not be applied.

<sup>13</sup> Contracts may specify a fixed amount per prescription or a percentage of the total rebates received by a PBM.

<sup>14</sup> Information contained in this analysis has been excerpted in detail from a February 2007 report prepared by the Office of Program Policy Analysis & Government Accountability. (Office of Program Policy Analysis & Government Accountability, *Legislature Could Consider Options to Address Pharmacy Benefit Manager Business Practices*, Report No. 07-08 (Feb. 2007), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0708rpt.pdf> (last visited March 17, 2014).

<sup>15</sup> 42 U.S.C. s. 1320b-23.

interchange, and repackaging practices. The study examined whether PBM ownership of mail-order pharmacies served to maximize competition and lower prescription drug prices for plan sponsors. In its 2005 report based on the study, the FTC found, among other things, that the prices for a common basket of prescription drugs dispensed by PBM-owned mail order pharmacies were typically lower than the prices charged by retail pharmacies. The study also found competition affords health plans substantial tools with which to safeguard their interests.<sup>16</sup>

This 2005 FTC study continued the FTC's ongoing review of PBMs. The PBM practices were a particular focus of hearings on health care markets jointly conducted by the FTC and the Department of Justice Antitrust Division ("DOJ") in 2003 ("Health Care Hearings").<sup>17</sup> In 2004, the FTC and DOJ issued a report based on the hearings, a Commission-sponsored workshop, and independent research.<sup>18</sup> In addition, FTC staff have analyzed and commented on proposed PBM legislation in several states in 2006, 2007, and 2009.<sup>19</sup>

### *State Study*

Pursuant to a legislative request, the Office of Program Policy Analysis & Government Accountability (OPPAGA) reviewed pharmacy benefit managers in a report released in 2007. The report addressed concerns relating to PBM business practices, actions by states, PBMs, and plan sponsors, and possible legislative options. Relevant portions of the report are summarized below.<sup>20</sup>

***What concerns exist related to PBM business practices?*** In recent years, federal and state litigants and various stakeholders in the prescription drug industry have alleged that PBMs sometimes engage in unfair business practices that have resulted in excessive profits at the expense of health plan members, sponsors, or pharmacies. These include allegations that PBMs:

- Have excessively profited by accepting secret monetary incentives from drug manufacturers, such as incentives for increasing a manufacturer's drug sales that are not shared with health plan sponsors.
- Have increased rebates by changing patient prescriptions to drugs that receive higher rebates.
- Have excessively profited from the price spread created by the difference between pharmacy reimbursements and plan sponsor drug prices.
- Have realized high profits by charging health plan sponsors significantly higher drug prices than prices at which they reimburse pharmacies.
- Have not provided sponsors access to information on PBM transactions or negotiations with manufacturers and pharmacies.

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<sup>16</sup> Federal Trade Commission, *Pharmacy Benefit Managers: Ownership of Mail-Order Pharmacies* (August 2005). Available at: <http://www.ftc.gov/reports/pharmbenefit05/050906pharmbenefitrpt.pdf> (last visited March 24, 2014).

<sup>17</sup> See Hearings on Health Care and Competition Law and Policy, June 26, 2003, available at <http://www.ftc.gov/ogc/healthcarehearings/030626ftctrans.pdf> (last visited March 24, 2014).

<sup>18</sup> See Federal Trade Commission, and Department of Justice, *Improving Health Care: A Dose of Competition* (2004), available at <http://www.ftc.gov/reports/healthcare/040723healthcarerpt.pdf> (last visited March 24, 2014).

<sup>19</sup> See, e.g., Letter from FTC staff to New York Senator James L. Seward (March 31, 2009), available at <http://www.ftc.gov/os/2009/04/V090006newyorkpbm.pdf>; Letter from FTC staff to New Jersey Assemblywoman Nellie Pou (Apr. 17, 2007), available at <http://www.ftc.gov/be/V060019.pdf>; Letter from FTC staff to Virginia Delegate Terry G. Kilgore (Oct. 2, 2006), available at <http://www.ftc.gov/be/V060018.pdf> (last visited March 24, 2014)

<sup>20</sup> Office of Program Policy Analysis & Government Accountability, *supra* note 7.

- Prevented health plan sponsors and pharmacies from receiving a fair share of the profits realized by PBMs in their negotiations with drug manufacturers.

***How have states, PBMs, and health plan sponsors addressed these concerns?*** As of December 2006, three states and the District of Columbia had passed legislation that addresses certain contractual issues.<sup>21</sup> In addition, two states had passed legislation to regulate PBMs by requiring licensure or oversight by state insurance departments or pharmacy boards. The PBMs, health plans sponsors, and other stakeholders have taken steps to change business practices and increase transparency.

To create more transparency in their business practices, PBMs have begun to offer health plan sponsors contracts that provide more transparency than traditional contracts. These contracts give health plan sponsors access to information about contractual and financial arrangements with drug manufacturers and pharmacies. Some PBMs also will negotiate contracts that establish drug prices for health plan sponsors equal to the price at which PBMs reimburse pharmacies. In addition to these voluntary steps, the provisions of settled lawsuits require defendant PBMs to adhere to specific transparency practices.<sup>22</sup>

***What options could the Legislature consider to address PBM business practices?*** In 2007, the OPPAGA suggested that prior to considering statutory actions, the Legislature may wish to give market forces time to further influence efforts by PBMs, health plan sponsors, and other stakeholders to change PBM business practices and establish contracts that are more transparent. If the Legislature wishes to enact statutory provisions to regulate PBMs, the OPPAGA suggested it could consider options adopted in other states, which include establishing transparency guidelines or licensing or certifying PBMs.

### **State Group Health Insurance Program - PBM Contract**

Under the authority of s.110.123, F.S., the Department of Management Services (DMS), through the Division of State Group Insurance (DGSI), administers the state group insurance program providing employee benefits such as health, life, dental, and vision insurance products under a cafeteria plan consistent with section 125 of the Internal Revenue Code.

As part of the State Group Insurance Program, the DMS contracts with a PBM, currently Express Scripts, Inc. (ESI), for the State Employees' Prescription Drug Plan. The DMS and the State of Florida are not a party to the private business contracts between the PBM and retail pharmacies.<sup>23</sup>

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<sup>21</sup> At least 21 states and the District of Columbia have now enacted laws imposing some form of regulation on pharmacy benefit managers, including Arkansas, Connecticut, Florida (Medicaid audits), Georgia, Indiana, Iowa, Kansas, Kentucky, Maryland, Mississippi, Missouri, New Mexico, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, and the District of Columbia. (National Community Pharmacy Association, *Laws that Provide Regulation of the Business Practices of Pharmacy Benefit Managers*, available at [http://www.ncpanet.org/pdf/leg/leg\\_pbm\\_business\\_practice\\_regulation.pdf](http://www.ncpanet.org/pdf/leg/leg_pbm_business_practice_regulation.pdf) (last visited March 17, 2014).

<sup>22</sup> For example, the settlement agreement between 20 state attorneys general against Medco arising from litigation in 2003 prohibits Medco from soliciting drug switches when the net drug cost of the proposed drug exceeds the cost of the prescribed drug. It also requires Medco to disclose financial incentives for switching drugs.

<sup>23</sup> Department of Management Services, 2014 Legislative Bill Analysis, dated February 18, 2014.

### III. Effect of Proposed Changes:

The bill creates a new section of law titled “Pharmacy benefit managers.” The bill defines terms used in the law as follows:

- “Maximum allowable cost” means the upper limit or maximum amount that an insurance or managed care plan will pay for generic, or brand-name drugs that have generic versions available, which are included on a pharmacy benefit manager (PBM)-generated list of products.
- “Plan sponsor” means an employer, insurer, managed care organization, prepaid limited health service organization, third-party administrator, or other entity contracting for pharmacy benefit manager services.
- “Pharmacy benefit manager” means a person, business, or other entity that provides administrative services related to processing and paying prescription claims for pharmacy benefit and coverage programs. Such services may include contracting with a pharmacy or network of pharmacies; establishing payment levels for provider pharmacies; negotiating discounts and rebate arrangements with drug manufacturers; developing and managing prescription formularies, preferred drug lists, and prior authorization programs; assuring audit compliance; and providing management reports.

The bill provides that a contract between a PBM and a pharmacy, which includes maximum allowable cost (MAC) pricing, must require the PBM to:

- Update MAC pricing information every seven-calendar days and establish a reasonable process for notice of updates; and
- Maintain a procedure to eliminate products from the MAC list or to modify the MAC pricing in a timely fashion so pricing remains consistent with pricing changes in the marketplace.

In order to place a prescription drug on the MAC list, the PBM must ensure a drug has at least two or more nationally available, therapeutically equivalent, multiple-source generic drugs that:

- Have a significant cost difference;
- Are listed as therapeutically and pharmaceutically equivalent or “A” or “B” rated in the United States Food and Drug Administration’s most recent version of the Orange Book;
- Are available for purchase without limitations by all pharmacies in the state from national or regional wholesalers; and
- Are not obsolete or temporarily unavailable.

These new requirements for drugs to be eligible for MAC list pricing may result in certain drugs being taken off the list and being subject to payment or reimbursement payments at a higher rate. Fewer drugs may qualify for the MAC list.

The bill requires a PBM to disclose to the plan sponsor:

- The methodology and sources used to determine MAC pricing between the PBM and the plan sponsor. The PBM must notify the plan sponsor as updates occur.
- Whether the PBM uses a MAC list for drugs dispensed at retail, but not for drugs dispensed by mail order.
- Whether the PBM is using the identical MAC lists to bill the plan sponsor that it uses to reimburse network pharmacies and, if not, to disclose the pricing differences.



The bill requires that contracts between PBMs and pharmacies contain:

- A process for appealing, investigating, and resolving disputes regarding MAC pricing, which limits the right to appeal to 90-calendar days following the initial claim; requires the dispute to be resolved within seven days; and requires the PBM to provide contact information of the person who is responsible for processing the appeal.
- A requirement that if the appeal is denied, the PBM must provide the reason and identify the national drug code of an alternative that may be purchased at a price at or below the MAC.
- A requirement that if the appeal is upheld, the PBM must make an adjustment retroactive to the date the claim was adjudicated and make the adjustment effective for all similarly situated network pharmacies.

The bill has an effective date of July 1, 2014.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Under Article VII, section 18(a), Fla. Const., a mandate includes a general bill requiring counties or municipalities to spend funds. Counties and municipalities are not bound by a general law to spend funds or take an action unless the Legislature has determined that such a law fulfills an important state interest and one of the specific exceptions specified in the state constitution applies. The implementation of this bill may require counties and municipalities to spend funds or take actions regarding health insurance programs for their employees as a result of a decreased number of prescription drugs being capable of being placed on a maximum allowable cost (MAC) pricing list. One of those mandate exceptions is that the law applies to all persons similarly situated, including the state and local governments. This bill may apply to all similarly situated persons, including the state and local governments. Therefore, a finding by the Legislature that the bill fulfills as important state interest would remove the bill from the purview of the constitutional provision.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

The new contracting requirements could be an impairment of contracts if any contracts between a PBM and plan sponsor or a PBM and a pharmacy are multi-year contracts.

The United States Constitution and the Florida Constitution prohibit the state from passing any law impairing the obligation of contracts.<sup>24</sup> The courts will subject state actions that impact state-held contracts to an elevated form of scrutiny when the Legislature passes laws that impact such contracts. *Cf. Chiles v. United Faculty of Fla.*, 615 So.2d 671 (Fla. 1993). “[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear.”<sup>25</sup>

If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.<sup>26</sup> The court will also consider three factors when balancing the impairment of contracts with the important public purpose:

- Whether the law was enacted to deal with a broad economic or social problem;
- Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and,
- Whether the effect on the contractual relationship is temporary; not severe, permanent, immediate, and retroactive.<sup>27</sup>

A law that is deemed to be an impairment of contract will be deemed to be invalid as it applies to any contracts entered into prior to the effective date of the Act.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

CS/CS/SB 1014 may result in a reduction in the number of drugs subject to the MAC list pricing. As a result, a pharmacist may receive a higher reimbursement for dispensed drugs that are removed from the maximum allowable cost (MAC) list and are subject to a reimbursement at a higher brand-like rate.

Due to changes in the criteria for drugs to be eligible for the MAC list, the bill may increase prices for some generic drugs removed from the MAC list and now subject to higher brand-like pricing. Employers and insurers may incur indeterminate additional costs for drugs that are removed from the MAC list. These costs could be shifted to policyholders as an increase in copayments for drugs removed the MAC list and now subject to brand pricing.

<sup>24</sup> U.S. Const. art. I, § 10; art. I, s. 10, Fla. Const.

<sup>25</sup> *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1980). *See also General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

<sup>26</sup> *Park Benzinger & Co. v. Southern Wine & Spirits, Inc.*, 391 So.2d 681 (Fla. 1980); *Yellow Cab C., v. Dade County*, 412 So. 2d 395 (Fla. 3rd DCA 1982). *See also Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983).

<sup>27</sup> *Pomponio v. Cladridge of Pompano Condo., Inc.*, 378 So.2d 774 (Fla. 1980).

**C. Government Sector Impact:**

According to the Division of State Group Insurance (DSGI) of the Department of Management Services, the implementation of this bill is estimated to result in a 0.7 percent increase in the cost of prescription drugs for the State Group Health Insurance Program, due to a decreased number of prescription drugs on the MAC pricing list.<sup>28</sup> The following table shows the negative fiscal impact (in millions) for the next three fiscal years to the State Employees Group Health Self-Insurance Trust Fund (trust fund):

	FY 2014-15	FY 2015-16	FY 2016-17
Projected Prescription Drug Claims <sup>29</sup>	\$ 487.0	\$ 540.8	\$ 593.9
Projected Prescription Drug Claims with a 0.7% increase	\$ 490.4	\$ 544.6	\$ 598.1
<b>Fiscal Impact</b>	<b>(3.4)</b>	<b>(3.8)</b>	<b>(4.2)</b>

The trust fund is funded by contributions paid by state employees and state agency and university employers. The negative fiscal impact of this bill to the trust fund could result in a larger increase in employer and/or employee contributions for health insurance than otherwise might be required. The following table shows the projected ending balance (in millions) for the trust fund and the impact this bill would have for the next three fiscal years:

	FY 2014-15	FY 2015-16	FY 2016-17
Ending TF Balance	\$ 349.7	\$ 154.4	\$ (235.9)
Ending TF Balance with 0.7% increase to Prescription Drug Claims <sup>30</sup>	\$ 346.3	\$ 147.2	\$ (247.3)
<b>Impact to Trust Fund</b>	<b>(3.4)</b>	<b>(7.2)</b>	<b>(11.6)</b>

An impact conference has been scheduled for April 7, 2014, to determine the estimated fiscal impact to the State Group Health Insurance Program.

Additionally, the DSGI notes the bill:

- Requires that, for a drug to be placed on a MAC list there must be two generics, which have a “significant cost difference.” A fiscal impact cannot be determined without a definition of this phrase.
- Removes all incentives for network retail pharmacies to dispense the least expensive therapeutic generic drug for the customer.

<sup>28</sup> Email to Jamie DeLoach (FL Senate, Appropriations Subcommittee on General Government) from Marlene Williams (DMS), April 2, 2014.

<sup>29</sup> Projected prescription drug claims. Self-Insurance Estimating Conference; Report on the Financial Outlook for the State Employees’ Group Health Self-Insurance Trust Fund, p. 5, adopted March 3, 2014.

<sup>30</sup> Projected ending balances. Self-Insurance Estimating Conference; Report on the Financial Outlook for the State Employees’ Group Health Self-Insurance Trust Fund, p. 5, adopted March 3, 2014.

- May result in the member (state employee or retiree) paying the brand copayment to correspond to the higher brand pricing that the DSGI would pay.<sup>31</sup>

According to the Division of Risk Management<sup>32</sup> of the Department of Financial Services (DFS), the fiscal impact on prescription drug costs for injured state workers is indeterminate at this time. The DFS spends approximately \$11,000,000 per year for pharmacy benefits. The Division of Risk Management is contracted through January 1, 2017, with a PBM to manage prescription costs for injured state workers. Due to prohibitions in the state and federal constitution on impairment of contracts, it is unlikely any effects of this legislation would occur until expiration of the current contract.

The fiscal impact on prescription costs for injured state workers is probably less of an impact than on state group health insurance. The provisions of s. 440.13(12)(c), F.S., prescribes a reimbursement amount at the average wholesale price plus a \$4.18 dispensing fee, unless a lower rate has been negotiated for workers' compensation prescriptions. Since this section is not addressed by the bill, it is likely that workers' compensation medication would continue to be reimbursed at the statutory amount. The bill may limit a PBM's ability to negotiate rates below the statutory rate for workers' compensation drugs.

According to the DFS, many of the disclosure requirements provided in the bill are already required pursuant to the current state contract. It is most likely that additional regulatory requirements, such as updating the MAC list every seven days and providing an appeal procedure, will increase the administrative costs for the PBM and result in higher state contracting costs after the current contract expires.

## **VI. Technical Deficiencies:**

Some of the terms and conditions provided in the bill may be difficult to interpret, implement, or enforce by the stakeholders. For example, the bill provides that in order to place a drug on the MAC list, the drug must have at least two therapeutically equivalent, multiple-source generic drugs, which have a "significant cost difference" and are available for purchase "without limitations" by all pharmacies in the state from national or regional wholesalers. It is unclear how "significant" and "without limitation" would be determined. The bill requires PBMs to modify MAC pricing in a "timely fashion." It is unclear how this requirement would be determined.

The bill creates a new section in Chapter 465, F.S., relating to pharmacies. It is unclear whether the Board of Pharmacy or the Department of Health would have the authority to enforce the provisions of the bill.

To avoid any issue as to the application of the mandate provision of the state constitution, consideration should be given to adding a statement to the bill that it fulfills an important state interest.

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<sup>31</sup> Department of Management Services, 2014 Legislative Bill Analysis, dated February 18, 2014.

<sup>32</sup> Department of Financial Services, CS/CS/SB 1014 Fiscal Note (Mar. 27, 2014) (on file with the Senate Committee on Banking and Insurance).

**VII. Related Issues:**

The bill takes effect July 1, 2014, and may result in additional administrative costs for plans that operate on a calendar year basis. Plans may incur additional costs to notify employees and retirees of changes in the plan.

**VIII. Statutes Affected:**

This bill creates section 465.1862 of the Florida Statutes.

**IX. 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 Banking and Insurance on March 25, 2014:**

The bill revises the criteria for a PBM to place a particular generic prescription drug on a maximum allowable cost list. The bill requires the drug to have at least two, instead of three, or more nationally available, therapeutically equivalent, multiple-source generic drugs that are listed as therapeutically and pharmaceutically equivalent or “A” or “B,” instead of only “A,” rated in the United States Food and Drug Administration’s most recent version of the Orange Book.

**CS by Health Policy on March 19, 2014:**

Deletes the requirement for contracts between PBMs and pharmacies to be executed by January 1 annually.

- Deletes the contract requirement for PBMs to provide pharmacies with the basis and sources used to determine MAC pricing.
- Deletes the requirement for a PBM to contractually commit to providing a specified reimbursement rate for generic drugs.
- Deletes the definitions of “average wholesale price” and “AWP Discount.”
- Makes a technical change to the definition of “plan sponsor,” by replacing the word “administration” with “administrator.”
- Reorganizes, without changing content, language related to conditions under which a PBM can place a drug on a MAC list.
- Clarifies the date for retroactive adjustment of payment when a pharmacy wins an appeal of a claim, as retroactive to the date the claim was adjudicated.

- B. **Amendments:**

None.

By the Committees on Banking and Insurance; and Health Policy;  
and Senator Garcia

597-03210-14

20141014c2

1 A bill to be entitled  
2 An act relating to pharmacy benefit managers; creating  
3 s. 465.1862, F.S.; defining terms; specifying contract  
4 terms that must be included in a contract between a  
5 pharmacy benefit manager and a pharmacy; providing  
6 restrictions on the inclusion of prescription drugs on  
7 a list that specifies the maximum allowable cost for  
8 such drugs; requiring the pharmacy benefit manager to  
9 disclose certain information to a plan sponsor;  
10 requiring a contract between a pharmacy benefit  
11 manager and a pharmacy to include an appeal process;  
12 providing an effective date.  
13  
14 Be It Enacted by the Legislature of the State of Florida:  
15  
16 Section 1. Section 465.1862, Florida Statutes, is created  
17 to read:  
18 465.1862 Pharmacy benefit managers.-  
19 (1) As used in this section, the term:  
20 (a) "Maximum allowable cost" (MAC) means the upper limit or  
21 maximum amount that an insurance or managed care plan will pay  
22 for generic, or brand-name drugs that have generic versions  
23 available, which are included on a PBM-generated list of  
24 products.  
25 (b) "Plan sponsor" means an employer, insurer, managed care  
26 organization, prepaid limited health service organization,  
27 third-party administrator, or other entity contracting for  
28 pharmacy benefit manager services.  
29 (c) "Pharmacy benefit manager" (PBM) means a person,

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597-03210-14

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30 business, or other entity that provides administrative services  
31 related to processing and paying prescription claims for  
32 pharmacy benefit and coverage programs. Such services may  
33 include contracting with a pharmacy or network of pharmacies;  
34 establishing payment levels for provider pharmacies; negotiating  
35 discounts and rebate arrangements with drug manufacturers;  
36 developing and managing prescription formularies, preferred drug  
37 lists, and prior authorization programs; assuring audit  
38 compliance; and providing management reports.  
39 (2) A contract between a pharmacy benefit manager and a  
40 pharmacy which includes MAC pricing must require the pharmacy  
41 benefit manager to:  
42 (a) Update the MAC pricing information at least every 7  
43 calendar days and establish a reasonable process for the prompt  
44 notification of such pricing updates to network pharmacies; and  
45 (b) Maintain a procedure to eliminate products from the  
46 list or modify the MAC pricing in a timely fashion in order to  
47 remain consistent with pricing changes in the marketplace.  
48 (3) In order to place a particular prescription drug on a  
49 MAC list, the pharmacy benefit manager must, at a minimum,  
50 ensure that the drug has at least two or more nationally  
51 available, therapeutically equivalent, multiple-source generic  
52 drugs that:  
53 (a) Have a significant cost difference;  
54 (b) Are listed as therapeutically and pharmaceutically  
55 equivalent or "A" or "B" rated in the United States Food and  
56 Drug Administration's most recent version of the Orange Book;  
57 (c) Are available for purchase without limitations by all  
58 pharmacies in the state from national or regional wholesalers;

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20141014c2

59 and60 (d) Are not obsolete or temporarily unavailable.61 (4) The pharmacy benefit manager must disclose the  
62 following to the plan sponsor:63 (a) The basis of the methodology and sources used to  
64 establish applicable MAC pricing in the contract between the  
65 pharmacy benefit manager and the plan sponsor. Applicable MAC  
66 lists must be updated and provided to the plan sponsor whenever  
67 there is a change.68 (b) Whether the pharmacy benefit manager uses a MAC list  
69 for drugs dispensed at retail but does not use a MAC list for  
70 drugs dispensed by mail order in the contract between the  
71 pharmacy benefit manager and the plan sponsor or within 21  
72 business days after implementation of the practice.73 (c) Whether the pharmacy benefit manager is using the  
74 identical MAC list with respect to billing the plan sponsor as  
75 it does when reimbursing all network pharmacies. If multiple MAC  
76 lists are used, the pharmacy benefit manager must disclose any  
77 difference between the amount paid to a pharmacy and the amount  
78 charged to the plan sponsor.79 (5) All contracts between a pharmacy benefit manager and a  
80 contracted pharmacy must include:81 (a) A process for appealing, investigating, and resolving  
82 disputes regarding MAC pricing. The process must:83 1. Limit the right to appeal to 90 calendar days following  
84 the initial claim;85 2. Investigate and resolve the dispute within 7 days; and86 3. Provide the telephone number at which a network pharmacy  
87 may contact the pharmacy benefit manager and speak with an

Page 3 of 4

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597-03210-14

20141014c2

88 individual who is responsible for processing appeals.89 (b) If the appeal is denied, the pharmacy benefit manager  
90 shall provide the reason for the denial and identify the  
91 national drug code of a drug product that may be purchased by a  
92 contracted pharmacy at a price at or below the MAC.93 (c) If an appeal is upheld, the pharmacy benefit manager  
94 shall make an adjustment retroactive to the date the claim was  
95 adjudicated. The pharmacy benefit manager shall make the  
96 adjustment effective for all similarly situated pharmacies in  
97 this state which are within the network.

98 Section 2. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/2014

Meeting Date

Topic Pharmacy Benefit Managers

Bill Number 1014 (if applicable)

Name Sally West

Amendment Barcode (if applicable)

Job Title Director of Government Affairs

Address Street

Phone 224-723-2650

City State Zip

E-mail Sally.West@walgreens.com

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

Representing Walgreens

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

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

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

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



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/2/14  
Meeting Date

Topic Pharmacy Benefit Managers

Bill Number SB 1014  
(if applicable)

Name Larry Gonzalez

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title General Counsel, FSHP

Address 223 S. Gadsden St

Phone 850-570-6307

Tallahassee FL 32301  
City State Zip

E-mail lgonzalez@earthlink.net

Speaking:  For  Against  Information

Representing \* Florida Society of Health-System Pharmacists

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/2/2014

Meeting Date

Topic PHARMACY BENEFIT MANAGEN

Bill Number 1014  
*(if applicable)*

Name MICHAEL JACKSON

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title EVP & CEO

Address 610 N. ADAMS ST

Phone 850 222-2400

Street

TAUNAHASSEE

City

TLH FL

State

32301

Zip

E-mail MJACKSON@PHARMVIEW.COM

Speaking:  For  Against  Information

Representing FLORIDA PHARMACY ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/2/2014  
Meeting Date

Topic MAC Pricing

Bill Number 1014  
(if applicable)

Name Jorge Chamizo

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Attorney

Address 108 S. Monroe St.

Phone (850) 681-0024

Street  
Tallahassee, FL 32301  
City State Zip

E-mail jorge@flapartners.com

Speaking:  For  Against  Information

Representing Independent Pharmacy Cooperative

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR RENE GARCIA**  
38th District

**COMMITTEES:**  
Communications, Energy, and Public Utilities, Vice  
Chair  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Appropriations Subcommittee on Health and Human  
Services  
Transportation  
Health Policy  
Agriculture  
Transportation

**JOINT COMMITTEE:**  
Joint Committee on Administrative Procedures, Chair

March 28, 2014

The Honorable Alan Hays  
Chair, Appropriations Subcommittee General Government  
320 Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Hays:

This letter should serve as a request to have my bill *SB 1014 Pharmacy Benefit Managers* heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "René García".

State Senator René García  
District 38  
RG:dm

CC:Jamie DeLoach, Staff Director

**REPLY TO:**

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**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 1098

INTRODUCER: Regulated Industries Committee and Senator Dean

SUBJECT: Florida Homeowners' Construction Recovery Fund

DATE: April 1, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Niles</u>	<u>Imhof</u>	<u>RI</u>	<b>Fav/CS</b>
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1098 permits claims against Division II contractors to be eligible for compensation from the Florida Homeowners' Construction Recovery Fund (fund) in the Department of Business and Professional Regulation. The bill revises the statutory limits on recovery payments to include Division II contracts beginning January 1, 2015, for any contract entered into after July 1, 2014. The bill also limits Division II claims to \$15,000 per claim with a \$150,000 lifetime maximum per licensee.

The bill removes the prohibition against paying claims to consumers who made improper payments to the contractor in violation of Florida's Construction Lien law on contracts entered into after July 1, 2014. The bill revises the required recovery fund notification statement that contractors must give to homeowners informing them of their rights under the recovery fund to include language stating that claimants' recovery payments are limited to a specific amount.

This bill will result in additional claims being paid out of the fund. However, the total amount of additional claims to be paid is indeterminate as the number of eligible claims and the amount of each claim will vary. Consequently, the fiscal impact of the bill is indeterminate. See Section V.

The bill provides an effective date of July 1, 2014.

## II. Present Situation:

### Contractors

*Division I contractors* are described under s. 489.105, F.S., as general contractors, building contractors and residential contractors. *Division II contractors* are described under s. 489.105, F.S., as sheet metal contractors, roofing contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, pollutant storage systems contractors, and specialty contractors.

### Construction Industry Licensing Board

The Construction Industry Licensing Board (board), within the Department of Business and Professional Regulation (department), is responsible for licensing and regulating the construction industry in this state.<sup>1</sup> The board meets regularly to consider applications for licensure, to review disciplinary cases, and to conduct informal hearings related to licensure and discipline.<sup>2</sup> The board engages in rulemaking to implement the provisions set forth in its statutes and conducts other general business, as necessary.<sup>3</sup>

The board is divided into Division I and Division II members based on the definitions of Division I and Division II contractors. The jurisdiction falls to each division relative to their scope,<sup>4</sup> and five members constitute a quorum for each division.

Section 489.129, F.S., grants the board the authority to take actions against any certificate holder or registrant if the contractor, financially responsible officer or business organization for which the contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying agent responsible under s. 489.1195, F.S., is found guilty of specific acts, including the acts that may qualify a claim to the fund, which is discussed below. These acts are described under s. 489.129(1)(g), (j), and (k), F.S.

### Violations Creating a Valid Claim

Section 489.129(1)(g), F.S., allows disciplinary proceedings for committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs when:

- Valid liens have been recorded against the customer's property by the contractor for supplies or services ordered by the contractor for which the customer has paid the contractor, but the contractor has not removed the liens within 75 days of such liens;
- The contractor has abandoned a job and the percentage of completion is less than the percentage of the contract price received by the contractor, unless the contractor is entitled to

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<sup>1</sup> See s. 489.107, F.S.

<sup>2</sup> Florida Department of Business and Professional Regulation, Construction Industry Licensing Board, available at <http://www.myfloridalicense.com/DBPR/pro/cilb/index.html> (Last visited March 18, 2014).

<sup>3</sup> Section 489.108, F.S., grants rulemaking authority.

<sup>4</sup> See *supra* note 2 and see s. 489.107(4), F.S.

retain such funds under the terms of the contract or refunds the excess funds within 30 days after abandonment; or

- The contractor's job has been completed, and the customer has been made to pay more than the original contract price, as adjusted for subsequent change orders, unless such increase in cost was the result of circumstances beyond the contractor's control, was caused by the customer, or was otherwise permitted by the terms of the contract between the contractor and the customer.

Section 489.129(1)(j), F.S., allows disciplinary proceedings for abandoning a construction project. Abandonment is presumed after 90 days if the contractor terminates the project without just cause or without proper notification to the owner, including the reason for termination, or fails to perform work without just cause for 90 consecutive days.

Section 489.129(1)(k), F.S., allows disciplinary proceedings for signing a statement with respect to a project or contract:

- Falsely indicating that the work is bonded;
- Falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor; or
- Falsely indicating that workers' compensation and public liability insurance are provided.

Section 489.129, F.S., allows the board to take the following actions given the circumstances above:

- Place on probation or reprimand the licensee;
- Revoke, suspend, or deny the issuance or renewal of the certificate or registration;
- Require financial restitution to a consumer for financial harm directly related to a violation of a provision of ch. 489, F.S.;
- Impose an administrative fine not to exceed \$10,000 per violation;
- Require continuing education; or
- Assess costs associated with investigation and prosecution.

### **Florida Homeowner's Construction Recovery Fund**

The Florida Homeowner's Construction Recovery Fund (fund) was created by the Legislature in 1993 after Hurricane Andrew. The fund is the last resort to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed general, building, and residential contractors. Covered losses include financial mismanagement or misconduct, project abandonment, or fraudulent statement of a contractor, financially responsible officer, or business organization licensed under ch. 489, F.S. A claimant must be a homeowner and the damage must have been caused by a Division I contractor. Claims are filed with the department, which reviews them for completeness and statutory eligibility. The department then presents the claim to the board for review. The board makes the determination for an award.

### **Duty of Contractor to give Notice of Fund**

Section 489.1425, F.S., provides that any agreement or contract for repair, restoration, improvement, or construction to residential real property must contain a written statement explaining the consumer's rights under the recovery fund, except where the value of all labor and

materials does not exceed \$2,500. The written statement must be substantially in the form provided for by this statute.

### **Requirements to Collect**

The claimant must have obtained a final judgment, arbitration award, or board issued restitution order against the contractor for damages that are a direct result of a compensable violation. The statute of limitations to make a claim is one year after the conclusion an action or award in arbitration that is based on the misconduct.<sup>5</sup>

Completed claim forms must be submitted with:<sup>6</sup>

- A copy of the complaint that initiated action against the contractor;
- A certified copy of the underlying judgment, order of restitution, or award in arbitration, together with the judgment;<sup>7</sup>
- A copy of any contract between the claimant and the contractor, including change orders;
- Proof of payment to the contractor and/or subcontractors;
- Copies of any liens and releases filed against the property, together with the Notice of Claim and Notice to Owner; copies of applicable bonds, sureties, guarantees, warranties, letters of credit and/or policies of insurance; and
- Certified copies of levy and execution documents, and proof of all efforts and inability to collect the judgment or restitution order, and other documentation as may be required by the Board to determine causation of injury or specific actual damages.

No claimant eligible for, or receiving, restitution shall be eligible to recover from the fund until two or more payments have been missed.<sup>8</sup> Prior to receiving any payments, such a claimant shall provide the board with a written statement indicating any amount received to date under such an order or plan, the date and amount of the last payment, and how much is still due and owing under such an order or plan.<sup>9</sup>

### **Limits**

Pursuant to s. 489.143, F.S., each recovery claim is limited to both a per-claim maximum amount and a total life time per-contractor maximum.<sup>10</sup> For contracts entered prior to July 1, 2004, the fund claims are limited to \$25,000.00 per claimant with a total life time aggregate limit of \$250,000.00 per licensee.<sup>11</sup> For contracts entered after July 1, 2004, the per-claim payment limits are increased to \$50,000.00 with a total life time aggregate of \$500,000.00 per licensee.<sup>12</sup> The fund does not require a minimum contract amount for eligible claims.<sup>13</sup>

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<sup>5</sup> Section 61G4-21.003(5), F.A.C.

<sup>6</sup> Rule 61G4-21.003(2), F.A.C.

<sup>7</sup> Pursuant to rule 61G4-21.003(3), F.A.C., if it is not expressly based on s. 489.129(1)(g), (j), or (k), F.S., the claimant must demonstrate that the contractor engaged in activity that is described in those sections.

<sup>8</sup> Section 61G4-21.005(3), F.A.C.

<sup>9</sup> *Id.*

<sup>10</sup> *2014 Legislative Bill Analysis for SB1098*, Department of Business and Professional Regulation (March 11, 2014).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*



Pursuant to s. 489.1425, F.S., any contract for the repair, improvement or construction of Florida residential real property must contain a statutorily mandated notification statement informing the consumer of their rights under the fund, unless the total contract price is less than \$2,500.00.<sup>14</sup>

The fund is not permitted to compensate consumers who contracted with Division II contractors for types of work set forth in s. 489.105(3)(d)-(p), F.S., or to compensate consumers who have suffered damages as a result of payments made in violation of Florida Construction Lien Law under pt. I, ch. 713, F.S.

### **Funding and Payouts**

The fund is financed by a 1.5 percent surcharge on all building permits issued for the enforcement of the Florida Building Code.<sup>15</sup> The proceeds from the surcharge are allocated equally to fund the Florida Homeowner's Construction Recovery Fund and the operations of the Building Code Administrators and Inspectors Board. The department may transfer excess cash to the Florida Homeowner's Construction Recovery Fund if it is determined that the excess cash is not needed to fund the operation of the Building Code Administrators and Inspectors Board. However, the department may not transfer excess cash that would exceed the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission pursuant to s. 216.181, F.S.<sup>16</sup>

In the Fiscal Year 2013-2014 General Appropriations Act, \$8,000,000 (\$2,500,000 recurring and \$5,500,000 nonrecurring) was provided in the Claims Payments From Construction Recovery Fund appropriation category. Beginning in the 2013-2014 fiscal year, there were 589 claims valued at \$13,153,267 in anticipated recovery payments.<sup>17</sup> According to the department, as of March 1, 2013, the Construction Industry Recovery Fund currently has approved 283 consumer recovery claims for a total of \$5,779,353.40 in recovery payments. The fund currently has a backlog of 253 claims representing \$5,636,599.43 in anticipated payments, which are awaiting approval by the board.<sup>18</sup>

The estimated revenues to the fund for Fiscal Year 2014-2015 are \$3 million. The department estimates that revenues will remain at approximately \$3 million over the next three years, assuming building construction maintains its current levels.<sup>19</sup> Additionally, the department projects that \$2,500,000 in Fiscal Year 2014-2015 and \$2,000,000 in the following three fiscal years could be transferred to the fund from the Building Code Administrators and Inspectors Board.<sup>20</sup> This would allow for \$5,500,000 in claims payments to be made in Fiscal Year 2014-2015 and \$5,000,000 the following three fiscal years.

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Section 438.631, F.S.

<sup>17</sup> *Legislative Budget Request FY 2014-15, Proposed New Issues*, Department of Business and Professional Regulation (received November 18, 2013), on file with the Appropriations Subcommittee on General Government.

<sup>18</sup> *See supra* note 10.

<sup>19</sup> *See supra* note 17.

<sup>20</sup> *See supra* note 17.

**III. Effect of Proposed Changes:**

**Section 1** amends s. 489.1401, F.S., to revise legislative intent to include both Division I and Division II contractors within the fund.

**Section 2** amends s. 489.1402, F.S., to expand the definition of “contractor” to include Division II contractors and the scope of work set forth in s. 489.105(3)(a)-(q), F.S. The section further amends the definition of “residence” to specifically include the term “single family residence.”

**Section 3** amends the conditions for recovery under s. 489.141, F.S., permitting the payment of claims for consumers who contracted after July 1, 2014, with Division II contractors for services that fall within s. 489.105(3)(d)-(q), F.S. In addition, the bill removes the prohibition against paying consumer claims where the damages resulted from payments made in violation of Florida’s Construction Lien Law for contracts entered into after July 1, 2014.

**Section 4** amends s. 489.1425, F.S., revising the required recovery fund notification statement to include language stating that claimants’ recovery payments are “up to a limited amount.”

**Section 5** amends s. 489.143, F.S., to specify the maximum fund disbursements for each Division I claim. In addition, the bill amends the statutory limits on recovery payments to reflect the inclusion of Division II contracts beginning January 1, 2015, for any contract entered after July 1, 2014. The bill limits Division II claims to \$15,000 per claim with a \$150,000 lifetime maximum per licensee.

**Section 6** establishes an effective date of July 1, 2014.

**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:**

CS/SB 1098 may increase restitution payments required of licensed Division II contractors against whom a recovery claim is paid.<sup>21</sup> Licensees must repay the fund for any amount of recovery paid to a consumer or have their license suspended until the payment is made.<sup>22</sup>

**C. Government Sector Impact:**

This bill will result in additional claims being paid out of the recovery fund. The total amount of additional claims to be paid is indeterminate as the number of eligible claims and the amount of each claim will vary based on the circumstances of the contract.<sup>23</sup>

During the five fiscal years prior to removal of Division II licensees from the fund eligibility (Fiscal Years 2002-2003 through 2006-2007), Division II contractor claims constituted approximately 23.3 percent of all claims paid by the recovery fund.<sup>24</sup> The average payment amount for each Division II claim was approximately \$8,200. Applying the percentage of Division II contractor claims paid during Fiscal Years 2002-2003 to 2006-2007 and the average payment per claim, the department estimates additional claims of \$852,800 per year.<sup>25</sup> However, the total number of claims can vary year to year and the amount of each claim can vary widely based on the circumstances of the contract.<sup>26</sup>

According to the department, the fund currently has a backlog of 253 claims representing \$5,636,599 in anticipated payments, which are awaiting approval by the board. The amount of yearly recovery fund payments is limited by the amount of funding received from the 1.5 percent surcharge. Therefore, the total amount of claims paid each year will not increase as a result of receiving additional claims. However, the inclusion of additional claims may extend the amount of time it takes to pay each individual claim.<sup>27</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>21</sup> 2014 Legislative Bill Analysis for SB1098, Department of Business and Professional Regulation (March 11, 2014).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 489.1401, 489.1402, 489.141, 489.1425, and 489.143.

**IX. 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 20, 2014:**

The CS provides that payments for claims for contracts entered into before July 1, 2004, may not exceed \$100,000 annual aggregate and \$250,000 total aggregate. A claim approved by the board in excess of the annual cap, an amount in excess of \$100,000 up to \$250,000 is eligible for payment in the next and succeeding fiscal years, but only after all that current calendar year's claims have been paid.

- B. **Amendments:**

None.

By the Committee on Regulated Industries; and Senator Dean

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1 A bill to be entitled  
 2 An act relating to the Florida Homeowners'  
 3 Construction Recovery Fund; amending s. 489.1401,  
 4 F.S.; clarifying legislative intent; making technical  
 5 changes; amending s. 489.1402, F.S.; redefining terms;  
 6 amending s. 489.141, F.S.; revising conditions under  
 7 which a claimant is eligible to seek recovery from the  
 8 recovery fund; amending s. 489.1425, F.S.; revising  
 9 the form required to be provided by a contractor which  
 10 explains a consumer's rights under the recovery fund;  
 11 amending s. 489.143, F.S.; prohibiting fund  
 12 disbursements from exceeding a specified amount for  
 13 each Division I claim and each Division II claim;  
 14 providing an effective date.  
 15  
 16 Be It Enacted by the Legislature of the State of Florida:  
 17  
 18 Section 1. Subsections (2) and (3) of section 489.1401,  
 19 Florida Statutes, are amended to read:  
 20 489.1401 Legislative intent.—  
 21 (2) It is the intent of the Legislature that the sole  
 22 purpose of the Florida Homeowners' Construction Recovery Fund is  
 23 to compensate an any aggrieved claimant who contracted for the  
 24 construction or improvement of the homeowner's residence located  
 25 within this state and who has obtained a final judgment in any  
 26 court of competent jurisdiction, was awarded restitution by the  
 27 Construction Industry Licensing Board, or received an award in  
 28 arbitration against a licensee on grounds of financial  
 29 mismanagement or misconduct, abandoning a construction project,

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30 or making a false statement with respect to a project. Such  
 31 grievance must arise ~~and arising~~ directly out of a any  
 32 transaction conducted when the judgment debtor was licensed and  
 33 must involve an act performed ~~any of the activities~~ enumerated  
 34 under s. 489.129(1)(g), (j) or (k) ~~on the homeowner's residence~~.  
 35 (3) It is the intent of the Legislature that Division I and  
 36 Division II contractors set apart funds for the specific  
 37 objective of participating in the fund.  
 38 Section 2. Paragraphs (d), (i), (k), and (l) of subsection  
 39 (1) of section 489.1402, Florida Statutes, are amended to read:  
 40 489.1402 Homeowners' Construction Recovery Fund;  
 41 definitions.—  
 42 (1) The following definitions apply to ss. 489.140-489.144:  
 43 (d) "Contractor" means a Division I or a Division II  
 44 contractor performing his or her respective services described  
 45 in s. 489.105(3)(a)-(q) ~~s. 489.105(3)(a)-(e)~~.  
 46 (i) "Residence" means a single-family residence, an  
 47 individual residential condominium or cooperative unit, or a  
 48 residential building containing not more than two residential  
 49 units in which the owner contracting for the improvement is  
 50 residing or will reside 6 months or more each calendar year upon  
 51 completion of the improvement.  
 52 (k) "Same transaction" means a contract, or a any series of  
 53 contracts, between a claimant and a contractor or qualified  
 54 business, when such contract or contracts involve the same  
 55 property or contiguous properties and are entered into either at  
 56 one time or serially.  
 57 (l) "Valid and current license," for the purpose of s.  
 58 489.141(2)(d), means a any license issued pursuant to this part

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59 to a licensee, including a license in an active, inactive,  
60 delinquent, or suspended status.

61 Section 3. Subsections (1) and (2) of section 489.141,  
62 Florida Statutes, are amended to read:

63 489.141 Conditions for recovery; eligibility.—

64 (1) ~~A~~ Any claimant is eligible to seek recovery from the  
65 recovery fund after making ~~having made~~ a claim and exhausting  
66 the limits of any available bond, cash bond, surety, guarantee,  
67 warranty, letter of credit, or policy of insurance, if provided  
68 ~~that~~ each of the following conditions is satisfied:

69 (a) The claimant has received final judgment in a court of  
70 competent jurisdiction in this state or has received an award in  
71 arbitration or the Construction Industry Licensing Board has  
72 issued a final order directing the licensee to pay restitution  
73 to the claimant. The board may waive this requirement if:

74 1. The claimant is unable to secure a final judgment  
75 against the licensee due to the death of the licensee; or

76 2. The claimant has sought to have assets involving the  
77 transaction that gave rise to the claim removed from the  
78 bankruptcy proceedings so that the matter might be heard in a  
79 court of competent jurisdiction in this state and, after due  
80 diligence, the claimant is precluded by action of the bankruptcy  
81 court from securing a final judgment against the licensee.

82 (b) The judgment, award, or restitution is based upon a  
83 violation of s. 489.129(1)(g), (j), or (k) or s. 713.35.

84 (c) The violation was committed by a licensee.

85 (d) The judgment, award, or restitution order specifies the  
86 actual damages suffered as a consequence of such violation.

87 (e) The contract was executed and the violation occurred on

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88 or after July 1, 1993, and provided that:

89 1. The claimant has caused to be issued a writ of execution  
90 upon such judgment, and the officer executing the writ has made  
91 a return showing that no personal or real property of the  
92 judgment debtor or licensee liable to be levied upon in  
93 satisfaction of the judgment can be found or that the amount  
94 realized on the sale of the judgment debtor's or licensee's  
95 property pursuant to such execution was insufficient to satisfy  
96 the judgment;

97 2. If the claimant is unable to comply with subparagraph 1.  
98 for a valid reason to be determined by the board, the claimant  
99 has made all reasonable searches and inquiries to ascertain  
100 whether the judgment debtor or licensee is possessed of real or  
101 personal property or other assets subject to being sold or  
102 applied in satisfaction of the judgment and by his or her search  
103 has discovered no property or assets or has discovered property  
104 and assets and has taken all necessary action and proceedings  
105 for the application thereof to the judgment but the amount  
106 thereby realized was insufficient to satisfy the judgment; and

107 3. The claimant has made a diligent attempt, as defined by  
108 board rule, to collect the restitution awarded by the board.

109 (f) A claim for recovery is made within 1 year after the  
110 conclusion of any civil, criminal, or administrative action or  
111 award in arbitration based on the act. This paragraph applies to  
112 any claim filed with the board after October 1, 1998.

113 (g) Any amounts recovered by the claimant from the judgment  
114 debtor or licensee, or from any other source, have been applied  
115 to the damages awarded by the court or the amount of restitution  
116 ordered by the board.

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117 (h) The claimant is not a person who is precluded by this  
118 act from making a claim for recovery.

119 (2) A claimant is not qualified to make a claim for  
120 recovery from the recovery fund, if:

121 (a) The claimant is the spouse of the judgment debtor or  
122 licensee or a personal representative of such spouse;

123 (b) The claimant is a licensee who acted as the contractor  
124 in the transaction ~~that which~~ is the subject of the claim;

125 (c) The claim is based upon a construction contract in  
126 which the licensee was acting with respect to the property owned  
127 or controlled by the licensee;

128 (d) The claim is based upon a construction contract in  
129 which the contractor did not hold a valid and current license at  
130 the time of the construction contract;

131 (e) The claimant was associated in a business relationship  
132 with the licensee other than the contract at issue;

133 (f) The claimant has suffered damages as the result of  
134 making improper payments to a contractor as defined in part I of  
135 chapter 713 on contracts entered into before July 1, 2014; or

136 (g) The claimant has contracted with a licensee to perform  
137 a scope of work described in s. 489.105(3) (d)-(p) on contracts  
138 entered into before July 1, 2014.

139 Section 4. Subsection (1) of section 489.1425, Florida  
140 Statutes, is amended to read:

141 489.1425 Duty of contractor to notify residential property  
142 owner of recovery fund.—

143 (1) Each ~~Any~~ agreement or contract for repair, restoration,  
144 improvement, or construction to residential real property must  
145 contain a written statement explaining the consumer's rights

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146 under the recovery fund, except where the value of all labor and  
147 materials does not exceed \$2,500. The written statement must be  
148 substantially in the following form:

149  
150 FLORIDA HOMEOWNERS' CONSTRUCTION  
151 RECOVERY FUND

152  
153 PAYMENT, UP TO A LIMITED AMOUNT, MAY BE AVAILABLE FROM  
154 THE FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF  
155 YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT,  
156 WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF  
157 FLORIDA LAW BY A LICENSED CONTRACTOR. FOR INFORMATION  
158 ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT  
159 THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT  
160 THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:

161  
162 The statement must ~~shall~~ be immediately followed by the board's  
163 address and telephone number as established by board rule.

164 Section 5. Section 489.143, Florida Statutes, is amended to  
165 read:

166 489.143 Payment from the fund.—

167 (1) The fund shall be disbursed as provided in s. 489.141  
168 on a final order of the board.

169 (2) A ~~Any~~ claimant who meets all of the conditions  
170 prescribed in s. 489.141 may apply to the board to cause payment  
171 to be made to a claimant from the recovery fund in an amount  
172 equal to the judgment, award, or restitution order or \$25,000,  
173 whichever is less, or an amount equal to the unsatisfied portion  
174 of such person's judgment, award, or restitution order, but only

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175 to the extent and amount of actual damages suffered by the  
 176 claimant, and only up to the maximum payment allowed for each  
 177 respective Division I and Division II claim. Payment from the  
 178 fund for other costs related to or pursuant to civil proceedings  
 179 such as postjudgment interest, ~~attorney~~ attorney's fees, court  
 180 costs, medical damages, and punitive damages is prohibited. The  
 181 recovery fund is not obligated to pay ~~a any~~ judgment, an award,  
 182 or a restitution order, or any portion thereof, which is not  
 183 expressly based on one of the grounds for recovery set forth in  
 184 s. 489.141.

185 (3) Beginning January 1, 2005, for each Division I contract  
 186 entered into after July 1, 2004, payment from the recovery fund  
 187 shall be subject to a \$50,000 maximum payment for each Division  
 188 I claim. Beginning January 1, 2015, for each Division II  
 189 contract entered into on or after July 1, 2014, payment from the  
 190 recovery fund shall be subject to a \$15,000 maximum payment for  
 191 each Division II claim.

192 (4)~~(3)~~ Upon receipt by a claimant under subsection (2) of  
 193 payment from the recovery fund, the claimant shall assign his or  
 194 her additional right, title, and interest in the judgment,  
 195 award, or restitution order, to the extent of such payment, to  
 196 the board, and thereupon the board shall be subrogated to the  
 197 right, title, and interest of the claimant; and any amount  
 198 subsequently recovered on the judgment, award, or restitution  
 199 order, to the extent of the right, title, and interest of the  
 200 board therein, shall be for the purpose of reimbursing the  
 201 recovery fund.

202 (5)~~(4)~~ Payments for claims arising out of the same  
 203 transaction shall be limited, in the aggregate, to the lesser of

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204 the judgment, award, or restitution order or the maximum payment  
 205 allowed, for a Division I claim or a Division II claim  
 206 regardless of the number of claimants involved in the  
 207 transaction.

208 (6)~~(5)~~ For contracts entered into before July 1, 2004,  
 209 payments for claims against any one licensee ~~may shall~~ not  
 210 exceed, in the aggregate, \$100,000 annually, up to a total  
 211 aggregate of \$250,000. For any claim approved by the board which  
 212 is in excess of the annual cap, the amount in excess of \$100,000  
 213 up to the total aggregate cap of \$250,000 is eligible for  
 214 payment in the next and succeeding fiscal years, but only after  
 215 all claims for the then-current calendar year have been paid.  
 216 Payments may not exceed the aggregate annual or per claimant  
 217 limits under law. Beginning January 1, 2005, for each Division I  
 218 contract entered into after July 1, 2004, payment from the  
 219 recovery fund is subject only to a total aggregate cap of  
 220 \$500,000 for each Division I licensee. Beginning January 1,  
 221 2015, for each Division II contract entered into on or after  
 222 July 1, 2014, payment from the recovery fund is subject only to  
 223 a total aggregate cap of \$150,000 for each Division II licensee.

224 (7)~~(6)~~ Claims shall be paid in the order filed, up to the  
 225 aggregate limits for each transaction and licensee and to the  
 226 limits of the amount appropriated to pay claims against the fund  
 227 ~~for the fiscal year in which the claims were filed~~. Payments may  
 228 not exceed the total aggregate cap per licensee or per claimant  
 229 limits under this section.

230 (8)~~(7)~~ If the annual appropriation is exhausted with claims  
 231 pending, such claims shall be carried forward to the next fiscal  
 232 year. Any moneys in excess of pending claims remaining in the



580-02896-14

20141098c1

233 recovery fund at the end of the fiscal year shall be paid as  
234 provided in s. 468.631.

235 ~~(9)(8)~~ Upon the payment of any amount from the recovery  
236 fund in settlement of a claim in satisfaction of a judgment,  
237 award, or restitution order against a licensee as described in  
238 s. 489.141, the license of such licensee shall be automatically  
239 suspended, without further administrative action, upon the date  
240 of payment from the fund. The license of such licensee ~~may shall~~  
241 not be reinstated until he or she has repaid in full, plus  
242 interest, the amount paid from the fund. A discharge of  
243 bankruptcy does not relieve a person from the penalties and  
244 disabilities provided in this section.

245 ~~(10)(9)~~ A Any firm, a corporation, a partnership, or an  
246 association, or a any person acting in his or her individual  
247 capacity, who aids, abets, solicits, or conspires with another  
248 ~~any~~ person to knowingly present or cause to be presented a ~~any~~  
249 false or fraudulent claim for the payment of a loss under this  
250 act is guilty of a third-degree felony, punishable as provided  
251 in s. 775.082 or s. 775.084 and by a fine of up to ~~not exceeding~~  
252 \$30,000~~7~~, unless the value of the fraud exceeds that amount,  
253 ~~\$30,000~~ in which event the fine may not exceed double the value  
254 of the fraud.

255 ~~(11)(10)~~ ~~All~~ Payments and disbursements from the recovery  
256 fund shall be made by the Chief Financial Officer upon a voucher  
257 signed by the secretary of the department or the secretary's  
258 designee.

259 Section 6. This act shall take effect July 1, 2014.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-2-14

Meeting Date

Topic CONSTRUCTION

Bill Number 1098  
*(if applicable)*

Name CAM FENTRISS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title LEGISLATIVE COUNSEL

Address 1400 VILLAGE SQUARE # 3-243

Phone 850-222-2772

Street

TALLAHASSEE FL 32312

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State

Zip

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Speaking:  For  Against  Information

Representing FLA. ROOFING, SHEET METAL + AIR CONDITIONING CONTRACTORS ASSN

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Environmental Preservation and Conservation, *Chair*  
Appropriations Subcommittee on Criminal and Civil Justice  
Appropriations Subcommittee on General Government  
Children, Families, and Elder Affairs  
Criminal Justice  
Gaming  
Military Affairs, Space, and Domestic Security

**SENATOR CHARLES S. DEAN, SR.**  
5th District

March 24, 2014

The Honorable Alan Hays  
320 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Hays,

I respectfully request you place Committee Substitute for Senate Bill 1098, relating to Florida Homeowners' Construction Recovery Fund, on your Appropriations Subcommittee on General Government agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean  
State Senator District 5

cc: Jamie DeLoach, Staff Director

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**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 1210

INTRODUCER: Banking and Insurance Committee and Senator Bean

SUBJECT: Division of Insurance Agents and Agency Services

DATE: April 1, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<b>Fav/CS</b>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Favorable</b>
3.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 1210 amends statutes relating to the regulation of insurance agents and agencies by the Department of Financial Services (DFS or department). This bill:

- Eliminates the insurance agency licensing requirement for agencies owned and operated by a single licensed agent under certain conditions.
- Allows third parties to sign agency applications.
- Specifies circumstances under which branch agencies do not have to be licensed.
- Repeals a provision allowing insurance agencies to obtain a registration in lieu of a license, converts all agency registrations to licenses, and eliminates the three-year expiration period for agency licenses.
- Repeals current law governing branch agencies and defines agent in charge and specifies the responsibilities of the agent in charge.
- Provides for agency licenses to automatically expire if the agency does not designate a new agent in charge with the DFS within 90 days after the agent in charge on record has left the agency.
- Creates a new type of insurance agent, an unaffiliated insurance agent, and specifies the scope of the license.
- Requires the DFS to immediately suspend the license or appointment of licensees charged with crimes that would preclude them from applying for licensure from the DFS.
- Exempts members of the United States Armed Forces, their spouses, and veterans who have retired within 24 months from the application filing fee for specified licenses.

- Requires agents who recommend the surrender of an annuity or life insurance policy to provide financial information to the consumer.
- Amends eligibility requirements for mediators under alternative dispute resolution programs administered by the DFS.
- Requires the DFS to deny an application to be a mediator or neutral evaluator or revoke or suspend a mediator or neutral evaluator in certain circumstances.
- Authorizes the DFS to investigate improper conduct of mediators, neutral evaluators, and navigators.
- Allows the DFS to share investigative information with other regulatory bodies.
- Amends requirements for licensure as a nonresident surplus lines agent.
- Bars issuance of any new limited customer representative licenses after September 30, 2014.
- Authorizes additional methods for service of process in certain administrative actions.
- Deletes requirement that applicants who take a licensure examination in Spanish must pay all associated costs.

According to the DFS, the exemption from licensing application fees for members of the military will have a minimal fiscal impact. In addition, the DFS has indicated an insignificant potential cost savings with regard to service of process deliveries and insignificant costs relating to changes in current systems. Any costs can be handled within existing resources.

The bill is effective July 1, 2014, except as otherwise provided.

## II. Present Situation:

### The Department of Financial Services

The DFS licenses insurance agencies and agents. The department's Division of Agent and Agency Services receives licensing applications, issues licenses, and investigates violations of the Insurance Code.<sup>1</sup> In order to transact insurance, a person must be licensed by the DFS and appointed by an insurer to transact insurance on its behalf.<sup>2</sup> If an agent fails to maintain an appointment during a four-year period, the agent's license expires and the agent must qualify as a first time applicant before transacting insurance.<sup>3</sup>

Section 624.310, F.S., gives the DFS the authority to initiate administrative proceedings to seek cease and desist orders, to seek the removal of affiliated parties, to impose administrative fines, and to suspend or revoke licenses. Any service of documents authorized or required by s. 624.310, F.S., must be made by certified mail, personal delivery, or by service of process in accordance with ch. 48, F.S. Section 624.310, F.S., does not allow for service by electronic mail.

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<sup>1</sup> The Division of Agent and Agency Services website is found at <http://www.myfloridacfo.com/Division/Agents/#.UxnmwPldUeG> (last accessed March 7, 2013).

<sup>2</sup> See ss. 626.015(3) and 626.112 F.S.

<sup>3</sup> See s. 626.431, F.S.

## Insurance Agency Licensure and Registration

The DFS is responsible for licensing insurance agencies in accordance with s. 626.172, F.S. An application for licensure must be signed by the owner of the agency.<sup>4</sup> Insurance agents who are sole proprietors and do not employ other insurance agents must be licensed as both an insurance agent and an insurance agency.<sup>5</sup>

Each place of business where an agent transacts insurance must have an agency license.<sup>6</sup> Section 626.747, F.S., requires a licensed insurance agent to be at each branch location where activities requiring licensure as an insurance agent occur. Such an agent is commonly referred to as the “agent in charge.”

Section 626.112(7), F.S., provides that agencies existing prior to January 1, 2003, are allowed to file an application for registration in lieu of applying for licensure. A benefit of registration over licensing is that registrations do not expire, whereas licenses expire every three years.<sup>7</sup>

## Insurance Agents

A “general lines agent” is an agent who transacts property insurance, casualty insurance, surety insurance, certain types of health insurance, and marine insurance.<sup>8</sup> A “customer representative” means an individual appointed by a general lines agent or agency to assist that agent or agency in transacting the business of insurance from the office of that agent or agency.<sup>9</sup> A “limited customer representative” is a customer representative appointed by a general lines agent or agency to assist that agent or agency in transacting only the business of private passenger motor vehicle insurance from the office of that agent or agency.<sup>10</sup>

## Regulation of Navigators

In 2010, the federal Patient Protection and Affordable Care Act became law. The act created “navigators” to aid consumers in selecting a health plan. Part XIII of ch. 626, F.S., requires navigators to register with the DFS and creates a registration process for navigators.<sup>11</sup> Section 626.9957, F.S., provides disciplinary rules for navigators and grounds for the denial of registration.

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<sup>4</sup> See s. 626.172(2), F.S.

<sup>5</sup> See s. 626.112(7), F.S.

<sup>6</sup> See s. 626.112(7), F.S.

<sup>7</sup> See s. 626.382, F.S.

<sup>8</sup> See s. 626.015(5), F.S.

<sup>9</sup> See s. 626.015(4), F.S.

<sup>10</sup> See S. 626.015(11), F.S.

<sup>11</sup> <http://www.myfloridacfo.com/Division/Agents/Industry/News/Navigators.htm#UxsW4vldUeE> (last accessed March 8, 2014).

**Alternative Dispute Resolution Programs**

The DFS administers alternative dispute programs for various types of insurance and has mediation programs for property insurance<sup>12</sup> and automobile insurance<sup>13</sup> claims. The department has a neutral evaluation program, similar to mediation, for sinkhole insurance claims<sup>14</sup> and approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole insurance claims.<sup>15</sup>

To qualify as a mediator for the property or automobile mediation programs, a person must possess graduate level degrees in specified areas, be a member of the Florida Bar, be a licensed certified public accountant, or be a mediator for four years.<sup>16</sup> In addition, an applicant must complete a training program approved by the DFS.<sup>17</sup>

To qualify as a neutral evaluator for sinkhole insurance claims, a neutral evaluator must be a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution approved by the department and who is determined by the department to be fair and impartial.<sup>18</sup>

According to an analysis provided by the DFS,<sup>19</sup> the number of reported mediations and neutral evaluations is:

	Fiscal Year 2010-2011	Fiscal Year 2011-2012	Fiscal Year 2012-2013
Mediations	3,489	3,323	3,966
Neutral Evaluations	2,245	2,681	1,867

The DFS does not have the explicit authority to investigate, remove, or discipline mediators and neutral evaluators.

**III. Effect of Proposed Changes:**

**Unaffiliated Agents (Sections 4, 5, 14)**

According to the DFS, some insurance agents act as advisors to clients for a fee. These agents provide advice and recommendations regarding, among other things, insurance products but do not sell the products. This bill defines in statute a new type of insurance agent, an unaffiliated insurance agent, and specifies the scope of the license. This agent acts as an independent

<sup>12</sup> See s. 627.7015, F.S.

<sup>13</sup> See s. 626.745, F.S.

<sup>14</sup> See s. 627.7074, F.S.

<sup>15</sup> See ss. 627.7015, 627.7074, and 627.745, F.S.

<sup>16</sup> See ss. 627.7015, 627.745(3), F.S.

<sup>17</sup> See ss. 627.7015, 627.745(3), F.S.

<sup>18</sup> See s. 627.706, F.S.

<sup>19</sup> See Department of Financial Services, *Senate Bill 708 Analysis* (February 4, 2014) (on file with the Committee on Banking and Insurance).

consultant in the business of analyzing or abstracting insurance policies, providing insurance advice or counseling, or making specific recommendations or comparisons of insurance products for a fee established in advance by a written contract signed by the parties. This bill defines this type of agent as a licensed insurance agent, except a limited lines agent, who is not appointed by or affiliated with any insurer, but is self-appointed. This bill prohibits an unaffiliated insurance agent from holding an appointment from an insurer, from transacting an insurance contract for an insurer, and from interfering with commissions from an appointed insurance agent. Unaffiliated insurance agents may continue to receive commissions on sales made before the date of appointment as an unaffiliated insurance agent as long as the agent discloses the receipt of commissions to the client when making recommendations or evaluating products of the entity from which commissions are received.

The unaffiliated agent is not appointed by an insurer to sell insurance products. This can lead to a situation where an agent's license expires because the agent is not appointed during a four-year period.<sup>20</sup> This bill allows an unaffiliated agent to appoint himself or herself and requires unaffiliated insurance agents to pay the same agent appointment fees required under current law for agents appointed by insurers.

### **Agent in Charge and Branch Agencies (Section 6, 22)**

Effective January 1, 2015, this bill creates s. 626.0428(4), F.S., which defines an agent in charge as the licensed and appointed agent responsible for the supervision of all individuals within an insurance agency location. Each business location established by an agent or insurance agency must be in the active full-time charge of a licensed and appointed agent holding the required licenses for the lines of insurance transacted at the location. The agent in charge of an insurance agency may be the agent in charge of additional branch locations if: (1) insurance activities requiring licensure as an insurance agent do not occur at the locations when an agent is not physically present and (2) unlicensed employees at the locations do not engage in insurance activities that require licensure as an insurance agent or customer representative.

This bill requires each insurance agency and branch office to designate an agent in charge and to file the agent's name, license number, and physical address of the insurance agency location with the department at the department website. A change of the designated agent in charge must be reported to the department within 30 days, and becomes effective upon notification to the department.

This bill provides that an insurance agency location is precluded from conducting the business of insurance unless an agent in charge is designated by and providing services to the agency at all times. When the agent in charge ends his or her affiliation with the agency, the agency must designate another agent in charge within 30 days. If the agency fails to make such designation within 90 days after the designated agent has ended his or her affiliation with the agency, the agency license automatically expires 91 days after the designated agent ended his or her affiliation with the agency.

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<sup>20</sup> Phone interview with DFS staff.



This bill provides that an agent in charge of an insurance agency is accountable for the wrongful acts, misconduct or violations committed by the licensee or agent or by any person under her or his supervision acting on behalf of the agency. However, the agent in charge is not criminally liable for the misconduct unless she or he personally committed the act or knew or should have known of the acts and of the facts that constitute the violation.

This bill repeals s. 626.747, F.S., relating to branch agencies, effective January 1, 2015. The section is incorporated and expanded in the new s. 624.0428(4), F.S.

### **Customer Representatives and Limited Customer Representatives (Sections 7, 12, 21)**

Section 7 provides that no new limited customer representative licenses may be issued after September 30, 2014. Section 21 of the bill amends s. 626.7355, F.S., to allow an applicant for a customer representative license to obtain a temporary license if the applicant is not disqualified by s. 626.207, F.S. Current law provides an applicant cannot obtain a temporary license if the applicant has been convicted of or entered a guilty or nolo contendere plea to a felony within the previous five years. Section 626.207, F.S., provides that persons convicted of felony crimes are disqualified from applying for licensure for periods ranging from seven years to a permanent bar. The length of the disqualification depends on the severity of the crime.

### **Insurance Agency Licensing and Registration (Sections 8, 10, 15, 16)**

Section 8 of this bill eliminates the insurance agency licensing requirement for agencies that are owned and operated by a single licensed agent who conducts business in her/his own name and does not employ or use other insurance licensees. Section 8 is effective January 1, 2015.

The bill provides that a branch place of business established by a licensed agency is considered a branch agency.<sup>21</sup> A branch agency is not required to be licensed if it: (1) transacts business under the same name and federal tax identification number as the licensed agency and has designated with the DFS a licensed agent in charge of the branch location; and (2) has submitted to the DFS for inclusion in the licensing record of the licensed agency the address and telephone number of the branch location within 30 days after insurance transactions began at the branch location.

This bill repeals current law allowing certain insurance agencies to obtain a registration in lieu of a license and makes conforming changes due to this repeal. This bill converts all agency registrations to licenses effective October 1, 2015. Effective January 1, 2015, the bill also eliminates the three-year expiration of an agency license. Thus, an agency license will continue in force until canceled, suspended, revoked, or until it is otherwise terminated or it expires by operation of law.

Section 10 allows an owner, partner, officer, director, president, senior vice president, secretary, treasurer, and limited liability company member who directs or participates in the management and control of the agency, to complete and sign an insurance agency application. This bill also allows a third party to complete, submit, and sign an agency license application on the agency's

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<sup>21</sup> This bill further provides that a license issued to a business entity that offers motor vehicles for rent encompasses each employee or authorized representative at a designated branch.

behalf. However, the agency is responsible for ensuring that the information provided by the third party is true and correct and is accountable for any misstatements or misrepresentations.

This bill also requires additional information relating to an agency or branch agency to be provided on the agency license application. Such additional information includes the name, address, and e-mail address of the agency's registered agent or person authorized to accept service on the agency's behalf, the physical address of the branch location, including its name, e-mail address, and telephone number, the date that the branch office began transacting insurance, and the fingerprints of each individual required to be listed in the agency application.

### **Licensure Filing Fees and Members of the Military (Section 9)**

This bill exempts members of the United States Armed Forces, their spouses, and veterans who have retired within 24 months who apply for licensure as an insurance agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary from the application filing fee. This bill lists documents applicants can submit with the application to establish eligibility for the exemption.

### **Suspension of Licenses (Sections 11, 18)**

This bill requires the DFS, upon receipt of information or an indictment, to immediately temporarily suspend a license or appointment when the licensee is charged with a felony enumerated in s. 626.207(3), F.S. Those felonies include all capital and first degree felonies, crimes involving fraud, embezzlement, or money laundering, or a felony directly related to the financial services business. The suspension shall continue if the licensee is found guilty of, or pleads guilty or nolo contendere to, the crime, regardless of whether a judgment or conviction is entered, during a pending appeal.

### **Licensure Examinations in Spanish (Section 13)**

Current law requires that an applicant who wishes to take licensure examinations in Spanish must bear the cost of the development, preparation, administration, grading, and evaluation of the examination. This bill removes that requirement. The DFS said the changes will be implemented using the current budget.<sup>22</sup>

### **Mediators, Navigators, and Neutral Evaluators (Sections 17, 29, 30, 31, 32)**

Section 17 gives the DFS the authority to investigate mediators, neutral evaluators, and navigators in the same manner it investigates agencies and agents. This bill allows the department to initiate investigations of neutral evaluators, navigators, and mediators on its own authority or after a complaint is received. The department may require a neutral evaluator, navigator, or mediator to open its books and records for inspection.

The bill gives the department the authority to discipline mediators and neutral evaluators. Section 29 of the bill requires the department to adopt rules for the denial of application,

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<sup>22</sup> Department of Financial Services, *Bill Analysis and Fiscal Impact Statement*, (February 25, 2014) (on file with the Senate Committee on Banking and Insurance).

suspension, and other penalties for mediators. Section 31 requires the department to adopt rules for certifying, denying certification, and revoking the certification as a neutral evaluator.

Section 31 provides that the DFS must deny an application of a neutral evaluator or suspend or revoke the approval of a neutral evaluator if there is:

- A material misstatement, misrepresentation, or fraud in the attempt to obtain approval;
- A demonstrated lack of fitness and trustworthiness to act as a neutral evaluator; and
- Fraudulent or dishonest practices in the conduct of an evaluation or in the conduct of financial services business, or violations of statutes, department rules, or department orders.

The DFS has similar power to discipline insurance agents and other regulated persons or entities.

Section 32 provides that the DFS must deny an application as a mediator or suspend or revoke the certification of a mediator if there is:

- A material misstatement, misrepresentation, or fraud in the attempt to obtain approval or certification;
- A demonstrated lack of fitness and trustworthiness to act as a mediator;
- Fraudulent or dishonest practices in the conduct of mediation or financial services business; and
- A violation of statutes, department rules, department orders, or the Florida Rules for Certified and Court-Appointed Mediators.

The DFS has similar power to discipline insurance agents and other regulated persons or entities.

Section 32 replaces the DFS mediator education, experience, and training program requirements. The bill provides that an individual with an active certification as a Florida Circuit Court Mediator is qualified to be a mediator for the department. An individual not certified as a Florida Circuit Court Mediator can be a DFS mediator if the person is an approved department mediator on July 1, 2014, and has conducted at least one department mediation from July 1, 2010, through July 1, 2014. This provision essentially grandfathers in current and active department mediators so they can continue to be department mediators, even if they are not certified as a Florida Circuit Court Mediator.

In order to become certified as a Florida Circuit Court Mediator, one must fulfil education requirements set by the Florida Supreme Court, complete a mediation training program certified by the Florida Supreme Court, and observe and conduct mediations under the supervision of a certified mediator.<sup>23</sup>

### **Appointment of Agents by Insurers (Section 20)**

When certain entities enter into an agency contract with an insurer, all members, corporate officers and stockholders who solicit, negotiate, or effect insurance contracts must qualify and be licensed individually as agents or customer representatives. Each property and casualty insurer entering into an agency contract is required to individually appoint each such agent, unless the insurer's aggregate net written premium in the agency is \$25,000 or less. The bill deletes the

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<sup>23</sup> See <http://www.flcourts.org/core/fileparse.php/283/urlt/HowToBecomeMediator.pdf> (last accessed February 7, 2014).

exception for insurers within no more than \$25,000 in net written premium within an agency, and requires insurers to appoint only those agents who solicit, negotiate, or effect insurance contracts for the insurer.

### **Licensure Examination to Solicit or Sell Variable Products (Section 23)**

Current law prohibits individuals from soliciting or selling variable life insurance, variable annuity contracts, or any other indeterminate value or variable contract unless the person has successfully completed a DFS authorized and approved licensure examination relating to variable “annuity” contracts. This bill deletes language limiting the scope of the licensing examination to variable annuity contracts, and requires that the examination relate to variable contracts.

### **Nonresident Surplus Lines Agents (Sections 27, 33)**

Surplus lines insurers are only permitted to write coverage that is not available in the private market. Under current law, applicants for licensure as nonresident surplus lines agents must satisfy the same licensing requirements as resident surplus lines agents. This bill amends licensing requirements for nonresident surplus lines agents to exempt these applicants from the experience or coursework and examination requirements.

Section 627.952, F.S., requires that persons who offer, solicit, sell, purchase, administer, or service insurance contracts, certificates, or agreements for any purchasing group or risk retention group to any Florida resident must be licensed and appointed as a general lines agent (either a resident or nonresident agent). To place business through Florida eligible surplus lines carriers, the agent must also be licensed and appointed as either a resident or nonresident surplus lines agent. Nonresident agents must be licensed and appointed as a surplus lines agent in their state of residence and file a fidelity bond payable to the State of Florida. The bill eliminates the fidelity bond requirement and requires that such persons be licensed and appointed as a surplus lines agent in their state of residence and be licensed and appointed as a nonresident surplus lines agent in Florida.

### **Information Required With the Surrender of Life Insurance or Annuity (Section 28)**

This bill creates s. 627.4553, F.S., to require insurance agents, insurers, or persons performing insurance agent activities under an exemption from licensure, who recommend that a consumer surrender an annuity or life insurance policy with a cash value, but who do not recommend that another such policy be purchased with the proceeds from the surrender, to provide the consumer with information relating to the product to be surrendered before execution of the surrender. The information must include that the amount of any surrender charge, tax consequences resulting from the transaction, and forfeited death benefit. The consumer must also be informed about the loss of any minimum interest rate guarantees and the value of any other investment performance guarantees that will be forfeited as a result of the transaction. This bill requires the DFS to adopt rules and forms so the required information can be provided.

**Other Provisions (Sections 1-3 and 34-37)**

Section 1 of this bill changes the name of the Division of Insurance Agents and Agency Services to the Division of Agent and Agency Services.

Section 2 of this bill authorizes the DFS to serve administrative complaints and other documents required to be served pursuant to s. 624.310, F.S., by electronic mail if service by mail cannot be obtained. This bill allows for service by hand delivery by department investigators. The department will send electronic mail and will receive an electronic receipt from the person once the email is received. The department will receive a second receipt once the email is opened. In addition, the department will ask the recipient to respond and confirm receipt of the email. If the recipient does not confirm receipt, the department will serve the document by delivery or publication.<sup>24</sup>

Section 3 prohibits the DFS and the OIR investigators from removing original records from the offices of any person that is being examined or investigated without the advance, written consent of such person or pursuant to a court order.

Section 34 requires insurers that write bail bonds to submit a sample power of attorney to Office of Insurance Regulation for approval. Currently, these forms are submitted to and approved by the DFS.

Section 35 prohibits bail bond agents whose license has been suspended or revoked from engaging in any transaction requiring a license or appointment under ch. 648, F.S., until the license is reinstated or a new license is issued.

Sections 36 and 37 prohibits individuals seeking licensure from the DFS who have sealed or expunged criminal history records from denying or failing to acknowledge the arrests covered by the records.

Except as otherwise provided, the bill is effective July 1, 2014.

**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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<sup>24</sup> Interview with DFS staff, March 6, 2014.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The fiscal impact of CS/SB 1210 is insignificant. The DFS has indicated changes to current systems required by this bill will be implemented within existing resources.<sup>25</sup>

The department has also indicated a potential cost savings relating to the ability to email and hand deliver service of process for agent and agency cases. The department utilized process servers 121 times for agent and agency cases, at an average cost of \$97 per service.<sup>26</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 20.121, 624.310, 624.318, 624.501, 626.015, 626.0428, 626.112, 626.171, 626.172, 626.207, 626.241, 626.261, 626.311, 626.321, 626.382, 626.601, 626.611, 626.641, 626.733, 626.7355, 626.7845, 626.8411, 626.861, 626.862, 626.9272, 627.7015, 627.706, 627.7074, 627.745, 627.952, 648.43, 648.49, 943.0585, and 943.059.

This bill creates section 627.4553 of the Florida Statutes.

This bill repeals section 626.747 of the Florida Statutes.

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<sup>25</sup> Department of Financial Services, *Bill Analysis and Fiscal Impact Statement*, (February 25, 2014).

<sup>26</sup> Email from the DFS staff (on file with the Committee on Banking and Insurance).

**IX. Additional Information:**

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

**CS by Banking and Insurance on March 11, 2014:**

The committee adopted two amendments to correct a drafting error relating to the effective date of one section of the bill and to add statutory citations.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Bean

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1 A bill to be entitled  
 2 An act relating to the Division of Insurance Agents  
 3 and Agency Services; amending s. 20.121, F.S.;  
 4 revising the name of the division; amending s.  
 5 624.310, F.S.; revising service delivery methods;  
 6 amending s. 624.318, F.S.; prohibiting the removal of  
 7 specified original documents under certain conditions;  
 8 amending s. 624.501, F.S.; revising original  
 9 appointment and renewal fees related to certain  
 10 insurance representatives; amending s. 626.015, F.S.;  
 11 defining the term "unaffiliated insurance agent";  
 12 amending s. 626.0428, F.S.; requiring a branch place  
 13 of business to have an agent in charge; authorizing an  
 14 agent to be in charge of more than one branch office  
 15 under certain circumstances; providing requirements  
 16 relating to the designation of an agent in charge;  
 17 providing that the agent in charge is accountable for  
 18 wrongful acts, misconduct, and violations committed by  
 19 the licensee and any person under his or her  
 20 supervision; prohibiting an insurance agency from  
 21 conducting insurance business at a location without a  
 22 designated agent in charge; providing for expiration  
 23 of an agency license under specified circumstances;  
 24 amending s. 626.112, F.S.; prohibiting new limited  
 25 customer representative licenses from being issued  
 26 after a specified date; providing licensure exemptions  
 27 that allow specified individuals or entities to  
 28 conduct insurance business at specified locations  
 29 under certain circumstances; revising licensure

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30 requirements and penalties with respect to registered  
 31 insurance agencies; providing that the registration of  
 32 an approved registered insurance agency automatically  
 33 converts to an insurance agency license on a specified  
 34 date; amending s. 626.171, F.S.; providing an  
 35 exemption from certain licensure application fees;  
 36 amending s. 626.172, F.S.; revising requirements  
 37 relating to applications for insurance agency  
 38 licenses; amending s. 626.207, F.S.; conforming a  
 39 cross-reference; amending s. 626.241, F.S.; revising  
 40 the scope of the examination for a limited agent  
 41 license; amending s. 626.261, F.S.; deleting a  
 42 provision requiring certain costs to be paid by  
 43 applicants who request licensure examinations in  
 44 Spanish; amending s. 626.311, F.S.; limiting the types  
 45 of business that may be transacted by certain agents;  
 46 amending s. 626.321, F.S.; providing that a license  
 47 issued to a business renting or leasing motor vehicles  
 48 applies to employees and authorized representatives;  
 49 amending s. 626.382, F.S.; providing that an insurance  
 50 agency license continues in force until canceled,  
 51 suspended, revoked, terminated, or expired; amending  
 52 s. 626.601, F.S.; revising terminology relating to  
 53 investigations conducted by the Department of  
 54 Financial Services and the Office of Insurance  
 55 Regulation with respect to individuals and entities  
 56 involved in the insurance industry; amending s.  
 57 626.611, F.S.; requiring the department to suspend  
 58 certain licenses and appointments; amending s.

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59 626.641, F.S.; conforming a cross-reference; amending  
 60 s. 626.733, F.S.; revising applicability of certain  
 61 appointment provisions; amending s. 626.7355, F.S.;  
 62 revising qualifications for a temporary customer  
 63 representative's license; repealing s. 626.747, F.S.,  
 64 relating to branch agencies, agents in charge, and the  
 65 payment of additional county tax under certain  
 66 circumstances on a specified date; amending s.  
 67 626.7845, F.S.; revising a prohibition against  
 68 unlicensed transaction of life insurance; amending ss.  
 69 626.8411, 626.861, and 626.862, F.S.; conforming  
 70 cross-references; amending s. 626.9272, F.S.; revising  
 71 requirements for the licensure of nonresident surplus  
 72 lines agents; creating s. 627.4553, F.S.; requiring an  
 73 insurance agent who recommends the surrender of  
 74 certain annuity or life insurance to provide certain  
 75 information to the department; amending s. 627.7015,  
 76 F.S.; revising the rulemaking authority of the  
 77 department with respect to qualifications and  
 78 specified types of penalties covered under the  
 79 property insurance mediation program; amending s.  
 80 627.706, F.S.; revising the definition of the term  
 81 "neutral evaluator"; amending s. 627.7074, F.S.;  
 82 providing grounds for the department to deny an  
 83 application, or suspend or revoke approval of  
 84 certification, of a neutral evaluator; requiring the  
 85 department to adopt rules; amending s. 627.745, F.S.;  
 86 revising qualifications for approval as a mediator by  
 87 the department; providing grounds for the department

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88 to deny an application, or suspend or revoke approval,  
 89 of a mediator; requiring the department to adopt  
 90 rules; amending s. 627.952, F.S.; providing that  
 91 certain persons who are not residents of this state  
 92 must be licensed and appointed as nonresident surplus  
 93 lines agents in this state in order to engage in  
 94 specified activities with respect to servicing  
 95 insurance contracts, certificates, or agreements for  
 96 purchasing or risk retention groups; deleting a  
 97 fidelity bond requirement applicable to certain  
 98 nonresident agents who are licensed as surplus lines  
 99 agents in another state; amending s. 648.43, F.S.;  
 100 revising requirements for the submission of a power of  
 101 attorney; amending s. 648.49, F.S.; revising  
 102 provisions relating to the duration of suspension or  
 103 revocation of a license; amending ss. 943.0585 and  
 104 943.059, F.S.; prohibiting a person seeking a license  
 105 from the Division of Insurance Agent and Agency  
 106 Services who is the subject of an expunged or sealed  
 107 criminal history record from denying or failing to  
 108 acknowledge arrests covered by the record; providing  
 109 effective dates.

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

112  
 113 Section 1. Paragraph (g) of subsection (2) of section  
 114 20.121, Florida Statutes, is amended to read:  
 115 20.121 Department of Financial Services.—There is created a  
 116 Department of Financial Services.

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117 (2) DIVISIONS.—The Department of Financial Services shall  
118 consist of the following divisions:

119 (g) The Division of Insurance Agent Agents and Agency  
120 Services.

121 Section 2. Subsection (6) of section 624.310, Florida  
122 Statutes, is amended to read:

123 624.310 Enforcement; cease and desist orders; removal of  
124 certain persons; fines.—

125 (6) ADMINISTRATIVE PROCEDURES.—All administrative  
126 proceedings under subsections (3), (4), and (5) shall be  
127 conducted in accordance with chapter 120. Any service required  
128 or authorized to be made by the department or office under this  
129 code shall be made:

130 (a) By certified mail, return receipt requested, delivered  
131 to the addressee only;

132 (b) By e-mail, delivery receipt required, sent to the most  
133 recent e-mail address provided to the department by the  
134 applicant or licensee in accordance with s. 626.171, s. 626.551,  
135 s. 648.34, or s. 648.421, if service by mail cannot be obtained  
136 at the last address provided to the department by the recipient;

137 (c) By personal delivery, including hand delivery by  
138 department investigators;

139 (d) By publication in accordance with s. 120.60; or

140 (e) In accordance with chapter 48.

141  
142 The service provided for in this subsection herein shall be  
143 effective from the date of delivery.

144 Section 3. Subsection (5) of section 624.318, Florida  
145 Statutes, is amended to read:

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146 624.318 Conduct of examination or investigation; access to  
147 records; correction of accounts; appraisals.—

148 (5) ~~Neither~~ The department, the office, ~~or an~~ ~~nor any~~  
149 examiner may not shall remove an original any record, account,  
150 document, file, or other property of the person being examined  
151 from the offices of such person except with the person's written  
152 consent ~~of such person~~ given in advance of such removal or  
153 pursuant to a court ~~an order of court~~ ~~duly obtained~~.

154 Section 4. Paragraphs (a) and (c) of subsection (6) and  
155 subsections (7) and (8) of section 624.501, Florida Statutes,  
156 are amended to read:

157 624.501 Filing, license, appointment, and miscellaneous  
158 fees.—The department, commission, or office, as appropriate,  
159 shall collect in advance, and persons so served shall pay to it  
160 in advance, fees, licenses, and miscellaneous charges as  
161 follows:

162 (6) Insurance representatives, property, marine, casualty,  
163 and surety insurance.

164 (a) Agent's original appointment and biennial renewal or  
165 continuation thereof, each insurer or unaffiliated agent making  
166 an appointment:

167	Appointment fee.....	\$42.00
168	State tax.....	12.00
169	County tax.....	6.00
170	Total.....	\$60.00

171 (c) Nonresident agent's original appointment and biennial  
172 renewal or continuation thereof, appointment fee, each insurer  
173 or unaffiliated agent making an appointment.....\$60.00

174 (7) Life insurance agents.

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175 (a) Agent's original appointment and biennial renewal or  
 176 continuation thereof, each insurer or unaffiliated agent making  
 177 an appointment:

178 Appointment fee.....\$42.00  
 179 State tax.....12.00  
 180 County tax.....6.00  
 181 Total.....\$60.00

182 (b) Nonresident agent's original appointment and biennial  
 183 renewal or continuation thereof, appointment fee, each insurer  
 184 or unaffiliated agent making an appointment \$60.00

185 (8) Health insurance agents.

186 (a) Agent's original appointment and biennial renewal or  
 187 continuation thereof, each insurer or unaffiliated agent making  
 188 an appointment:

189 Appointment fee.....\$42.00  
 190 State tax.....12.00  
 191 County tax.....6.00  
 192 Total.....\$60.00

193 (b) Nonresident agent's original appointment and biennial  
 194 renewal or continuation thereof, appointment fee, each insurer  
 195 or unaffiliated agent making an appointment \$60.00

196 Section 5. Present subsection (18) of section 626.015,  
 197 Florida Statutes, is renumbered as subsection (19), and a new  
 198 subsection (18) is added to that section, to read:  
 199 626.015 Definitions.—As used in this part:  
 200 (18) "Unaffiliated insurance agent" means a licensed  
 201 insurance agent, except a limited lines agent, who is self-  
 202 appointed and who practices as an independent consultant in the  
 203 business of analyzing or abstracting insurance policies,

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204 providing insurance advice or counseling, or making specific  
 205 recommendations or comparisons of insurance products for a fee  
 206 established in advance by written contract signed by the  
 207 parties. An unaffiliated insurance agent may not be affiliated  
 208 with an insurer, insurer-appointed insurance agent, or insurance  
 209 agency contracted with or employing insurer-appointed insurance  
 210 agents.

211 Section 6. Effective January 1, 2015, section 626.0428,  
 212 Florida Statutes, is amended to read:  
 213 626.0428 Agency personnel powers, duties, and limitations.—  
 214 (1) An employee of individual ~~employed by~~ an agent or  
 215 agency on salary who devotes full time to clerical work, with  
 216 incidental taking of insurance applications or quoting or  
 217 receiving premiums on incoming inquiries in the office of the  
 218 agent or agency, is not ~~deemed to be~~ an agent or customer  
 219 representative if his or her compensation does not include in  
 220 whole or in part any commissions on such business and is not  
 221 related to the production of applications, insurance, or  
 222 premiums.

223 (2) An employee, or an authorized representative located at  
 224 a designated branch of an agent or agency may not bind insurance  
 225 coverage unless licensed and appointed as an agent or customer  
 226 representative.

227 (3) An employee or an authorized representative located at  
 228 a designated branch of an agent or agency may not initiate  
 229 contact with any person for the purpose of soliciting insurance  
 230 unless licensed and appointed as an agent or customer  
 231 representative. As to title insurance, an employee of an agent  
 232 or agency may not initiate contact with an any individual

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233 proposed to be insured for the purpose of soliciting title  
 234 insurance unless licensed as a title insurance agent or exempt  
 235 from such licensure pursuant to s. 626.8417(4).

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

241 (b) However, the licensed agent in charge of an insurance  
 242 agency may also be the agent in charge of additional branch  
 243 office locations of the agency if insurance activities requiring  
 244 licensure as an insurance agent do not occur at a location when  
 245 an agent is not physically present and unlicensed employees at  
 246 the location do not engage in insurance activities requiring  
 247 licensure as an insurance agent or customer representative.

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

257 (d) For the purposes of this subsection, an "agent in  
 258 charge" is the licensed and appointed agent who is responsible  
 259 for the supervision of all individuals within an insurance  
 260 agency location, regardless of whether the agent in charge  
 261 handles a specific transaction or deals with the general public

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262 in the solicitation or negotiation of insurance contracts or the  
 263 collection or accounting of moneys.

264 (e) An agent in charge of an insurance agency is  
 265 accountable for wrongful acts, misconduct, or violations of this  
 266 code committed by the licensee or agent or by any person under  
 267 his or her supervision while acting on behalf of the agency.  
 268 This section does not render an agent in charge criminally  
 269 liable for an act unless the agent in charge personally  
 270 committed the act or knew or should have known of the act and of  
 271 the facts constituting a violation of this chapter.

272 (f) An insurance agency location may not conduct the  
 273 business of insurance unless an agent in charge is designated  
 274 by, and providing services to, the agency at all times. If the  
 275 agent in charge designated with the department ends his or her  
 276 affiliation with the agency and the agency fails to designate  
 277 another agent in charge within the 30 days provided for in  
 278 paragraph (c) and such failure continues for 90 days, the agency  
 279 license shall automatically expire on the 91st day after the  
 280 date the designated agent in charge ended his or her affiliation  
 281 with the agency.

282 Section 7. Paragraph (b) of subsection (1) of section  
 283 626.112, Florida Statutes, is amended to read:

284 626.112 License and appointment required; agents, customer  
 285 representatives, adjusters, insurance agencies, service  
 286 representatives, managing general agents.-

287 (1)

288 (b) Except as provided in subsection (6) or in applicable  
 289 department rules, and in addition to other conduct described in  
 290 this chapter with respect to particular types of agents, a

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291 license as an insurance agent, service representative, customer  
 292 representative, or limited customer representative is required  
 293 in order to engage in the solicitation of insurance. Effective  
 294 October 1, 2014, new limited customer representative licenses  
 295 may not be issued. For purposes of this requirement, as  
 296 applicable to ~~any of~~ the license types described in this  
 297 section, the solicitation of insurance is the attempt to  
 298 persuade any person to purchase an insurance product by:

- 299 1. Describing the benefits or terms of insurance coverage,  
 300 including premiums or rates of return;
- 301 2. Distributing an invitation to contract to prospective  
 302 purchasers;
- 303 3. Making general or specific recommendations as to  
 304 insurance products;
- 305 4. Completing orders or applications for insurance  
 306 products;
- 307 5. Comparing insurance products, advising as to insurance  
 308 matters, or interpreting policies or coverages; or
- 309 6. Offering or attempting to negotiate on behalf of another  
 310 person a viatical settlement contract as defined in s. 626.9911.

311 However, an employee leasing company licensed under ~~pursuant to~~  
 312 chapter 468 which is seeking to enter into a contract with an  
 313 employer that identifies products and services offered to  
 314 employees may deliver proposals for the purchase of employee  
 315 leasing services to prospective clients of the employee leasing  
 316 company setting forth the terms and conditions of doing  
 317 business; classify employees as permitted by s. 468.529; collect  
 318 information from prospective clients and other sources as  
 319

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320 necessary to perform due diligence on the prospective client and  
 321 to prepare a proposal for services; provide and receive  
 322 enrollment forms, plans, and other documents; and discuss or  
 323 explain in general terms the conditions, limitations, options,  
 324 or exclusions of insurance benefit plans available to the client  
 325 or employees of the employee leasing company were the client to  
 326 contract with the employee leasing company. Any advertising  
 327 materials or other documents describing specific insurance  
 328 coverages must identify and be from a licensed insurer or its  
 329 licensed agent or a licensed and appointed agent employed by the  
 330 employee leasing company. The employee leasing company may not  
 331 advise or inform the prospective business client or individual  
 332 employees of specific coverage provisions, exclusions, or  
 333 limitations of particular plans. As to clients for which the  
 334 employee leasing company is providing services pursuant to s.  
 335 468.525(4), the employee leasing company may engage in  
 336 activities permitted by ss. 626.7315, 626.7845, and 626.8305,  
 337 subject to the restrictions specified in those sections. If a  
 338 prospective client requests more specific information concerning  
 339 the insurance provided by the employee leasing company, the  
 340 employee leasing company must refer the prospective business  
 341 client to the insurer or its licensed agent or to a licensed and  
 342 appointed agent employed by the employee leasing company.

343 Section 8. Effective January 1, 2015, subsection (7) of  
 344 section 626.112, Florida Statutes, is amended to read:  
 345 626.112 License and appointment required; agents, customer  
 346 representatives, adjusters, insurance agencies, service  
 347 representatives, managing general agents.-  
 348 (7)(a) ~~An~~ Effective October 1, 2006, no individual, firm,

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349 partnership, corporation, association, or ~~any~~ other entity may  
 350 ~~not shall~~ act in its own name or under a trade name, directly or  
 351 indirectly, as an insurance agency, unless it complies with s.  
 352 626.172 with respect to possessing an insurance agency license  
 353 for each place of business at which it engages in ~~an any~~  
 354 activity ~~that which~~ that may be performed only by a licensed  
 355 insurance agent. However, an insurance agency that is owned and  
 356 operated by a single licensed agent conducting business in his  
 357 or her individual name and not employing or otherwise using the  
 358 services of or appointing other licensees is exempt from the  
 359 agency licensing requirements of this subsection.

(a) A branch location of a business which is established by  
 361 a licensed insurance agency is considered a branch agency and is  
 362 not required to be licensed if it transacts business under the  
 363 same name and federal tax identification number as the licensed  
 364 agency and has designated with the department a licensed agent  
 365 in charge of the branch location as required by s. 626.0428 and  
 366 the address and telephone number of the branch location have  
 367 been submitted to the department for inclusion in the licensing  
 368 record of the licensed agency within 30 days after insurance  
 369 transactions begin at the branch location Each agency engaged in  
 370 business in this state before January 1, 2003, which is wholly  
 371 owned by insurance agents currently licensed and appointed under  
 372 this chapter, each incorporated agency whose voting shares are  
 373 traded on a securities exchange, each agency designated and  
 374 subject to supervision and inspection as a branch office under  
 375 the rules of the National Association of Securities Dealers, and  
 376 each agency whose primary function is offering insurance as a  
 377 service or member benefit to members of a nonprofit corporation

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378 may file an application for registration in lieu of licensure in  
 379 accordance with s. 626.172(3). Each agency engaged in business  
 380 before October 1, 2006, shall file an application for licensure  
 381 or registration on or before October 1, 2006.

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

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

(c) ~~(b)~~ Effective October 1, 2015, the department must  
 392 convert the registration of an approved ~~a~~ registered insurance  
 393 agency ~~to shall, as a condition precedent to continuing~~  
 394 ~~business, obtain an insurance agency license if the department~~  
 395 ~~finds that, with respect to any majority owner, partner,~~  
 396 ~~manager, director, officer, or other person who manages or~~  
 397 ~~controls the agency, any person has~~

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

~~2. Employed any individual in a managerial capacity or in a~~  
 404 ~~capacity dealing with the public who is under an order of~~  
 405 ~~revocation or suspension issued by the department. An insurance~~  
 406 ~~agency may request, on forms prescribed by the department,~~

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407 verification of any person's license status. If a request is  
 408 mailed within 5 working days after an employee is hired, and the  
 409 employee's license is currently suspended or revoked, the agency  
 410 shall not be required to obtain a license, if the unlicensed  
 411 ~~person's employment is immediately terminated.~~

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

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

417 a. Solicited or handled controlled business. This  
 418 subparagraph shall not prohibit the licensing of any lending or  
 419 financing institution or creditor, with respect to insurance  
 420 only, under credit life or disability insurance policies of  
 421 borrowers from the institutions, which policies are subject to  
 422 part IX of chapter 627.

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

426 e. Unlawfully rebated, attempted to unlawfully rebate, or  
 427 unlawfully divided or offered to divide commissions with  
 428 another.

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

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

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

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

440 h. Violated the provision against twisting as defined in s.  
 441 626.9541(1)(1).

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

445 j. Willfully overinsured any property insurance risk.

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

449 l. Demonstrated lack of fitness or trustworthiness to  
 450 engage in the business of insurance arising out of activities  
 451 related to insurance or the insurance agency.

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

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

457 6. Willfully circumvented the requirements or prohibitions  
 458 of this code.

459 Section 9. Present subsection (6) of section 626.171,  
 460 Florida Statutes, is renumbered as subsection (7), and a new  
 461 subsection (6) is added to that section, to read:  
 462 626.171 Application for license as an agent, customer  
 463 representative, adjuster, service representative, managing  
 464 general agent, or reinsurance intermediary.-

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465 (6) Members of the United States Armed Forces and their  
 466 spouses, and veterans of the United States Armed Forces who have  
 467 retired within 24 months before application for licensure, are  
 468 exempt from the application filing fee prescribed in s. 624.501.  
 469 Qualified individuals must provide a copy of a military  
 470 identification card, military dependent identification card,  
 471 military service record, military personnel file, veteran  
 472 record, discharge paper, or separation document, or separation  
 473 document that indicates such members of the United States Armed  
 474 Forces are currently in good standing or were honorably  
 475 discharged.

476 Section 10. Subsections (2), (3), and (4) of section  
 477 626.172, Florida Statutes, are amended to read:

478 626.172 Application for insurance agency license.—

479 (2) An application for an insurance agency license must be  
 480 signed by an individual specified in paragraph (a) shall be  
 481 signed by the owner or owners of the agency. An insurance agency  
 482 may permit a third party to complete, submit, and sign an  
 483 application on the insurance agency's behalf; however, the  
 484 insurance agency is responsible for ensuring that the  
 485 information on the application is true and correct and is  
 486 accountable for any misstatements or misrepresentations. If the  
 487 agency is incorporated, the application shall be signed by the  
 488 president and secretary of the corporation. The application must  
 489 for an insurance agency license shall include:

490 (a) The name of each ~~majority~~ owner, partner, officer, and  
 491 director, president, senior vice president, secretary,  
 492 treasurer, and limited liability company member who directs or  
 493 participates in the management or control of the insurance

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494 agency, whether through ownership of voting securities, by  
 495 contract, by ownership of an agency bank account, or otherwise.

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

498 (c) The name, principal business street address, and valid  
 499 e-mail address of the insurance agency and the name, address,  
 500 and e-mail address of the agency's registered agent or person or  
 501 company authorized to accept service on behalf of the agency and  
 502 its principal business address.

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

508 (e) The name of the ~~each~~ agent ~~to be~~ in full-time charge of  
 509 the an agency office, including branch locations, and his or her  
 510 corresponding location specification of which office.

511 (f) The fingerprints of each of the following:

- 512 1. A sole proprietor;
- 513 2. Each individual specified in paragraph (a) partner; and
- 514 ~~3. Each owner of an unincorporated agency;~~
- 515 ~~3.4. Each individual owner~~ who directs or participates in  
 516 the management or control of an incorporated agency whose shares  
 517 are not traded on a securities exchange;
- 518 ~~5. The president, senior vice presidents, treasurer,~~  
 519 ~~secretary, and directors of the agency; and~~
- 520 ~~6. Any other person who directs or participates in the~~  
 521 ~~management or control of the agency, whether through the~~  
 522 ~~ownership of voting securities, by contract, or otherwise.~~

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523  
524 Fingerprints must be taken by a law enforcement agency or other  
525 entity approved by the department and must be accompanied by the  
526 fingerprint processing fee specified in s. 624.501. Fingerprints  
527 ~~must shall~~ be processed in accordance with s. 624.34. However,  
528 fingerprints need not be filed for an any individual who is  
529 currently licensed and appointed under this chapter. This  
530 paragraph does not apply to corporations whose voting shares are  
531 traded on a securities exchange.

532 (g) Such additional information as the department requires  
533 by rule to ascertain the trustworthiness and competence of  
534 persons required to be listed on the application and to  
535 ascertain that such persons meet the requirements of this code.  
536 However, the department may not require that credit or character  
537 reports be submitted for persons required to be listed on the  
538 application.

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

543 ~~(3) The department shall issue a registration as an~~  
544 ~~insurance agency to any agency that files a written application~~  
545 ~~with the department and qualifies for registration. The~~  
546 ~~application for registration shall require the agency to provide~~  
547 ~~the same information required for an agency licensed under~~  
548 ~~subsection (2), the agent identification number for each owner~~  
549 ~~who is a licensed agent, proof that the agency qualifies for~~  
550 ~~registration as provided in s. 626.112(7), and any other~~  
551 ~~additional information that the department determines is~~

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552 ~~necessary in order to demonstrate that the agency qualifies for~~  
553 ~~registration. The application must be signed by the owner or~~  
554 ~~owners of the agency. If the agency is incorporated, the~~  
555 ~~application must be signed by the president and the secretary of~~  
556 ~~the corporation. An agent who owns the agency need not file~~  
557 ~~fingerprints with the department if the agent obtained a license~~  
558 ~~under this chapter and the license is currently valid.~~

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

562 ~~(b) A registered insurance agency must file an application~~  
563 ~~for licensure no later than 30 days after the date that any~~  
564 ~~person who is not a licensed and appointed agent in this state~~  
565 ~~acquires any ownership interest in the agency. If an agency~~  
566 ~~fails to file an application for licensure in compliance with~~  
567 ~~this paragraph, the department shall impose an administrative~~  
568 ~~penalty in an amount of up to \$5,000 on the agency.~~

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

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

577 Section 11. Subsection (7) of section 626.207, Florida  
578 Statutes, is amended to read:

579 626.207 Disqualification of applicants and licensees;  
580 penalties against licensees; rulemaking authority.-

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581 (7) After the disqualifying period has been met, the burden  
582 is on the applicant to demonstrate that the applicant has been  
583 rehabilitated, does not pose a risk to the insurance-buying  
584 public, is fit and trustworthy to engage in the business of  
585 insurance pursuant to s. 626.611(1)(g) ~~s. 626.611(7)~~, and is  
586 otherwise qualified for licensure.

587 Section 12. Subsection (5) of section 626.241, Florida  
588 Statutes, is amended to read:

589 626.241 Scope of examination.—

590 (5) Examinations given applicants for a limited agent  
591 ~~license as agent or as customer representative~~ shall be limited  
592 in scope to the kind of business to be transacted under such  
593 license.

594 Section 13. Subsection (5) of section 626.261, Florida  
595 Statutes, is amended to read:

596 626.261 Conduct of examination.—

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

605 Section 14. Present subsection (6) of section 626.311,  
606 Florida Statutes, is renumbered as subsection (7), and a new  
607 subsection (6) is added to that section, to read:

608 626.311 Scope of license.—

609 (6) An agent who appoints his or her license as an

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610 unaffiliated insurance agent may not hold an appointment from an  
611 insurer for any license he or she holds; transact, solicit, or  
612 service an insurance contract on behalf of an insurer; interfere  
613 with commissions received or to be received by an insurer-  
614 appointed insurance agent or an insurance agency contracted with  
615 or employing insurer-appointed insurance agents; or receive  
616 compensation or any other thing of value from an insurer, an  
617 insurer-appointed insurance agent, or an insurance agency  
618 contracted with or employing insurer-appointed insurance agents  
619 for any transaction or referral occurring after the date of  
620 appointment as an unaffiliated insurance agent. An unaffiliated  
621 insurance agent may continue to receive commissions on sales  
622 that occurred before the date of appointment as an unaffiliated  
623 insurance agent if the receipt of such commissions is disclosed  
624 when making recommendations or evaluating products for a client  
625 that involve products of the entity from which the commissions  
626 are received.

627 Section 15. Paragraph (d) of subsection (1) of section  
628 626.321, Florida Statutes, is amended to read:

629 626.321 Limited licenses.—

630 (1) The department shall issue to a qualified applicant a  
631 license as agent authorized to transact a limited class of  
632 business in any of the following categories of limited lines  
633 insurance:

634 (d) *Motor vehicle rental insurance.*—

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

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639 lease or rental agreement and the occupants of the motor  
640 vehicle:

641 a. Excess motor vehicle liability insurance providing  
642 coverage in excess of the standard liability limits provided by  
643 the lessor in the lessor's lease to a person renting or leasing  
644 a motor vehicle from the licensee's employer for liability  
645 arising in connection with the negligent operation of the leased  
646 or rented motor vehicle.

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

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

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

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

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

673 a. A license issued to a business entity that offers motor  
674 vehicles for rent or lease encompasses each office, branch  
675 office, employee, and authorized representative located at a  
676 designated branch or place of business making use of the  
677 entity's business name in order to offer, solicit, and sell  
678 insurance pursuant to this paragraph.

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

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

693 Section 16. Effective January 1, 2015, section 626.382,  
694 Florida Statutes, is amended to read:  
695 626.382 Continuation, expiration of license; insurance  
696 agencies.—The license of an ~~any~~ insurance agency ~~shall be issued~~

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697 ~~for a period of 3 years and shall continue in force until~~  
 698 ~~canceled, suspended, or revoked, or until it is otherwise~~  
 699 ~~terminated or expires by operation of law. A license may be~~  
 700 ~~renewed by submitting a renewal request to the department on a~~  
 701 ~~form adopted by department rule.~~

702 Section 17. Section 626.601, Florida Statutes, is amended  
 703 to read:

704 626.601 Improper conduct; investigation inquiry;  
 705 fingerprinting.—

706 (1) The department or office may, upon its own motion or  
 707 upon a written complaint signed by an ~~any~~ interested person and  
 708 filed with the department or office, inquire into the ~~any~~  
 709 alleged improper conduct of any licensed, approved, or certified  
 710 licensee, insurance agency, agent, adjuster, service  
 711 representative, managing general agent, customer representative,  
 712 title insurance agent, title insurance agency, mediator, neutral  
 713 evaluator, navigator, continuing education course provider,  
 714 instructor, school official, or monitor group under this code.

715 The department or office may thereafter initiate an  
 716 investigation of any such individual or entity licensee if it  
 717 has reasonable cause to believe that the individual or entity  
 718 ~~licensee~~ has violated any provision of the insurance code.  
 719 During the course of its investigation, the department or office  
 720 shall contact the individual or entity licensee being  
 721 investigated unless it determines that contacting such  
 722 individual or entity person could jeopardize the successful  
 723 completion of the investigation or cause injury to the public.

724 (2) In the investigation by the department or office of any  
 725 ~~the~~ alleged misconduct, an individual or entity the licensee

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726 shall, ~~if whenever~~ so required by the department or office,  
 727 cause the individual's or entity's ~~his or her~~ books and records  
 728 to be open for inspection for the purpose of such investigation  
 729 inquiries.

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

734 (4) The expense for ~~any~~ hearings or investigations  
 735 conducted under this section law, as well as the fees and  
 736 mileage of witnesses, may be paid out of the appropriate fund.

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

748 (6) The complaint and any information obtained pursuant to  
 749 the investigation by the department or office are confidential  
 750 and are exempt from ~~the provisions of~~ s. 119.07, unless the  
 751 department or office files a formal administrative complaint,  
 752 emergency order, or consent order against the individual or  
 753 entity licensee. ~~Nothing in This subsection does not shall be~~  
 754 ~~construed to prevent the department or office from disclosing~~

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755 the complaint or such information as it deems necessary to  
756 conduct the investigation, to update the complainant as to the  
757 status and outcome of the complaint, or to share such  
758 information with any law enforcement agency or other regulatory  
759 body.

760 Section 18. Section 626.611, Florida Statutes, is amended  
761 to read:

762 626.611 Grounds for compulsory refusal, suspension, or  
763 revocation of agent's, title agency's, adjuster's, customer  
764 representative's, service representative's, or managing general  
765 agent's license or appointment.-

766 (1) The department shall deny an application for, suspend,  
767 revoke, or refuse to renew or continue the license or  
768 appointment of an any applicant, agent, title agency, adjuster,  
769 customer representative, service representative, or managing  
770 general agent, and it shall suspend or revoke the eligibility to  
771 hold a license or appointment of any such person, if it finds  
772 that as to the applicant, licensee, or appointee any one or more  
773 of the following applicable grounds exist:

774 (a)(1) Lack of one or more of the qualifications for the  
775 license or appointment as specified in this code.

776 (b)(2) Material misstatement, misrepresentation, or fraud  
777 in obtaining the license or appointment or in attempting to  
778 obtain the license or appointment.

779 (c)(3) Failure to pass to the satisfaction of the  
780 department any examination required under this code.

781 (d)(4) If the license or appointment is willfully used, or  
782 to be used, to circumvent any of the requirements or  
783 prohibitions of this code.

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784 (e)(5) Willful misrepresentation of any insurance policy or  
785 annuity contract or willful deception with regard to any such  
786 policy or contract, done either in person or by any form of  
787 dissemination of information or advertising.

788 (f)(6) If, as an adjuster, or as an agent licensed and  
789 appointed to adjust claims under this code, he or she has  
790 materially misrepresented to an insured or other interested  
791 party the terms and coverage of an insurance contract with  
792 intent and for the purpose of effecting settlement of claim for  
793 loss or damage or benefit under such contract on less favorable  
794 terms than those provided in and contemplated by the contract.  
795 (g)(7) Demonstrated lack of fitness or trustworthiness to  
796 engage in the business of insurance.

797 (h)(8) Demonstrated lack of reasonably adequate knowledge  
798 and technical competence to engage in the transactions  
799 authorized by the license or appointment.

800 (i)(9) Fraudulent or dishonest practices in the conduct of  
801 business under the license or appointment.

802 (j)(10) Misappropriation, conversion, or unlawful  
803 withholding of moneys belonging to insurers or insureds or  
804 beneficiaries or to others and received in conduct of business  
805 under the license or appointment.

806 (k)(11) Unlawfully rebating, attempting to unlawfully  
807 rebate, or unlawfully dividing or offering to divide his or her  
808 commission with another.

809 (l)(12) Having obtained or attempted to obtain, or having  
810 used or using, a license or appointment as agent or customer  
811 representative for the purpose of soliciting or handling  
812 "controlled business" as defined in s. 626.730 with respect to

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813 general lines agents, s. 626.784 with respect to life agents,  
 814 and s. 626.830 with respect to health agents.

815 ~~(m)(13)~~ Willful failure to comply with, or willful  
 816 violation of, any proper order or rule of the department or  
 817 willful violation of any provision of this code.

818 ~~(n)(14)~~ Having been found guilty of or having pleaded  
 819 guilty or nolo contendere to a felony or a crime punishable by  
 820 imprisonment of 1 year or more under the law of the United  
 821 States of America or of any state thereof or under the law of  
 822 any other country which involves moral turpitude, without regard  
 823 to whether a judgment of conviction has been entered by the  
 824 court having jurisdiction of such cases.

825 ~~(o)(15)~~ Fraudulent or dishonest practice in submitting or  
 826 aiding or abetting any person in the submission of an  
 827 application for workers' compensation coverage under chapter 440  
 828 containing false or misleading information as to employee  
 829 payroll or classification for the purpose of avoiding or  
 830 reducing the amount of premium due for such coverage.

831 ~~(p)(16)~~ Sale of an unregistered security that was required  
 832 to be registered, pursuant to chapter 517.

833 ~~(q)(17)~~ In transactions related to viatical settlement  
 834 contracts as defined in s. 626.9911:

835 ~~1.(a)~~ Commission of a fraudulent or dishonest act.  
 836 ~~2.(b)~~ No longer meeting the requirements for initial  
 837 licensure.

838 ~~3.(c)~~ Having received a fee, commission, or other valuable  
 839 consideration for his or her services with respect to viatical  
 840 settlements that involved unlicensed viatical settlement  
 841 providers or persons who offered or attempted to negotiate on

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842 behalf of another person a viatical settlement contract as  
 843 defined in s. 626.9911 and who were not licensed life agents.

844 ~~4.(d)~~ Dealing in bad faith with viators.

845 (2) Upon receipt of an information or indictment, the  
 846 department shall immediately temporarily suspend a license or  
 847 appointment issued under this chapter if the licensee is charged  
 848 with a felony enumerated in s. 626.207(3). The suspension shall  
 849 continue if the licensee is found guilty of, or pleads guilty or  
 850 nolo contendere to, the crime, regardless of whether a judgment  
 851 or conviction is entered, during a pending appeal. A person may  
 852 not transact insurance business after suspension of his or her  
 853 license or appointment.

854 Section 19. Subsection (2) of section 626.641, Florida  
 855 Statutes, is amended to read:

856 626.641 Duration of suspension or revocation.—

857 (2) No person or appointee under any license or appointment  
 858 revoked by the department, nor any person whose eligibility to  
 859 hold same has been revoked by the department, shall have the  
 860 right to apply for another license or appointment under this  
 861 code within 2 years after ~~from~~ the effective date of such  
 862 revocation or, if judicial review of such revocation is sought,  
 863 within 2 years after ~~from~~ the date of final court order or  
 864 decree affirming the revocation. An applicant for another  
 865 license or appointment pursuant to this subsection must apply  
 866 and qualify for licensure in the same manner as a first-time  
 867 applicant, and the application may be denied on the same grounds  
 868 that apply to first-time applicants for licensure pursuant to  
 869 ss. 626.207, 626.611, and 626.621. In addition, the department  
 870 may shall not grant a new license or appointment or reinstate

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871 eligibility to hold such license or appointment if it finds that  
 872 the circumstance or circumstances for which the eligibility was  
 873 revoked or for which the previous license or appointment was  
 874 revoked still exist or are likely to recur, ~~or~~ if an  
 875 individual's license as agent or customer representative or  
 876 eligibility to hold same has been revoked upon the ground  
 877 specified in s. 626.611(1) (1) ~~s. 626.611(12)~~, the department  
 878 ~~shall refuse to grant or issue any new license or appointment so~~  
 879 ~~applied for.~~

880 Section 20. Section 626.733, Florida Statutes, is amended  
 881 to read:

882 626.733 Agency firms and corporations; special  
 883 requirements.—If a sole proprietorship, partnership,  
 884 corporation, or association holds an agency contract, all  
 885 members thereof who solicit, negotiate, or effect insurance  
 886 contracts, and all officers and stockholders of the corporation  
 887 who solicit, negotiate, or effect insurance contracts, must are  
 888 ~~required to~~ qualify and be licensed individually as agents or  
 889 customer representatives, ~~r~~ and all of such agents must be  
 890 individually appointed as to each property and casualty insurer  
 891 entering into an agency contract with such agency. Each ~~such~~  
 892 ~~appointing insurer as seen as known to it~~ shall comply with this  
 893 section and shall determine and require that each agent so  
 894 associated ~~in or so connected~~ with such agency is likewise  
 895 appointed as to the same such insurer and for the same type and  
 896 class of license. However, an ~~no~~ insurer is not required to  
 897 comply with the appointment provisions of this section for an  
 898 agent within an agency who does not solicit, negotiate, or  
 899 effect insurance contracts for that insurer if such insurer

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900 ~~satisfactorily demonstrates to the department that the insurer~~  
 901 ~~has issued an aggregate net written premium, in an agency, in an~~  
 902 ~~amount of \$25,000 or less.~~

903 Section 21. Paragraphs (a) and (g) of subsection (1) of  
 904 section 626.7355, Florida Statutes, are amended to read:

905 626.7355 Temporary license as customer representative  
 906 pending examination.—

907 (1) The department shall issue a temporary customer  
 908 representative's license with respect to a person who has  
 909 applied for such license upon finding that the person:

910 (a) Has filed an application for a customer  
 911 representative's license ~~or a limited customer representative's~~  
 912 ~~license~~ and has paid any fees required under s. 624.501(5) in  
 913 connection with such application ~~for a customer representative's~~  
 914 ~~license or limited customer representative's license.~~

915 (g) Is not disqualified from licensure by the department  
 916 under s. 626.207 ~~Within the last 5 years, has not been~~  
 917 ~~convicted, found guilty or pleaded nolo contendere to a felony~~  
 918 ~~or a crime punishable by imprisonment of 1 year or more under~~  
 919 ~~the law of any municipality, county, state, territory, or~~  
 920 ~~country, whether or not a judgment of conviction has been~~  
 921 ~~entered.~~

922 Section 22. Effective January 1, 2015, section 626.747,  
 923 Florida Statutes, is repealed.

924 Section 23. Subsection (1) of section 626.7845, Florida  
 925 Statutes, is amended to read:

926 626.7845 Prohibition against unlicensed transaction of life  
 927 insurance.—

928 (1) An individual may not solicit or sell variable life

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929 insurance, variable annuity contracts, or any other  
930 indeterminate value or variable contract as defined in s.  
931 627.8015, unless the individual has successfully completed a  
932 licensure examination relating to variable ~~annuity~~ contracts  
933 authorized and approved by the department.

934 Section 24. Effective January 1, 2015, subsection (1) of  
935 section 626.8411, Florida Statutes, is amended to read:

936 626.8411 Application of Florida Insurance Code provisions  
937 to title insurance agents or agencies.—

938 (1) The following provisions ~~of part II~~ applicable to  
939 general lines agents or agencies also apply to title insurance  
940 agents or agencies:

941 (a) Section 626.734, relating to liability of certain  
942 agents.

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

945 (c) Section 626.749, relating to place of business in  
946 residence.

947 (d) Section 626.753, relating to sharing of commissions.

948 (e) Section 626.754, relating to rights of agent following  
949 termination of appointment.

950 Section 25. Subsection (2) of section 626.861, Florida  
951 Statutes, is amended to read:

952 626.861 Insurer's officers, insurer's employees, reciprocal  
953 insurer's representatives; adjustments by.—

954 (2) If any such officer, employee, attorney, or agent in  
955 connection with the adjustment of any such claim, loss, or  
956 damage engages in ~~any of~~ the misconduct described in or  
957 contemplated by s. 626.611(1)(f) ~~s. 626.611(6)~~, the office may

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958 suspend or revoke the insurer's certificate of authority.

959 Section 26. Section 626.862, Florida Statutes, is amended  
960 to read:

961 626.862 Agents; adjustments by.—A licensed and appointed  
962 insurance agent may, without being licensed as an adjuster,  
963 adjust losses for the insurer represented by him or her as agent  
964 if ~~so~~ authorized by the insurer. The license and appointment of  
965 the agent may be suspended or revoked for violation of or  
966 misconduct prohibited by s. 626.611(1)(f) ~~s. 626.611(6)~~.

967 Section 27. Subsection (2) of section 626.9272, Florida  
968 Statutes, is amended to read:

969 626.9272 Licensing of nonresident surplus lines agents.—

970 (2) The department may not issue a license unless the  
971 applicant satisfies the same licensing requirements under s.  
972 626.927 as required of a resident surplus lines agent, excluding  
973 the required experience or coursework and examination. The  
974 department may refuse to issue such license or appointment if  
975 ~~when~~ it has reason to believe that any of the grounds exist for  
976 denial, suspension, or revocation of a license as set forth in  
977 ss. 626.611 and 626.621.

978 Section 28. Section 627.4553, Florida Statutes, is created  
979 to read:

980 627.4553 Recommendations to surrender.—If an insurance  
981 agent recommends the surrender of an annuity or life insurance  
982 policy containing a cash value but does not recommend that the  
983 proceeds from the surrender be used to fund or purchase another  
984 annuity or life insurance policy, before execution of the  
985 surrender, the insurance agent, or the insurance company if no  
986 agent is involved, must provide, on a form that satisfies the



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987 requirements of the rule adopted by the department, information  
 988 relating to the annuity or policy to be surrendered. Such  
 989 information must include, but need not limited to, the amount of  
 990 any surrender charge, the loss of any minimum interest rate  
 991 guarantees, the amount of any tax consequences resulting from  
 992 the transaction, the amount of any forfeited death benefit, and  
 993 the value of any other investment performance guarantees being  
 994 forfeited as a result of the transaction. This section also  
 995 applies to a person performing insurance agent activities  
 996 pursuant to an exemption from licensure under this part.

997 Section 29. Paragraph (b) of subsection (4) of section  
 998 627.7015, Florida Statutes, is amended to read:

999 627.7015 Alternative procedure for resolution of disputed  
 1000 property insurance claims.—

1001 (4) The department shall adopt by rule a property insurance  
 1002 mediation program to be administered by the department or its  
 1003 designee. The department may also adopt special rules which are  
 1004 applicable in cases of an emergency within the state. The rules  
 1005 shall be modeled after practices and procedures set forth in  
 1006 mediation rules of procedure adopted by the Supreme Court. The  
 1007 rules shall provide for:

1008 (b) Qualifications, denial of application, suspension,  
 1009 revocation, and other penalties for ~~of~~ mediators as provided in  
 1010 s. 627.745 and ~~in~~ the Florida Rules for ~~of~~ Certified and Court-  
 1011 Appointed Court Appointed Mediators, ~~and for such other~~  
 1012 ~~individuals as are qualified by education, training, or~~  
 1013 ~~experience as the department determines to be appropriate.~~

1014 Section 30. Paragraph (c) of subsection (2) of section  
 1015 627.706, Florida Statutes, is amended to read:

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1016 627.706 Sinkhole insurance; catastrophic ground cover  
 1017 collapse; definitions.—

1018 (2) As used in ss. 627.706–627.7074, and as used in  
 1019 connection with any policy providing coverage for a catastrophic  
 1020 ground cover collapse or for sinkhole losses, the term:

1021 (c) “Neutral evaluator” means a professional engineer or a  
 1022 professional geologist who has completed a course of study in  
 1023 alternative dispute resolution designed or approved by the  
 1024 department for use in the neutral evaluation process, ~~and~~ who is  
 1025 determined by the department to be fair and impartial, and who  
 1026 is not otherwise ineligible for certification as provided in s.  
 1027 627.7074.

1028 Section 31. Subsections (7) and (18) of section 627.7074,  
 1029 Florida Statutes, are amended to read:

1030 627.7074 Alternative procedure for resolution of disputed  
 1031 sinkhole insurance claims.—

1032 (7) Upon receipt of a request for neutral evaluation, the  
 1033 department shall provide the parties a list of certified neutral  
 1034 evaluators. The department shall allow the parties to submit  
 1035 requests to disqualify evaluators on the list for cause.

1036 (a) The department shall disqualify neutral evaluators for  
 1037 cause based only on any of the following grounds:

1038 1. A familial relationship exists between the neutral  
 1039 evaluator and either party or a representative of either party  
 1040 within the third degree.

1041 2. The proposed neutral evaluator has, in a professional  
 1042 capacity, previously represented either party or a  
 1043 representative of either party, in the same or a substantially  
 1044 related matter.

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1045 3. The proposed neutral evaluator has, in a professional  
 1046 capacity, represented another person in the same or a  
 1047 substantially related matter and that person's interests are  
 1048 materially adverse to the interests of the parties. The term  
 1049 "substantially related matter" means participation by the  
 1050 neutral evaluator on the same claim, property, or adjacent  
 1051 property.

1052 4. The proposed neutral evaluator has, within the preceding  
 1053 5 years, worked as an employer or employee of a any party to the  
 1054 case.

1055 (b) The department shall deny an application, or suspend or  
 1056 revoke its certification, of a neutral evaluator to serve in  
 1057 such capacity if the department finds that one or more of the  
 1058 following grounds exist:

1059 1. Lack of one or more of the qualifications specified in  
 1060 this section for certification.

1061 2. Material misstatement, misrepresentation, or fraud in  
 1062 obtaining or attempting to obtain certification.

1063 3. Demonstrated lack of fitness or trustworthiness to act  
 1064 as a neutral evaluator.

1065 4. Fraudulent or dishonest practices in the conduct of an  
 1066 evaluation or in the conduct of financial services business.

1067 5. Violation of any provision of this code or of a lawful  
 1068 order or rule of the department or aiding, instructing, or  
 1069 encouraging another party in committing such a violation.

1070 (c)(b) The parties shall appoint a neutral evaluator from  
 1071 the department list and promptly inform the department. If the  
 1072 parties cannot agree to a neutral evaluator within 14 business  
 1073 days, the department shall appoint a neutral evaluator from the

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1074 list of certified neutral evaluators. The department shall allow  
 1075 each party to disqualify two neutral evaluators without cause.  
 1076 Upon selection or appointment, the department shall promptly  
 1077 refer the request to the neutral evaluator.

1078 (d)(e) Within 14 business days after the referral, the  
 1079 neutral evaluator shall notify the policyholder and the insurer  
 1080 of the date, time, and place of the neutral evaluation  
 1081 conference. The conference may be held by telephone, if feasible  
 1082 and desirable. The neutral evaluator shall make reasonable  
 1083 efforts to hold the conference within 90 days after the receipt  
 1084 of the request by the department. Failure of the neutral  
 1085 evaluator to hold the conference within 90 days does not  
 1086 invalidate either party's right to neutral evaluation or to a  
 1087 neutral evaluation conference held outside this timeframe.

1088 (18) The department shall adopt rules of procedure for the  
 1089 neutral evaluation process and rules for certifying, denying  
 1090 certification of, suspending certification of, and revoking  
 1091 certification as a neutral evaluator.

1092 Section 32. Subsection (3) of section 627.745, Florida  
 1093 Statutes, is amended, present subsections (4) and (5) of that  
 1094 section are renumbered as subsections (5) and (6), respectively,  
 1095 and a new subsection (4) is added to that section, to read:  
 1096 627.745 Mediation of claims.-  
 1097 (3)(a) ~~The department shall approve~~ Mediators ~~who to~~  
 1098 conduct mediations pursuant to this section. ~~All mediators~~ must  
 1099 file an application under oath and be approved by the department  
 1100 ~~for approval as a mediator.~~

1101 ~~(b)~~ To qualify for approval as a mediator, an individual a  
 1102 ~~person~~ must meet one of the following qualifications:

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1103 (a)1- Possess active certification as a Florida Supreme  
 1104 Court certified circuit court mediator. A Florida Supreme Court  
 1105 certified circuit court mediator in a lapsed, suspended,  
 1106 sanctioned, or decertified status is not eligible to participate  
 1107 in the mediation program a masters or doctorate degree in  
 1108 psychology, counseling, business, accounting, or economics, be a  
 1109 member of The Florida Bar, be licensed as a certified public  
 1110 accountant, or demonstrate that the applicant for approval has  
 1111 been actively engaged as a qualified mediator for at least 4  
 1112 years prior to July 1, 1990.

1113 (b)2- Be an approved department mediator as of July 1,  
 1114 2014, and have conducted at least one mediation on behalf of the  
 1115 department within 4 years immediately preceding that the date  
 1116 the application for approval is filed with the department, have  
 1117 completed a minimum of a 40-hour training program approved by  
 1118 the department and successfully passed a final examination  
 1119 included in the training program and approved by the department.  
 1120 The training program shall include and address all of the  
 1121 following:

- 1122 a. Mediation theory.
- 1123 b. Mediation process and techniques.
- 1124 c. Standards of conduct for mediators.
- 1125 d. Conflict management and intervention skills.
- 1126 e. Insurance nomenclature.

1127 (4) The department shall deny an application, or suspend or  
 1128 revoke its approval, of a mediator to serve in such capacity if  
 1129 the department finds that one or more of the following grounds  
 1130 exist:

1131 (a) Lack of one or more of the qualifications specified in

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1132 this section for approval or certification.

1133 (b) Material misstatement, misrepresentation, or fraud in  
 1134 obtaining or attempting to obtain the approval or certification.

1135 (c) Demonstrated lack of fitness or trustworthiness to act  
 1136 as a mediator.

1137 (d) Fraudulent or dishonest practices in the conduct of  
 1138 mediation or in the conduct of business in the financial  
 1139 services industry.

1140 (e) Violation of any provision of this code or of a lawful  
 1141 order or rule of the department, violation of the Florida Rules  
 1142 for Certified and Court Appointed Mediators, or aiding,  
 1143 instructing, or encouraging another party in committing such a  
 1144 violation.

1145 The department shall adopt rules for the approval or denial  
 1147 of mediator applications and the suspension and revocation of  
 1148 approval of mediators.

1149 Section 33. Paragraph (b) of subsection (1) of section  
 1150 627.952, Florida Statutes, is amended to read:

1151 627.952 Risk retention and purchasing group agents.—

1152 (1) Any person offering, soliciting, selling, purchasing,  
 1153 administering, or otherwise servicing insurance contracts,  
 1154 certificates, or agreements for any purchasing group or risk  
 1155 retention group to any resident of this state, either directly  
 1156 or indirectly, by the use of mail, advertising, or other means  
 1157 of communication, shall obtain a license and appointment to act  
 1158 as a resident general lines agent, if a resident of this state,  
 1159 or a nonresident general lines agent if not a resident. Any such  
 1160 person shall be subject to all requirements of the Florida

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1161 Insurance Code.

1162 (b) ~~Any person required to be licensed and appointed under~~  
 1163 ~~this subsection,~~ In order to place business through a Florida-  
 1164 eligible Florida-eligible surplus lines carrier carriers, a  
 1165 person required to be licensed and appointed under this  
 1166 subsection must:

1167 1. If a resident of this state, be licensed and appointed  
 1168 as a surplus lines agent.

1169 2. If not a resident of this state, ~~such person must be~~  
 1170 licensed and appointed as a surplus lines agent in her or his  
 1171 state of residence and be licensed and appointed as a  
 1172 nonresident surplus lines agent in this state file and maintain  
 1173 a fidelity bond in favor of the people of the State of Florida  
 1174 executed by a surety company admitted in this state and payable  
 1175 to the State of Florida; however, such nonresident is limited to  
 1176 the provision of insurance for purchasing groups. The bond must  
 1177 be continuous in form and in the amount of not less than  
 1178 \$50,000, aggregate liability. The bond must remain in force and  
 1179 effect until the surety is released from liability by the  
 1180 department or until the bond is canceled by the surety. The  
 1181 surety may cancel the bond and be released from further  
 1182 liability upon 30 days' prior written notice to the department.  
 1183 The cancellation does not affect any liability incurred or  
 1184 accrued before the termination of the 30-day period. Upon  
 1185 receipt of a notice of cancellation, the department shall  
 1186 immediately notify the agent.

1187 Section 34. Subsection (1) of section 648.43, Florida  
 1188 Statutes, is amended to read:

1189 648.43 Power of attorney; to be approved by department;

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1190 filing of copies; notification of transfer bond.-

1191 (1) Every insurer engaged in the writing of bail bonds  
 1192 through bail bond agents in this state shall submit ~~and have~~  
 1193 ~~approved by the department~~ a sample power of attorney to the  
 1194 office for prior approval, which ~~shall~~ will be the only form of  
 1195 power of attorney the insurer issues ~~will issue~~ to bail bond  
 1196 agents in this state.

1197 Section 35. Subsection (3) of section 648.49, Florida  
 1198 Statutes, is amended to read:

1199 648.49 Duration of suspension or revocation.-

1200 (3) During the period of suspension, ~~or after~~ revocation of  
 1201 the license and until the license is reinstated or a new license  
 1202 is issued, the former licensee may not engage in or attempt to  
 1203 profess to engage in any transaction or business for which a  
 1204 license or appointment is required under this chapter. A ~~Any~~  
 1205 person who violates this subsection commits a felony of the  
 1206 third degree, punishable as provided in s. 775.082, s. 775.083,  
 1207 or s. 775.084.

1208 Section 36. Paragraphs (a) and (c) of subsection (4) of  
 1209 section 943.0585, Florida Statutes, are amended to read:

1210 943.0585 Court-ordered expunction of criminal history  
 1211 records.-The courts of this state have jurisdiction over their  
 1212 own procedures, including the maintenance, expunction, and  
 1213 correction of judicial records containing criminal history  
 1214 information to the extent such procedures are not inconsistent  
 1215 with the conditions, responsibilities, and duties established by  
 1216 this section. Any court of competent jurisdiction may order a  
 1217 criminal justice agency to expunge the criminal history record  
 1218 of a minor or an adult who complies with the requirements of

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1219 this section. The court shall not order a criminal justice  
 1220 agency to expunge a criminal history record until the person  
 1221 seeking to expunge a criminal history record has applied for and  
 1222 received a certificate of eligibility for expunction pursuant to  
 1223 subsection (2). A criminal history record that relates to a  
 1224 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
 1225 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
 1226 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
 1227 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
 1228 any violation specified as a predicate offense for registration  
 1229 as a sexual predator pursuant to s. 775.21, without regard to  
 1230 whether that offense alone is sufficient to require such  
 1231 registration, or for registration as a sexual offender pursuant  
 1232 to s. 943.0435, may not be expunged, without regard to whether  
 1233 adjudication was withheld, if the defendant was found guilty of  
 1234 or pled guilty or nolo contendere to the offense, or if the  
 1235 defendant, as a minor, was found to have committed, or pled  
 1236 guilty or nolo contendere to committing, the offense as a  
 1237 delinquent act. The court may only order expunction of a  
 1238 criminal history record pertaining to one arrest or one incident  
 1239 of alleged criminal activity, except as provided in this  
 1240 section. The court may, at its sole discretion, order the  
 1241 expunction of a criminal history record pertaining to more than  
 1242 one arrest if the additional arrests directly relate to the  
 1243 original arrest. If the court intends to order the expunction of  
 1244 records pertaining to such additional arrests, such intent must  
 1245 be specified in the order. A criminal justice agency may not  
 1246 expunge any record pertaining to such additional arrests if the  
 1247 order to expunge does not articulate the intention of the court

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1248 to expunge a record pertaining to more than one arrest. This  
 1249 section does not prevent the court from ordering the expunction  
 1250 of only a portion of a criminal history record pertaining to one  
 1251 arrest or one incident of alleged criminal activity.  
 1252 Notwithstanding any law to the contrary, a criminal justice  
 1253 agency may comply with laws, court orders, and official requests  
 1254 of other jurisdictions relating to expunction, correction, or  
 1255 confidential handling of criminal history records or information  
 1256 derived therefrom. This section does not confer any right to the  
 1257 expunction of any criminal history record, and any request for  
 1258 expunction of a criminal history record may be denied at the  
 1259 sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any  
 1260 criminal history record of a minor or an adult which is ordered  
 1261 expunged by a court of competent jurisdiction pursuant to this  
 1262 section must be physically destroyed or obliterated by any  
 1263 criminal justice agency having custody of such record; except  
 1264 that any criminal history record in the custody of the  
 1265 department must be retained in all cases. A criminal history  
 1266 record ordered expunged that is retained by the department is  
 1267 confidential and exempt from the provisions of s. 119.07(1) and  
 1268 s. 24(a), Art. I of the State Constitution and not available to  
 1269 any person or entity except upon order of a court of competent  
 1270 jurisdiction. A criminal justice agency may retain a notation  
 1271 indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history  
 1272 record that is expunged under this section or under other  
 1273 provisions of law, including former s. 893.14, former s. 901.33,  
 1274 and former s. 943.058, may lawfully deny or fail to acknowledge  
 1275  
 1276

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1277 the arrests covered by the expunged record, except when the  
 1278 subject of the record:

1279 1. Is a candidate for employment with a criminal justice  
 1280 agency;

1281 2. Is a defendant in a criminal prosecution;

1282 3. Concurrently or subsequently petitions for relief under  
 1283 this section, s. 943.0583, or s. 943.059;

1284 4. Is a candidate for admission to The Florida Bar;

1285 5. Is seeking to be employed or licensed by or to contract  
 1286 with the Department of Children and Families, the Division of  
 1287 Vocational Rehabilitation within the Department of Education,  
 1288 the Agency for Health Care Administration, the Agency for  
 1289 Persons with Disabilities, the Department of Health, the  
 1290 Department of Elderly Affairs, or the Department of Juvenile  
 1291 Justice or to be employed or used by such contractor or licensee  
 1292 in a sensitive position having direct contact with children, the  
 1293 disabled, or the elderly; ~~or~~

1294 6. Is seeking to be employed or licensed by the Department  
 1295 of Education, any district school board, any university  
 1296 laboratory school, any charter school, any private or parochial  
 1297 school, or any local governmental entity that licenses child  
 1298 care facilities; or

1299 7. Is seeking to be licensed by the Division of Insurance  
 1300 Agent and Agency Services within the Department of Financial  
 1301 Services.

1302 (c) Information relating to the existence of an expunged  
 1303 criminal history record which is provided in accordance with  
 1304 paragraph (a) is confidential and exempt from the provisions of  
 1305 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,

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1306 except that the department shall disclose the existence of a  
 1307 criminal history record ordered expunged to the entities set  
 1308 forth in subparagraphs (a)1., 4., 5., 6., and ~~7.~~ ~~7-~~ for their  
 1309 respective licensing, access authorization, and employment  
 1310 purposes, and to criminal justice agencies for their respective  
 1311 criminal justice purposes. It is unlawful for any employee of an  
 1312 entity set forth in subparagraph (a)1., subparagraph (a)4.,  
 1313 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7.  
 1314 ~~subparagraph (a)7-~~ to disclose information relating to the  
 1315 existence of an expunged criminal history record of a person  
 1316 seeking employment, access authorization, or licensure with such  
 1317 entity or contractor, except to the person to whom the criminal  
 1318 history record relates or to persons having direct  
 1319 responsibility for employment, access authorization, or  
 1320 licensure decisions. Any person who violates this paragraph  
 1321 commits a misdemeanor of the first degree, punishable as  
 1322 provided in s. 775.082 or s. 775.083.

1323 Section 37. Paragraphs (a) and (c) of subsection (4) of  
 1324 section 943.059, Florida Statutes, are amended to read:

1325 943.059 Court-ordered sealing of criminal history records.-  
 1326 The courts of this state shall continue to have jurisdiction  
 1327 over their own procedures, including the maintenance, sealing,  
 1328 and correction of judicial records containing criminal history  
 1329 information to the extent such procedures are not inconsistent  
 1330 with the conditions, responsibilities, and duties established by  
 1331 this section. Any court of competent jurisdiction may order a  
 1332 criminal justice agency to seal the criminal history record of a  
 1333 minor or an adult who complies with the requirements of this  
 1334 section. The court shall not order a criminal justice agency to

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1335 seal a criminal history record until the person seeking to seal  
 1336 a criminal history record has applied for and received a  
 1337 certificate of eligibility for sealing pursuant to subsection  
 1338 (2). A criminal history record that relates to a violation of s.  
 1339 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.  
 1340 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter  
 1341 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
 1342 916.1075, a violation enumerated in s. 907.041, or any violation  
 1343 specified as a predicate offense for registration as a sexual  
 1344 predator pursuant to s. 775.21, without regard to whether that  
 1345 offense alone is sufficient to require such registration, or for  
 1346 registration as a sexual offender pursuant to s. 943.0435, may  
 1347 not be sealed, without regard to whether adjudication was  
 1348 withheld, if the defendant was found guilty of or pled guilty or  
 1349 nolo contendere to the offense, or if the defendant, as a minor,  
 1350 was found to have committed or pled guilty or nolo contendere to  
 1351 committing the offense as a delinquent act. The court may only  
 1352 order sealing of a criminal history record pertaining to one  
 1353 arrest or one incident of alleged criminal activity, except as  
 1354 provided in this section. The court may, at its sole discretion,  
 1355 order the sealing of a criminal history record pertaining to  
 1356 more than one arrest if the additional arrests directly relate  
 1357 to the original arrest. If the court intends to order the  
 1358 sealing of records pertaining to such additional arrests, such  
 1359 intent must be specified in the order. A criminal justice agency  
 1360 may not seal any record pertaining to such additional arrests if  
 1361 the order to seal does not articulate the intention of the court  
 1362 to seal records pertaining to more than one arrest. This section  
 1363 does not prevent the court from ordering the sealing of only a

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1364 portion of a criminal history record pertaining to one arrest or  
 1365 one incident of alleged criminal activity. Notwithstanding any  
 1366 law to the contrary, a criminal justice agency may comply with  
 1367 laws, court orders, and official requests of other jurisdictions  
 1368 relating to sealing, correction, or confidential handling of  
 1369 criminal history records or information derived therefrom. This  
 1370 section does not confer any right to the sealing of any criminal  
 1371 history record, and any request for sealing a criminal history  
 1372 record may be denied at the sole discretion of the court.

1373 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal  
 1374 history record of a minor or an adult which is ordered sealed by  
 1375 a court of competent jurisdiction pursuant to this section is  
 1376 confidential and exempt from the provisions of s. 119.07(1) and  
 1377 s. 24(a), Art. I of the State Constitution and is available only  
 1378 to the person who is the subject of the record, to the subject's  
 1379 attorney, to criminal justice agencies for their respective  
 1380 criminal justice purposes, which include conducting a criminal  
 1381 history background check for approval of firearms purchases or  
 1382 transfers as authorized by state or federal law, to judges in  
 1383 the state courts system for the purpose of assisting them in  
 1384 their case-related decisionmaking responsibilities, as set forth  
 1385 in s. 943.053(5), or to those entities set forth in  
 1386 subparagraphs (a)1., 4., 5., 6., and 8. ~~8.~~ for their respective  
 1387 licensing, access authorization, and employment purposes.

1388 (a) The subject of a criminal history record sealed under  
 1389 this section or under other provisions of law, including former  
 1390 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
 1391 deny or fail to acknowledge the arrests covered by the sealed  
 1392 record, except when the subject of the record:

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1393 1. Is a candidate for employment with a criminal justice  
 1394 agency;

1395 2. Is a defendant in a criminal prosecution;

1396 3. Concurrently or subsequently petitions for relief under  
 1397 this section, s. 943.0583, or s. 943.0585;

1398 4. Is a candidate for admission to The Florida Bar;

1399 5. Is seeking to be employed or licensed by or to contract  
 1400 with the Department of Children and Families, the Division of  
 1401 Vocational Rehabilitation within the Department of Education,  
 1402 the Agency for Health Care Administration, the Agency for  
 1403 Persons with Disabilities, the Department of Health, the  
 1404 Department of Elderly Affairs, or the Department of Juvenile  
 1405 Justice or to be employed or used by such contractor or licensee  
 1406 in a sensitive position having direct contact with children, the  
 1407 disabled, or the elderly;

1408 6. Is seeking to be employed or licensed by the Department  
 1409 of Education, any district school board, any university  
 1410 laboratory school, any charter school, any private or parochial  
 1411 school, or any local governmental entity that licenses child  
 1412 care facilities; ~~or~~

1413 7. Is attempting to purchase a firearm from a licensed  
 1414 importer, licensed manufacturer, or licensed dealer and is  
 1415 subject to a criminal history check under state or federal law;  
 1416 or

1417 8. Is seeking to be licensed by the Division of Insurance  
 1418 Agent and Agency Services within the Department of Financial  
 1419 Services.

1420 (c) Information relating to the existence of a sealed  
 1421 criminal record provided in accordance with the provisions of

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1422 paragraph (a) is confidential and exempt from the provisions of  
 1423 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
 1424 except that the department shall disclose the sealed criminal  
 1425 history record to the entities set forth in subparagraphs (a)1.,  
 1426 4., 5., 6., and 8. ~~8.~~ for their respective licensing, access  
 1427 authorization, and employment purposes. It is unlawful for any  
 1428 employee of an entity set forth in subparagraph (a)1.,  
 1429 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or  
 1430 subparagraph (a)8. ~~subparagraph (a)8.~~ to disclose information  
 1431 relating to the existence of a sealed criminal history record of  
 1432 a person seeking employment, access authorization, or licensure  
 1433 with such entity or contractor, except to the person to whom the  
 1434 criminal history record relates or to persons having direct  
 1435 responsibility for employment, access authorization, or  
 1436 licensure decisions. Any person who violates the provisions of  
 1437 this paragraph commits a misdemeanor of the first degree,  
 1438 punishable as provided in s. 775.082 or s. 775.083.

1439 Section 38. Except as otherwise expressly provided in this  
 1440 act, and except for this section which shall take effect upon  
 1441 becoming law, this act shall take effect July 1, 2014.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14

Meeting Date

Topic Non resident surplus line agent

Bill Number SB 1210

(if applicable)

Name Greg Thomas

Amendment Barcode

(if applicable)

Job Title Dir, Insurance Agents Agency Services

Address 400 N Monroe St

Phone 850-413-2863

Street

Tallahassee FL 32309

City

State

Zip

E-mail greg.thomas@mffloridach.com

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

Representing CFO'S office

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-2-2014

Meeting Date

Topic SB 1210

Bill Number SB 1210  
*(if applicable)*

Name ~~Logan~~ Logan McFaddin

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Director, Leg. Affairs

Address 400 N Monroe St  
*Street*

Phone 850 413 2863

Tallahassee FL 32309  
*City State Zip*

E-mail Logan.McFaddin@myfloridacfo.com

Speaking:  For  Against  Information

Representing CFO'S office

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/2/14

Meeting Date

Topic \_\_\_\_\_

Bill Number 1210  
*(if applicable)*

Name Leslie Dughi

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 101 E. College Avenue  
*Street*  
Tall, FL 32301  
*City State Zip*

Phone \_\_\_\_\_

E-mail dughil@gtlow.com

Speaking:  For  Against  Information

Representing Enterprise, National and Alamo

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/2/14  
Meeting Date

Topic ~~BR~~

Bill Number SB 1210  
(if applicable)

Name Alan Suskey

Amendment Barcode N/A  
(if applicable)

Job Title Consultant

Address 310 S Bronough St  
Street

Phone 850.510.8314

TLH, FL  
City State Zip

E-mail ALAN@Capitalinsight.com

Speaking:  For  Against  Information

Representing FL Association of Insurance Agents

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Health Policy, *Chair*  
Appropriations  
Appropriations Subcommittee on Education  
Appropriations Subcommittee on Health  
and Human Services  
Commerce and Tourism  
Communications, Energy, and Public Utilities  
Governmental Oversight and Accountability

**SELECT COMMITTEE:**  
Select Committee on Patient Protection  
and Affordable Care Act

### SENATOR AARON BEAN

4th District

March 17, 2014

Senator Alan Hays  
Chairman, Appropriations Subcommittee on General Government  
320 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Hays:

This letter is to request that CS/SB 1210 relating to the Division of Insurance Agents and Agency Services be placed on the agenda of the next possible committee meeting.

Thank you for your consideration of this request.

Respectfully,

A handwritten signature in cursive script that reads "Aaron Bean".

Aaron Bean  
State Senator, 4<sup>th</sup> District

Cc: Jamie DeLoach, Staff Director  
Lisa Waddell, Committee Administrative Assistant

**REPLY TO:**

- 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
- 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 1582

INTRODUCER: Appropriations Subcommittee on General Government and Senator Dean

SUBJECT: Rehabilitation of Petroleum Contamination Sites

DATE: April 2, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gudeman</u>	<u>Uchino</u>	<u>EP</u>	<b>Favorable</b>
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Fav/CS</b>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1582 revises the legislative intent for the Petroleum Restoration Program in the Department of Environmental Protection (DEP or department), requires competitive procurement for cleanup contracts, and amends contractor qualifications. The bill limits the eligibility funding for the Early Detection Incentive (EDI) Program, deletes obsolete provisions related to the reimbursement program, and repeals sections of statute related to the Petroleum Preapproval Program.

The DEP anticipates that the costs to the state for site rehabilitation will decrease with the implementation of competitive solicitation procedures. In the preapproved advanced cleanup program, lower costs of at least 25 percent are required for applicants participating in a performance-based contract for the cleanup of at least 20 sites. The increase in workload related to contracts and procurement can be handled with existing staff.

The bill takes effect on July 1, 2014.

**II. Present Situation:**

**Petroleum Restoration Program**

The Department of Environmental Protection, Division of Waste Management, regulates underground and aboveground storage tank systems. In 1983, Florida became one of the first

states to pass legislation and adopt rules to regulate underground and aboveground storage tanks.<sup>1</sup> Leaking storage tanks pose a significant threat to groundwater quality, and Florida relies on groundwater for about 92 percent of its drinking water needs.<sup>2</sup>

In 1986, the Legislature passed the State Underground Petroleum Environmental Response Act (SUPER Act) to address the problem of pollution from leaking underground petroleum storage systems. The SUPER Act authorized the DEP to establish criteria for the prioritization, assessment, cleanup, and reimbursement for cleanup of contaminated sites. The SUPER Act also created the Inland Protection Trust Fund (IPTF), which is funded by a tax on petroleum products imported or produced in Florida. The SUPER Act established the Early Detection Incentive Program (EDI), which provided site owners with the option of conducting the cleanup themselves, and then receive reimbursement from the IPTF, or have the state conduct the cleanup in priority order.<sup>3</sup>

In 1988, the Legislature created the Petroleum Liability Insurance Program (PLIP) to provide third-party liability insurance to qualified program participants. The PLIP provided up to \$1 million of liability insurance for each incident of petroleum contamination.<sup>4</sup> The program was revised in 1989 and renamed to the Petroleum Liability Insurance and Restoration Program (PLIRP). The PLIRP allows eligible petroleum facilities to purchase \$1 million in pollution liability protection from a state contracted insurer and provided \$1 million worth of site restoration coverage through reimbursement or state-funded cleanup.<sup>5</sup>

In 1990, the Legislature established the Abandoned Tank Restoration Program (ATRP). The ATRP was created to address the contamination at facilities that had out-of-service or abandoned tanks as of March 1990. The ATRP originally had a one-year application period, but the deadline is now waived indefinitely for owners who are unable to pay for the closure of abandoned tanks.<sup>6</sup>

The Legislature began to phase out the state's role in the cleanup process in 1992 by shifting the cleanup of sites to the reimbursement program,<sup>7</sup> which was funded by increasing the excise tax on petroleum and petroleum products.<sup>8</sup> The reimbursement program proved costly, and within a few years the reimbursement amount exceeded the administrative capacity of the DEP and the financial resources of the IPTF. By 1996, over 18,000 petroleum sites had been identified as contaminated and the program had accumulated \$551.5 million in outstanding reimbursement claims.<sup>9</sup>

In 1995, the Legislature passed a temporary measure to address the large backlog of reimbursement applications and unpaid claims and required a review of the petroleum

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<sup>1</sup> See ch. 83-310, Laws of Fla.

<sup>2</sup> DEP, *Storage Tank Compliance*, <http://www.dep.state.fl.us/waste/categories/tanks/> (last visited Mar. 6, 2014).

<sup>3</sup> Chapter 86-159, Laws of Fla.

<sup>4</sup> Chapter 88-331, Laws of Fla.

<sup>5</sup> Chapter 89-188, Laws of Fla.

<sup>6</sup> Chapter 90-98, Laws of Fla.

<sup>7</sup> The term "cleanup sites" includes contaminated sites that are being remediated by the state or the property owner.

<sup>8</sup> Chapter 92-30, Laws of Fla.

<sup>9</sup> Comm. on Environmental Preservation and Conservation, The Florida Senate, *Underground Petroleum Storage Tank Cleanup Program*, (Interim Report 2005-153) (Nov. 2004).

underground storage tanks program. The measure only funded the remediation of sites that had received prior notice from the DEP.<sup>10</sup>

The Petroleum Preapproval Program (program) was implemented by the Legislature in 1996. The program required state-funded clean up of sites to be done on a preapproved basis, in priority order, and within the current fiscal year's budget. The program also required the DEP to use risk-based corrective action principles in the cleanup criteria rule. The Petroleum Cleanup Participation Program (PCPP) was created for sites that had missed the opportunity for state funding assistance but had reported contamination before 1995. Responsible parties were required to cost share in the cleanup and prepare a limited scope assessment at their expense.<sup>11</sup>

The Preapproved Advanced Cleanup (PAC) program was also created in 1996 to allow property owners or responsible parties the opportunity to pay a portion of the cleanup costs in order to bypass the priority ranking list. The PAC program requires applicants to provide at least 25 percent of the total cleanup costs and requires the property owner to prepare limited scope assessments at their expense.<sup>12</sup>

Section 376.30713(4), F.S., authorizes the DEP to enter into PAC contracts for up to \$15 million each fiscal year and limits the amount a facility may receive to \$5 million per year. A facility includes multiple site facilities such as airports, ports, or terminal facilities.<sup>13</sup> PAC applications are submitted to the DEP twice a year (between May 1 and June 30 and between November 1 and December 31). The applications are ranked based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant that proposes the highest percentage of its share of costs.<sup>14</sup> In 1999, the Legislature amended the Petroleum Preapproval Program to allow the DEP to fund certain source removal activities. The bill addressed new petroleum discharges that occurred at a site with existing contamination and were reported after December 31, 1998. The bill allowed a responsible party to enter into a Site Rehabilitation Agreement with the DEP and to share in the cost and coordination of the cleanup, provided that the responsible party submit an application and a Limited Contamination Assessment Report to the DEP.<sup>15</sup>

The Legislature substantially amended the Petroleum Preapproval Program in 2005 to require:

- All of Florida's underground petroleum storage tanks be upgraded prior to January 1, 2010;
- The DEP to establish a process to uniformly encumber funds appropriated for the underground storage tank program throughout a fiscal year;
- The DEP to establish priorities based on a scoring system;
- Funding for limited interim soil-source removals for sites that become inaccessible for future remediation due to road infrastructure and right-of-way restrictions resulting from pending Department of Transportation projects;

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<sup>10</sup> Chapter 95-2, Laws of Fla.

<sup>11</sup> Chapter 96-277, ss. 18-19, Laws of Fla.

<sup>12</sup> Section 376.30713, F.S.

<sup>13</sup> Section 376.30713(4), F.S.

<sup>14</sup> Section 376.30713(2), F.S.

<sup>15</sup> Chapter 99-376, Laws of Fla.



- Funding for limited interim soil-source removals associated with the underground petroleum storage system upgrade that are conducted in advance of the site's priority ranking for cleanup;
- Limited funding to 10 sites per fiscal year per owner for source removal associated with the underground petroleum storage system upgrade;
- Limited funding per facility and for activities that may be funded;
- Limited funding of \$1 million per fiscal year for Department of Transportation projects, and \$10 million per fiscal year for underground petroleum storage system upgrade projects;
- Repeal of funding provisions as of June 30, 2008;
- Availability of the Preapproved Advanced Cleanup Participation Program for discharges of petroleum that are eligible for restoration funding under the Petroleum Cleanup Participation Program for the state's cost share of site rehabilitation; and
- Extension of the life of the Inland Protection Financing Corporation from 2011 to 2025, and require the corporation to issue notes and bonds, and to pay for large-scale cleanups such as ports, airports, and terminal facilities that are eligible for state funding.<sup>16</sup>

In 2013, the Legislature amended s. 376.30711, F.S., to require all task assignments, work orders, and contracts for providers under the preapproval program be procured through competitive bidding pursuant to ss. 287.056, 287.057, and 287.059, F.S., after June 30, 2014.<sup>17</sup> Pursuant to s. 376.30711, F.S., the DEP is authorized to use competitive bid procedures or negotiated contracts for preapproving all costs and procedures for site-specific rehabilitation projects, but has not done so on a permanent basis.

Pursuant to s. 287.057, F.S., state agencies that competitively solicit contractual services exceeding \$35,000 must:

- Make the competitive solicitation available to all vendors;
- Include the time and date for the receipt of bids, proposal, or replies, and of the public opening;
- Include the contractual terms and conditions applicable to the procurement and the criteria used to determine acceptability and merit of the bid;
- Use the invitation to bid process when the agency is able to define the scope of work and establish the specifications of the services needed;
- Use the request for proposal process when the purpose of the services needed can be defined and the agency can identify the deliverables; and
- Use the invitation to negotiate process when the agency must determine the best method for achieving the specific goal and more than one vendor is able to provide the services.

Contractual services that exceed the \$35,000 threshold must be procured through competitive sealed bids, competitive sealed proposals, or competitive sealed replies unless:

- The agency head determines there is an immediate danger to public health, safety, or welfare; and

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<sup>16</sup> Sections 376.3071, 376.30713, 376.3075, and 376.30715, F.S.

<sup>17</sup> Chapter 2013-41, s. 29, Laws of Fla.

- The agency purchases the services from a state procured contract that was contracted by another agency pursuant to s. 287.057(1), F.S.<sup>18</sup>

### **MyFloridaMarketPlace**

The Department of Management Services established a statewide electronic registration and procurement system called MyFloridaMarketPlace. Pursuant to s. 287.057(23), F.S., a one percent transaction fee is charged to all vendors in order to utilize the system.<sup>19</sup>

### **Funding for the Petroleum Restoration Program**

The Fiscal Year 2013-2014 General Appropriations Act (GAA) appropriated \$125 million to the DEP for the rehabilitation of eligible petroleum contaminated sites. The GAA directed that up to \$50 million be appropriated to fund petroleum rehabilitation task assignments, work orders, and contracts entered into prior to June 30, 2013. The remaining \$75 million was placed in reserve and was contingent upon submission of a plan for consideration by the Legislative Budget Commission (LBC) detailing how the DEP would improve the effectiveness and efficiency of the Petroleum Restoration Program. Also, no funds could be released after January 1, 2014, unless the DEP adopted rules to implement ss. 376.3071, 376.30711, and 376.30713, Florida Statutes. The DEP's plan was approved by the LBC on September 12, 2013, and rules were adopted on December 27, 2013. The remaining \$75 million in appropriation was released in March 2014.<sup>20</sup>

The DEP is currently transitioning the Petroleum Restoration Program from the "preapproved contractor" approach to competitive procurement procedures pursuant to ss. 287.056, 287.057, and 287.059, F.S., and rules 62-771 and 62-772, F.A.C. As of January 31, 2014, there are approximately 17,300 sites or gasoline filling stations eligible for state funding and approximately 7,258 sites have been rehabilitated. Approximately 3,167 sites are currently undergoing some phase of site rehabilitation, and approximately 6,911 sites await rehabilitation. Site rehabilitation is funded based on available budget and the priority score. The score for each site ranges from five to 115, with five representing a very low potential threat to human health and the environment, and 115 representing a substantial potential threat.<sup>21</sup>

As of March 13, 2014, there are 60 approved cleanup contractors and 137 executed contracts. The DEP has:

- Obligated approximately \$57.1 million of the Fiscal Year 2013-2014 appropriation of \$125 million;
- Directed assigned rehabilitation work to 149 sites with a total value of \$5,041,217, which is included in the total obligated amount of \$57.1 million; and

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<sup>18</sup> See s. 287.057, F.S.

<sup>19</sup> See Rules 60A-1.030, 60A-1.031, and 60A-1.032, F.A.C.

<sup>20</sup> Chapter 2013-40, Laws of Fla.

<sup>21</sup> DEP, *Senate Bill 1582 Agency Analysis*, 3 (Mar. 12, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

- Selected 13 sites to receive quotes from contractors for a total estimated value of \$4,216,075, which is not included in the \$57.1 million.<sup>22</sup>

### **Legislative Ratification of Agency Rules**

The Legislature required the DEP to adopt rules to implement ss. 376.3071, 376.30711, and 376.30713, F.S., by December 31, 2013, otherwise the remaining, unreleased funds appropriated for Fiscal Year 2013-2014 could not be released. On May 30, 2013, the DEP published a Notice of Rule Development in the Florida Administrative Register to create Rule 62-772, F.A.C., and amend Rule 62-771, F.A.C. The new rules provide the procedures for the procurement of contractual services for clean up of petroleum contaminated sites and amend the procedures for establishing the priority scoring system for petroleum contaminated sites. The rules were adopted on December 27, 2013.

Pursuant to s. 120.541, F.S., a rule that meets any of three thresholds must be ratified by the Legislature. The thresholds include:

- If the rule is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years after implementation of the rule;
- If the rule is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within five years after implementation of the rule; or
- If the rule is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within five years after implementation of the rule.<sup>23</sup>

The DEP prepared a Statement of Estimated Regulatory (SERC) for Rules 62-772.300 and 62-772.400, F.A.C., and determined the rules triggered a statutory threshold requiring ratification. The SERC for Rule 62-772.300, F.A.C., estimates the cost for contractors to maintain business licensure, safety compliance, workers compensation insurance, comprehensive automobile insurance, and general and professional liability insurance is approximately \$15.4 million per year. The cost estimate provided in the SERC is based on 225 contractors. As of March 2014, the number of agency term contractors is 70, decreasing the cost associated with Rule 62-772.300, F.A.C., to approximately \$4.8 million per year.<sup>24</sup>

The SERC for Rule 62-772.400, F.A.C., estimates the cost incurred by contractors to assemble and submit bids, responses, replies, and quotes to the DEP as part of the competitive procurement procedures and a one percent transaction fee for MyFloridaMarketPlace, to be approximately \$41 million per year.<sup>25</sup>

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<sup>22</sup> Email from Pierce Schuessler, Legislative Affairs Director, DEP (Mar. 16, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>23</sup> Section 120.541(2)(a)1.-3., F.S.

<sup>24</sup> DEP, *Statement of Estimated Regulatory Cost, Rule 62-772.300, F.A.C.*, 3 (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>25</sup> DEP, *Statement of Estimated Regulatory Cost, Rule 62-772.400, F.A.C.*, 3 (on file with the Senate Committee on Environmental Preservation and Conservation).

The cost requirements outlined by the DEP in its new rules are already required of and incurred by contractors in order to conduct business pursuant to ss. 376.3071, 376.30711, and 376.30713, F.S.; however, the existing requirements are being restated in rule, thereby requiring ratification by the Legislature.

### III. Effect of Proposed Changes:

The bill provides conforming language and makes technical changes to repeal the Petroleum Preapproval Program and requires the DEP to competitively procure contracts for the Petroleum Restoration Program.

**Section 1** amends s. 376.3071, F.S., to affirm that the Petroleum Restoration Program be implemented in a manner that reduces costs and improves efficiencies for rehabilitation activities. The bill specifies that the Legislature intends to prioritize the cleanup of sites based on the threat of contamination to water resources and the environment, public health, safety, and welfare, and within the funding limits of the Inland Protection Trust Fund. The bill recognizes that when source removal is feasible and cost effective, it significantly reduces and eliminates the spread of contamination.

The bill specifies contracting and contractor selection requirements. It directs that state-funded cleanup sites are funded pursuant to the provisions of the Petroleum Restoration Program in ss. 376.3071, 376.305(6), 376.3072, and 376.3073, F.S. The bill requires a facility owner to abate the source of discharge for a release that occurred after March 29, 1995, and to notify the DEP if free product is present.

The bill requires the DEP to comply with competitive procurement requirements pursuant to ch. 287, F.S., or adopted rules.

Contractors that perform site assessments and remediation are required to certify to the DEP that they:

- Comply with applicable Occupational Safety and Health Administration regulations;
- Maintain workers compensation insurance for employees as required by the Florida Workers' Compensation Law;
- Maintain comprehensive general liability and comprehensive automobile liability insurance including:
  - Having minimum limits of \$1 million per occurrence; and
  - Having \$1 million per annual aggregate for personal injury, accidental death, and property damage;
- Maintain professional liability insurance of at least \$1 million per occurrence and \$1 million annual aggregate; and
- Have the capacity to perform or directly supervise the majority of the rehabilitation work pursuant to s. 489.113(9), F.S.

The bill requires that the rules implementing this section must:

- Specify that only qualified contractors may submit responses on competitive solicitation;

- Include procedures for the rejection of vendors that do not meet the minimum qualifications; and
- Include requirements for the vendor to maintain its qualifications.

The bill provides procedures for invoicing and payments. Specifically, the bill:

- Requires invoices to be submitted on forms provided by the DEP;
- Requires contractors to provide evidence documenting the contracted services were provided;
- Requires invoices to be paid pursuant to s. 215.422, F.S., if there are sufficient unencumbered funds available;
- Allows a contractor to assign its right to payment to another person after the contractor has submitted an invoice and before payment is made;
- Specifies the assignee must be paid pursuant to s. 215.422, F.S.;
- Requires contractors to submit an invoice to the DEP within 30 days of the DEP's written acceptance of the interim deliverables or approval of the final deliverables;
- Allows the DEP to retain up to 25 percent of the contracted amount or use a performance bond as long as the terms are included in the contract;
- Specifies that the contractor, or the assignee, must make prompt payment to subcontractors and suppliers pursuant to s. 287.0585, F.S.;
- Specifies that the exemption provided in s. 287.0585(2), F.S., does not apply to payments associated with an approved contract;
- Allows the DEP to withhold payment if the validity or accuracy of the contractor's invoices or supporting documents is in question; and
- Does not authorize payment for the cost of contaminated soil treatment or disposal if the soil treatment or disposal does not meet the rules for general permitting, state air emissions standards, monitoring, sampling, and reporting rules as described by the DEP.

The bill specifies the DEP must terminate or suspend a contractor's eligibility for participation in the program if the contractor fails to perform its contractual duties. It also prohibits a site owner or operator, or its designee, from receiving remuneration in cash or in kind, directly or indirectly from a contract performing site cleanup activities. The bill clarifies that any action by the DEP to seek recovery of payments or overpayments to a contractor must be based on the law that existed at the time of payment or overpayment.

The bill deletes references to the preapproval program and obsolete provisions related to the reimbursement program and makes conforming and technical changes.

**Section 2** repeals s. 376.30711, F.S., which provided contracting and contractor selection procedures for the preapproval program.

**Section 3** amends s. 376.301, F.S., deletes the obsolete definitions of "backlog" and "person responsible for conducting site rehabilitation," which were associated with the reimbursement program.

**Sections 4-5 and 7-10** amend ss. 376.302, 376.305, 376.30714, 376.3072, 376.3073, 376.3075, F.S., respectively, to make conforming and technical changes to repeal the reimbursement program and the preapproval program.

**Section 6** amends s. 376.30713, F.S., to allow an applicant to participate in the preapproved advanced cleanup program under a performance-based contract for the cleanup of at least 20 sites. The applicant must provide at least 25 percent of the costs of cleanup by paying, demonstrating cost savings to the DEP, or a combination of the two. The percentage of cost savings must be included in the application and compared to the cost of cleanup of the same sites using the current rates provided to the DEP by the agency term contractor. The DEP must determine if the cost savings demonstration is acceptable, which is not subject to ch. 120, F.S. The bill also makes conforming and technical changes to repeal the reimbursement program and the preapproval program.

**Section 11** provides an effective date of July 1, 2014.

#### **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:

Under CS/SB 1582, the transition from a “preapproved contractor” approach to a competitive procurement system will have a positive and negative fiscal impact on the private sector. There will be costs to contractors associated with the requirements of submitting quotes and materials that meet the requirements of MyFloridaMarketPlace, including the one percent transaction fee. The utilization of competitive solicitation procedures are expected to reduce prices and potential profits. However, contractors that maintain a positive performance record will be able to generate more work, which could offset the lower profit margins.<sup>26</sup>

Generally, lower costs to rehabilitate sites will lead to greater efficiencies and the ability to clean up sites more cost effectively than in previous years. Individually, these costs

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<sup>26</sup> *Supra* note 18, at 6.

may be negligible; however, in the aggregate and over time, the new program could lead to substantial savings.

The expansion of the preapproved advanced cleanup (PAC) program may benefit applicants with at least 20 sites that require cleanup. Conversely, because funding of this program is limited to \$15 million each fiscal year, such expansion may exhaust the funds available for applicants with less than 20 sites.

**C. Government Sector Impact:**

The bill may decrease DEP's cost of site rehabilitation due to the implementation of the competitive solicitation process. Since this process is in the early stage of implementation, the cost savings are indeterminate at this time.<sup>27</sup>

In the PAC program, at least 25 percent in lower costs is required for applicants participating in a performance-based contract for the cleanup of at least 20 sites.

The department anticipates an increase in workload related to contracts and procurement in the Administrative section within the Petroleum Restoration Program. Currently, this section has 12 positions and an annual budget of \$886,103, with seven positions that work directly on contracts and procurement. According to the DEP, this is sufficient to handle the increased workload.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

CS/SB 1674, providing for legislative ratification of Rules 62-772.300 and 62-772.400, F.A.C., which relate to competitive bidding and contractor qualifications for the Petroleum Restoration Program, is pending. Failure to ratify the rules would prohibit the DEP from implementing the program after June 30, 2014.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 376.3071, 376.301, 376.302, 376.305, 376.30713, 376.30714, 376.3072, 376.3073, and 376.3075.

This bill repeals section 376.30711 of the Florida Statutes.

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<sup>27</sup> *Id.* DEP, *Senate Bill 1582 Agency Analysis*, 6 (Mar. 12, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

**IX. Additional Information:**

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

**Recommended CS by Appropriations Subcommittee on General Government on April 2, 2014:**

- Authorizes the DEP to approve performance-based advanced cleanup contracts for at least 20 sites for applicants and requires that they demonstrate a proportional share of at least 25 percent of the cleanup costs;
  - Requires competitive solicitations to adhere to the requirements in s. 287.055, F.S., relating to acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services.
- B. **Amendments:**
- None.

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

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196092

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2014	.	
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	.	
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Appropriations Subcommittee on General Government (Legg)  
recommended the following:

**Senate Amendment**

Delete lines 496 - 497  
and insert:  
section or s. 287.0595.



740840

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/02/2014	.	
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	.	
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Appropriations Subcommittee on General Government (Simpson)  
recommended the following:

**Senate Amendment**

Between lines 582 and 583  
insert:

(n) In lieu of selecting a contractor by competitive  
procurement, the site owner or responsible party may select a  
contractor under the following conditions:

1. For a site participating in the low-scored site  
initiative pursuant to paragraph (12) (b), the site owner or  
responsible party may select an agency term contractor,



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11 qualified contractor providing pricing terms and conditions  
12 negotiated on best terms with the department, or a qualified  
13 contractor using the informal quote process administered by the  
14 department.

15 2. For a site whose owner or responsible party provides 25  
16 percent or more of the cleanup costs or for program tasks of  
17 which the cost of cleanup will exceed a program cap, the site  
18 owner or responsible party may select an agency term contractor.

19 3. The site owner or responsible party may propose a  
20 grouping of at least 25 sites eligible for state restoration  
21 funding assistance to the department for purpose of entering  
22 into a contract for fixed-price, performance-based cleanup. The  
23 estimated cleanup cost for any such site must be less than the  
24 amount of state restoration funding assistance available for  
25 that site. The performance-based contract may be negotiated  
26 between the department and an agency term contractor designated  
27 by the site owner or responsible party.

28 4. The site owner or responsible party may reject an agency  
29 term contractor before the assignment of work.

30 (o) The Petroleum Restoration Cleanup program is exempt  
31 from the 1 percent requirement under the MyFloridaMarketPlace  
32 system.

33  
34 As used in this section, the term "site owner" or "responsible  
35 party" means the current real property owner or a party to a  
36 responsible party agreement with the current real property  
37 owner. If the person identified in the responsible party  
38 agreement is no longer the current real property owner, the  
39 current real property owner must notify the department that he



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40 or she concurs with the responsible party agreement or does not  
41 object to the responsible party agreement.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2014	.	
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Appropriations Subcommittee on General Government (Simpson)  
recommended the following:

1       **Senate Substitute for Amendment (740840) (with title**  
2 **amendment)**

3  
4       Delete lines 1393 - 1451  
5 and insert:

6       share. An applicant proposing that the department enter into a  
7 performance-based contract for the cleanup of at least 20 sites  
8 may use the following as its cost share commitment: a commitment  
9 to pay; a demonstrated cost savings to the department; or any  
10 combination of the two. For applications relying on a



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11 demonstration of a cost savings, the applicant, in conjunction  
12 with its proposed agency term contractor, shall establish and  
13 provide in its application the percentage of cost savings, in  
14 the aggregate, that is being provided to the department for  
15 cleanup of the sites under its application compared to the cost  
16 of cleanup of those same sites using the current rates provided  
17 to the department by that proposed agency term contractor. The  
18 department shall determine if the cost savings demonstration is  
19 acceptable, and such determination is not subject to chapter  
20 120.

21       2. A nonrefundable review fee of \$250 to cover the  
22 administrative costs associated with the department's review of  
23 the application.

24       3. A limited contamination assessment report.

25       4. A proposed course of action.

26  
27 The limited contamination assessment report must ~~shall~~ be  
28 sufficient to support the proposed course of action and to  
29 estimate the cost of the proposed course of action. ~~Any~~ Costs  
30 incurred related to conducting the limited contamination  
31 assessment report are not refundable from the Inland Protection  
32 Trust Fund. Site eligibility under this subsection, ~~or any other~~  
33 provision of this section ~~is, shall~~ not ~~constitute~~ an  
34 entitlement to ~~preapproved~~ advanced cleanup or continued  
35 restoration funding. The applicant shall certify to the  
36 department that the applicant has the prerequisite authority to  
37 enter into an ~~a preapproved~~ advanced cleanup contract with the  
38 department. The ~~This~~ certification must ~~shall~~ be submitted with  
39 the application.



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40 (b) The department shall rank the applications based on the  
41 percentage of cost-sharing commitment proposed by the applicant,  
42 with the highest ranking given to the applicant who ~~that~~  
43 proposes the highest percentage of cost sharing. If the  
44 department receives applications that propose identical cost-  
45 sharing commitments and that ~~which~~ exceed the funds available to  
46 commit to all such proposals during the ~~preapproved~~ advanced  
47 cleanup application period, the department shall proceed to  
48 rerank those applicants. Those applicants submitting identical  
49 cost-sharing proposals that ~~which~~ exceed funding availability  
50 must ~~shall~~ be so notified by the department and ~~shall be~~ offered  
51 the opportunity to raise their individual cost-share  
52 commitments, in a period ~~of time~~ specified in the notice. At the  
53 close of the period, the department shall proceed to rerank the  
54 applications pursuant to ~~in accordance with~~ this paragraph.

55 (3) (a) Based on the ranking established under paragraph  
56 (2) (b) ~~and the funding limitations provided in subsection (4),~~  
57 the department shall begin ~~commence~~ negotiation with such  
58 applicants. If the department and the applicant agree on the  
59 course of action, the department may enter into a contract with  
60 the applicant. The department may ~~is authorized to~~ negotiate the  
61 terms and conditions of the contract.

62 (b) ~~Preapproved~~ Advanced cleanup shall be conducted  
63 pursuant to s. 376.3071(5) (b) and (6) and rules adopted under  
64 ss. 287.0595 and 376.3071 ~~under the provisions of ss.~~  
65 ~~376.3071(5) (b) and 376.30711.~~ If the terms of the ~~preapproved~~  
66 advanced cleanup contract are not fulfilled, the applicant  
67 forfeits any right to future payment for any site rehabilitation  
68 work conducted under the contract.



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69 (c) The department's decision not to enter into an a  
70 ~~preapproved~~ advanced cleanup contract with the applicant is  
71 ~~shall not be~~ subject to ~~the provisions of~~ chapter 120. If the  
72 department cannot ~~is not able to~~ complete negotiation of the  
73 course of action and the terms of the contract within 60 days  
74 after beginning ~~commencing~~ negotiations, the department shall  
75 terminate negotiations with that applicant.

76 (4) The department may ~~is authorized to~~ enter into  
77 contracts for a total of up to \$15 million of ~~preapproved~~  
78 advanced cleanup work in each fiscal year. However, a facility  
79 or an applicant that bundles multiple sites as specified in  
80 subparagraph (2) (a) 1.

81  
82 ===== T I T L E A M E N D M E N T =====

83 And the title is amended as follows:

84 Delete line 14

85 and insert:

86 amending ss. 376.301, 376.302, and 376.305, F.S.;

87 conforming provisions to changes made by the act;

88 amending s. 376.30713, F.S.; providing that applicants

89 can use a demonstration of a cost savings if bundling

90 multiple sites for meeting the required cost-

91 commitment share; amending ss.



By Senator Dean

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1 A bill to be entitled  
 2 An act relating to rehabilitation of petroleum  
 3 contamination sites; amending s. 376.3071, F.S.;  
 4 revising legislative findings and intent regarding the  
 5 Petroleum Restoration Program and the rehabilitation  
 6 of contamination sites; providing requirements for  
 7 site rehabilitation contracts and procedures for  
 8 payment of rehabilitation work under the Petroleum  
 9 Restoration Program; limiting eligibility for funding  
 10 under the Early Detection Incentive Program; deleting  
 11 obsolete provisions relating to reimbursement for  
 12 certain cleanup expenses; repealing s. 376.30711,  
 13 F.S., relating to preapproved site rehabilitation;  
 14 amending ss. 376.301, 376.302, 376.305, 376.30713,  
 15 376.30714, 376.3072, 376.3073, and 376.3075, F.S.;  
 16 conforming provisions to changes made by the act;  
 17 providing an effective date.

18  
 19 Be It Enacted by the Legislature of the State of Florida:

20  
 21 Section 1. Section 376.3071, Florida Statutes, is amended  
 22 to read:

23 376.3071 Inland Protection Trust Fund; creation; purposes;  
 24 funding.—

25 (1) FINDINGS.—In addition to the legislative findings set  
 26 forth in s. 376.30, the Legislature finds and declares:

27 (a) That significant quantities of petroleum and petroleum  
 28 products are being stored in storage systems in this state,  
 29 which is a hazardous undertaking.

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30 (b) That spills, leaks, and other discharges from such  
 31 storage systems have occurred, are occurring, and will continue  
 32 to occur and that such discharges pose a significant threat to  
 33 the quality of the groundwaters and inland surface waters of  
 34 this state.

35 (c) That, where contamination of the ground or surface  
 36 water has occurred, remedial measures have often been delayed  
 37 for long periods while determinations as to liability and the  
 38 extent of liability are made and that such delays result in the  
 39 continuation and intensification of the threat to the public  
 40 health, safety, and welfare; in greater damage to water  
 41 resources and the environment; and in significantly higher costs  
 42 to contain and remove the contamination.

43 (d) That adequate financial resources must be readily  
 44 available to provide for the expeditious supply of safe and  
 45 reliable alternative sources of potable water to affected  
 46 persons and to provide a means for investigation and cleanup of  
 47 contamination sites without delay.

48 (e) That it is necessary to fulfill the intent and purposes  
 49 of ss. 376.30-376.317, and ~~further it is hereby~~ determined to be  
 50 in the best interest of, and necessary for the protection of the  
 51 public health, safety, and ~~general~~ welfare of the residents of  
 52 this state, and therefore a paramount public purpose, to provide  
 53 for the creation of a nonprofit public benefit corporation as an  
 54 instrumentality of the state to assist in financing the  
 55 functions provided in ss. 376.30-376.317 and to authorize the  
 56 department to enter into one or more service contracts with such  
 57 corporation for the purpose ~~provision~~ of financing services  
 58 related to such functions and to make payments thereunder from

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59 the amount on deposit in the Inland Protection Trust Fund,  
60 subject to annual appropriation by the Legislature.

61 (f) That to achieve the purposes established in paragraph  
62 (e) and in order to facilitate the expeditious handling and  
63 rehabilitation of contamination sites and remedial measures with  
64 respect to contamination sites ~~provided hereby~~ without delay, it  
65 is in the best interests of the residents of this state to  
66 authorize such corporation to issue evidences of indebtedness  
67 payable from amounts paid by the department under any such  
68 service contract entered into between the department and such  
69 corporation.

70 (g) That the Petroleum Restoration Program must be  
71 implemented in a manner that reduces costs and improves the  
72 efficiency of rehabilitation activities to reduce the  
73 significant backlog of contaminated sites eligible for state-  
74 funded rehabilitation and the corresponding threat to water  
75 resources, the environment, and the public health, safety, and  
76 welfare.

77 (2) INTENT AND PURPOSE.—

78 (a) It is the intent of the Legislature to establish the  
79 Inland Protection Trust Fund to serve as a repository for funds  
80 which will enable the department to respond without delay to  
81 incidents of inland contamination related to the storage of  
82 petroleum and petroleum products in order to protect the public  
83 health, safety, and welfare and to minimize environmental  
84 damage.

85 (b) It is the intent of the Legislature that the department  
86 implement rules and procedures to improve the efficiency of the  
87 Petroleum Restoration Program. The department is directed to

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88 implement rules and policies to eliminate and reduce duplication  
89 of site rehabilitation efforts, paperwork, and documentation,  
90 and micromanagement of site rehabilitation tasks.

91 (c) It is the intent of the Legislature that rehabilitation  
92 of contamination sites be conducted with emphasis on first  
93 addressing the sites that pose the greatest threat to water  
94 resources, the environment, and the public health, safety, and  
95 welfare, within the availability of funds in the Inland  
96 Protection Trust Fund, recognizing that source removal, wherever  
97 it is technologically feasible and cost-effective, significantly  
98 reduces contamination or eliminates the spread of contamination  
99 and protects water resources, the environment, and the public  
100 health, safety, and welfare.

101 (d) ~~(e)~~ The department is directed to adopt and implement  
102 uniform and standardized forms for ~~the requests for preapproval~~  
103 site rehabilitation work and for the submittal of reports to  
104 ensure that information is submitted to the department in a  
105 concise, standardized uniform format seeking only information  
106 that is necessary.

107 (e) ~~(d)~~ The department is directed to implement computerized  
108 and electronic filing capabilities of ~~preapproval requests and~~  
109 submittal of reports in order to expedite submittal of the  
110 information and elimination of delay in paperwork. ~~The~~  
111 ~~computerized, electronic filing system shall be implemented no~~  
112 ~~later than January 1, 1997.~~

113 ~~(e) The department is directed to adopt uniform scopes of~~  
114 ~~work with templated labor and equipment costs to provide~~  
115 ~~definitive guidance as to the type of work and authorized~~  
116 ~~expenditures that will be allowed for preapproved site~~

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117 ~~rehabilitation tasks.~~

118 (f) The department is directed to establish guidelines for  
119 consideration and acceptance of new and innovative technologies  
120 for site rehabilitation work.

121 (3) CREATION.—There is ~~hereby~~ created the Inland Protection  
122 Trust Fund, hereinafter referred to as the “fund,” to be  
123 administered by the department. This fund shall be used by the  
124 department as a nonlapsing revolving fund for carrying out the  
125 purposes of this section and s. 376.3073. To this fund shall be  
126 credited all penalties, judgments, recoveries, reimbursements,  
127 loans, and other fees and charges related to the implementation  
128 of this section and s. 376.3073 and the excise tax revenues  
129 levied, collected, and credited pursuant to ss. 206.9935(3) and  
130 206.9945(1) (c). Charges against the fund shall be made pursuant  
131 to in accordance with the provisions of this section.

132 (4) USES.—Whenever, in its determination, incidents of  
133 inland contamination related to the storage of petroleum or  
134 petroleum products may pose a threat to water resources, the  
135 environment, or the public health, safety, or welfare, the  
136 department shall obligate moneys available in the fund to  
137 provide for:

138 (a) Prompt investigation and assessment of contamination  
139 sites.

140 (b) Expeditious restoration or replacement of potable water  
141 supplies as provided in s. 376.30(3) (c) 1.

142 (c) Rehabilitation of contamination sites, which shall  
143 consist of cleanup of affected soil, groundwater, and inland  
144 surface waters, using the most cost-effective alternative that  
145 is technologically feasible and reliable, ~~and~~ that provides

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146 adequate protection of water resources and the public health,  
147 safety, and welfare, and that minimizes environmental damage,  
148 pursuant to in accordance with the site selection and cleanup  
149 criteria established by the department under subsection (5),  
150 except that this paragraph does not ~~nothing herein shall be~~  
151 ~~construed to~~ authorize the department to obligate funds for  
152 payment of costs that ~~which~~ may be associated with, but are not  
153 integral to, site rehabilitation, such as the cost for  
154 retrofitting or replacing petroleum storage systems.

155 (d) Maintenance and monitoring of contamination sites.

156 (e) Inspection and supervision of activities described in  
157 this subsection.

158 (f) Payment of expenses incurred by the department in its  
159 efforts to obtain from responsible parties the payment or  
160 recovery of reasonable costs resulting from the activities  
161 described in this subsection.

162 (g) Payment of any other reasonable costs of  
163 administration, including those administrative costs incurred by  
164 the Department of Health in providing field and laboratory  
165 services, toxicological risk assessment, and other assistance to  
166 the department in the investigation of drinking water  
167 contamination complaints and costs associated with public  
168 information and education activities.

169 (h) Establishment and implementation of the compliance  
170 verification program as authorized in s. 376.303(1) (a),  
171 including contracting with local governments or state agencies  
172 to provide for the administration of such program through  
173 locally administered programs, to minimize the potential for  
174 further contamination sites.

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175 (i) Funding of the provisions of ss. 376.305(6) and  
 176 376.3072.

177 (j) Activities related to removal and replacement of  
 178 petroleum storage systems, exclusive of costs of any tank,  
 179 piping, dispensing unit, or related hardware, if soil removal is  
 180 approved ~~preapproved~~ as a component of site rehabilitation and  
 181 requires removal of the tank where remediation is conducted  
 182 under this section s. 376.30711 or if such activities were  
 183 justified in an approved remedial action plan ~~performed pursuant~~  
 184 ~~to subsection (12)~~.

185 ~~(k) Activities related to reimbursement application~~  
 186 ~~preparation and activities related to reimbursement application~~  
 187 ~~examination by a certified public accountant pursuant to~~  
 188 ~~subsection (12)~~.

189 (k)(1) Reasonable costs of restoring property as nearly as  
 190 practicable to the conditions that which existed before ~~prior to~~  
 191 activities associated with contamination assessment or remedial  
 192 action taken under s. 376.303(4).

193 (l)(m) Repayment of loans to the fund.

194 (m)(n) Expenditure of sums from the fund to cover  
 195 ineligible sites or costs as set forth in subsection (13), if  
 196 the department in its discretion deems it necessary to do so. In  
 197 such cases, the department may seek recovery and reimbursement  
 198 of costs in the same manner and pursuant to in accordance with  
 199 the same procedures ~~as are~~ established for recovery and  
 200 reimbursement of sums otherwise owed to or expended from the  
 201 fund.

202 (n)(o) Payment of amounts payable under any service  
 203 contract entered into by the department pursuant to s. 376.3075,

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204 subject to annual appropriation by the Legislature.

205 (o)(p) Petroleum remediation pursuant to this section s.  
 206 ~~376.30711~~ throughout a state fiscal year. The department shall  
 207 establish a process to uniformly encumber appropriated funds  
 208 throughout a state fiscal year and shall allow for emergencies  
 209 and imminent threats to water resources, human health and the  
 210 environment, and the public health, safety, and welfare, as  
 211 provided in paragraph (5)(a). This paragraph does not apply to  
 212 appropriations associated with the free product recovery  
 213 initiative provided in ~~of~~ paragraph (5)(c) or the ~~preapproved~~  
 214 advanced cleanup program provided in ~~of~~ s. 376.30713.

215 (p)(q) Enforcement of this section and ss. 376.30-376.317  
 216 by the Fish and Wildlife Conservation Commission. The department  
 217 shall disburse moneys to the commission for such purpose.

218

219 The Inland Protection Trust Fund may only be used to fund the  
 220 activities in ss. 376.30-376.317 except ss. 376.3078 and  
 221 376.3079. Amounts on deposit in the ~~Inland Protection Trust~~ fund  
 222 in each fiscal year shall first be applied or allocated for the  
 223 payment of amounts payable by the department pursuant to  
 224 paragraph (n) ~~(o)~~ under a service contract entered into by the  
 225 department pursuant to s. 376.3075 and appropriated in each year  
 226 by the Legislature before ~~prior to~~ making or providing for other  
 227 disbursements from the fund. ~~Nothing in~~ This subsection does not  
 228 ~~shall~~ authorize the use of the ~~Inland Protection Trust~~ fund for  
 229 cleanup of contamination caused primarily by a discharge of  
 230 solvents as defined in s. 206.9925(6), or polychlorinated  
 231 biphenyls when their presence causes them to be hazardous  
 232 wastes, except solvent contamination which is the result of

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233 chemical or physical breakdown of petroleum products and is  
 234 otherwise eligible. Facilities used primarily for the storage of  
 235 motor or diesel fuels as defined in ss. 206.01 and 206.86 are  
 236 ~~shall be presumed not to be~~ excluded from eligibility pursuant  
 237 to this section.

238 (5) SITE SELECTION AND CLEANUP CRITERIA.—

239 (a) The department shall adopt rules to establish  
 240 priorities based upon a scoring system for state-conducted  
 241 cleanup at petroleum contamination sites based upon factors that  
 242 include, but need not be limited to:

243 1. The degree to which the public ~~human~~ health, safety, or  
 244 welfare may be affected by exposure to the contamination;

245 2. The size of the population or area affected by the  
 246 contamination;

247 3. The present and future uses of the affected aquifer or  
 248 surface waters, with particular consideration as to the  
 249 probability that the contamination is substantially affecting,  
 250 or will migrate to and substantially affect, a known public or  
 251 private source of potable water; and

252 4. The effect of the contamination on water resources and  
 253 the environment.

254

255 Moneys in the fund shall then be obligated for activities  
 256 described in paragraphs (4)(a)-(e) at individual sites pursuant  
 257 ~~to in accordance with~~ such established criteria. However,  
 258 ~~nothing in this paragraph does not shall be construed to~~  
 259 restrict the department from modifying the priority status of a  
 260 rehabilitation site where conditions warrant, taking into  
 261 consideration the actual distance between the contamination site

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262 and groundwater or surface water receptors or other factors that  
 263 affect the risk of exposure to petroleum products' chemicals of  
 264 concern. The department may use the effective date of a  
 265 department final order granting eligibility pursuant to  
 266 subsections (10) ~~(9)~~ and (13) and ss. 376.305(6) and 376.3072 to  
 267 establish a prioritization system within a particular priority  
 268 scoring range.

269 (b) It is the intent of the Legislature to protect the  
 270 health of all people under actual circumstances of exposure. The  
 271 secretary shall establish criteria by rule for the purpose of  
 272 determining, on a site-specific basis, the rehabilitation  
 273 program tasks that comprise a site rehabilitation program and  
 274 the level at which a rehabilitation program task and a site  
 275 rehabilitation program are ~~may be deemed~~ completed. In  
 276 establishing the rule, the department shall incorporate, to the  
 277 maximum extent feasible, risk-based corrective action principles  
 278 to achieve protection of water resources, human health and  
 279 ~~safety and~~ the environment, and the public health, safety, and  
 280 welfare in a cost-effective manner as provided in this  
 281 subsection. Criteria for determining what constitutes a  
 282 rehabilitation program task or completion of site rehabilitation  
 283 program tasks and site rehabilitation programs shall be based  
 284 upon the factors set forth in paragraph (a) and the following  
 285 additional factors:

286 1. The current exposure and potential risk of exposure to  
 287 humans and the environment including multiple pathways of  
 288 exposure.

289 2. The appropriate point of compliance with cleanup target  
 290 levels for petroleum products' chemicals of concern. The point

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291 of compliance shall be at the source of the petroleum  
 292 contamination. However, the department may ~~is authorized to~~  
 293 temporarily move the point of compliance to the boundary of the  
 294 property, or to the edge of the plume when the plume is within  
 295 the property boundary, while cleanup, including cleanup through  
 296 natural attenuation processes in conjunction with appropriate  
 297 monitoring, is proceeding. The department may also ~~is~~  
 298 ~~authorized~~, pursuant to criteria provided for in this paragraph,  
 299 ~~to~~ temporarily extend the point of compliance beyond the  
 300 property boundary with appropriate monitoring, if such extension  
 301 is needed to facilitate natural attenuation or to address the  
 302 current conditions of the plume and if water resources, provided  
 303 human health, public safety, and the environment, and the public  
 304 health, safety, and welfare are adequately protected. Temporary  
 305 extension of the point of compliance beyond the property  
 306 boundary, as provided in this subparagraph, must ~~shall~~ include  
 307 notice to local governments and owners of any property into  
 308 which the point of compliance is allowed to extend.

309 3. The appropriate site-specific cleanup goal. The site-  
 310 specific cleanup goal shall be that all petroleum contamination  
 311 sites ultimately achieve the applicable cleanup target levels  
 312 provided in this paragraph. However, the department may ~~is~~  
 313 ~~authorized to~~ allow concentrations of the petroleum products'  
 314 chemicals of concern to temporarily exceed the applicable  
 315 cleanup target levels while cleanup, including cleanup through  
 316 natural attenuation processes in conjunction with appropriate  
 317 monitoring, is proceeding, if water resources provided human  
 318 health, public safety, and the environment, and the public  
 319 health, welfare, and safety are adequately protected.

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320 4. The appropriateness of using institutional or  
 321 engineering controls. Site rehabilitation programs may include  
 322 the use of institutional or engineering controls to eliminate  
 323 the potential exposure to petroleum products' chemicals of  
 324 concern to humans or the environment. Use of such controls must  
 325 have prior department approval ~~be preapproved by the department,~~  
 326 ~~and may institutional controls shall~~ not be acquired with moneys  
 327 ~~funds~~ from the ~~Inland Protection Trust~~ fund. When institutional  
 328 or engineering controls are implemented to control exposure, the  
 329 removal of such controls must have prior department approval and  
 330 must be accompanied immediately by the resumption of active  
 331 cleanup, or other approved controls, unless cleanup target  
 332 levels pursuant to this paragraph have been achieved.

333 5. The additive effects of the petroleum products'  
 334 chemicals of concern. The synergistic effects of petroleum  
 335 products' chemicals of concern must ~~shall~~ also be considered  
 336 when the scientific data becomes available.

337 6. Individual site characteristics that must ~~which shall~~  
 338 include, but not be limited to, the current and projected use of  
 339 the affected groundwater in the vicinity of the site, current  
 340 and projected land uses of the area affected by the  
 341 contamination, the exposed population, the degree and extent of  
 342 contamination, the rate of contaminant migration, the apparent  
 343 or potential rate of contaminant degradation through natural  
 344 attenuation processes, the location of the plume, and the  
 345 potential for further migration in relation to site property  
 346 boundaries.

347 7. Applicable state water quality standards.

348 a. Cleanup target levels for petroleum products' chemicals

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349 of concern found in groundwater shall be the applicable state  
 350 water quality standards. Where such standards do not exist, the  
 351 cleanup target levels for groundwater shall be based on the  
 352 minimum criteria specified in department rule. The department  
 353 shall consider the following, as appropriate, in establishing  
 354 the applicable minimum criteria: calculations using a lifetime  
 355 cancer risk level of 1.0E-6; a hazard index of 1 or less; the  
 356 best achievable detection limit; the naturally occurring  
 357 background concentration; or nuisance, organoleptic, and  
 358 aesthetic considerations.

359 b. Where surface waters are exposed to petroleum  
 360 contaminated groundwater, the cleanup target levels for the  
 361 petroleum products' chemicals of concern shall be based on the  
 362 surface water standards as established by department rule. The  
 363 point of measuring compliance with the surface water standards  
 364 shall be in the groundwater immediately adjacent to the surface  
 365 water body.

366 8. Whether deviation from state water quality standards or  
 367 from established criteria is appropriate. The department may  
 368 issue a "No Further Action Order" based upon the degree to which  
 369 the desired cleanup target level is achievable and can be  
 370 reasonably and cost-effectively implemented within available  
 371 technologies or engineering and institutional control  
 372 strategies. Where a state water quality standard is applicable,  
 373 a deviation may not result in the application of cleanup target  
 374 levels more stringent than the said standard. In determining  
 375 whether it is appropriate to establish alternate cleanup target  
 376 levels at a site, the department may consider the effectiveness  
 377 of source removal that has been completed at the site and the

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378 practical likelihood of: the use of low yield or poor quality  
 379 groundwater; the use of groundwater near marine surface water  
 380 bodies; the current and projected use of the affected  
 381 groundwater in the vicinity of the site; or the use of  
 382 groundwater in the immediate vicinity of the storage tank area,  
 383 where it has been demonstrated that the groundwater  
 384 contamination is not migrating away from such localized source,  
 385 if water resources, provided human health, public safety, and  
 386 the environment, and the public health, safety, and welfare are  
 387 adequately protected.

388 9. Appropriate cleanup target levels for soils.

389 a. In establishing soil cleanup target levels for human  
 390 exposure to petroleum products' chemicals of concern found in  
 391 soils from the land surface to 2 feet below land surface, the  
 392 department shall consider the following, as appropriate:  
 393 calculations using a lifetime cancer risk level of 1.0E-6; a  
 394 hazard index of 1 or less; the best achievable detection limit;  
 395 or the naturally occurring background concentration.

396 b. Leachability-based soil target levels shall be based on  
 397 protection of the groundwater cleanup target levels or the  
 398 alternate cleanup target levels for groundwater established  
 399 pursuant to this paragraph, as appropriate. Source removal and  
 400 other cost-effective alternatives that are technologically  
 401 feasible shall be considered in achieving the leachability soil  
 402 target levels established by the department. The leachability  
 403 goals do not apply ~~shall not be applicable~~ if the department  
 404 determines, based upon individual site characteristics, that  
 405 petroleum products' chemicals of concern will not leach into the  
 406 groundwater at levels which pose a threat to water resources,

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407 ~~human health and safety or the environment, or the public~~  
 408 ~~health, safety, or welfare.~~

409  
 410 ~~However, nothing in~~ This paragraph ~~does not shall be construed~~  
 411 ~~to~~ restrict the department from temporarily postponing  
 412 completion of any site rehabilitation program for which funds  
 413 are being expended whenever such postponement is ~~deemed~~  
 414 necessary in order to make funds available for rehabilitation of  
 415 a contamination site with a higher priority status.

416 (c) The department shall require source removal, if  
 417 warranted and cost-effective, at each site eligible for  
 418 restoration funding from the ~~Inland Protection Trust~~ fund.

419 1. Funding for free product recovery may be provided in  
 420 advance of the order established by the priority ranking system  
 421 under paragraph (a) for site cleanup activities. However, a  
 422 separate prioritization for free product recovery shall be  
 423 established consistent with paragraph (a). No more than \$5  
 424 million shall be encumbered from the ~~Inland Protection Trust~~  
 425 fund in any fiscal year for free product recovery conducted in  
 426 advance of the priority order under paragraph (a) established  
 427 for site cleanup activities.

428 2. Once free product removal and other source removal  
 429 identified in this paragraph are completed at a site, and  
 430 notwithstanding the order established by the priority ranking  
 431 system under paragraph (a) for site cleanup activities, the  
 432 department may reevaluate the site to determine the degree of  
 433 active cleanup needed to continue site rehabilitation. Further,  
 434 the department shall determine whether ~~if~~ the reevaluated site  
 435 qualifies for natural attenuation monitoring, long-term natural

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436 attenuation monitoring, or no further action. If additional site  
 437 rehabilitation is necessary to reach no further action status,  
 438 the site rehabilitation shall be conducted in the order  
 439 established by the priority ranking system under paragraph (a).  
 440 The department shall use ~~utilize~~ natural attenuation monitoring  
 441 strategies and, when cost-effective, transition sites eligible  
 442 for restoration funding assistance to long-term natural  
 443 attenuation monitoring where the plume is shrinking or stable  
 444 and confined to the source property boundaries and the petroleum  
 445 products' chemicals of concern meet the natural attenuation  
 446 default concentrations, as defined by department rule. If the  
 447 plume migrates beyond the source property boundaries, natural  
 448 attenuation monitoring may be conducted pursuant to ~~in~~  
 449 ~~accordance with~~ department rule, or if the site no longer  
 450 qualifies for natural attenuation monitoring, active remediation  
 451 may be resumed. For long-term natural attenuation monitoring, if  
 452 the petroleum products' chemicals of concern increase or are not  
 453 significantly reduced after 42 months of monitoring, or if the  
 454 plume migrates beyond the property boundaries, active  
 455 remediation shall be resumed as necessary. For sites undergoing  
 456 active remediation, the department shall evaluate ~~estimate~~ the  
 457 cost of natural attenuation monitoring pursuant to s. 376.30711  
 458 to ensure that site mobilizations are performed in a cost-  
 459 effective manner. Sites that are not eligible for state  
 460 restoration funding may transition to long-term natural  
 461 attenuation monitoring using the criteria in this subparagraph.  
 462 ~~Nothing in~~ This subparagraph does not preclude ~~precludes~~ a site  
 463 from pursuing a "No Further Action" order with conditions.

464 3. The department shall evaluate whether higher natural



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 465 attenuation default concentrations for natural attenuation  
 466 monitoring or long-term natural attenuation monitoring are cost-  
 467 effective and would adequately protect ~~water resources, public~~  
 468 ~~health and the environment, and the public health, safety, and~~  
 469 ~~welfare~~. The department shall also evaluate site-specific  
 470 characteristics that would allow for higher natural attenuation  
 471 or long-term natural attenuation concentration levels.  
 472 4. A local government may not deny a building permit based  
 473 solely on the presence of petroleum contamination for any  
 474 construction, repairs, or renovations performed in conjunction  
 475 with tank upgrade activities to an existing retail fuel facility  
 476 if the facility was fully operational before the building permit  
 477 was requested and if the construction, repair, or renovation is  
 478 performed by a licensed contractor. All building permits and any  
 479 construction, repairs, or renovations performed in conjunction  
 480 with such permits must comply with the applicable provisions of  
 481 chapters 489 and 553.

482 (6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.-

483 (a) Site rehabilitation work on sites that are eligible for  
 484 state-funded cleanup from the fund pursuant to this section and  
 485 ss. 376.305(6), 376.3072, and 376.3073 may be funded only  
 486 pursuant to this section. A facility operator shall abate the  
 487 source of discharge for a new release that occurred after March  
 488 29, 1995. If free product is present, the operator shall notify  
 489 the department, and the department may direct the removal of the  
 490 free product. The department shall grant approval to continue  
 491 site rehabilitation pursuant to this section.

492 (b) When contracting for site rehabilitation activities  
 493 performed under the Petroleum Restoration Program, the

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 494 department shall comply with competitive procurement  
 495 requirements provided in chapter 287 or rules adopted under this  
 496 section or s. 287.0595. A competitive solicitation issued  
 497 pursuant to this section is not subject to s. 287.055.

498 (c) Each contractor performing site assessment and  
 499 remediation activities for state-funded sites under this section  
 500 shall certify to the department that the contractor meets all  
 501 certification and license requirements imposed by law. Each  
 502 contractor shall certify to the department that the contractor  
 503 meets the following minimum qualifications:

504 1. Complies with applicable Occupational Safety and Health  
 505 Administration regulations.

506 2. Maintains workers' compensation insurance for employees  
 507 as required by the Florida Workers' Compensation Law.

508 3. Maintains comprehensive general liability and  
 509 comprehensive automobile liability insurance with minimum limits  
 510 of at least \$1 million per occurrence and \$1 million annual  
 511 aggregate to pay claims for damage for personal injury,  
 512 including accidental death, as well as claims for property  
 513 damage that may arise from performance of work under the  
 514 program, which insurance designates the state as an additional  
 515 insured party.

516 4. Maintains professional liability insurance of at least  
 517 \$1 million per occurrence and \$1 million annual aggregate.

518 5. Has the capacity to perform or directly supervise the  
 519 majority of the rehabilitation work at a site pursuant to s.  
 520 489.113(9).

521 (d) The department rules implementing this section must  
 522 specify that only qualified vendors may submit responses on a

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 523 competitive solicitation. The department rules must also include  
 524 procedures for the rejection of vendors not meeting the minimum  
 525 qualifications on the opening of a competitive solicitation and  
 526 requirements for a vendor to maintain its qualifications in  
 527 order to enter contracts or perform rehabilitation work.

528 (e) A contractor that performs services pursuant to this  
 529 subsection may file invoices for payment with the department for  
 530 the services described in the approved contract. The invoices  
 531 for payment must be submitted to the department on forms  
 532 provided by the department, together with evidence documenting  
 533 that activities were conducted or completed pursuant to the  
 534 approved contract. If there are sufficient unencumbered funds  
 535 available in the fund which have been appropriated for  
 536 expenditure by the Legislature and if all of the terms of the  
 537 approved contract have been met, invoices for payment must be  
 538 paid pursuant to s. 215.422. After a contractor has submitted  
 539 its invoices to the department, and before payment is made, the  
 540 contractor may assign its right to payment to another person  
 541 without recourse of the assignee or assignor to the state. In  
 542 such cases, the assignee must be paid pursuant to s. 215.422.  
 543 Prior notice of the assignment and assignment information must  
 544 be made to the department and must be signed and notarized by  
 545 the assigning party.

546 (f) The contractor shall submit an invoice to the  
 547 department within 30 days after the date of the department's  
 548 written acceptance of each interim deliverable or written  
 549 approval of the final deliverable specified in the approved  
 550 contract.

551 (g) The department shall make payments based on the terms

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 552 of an approved contract for site rehabilitation work. The  
 553 department may, based on its experience and the past performance  
 554 and concerns regarding a contractor, retain up to 25 percent of  
 555 the contracted amount or use performance bonds to ensure  
 556 performance. The amount of retainage and the amount of  
 557 performance bonds, as well as the terms and conditions for such,  
 558 must be included in the approved contract.

559 (h) The contractor or the person to which the contractor  
 560 has assigned its right to payment pursuant to paragraph (e)  
 561 shall make prompt payment to subcontractors and suppliers for  
 562 their costs associated with an approved contract pursuant to s.  
 563 287.0585(1).

564 (i) The exemption under s. 287.0585(2) does not apply to  
 565 payments associated with an approved contract.

566 (j) The department may withhold payment if the validity or  
 567 accuracy of a contractor's invoices or supporting documents is  
 568 in question.

569 (k) This section does not authorize payment to a person for  
 570 costs of contaminated soil treatment or disposal that does not  
 571 meet the applicable rules of this state for such treatment or  
 572 disposal, including all general permitting, state air emission  
 573 standards, monitoring, sampling, and reporting rules more  
 574 specifically described by department rules.

575 (l) The department shall terminate or suspend a  
 576 contractor's eligibility for participation in the program if the  
 577 contractor fails to perform its contractual duties for site  
 578 rehabilitation program tasks.

579 (m) A site owner or operator, or his or her designee, may  
 580 not receive any remuneration, in cash or in kind, directly or

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581 indirectly, from a rehabilitation contractor performing site  
582 cleanup activities pursuant to this section.

583 ~~(7)(6)~~ FUNDING.—The Inland Protection Trust Fund shall be  
584 funded as follows:

585 (a) All excise taxes levied, collected, and credited to the  
586 fund in accordance with ~~the provisions of~~ ss. 206.9935(3) and  
587 206.9945(1)(c).

588 (b) All penalties, judgments, recoveries, reimbursements,  
589 and other fees and charges credited to the fund pursuant to ~~in~~  
590 ~~accordance with the provisions of~~ subsection (3).

591 ~~(8)(7)~~ DEPARTMENTAL DUTY TO SEEK RECOVERY AND  
592 REIMBURSEMENT.—

593 (a) Except as provided in subsection ~~(10)~~ ~~(9)~~ and as  
594 otherwise provided by law, the department shall recover to the  
595 use of the fund from a person or persons at any time causing or  
596 having caused the discharge or from the Federal Government,  
597 jointly and severally, all sums owed or expended from the fund,  
598 pursuant to s. 376.308, except that the department may decline  
599 to pursue such recovery if it finds the amount involved too  
600 small or the likelihood of recovery too uncertain. Sums  
601 recovered as a result of damage due to a discharge related to  
602 the storage of petroleum or petroleum products or other similar  
603 disaster shall be apportioned between the fund and the General  
604 Revenue Fund so as to repay the full costs to the General  
605 Revenue Fund of ~~any~~ sums disbursed therefrom as a result of such  
606 disaster. A ~~Any~~ request for reimbursement to the fund for such  
607 costs, if not paid within 30 days after ~~of~~ demand, shall be  
608 turned over to the department for collection.

609 (b) Except as provided in subsection ~~(10)~~ ~~(9)~~ and as

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610 otherwise provided by law, it is the duty of the department in  
611 administering the fund diligently to pursue the reimbursement to  
612 the fund of any sum expended from the fund for cleanup and  
613 abatement pursuant to ~~in accordance with the provisions of~~ this  
614 section or s. 376.3073, unless the department finds the amount  
615 involved too small or the likelihood of recovery too uncertain.  
616 For the purposes of s. 95.11, the limitation period within which  
617 to institute an action to recover such sums shall begin ~~commence~~  
618 on the last date on which ~~any~~ such sums were expended, and not  
619 the date on which ~~that~~ the discharge occurred. The department's  
620 claim for recovery of payments or overpayments from the fund  
621 must be based on the law in existence at the time of the payment  
622 or overpayment.

623 (c) If the department initiates an enforcement action to  
624 clean up a contaminated site and determines that the responsible  
625 party cannot ~~is~~ financially unable to ~~be~~ undertake complete  
626 restoration of the contaminated site, that the current property  
627 owner was not responsible for the discharge when the  
628 contamination first occurred, or that the state's interest can  
629 best be served by conducting cleanup, the department may enter  
630 into an agreement with the responsible party or property owner  
631 whereby the department agrees to conduct site rehabilitation and  
632 the responsible party or property owner agrees to pay for the  
633 portion of the cleanup costs that are within such party's or  
634 owner's financial capabilities as determined by the department,  
635 taking into consideration the party's or owner's net worth and  
636 the economic impact on the party or owner.

637 ~~(9)(8)~~ INVESTMENTS; INTEREST.—Moneys in the fund which are  
638 not needed currently to meet the obligations of the department

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639 in the exercise of its responsibilities under this section and  
 640 s. 376.3073 shall be deposited with the Chief Financial Officer  
 641 to the credit of the fund and may be invested in such manner as  
 642 ~~is provided for~~ by law statute. The interest received on such  
 643 investment shall be credited to the fund. Any provisions of law  
 644 to the contrary notwithstanding, such interest may be freely  
 645 transferred between ~~the this~~ trust fund and the Water Quality  
 646 Assurance Trust Fund, in the discretion of the department.

647 ~~(10)(9)~~ EARLY DETECTION INCENTIVE PROGRAM.—To encourage  
 648 early detection, reporting, and cleanup of contamination from  
 649 leaking petroleum storage systems, the department shall, within  
 650 the guidelines established in this subsection, conduct an  
 651 incentive program that provides ~~which shall provide~~ for a 30-  
 652 month grace period ending on December 31, 1988. ~~Pursuant~~  
 653 ~~thereto:~~

654 (a) The department shall establish reasonable requirements  
 655 for the written reporting of petroleum contamination incidents  
 656 and shall distribute forms to registrants under s. 376.303(1)(b)  
 657 and to other interested parties upon request to be used for such  
 658 purpose. Until such forms are available for distribution, the  
 659 department shall take reports of such incidents, however made,  
 660 but shall notify any person making such a report that a complete  
 661 written report of the incident will be required by the  
 662 department at a later time, the form for which will be provided  
 663 by the department.

664 (b) When reporting forms become available for distribution,  
 665 all sites involving incidents of contamination from petroleum  
 666 storage systems initially reported to the department at any time  
 667 from midnight on June 30, 1986, to midnight on December 31,

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668 1988, shall be qualified sites if, ~~provided that~~ such a complete  
 669 written report is filed with respect thereto within a reasonable  
 670 time. Subject to the delays which may occur as a result of the  
 671 prioritization of sites under paragraph (5)(a) for any qualified  
 672 site, costs for activities described in paragraphs (4)(a)-(e)  
 673 shall be absorbed at the expense of the fund, without recourse  
 674 to reimbursement or recovery, with the following exceptions:

675 1. ~~The provisions of~~ This subsection does shall not apply  
 676 to a any site where the department has been denied site access  
 677 to implement ~~the provisions of~~ this section.

678 2. ~~The provisions of~~ This subsection does shall not be  
 679 ~~construed to~~ authorize or require reimbursement from the fund  
 680 for costs expended before ~~prior to~~ the beginning of the grace  
 681 period, ~~except as provided in subsection (12)~~.

682 3.a. Upon discovery by the department that the owner or  
 683 operator of a petroleum storage system has been grossly  
 684 negligent in the maintenance of such petroleum storage system;  
 685 has, with willful intent to conceal the existence of a serious  
 686 discharge, falsified inventory or reconciliation records  
 687 maintained with respect to the site at which such system is  
 688 located; or has intentionally damaged such petroleum storage  
 689 system, the site at which such system is located shall be  
 690 ineligible for participation in the incentive program and the  
 691 owner shall be liable for all costs due to discharges from  
 692 petroleum storage systems at that site, any other provisions of  
 693 chapter 86-159, Laws of Florida, to the contrary  
 694 notwithstanding. For the purposes of this paragraph, willful  
 695 failure to maintain inventory and reconciliation records,  
 696 willful failure to make monthly monitoring system checks where

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697 such systems are in place, and failure to meet monitoring and  
 698 retrofitting requirements within the schedules established under  
 699 chapter 62-761, Florida Administrative Code, or violation of  
 700 similar rules adopted by the department under this chapter,  
 701 ~~constitutes shall be construed to be~~ gross negligence in the  
 702 maintenance of a petroleum storage system.

703 b. The department shall redetermine the eligibility of  
 704 petroleum storage systems for which a timely Early Detection  
 705 Incentive Program ~~EDI~~ application was filed, but which were  
 706 deemed ineligible by the department, under the following  
 707 conditions:

708 (I) The owner or operator, on or before March 31, 1991,  
 709 shall submit, in writing, notification that the storage system  
 710 is now in compliance with department rules adopted pursuant to  
 711 s. 376.303, and which requests the department to reevaluate the  
 712 storage system eligibility; and

713 (II) The department verifies the storage system compliance  
 714 based on a compliance inspection.

715 ~~Provided, however, that~~ A site may be determined eligible by the  
 716 department for good cause shown, including, but not limited to,  
 717 demonstration by the owner or operator that to achieve  
 718 compliance would cause an increase in the potential for the  
 719 spread of the contamination.

720 c. Redetermination of eligibility pursuant to sub-  
 721 subparagraph b. shall not be available to:

722 (I) Petroleum storage systems owned or operated by the  
 723 Federal Government.

724 (II) Facilities that denied site access to the department.

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726 (III) Facilities where a discharge was intentionally  
 727 concealed.

728 (IV) Facilities that were denied eligibility due to:

729 (A) Absence of contamination, unless any such facility  
 730 subsequently establishes that contamination did exist at that  
 731 facility on or before December 31, 1988.

732 (B) Contamination from substances that were not petroleum  
 733 or a petroleum product.

734 (C) Contamination that was not from a petroleum storage  
 735 system.

736 d. ~~EDI~~ Applicants who demonstrate compliance for a site  
 737 pursuant to sub-subparagraph b. are eligible for the Early  
 738 Detection Incentive Program and site rehabilitation funding  
 739 pursuant to subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~.

740 If, in order to avoid prolonged delay, the department in its  
 741 discretion deems it necessary to expend sums from the fund to  
 742 cover ineligible sites or costs as set forth in this paragraph,  
 743 the department may do so and seek recovery and reimbursement  
 744 therefor in the same manner and pursuant to in accordance with  
 745 the same procedures ~~as are~~ established for recovery and  
 746 reimbursement of sums otherwise owed to or expended from the  
 747 fund.

748 (c) A ~~No~~ report of a discharge made to the department by a  
 749 ~~any person pursuant to in accordance with~~ this subsection, or  
 750 ~~any rules adopted promulgated pursuant to this subsection may~~  
 751 not hereto, shall be used directly as evidence of liability for  
 752 such discharge in any civil or criminal trial arising out of the  
 753 discharge.

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755 (d) ~~The provisions of~~ This subsection does ~~shall~~ not apply  
 756 to petroleum storage systems owned or operated by the Federal  
 757 Government.

758 ~~(11)(10) VIOLATIONS; PENALTY. A~~ It is unlawful for any  
 759 person may not ~~to~~:

760 (a) Falsify inventory or reconciliation records maintained  
 761 in compliance with chapters 62-761 and 62-762, Florida  
 762 Administrative Code, with willful intent to conceal the  
 763 existence of a serious leak; or

764 (b) Intentionally damage a petroleum storage system.

765

766 A ~~Any~~ person convicted of such a violation commits ~~shall be~~  
 767 ~~guilty of~~ a felony of the third degree, punishable as provided  
 768 in s. 775.082, s. 775.083, or s. 775.084.

769 ~~(12)(11) SITE CLEANUP.-~~

770 (a) Voluntary cleanup.-This section does not prohibit a  
 771 person from conducting site rehabilitation ~~either~~ through his or  
 772 her own personnel or through responsible response action  
 773 contractors or subcontractors when such person is not seeking  
 774 site rehabilitation funding from the fund. Such voluntary  
 775 cleanups must meet all applicable environmental standards.

776 (b) Low-scored site initiative.-Notwithstanding subsections  
 777 (5) and (6) s. 376.30711, ~~a~~ any site with a priority ranking  
 778 score of 29 points or less may voluntarily participate in the  
 779 low-scored site initiative regardless of, whether ~~or not~~ the  
 780 site is eligible for state restoration funding.

781 1. To participate in the low-scored site initiative, the  
 782 responsible party or property owner must affirmatively  
 783 demonstrate that the following conditions are met:

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784 a. Upon reassessment pursuant to department rule, the site  
 785 retains a priority ranking score of 29 points or less.

786 b. ~~No~~ Excessively contaminated soil, as defined by  
 787 department rule, does not exist ~~exists~~ onsite as a result of a  
 788 release of petroleum products.

789 c. A minimum of 6 months of groundwater monitoring  
 790 indicates that the plume is shrinking or stable.

791 d. The release of petroleum products at the site does not  
 792 adversely affect adjacent surface waters, including their  
 793 effects on human health and the environment.

794 e. The area of groundwater containing the petroleum  
 795 products' chemicals of concern is less than one-quarter acre and  
 796 is confined to the source property boundaries of the real  
 797 property on which the discharge originated.

798 f. Soils onsite that are subject to human exposure found  
 799 between land surface and 2 feet below land surface meet the soil  
 800 cleanup target levels established by department rule or human  
 801 exposure is limited by appropriate institutional or engineering  
 802 controls.

803 2. Upon affirmative demonstration of the conditions under  
 804 subparagraph 1., the department shall issue a determination of  
 805 "No Further Action." Such determination acknowledges that  
 806 minimal contamination exists onsite and that such contamination  
 807 is not a threat to water resources, ~~human health or the~~  
 808 environment, or the public health, safety, or welfare. If no  
 809 contamination is detected, the department may issue a site  
 810 rehabilitation completion order.

811 3. Sites that are eligible for state restoration funding  
 812 may receive payment of ~~preapproved~~ costs for the low-scored site

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813 initiative as follows:

814 a. A responsible party or property owner may submit an  
815 assessment plan designed to affirmatively demonstrate that the  
816 site meets the conditions under subparagraph 1. Notwithstanding  
817 the priority ranking score of the site, the department may  
818 ~~approve~~ preapprove the cost of the assessment pursuant to s.  
819 ~~376.30711~~, including 6 months of groundwater monitoring, not to  
820 exceed \$30,000 for each site. The department may not pay the  
821 costs associated with the establishment of institutional or  
822 engineering controls.

823 b. The assessment work shall be completed no later than 6  
824 months after the department issues its approval.

825 c. No more than \$10 million for the low-scored site  
826 initiative may be encumbered from the Inland Protection Trust  
827 fund in any fiscal year. Funds shall be made available on a  
828 first-come, first-served basis and shall be limited to 10 sites  
829 in each fiscal year for each responsible party or property  
830 owner.

831 d. Program deductibles, copayments, and the limited  
832 contamination assessment report requirements under paragraph  
833 (13)(c) do not apply to expenditures under this paragraph.

834 ~~(12) REIMBURSEMENT FOR CLEANUP EXPENSES. Except as provided~~  
835 ~~in s. 2(3), chapter 95-2, Laws of Florida, this subsection shall~~  
836 ~~not apply to any site rehabilitation program task initiated~~  
837 ~~after March 29, 1995. Effective August 1, 1996, no further site~~  
838 ~~rehabilitation work on sites eligible for state-funded cleanup~~  
839 ~~from the Inland Protection Trust Fund shall be eligible for~~  
840 ~~reimbursement pursuant to this subsection. The person~~  
841 ~~responsible for conducting site rehabilitation may seek~~

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842 ~~reimbursement for site rehabilitation program task work~~  
843 ~~conducted after March 28, 1995, in accordance with s. 2(2) and~~  
844 ~~(3), chapter 95-2, Laws of Florida, regardless of whether the~~  
845 ~~site rehabilitation program task is completed. A site~~  
846 ~~rehabilitation program task shall be considered to be initiated~~  
847 ~~when actual onsite work or engineering design, pursuant to~~  
848 ~~chapter 62-770, Florida Administrative Code, which is integral~~  
849 ~~to performing a site rehabilitation program task has begun and~~  
850 ~~shall not include contract negotiation and execution, site~~  
851 ~~research, or project planning. All reimbursement applications~~  
852 ~~pursuant to this subsection must be submitted to the department~~  
853 ~~by January 3, 1997. The department shall not accept any~~  
854 ~~applications for reimbursement or pay any claims on applications~~  
855 ~~for reimbursement received after that date; provided, however if~~  
856 ~~an application filed on or prior to January 3, 1997, was~~  
857 ~~returned by the department on the grounds of untimely filing, it~~  
858 ~~shall be refiled within 30 days after the effective date of this~~  
859 ~~act in order to be processed.~~

860 ~~(a) Legislative findings. The Legislature finds and~~  
861 ~~declares that rehabilitation of contamination sites should be~~  
862 ~~conducted in a manner and to a level of completion which will~~  
863 ~~protect the public health, safety, and welfare and will minimize~~  
864 ~~damage to the environment.~~

865 ~~(b) Conditions.—~~

866 ~~1. The owner, operator, or his or her designee of a site~~  
867 ~~which is eligible for restoration funding assistance in the EDI,~~  
868 ~~PLRIP, or ATRP programs shall be reimbursed from the Inland~~  
869 ~~Protection Trust Fund of allowable costs at reasonable rates~~  
870 ~~incurred on or after January 1, 1985, for completed program~~

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871 ~~tasks as identified in the department rule promulgated pursuant~~  
 872 ~~to paragraph (5) (b), or uncompleted program tasks pursuant to~~  
 873 ~~chapter 95-2, Laws of Florida, subject to the conditions in this~~  
 874 ~~section. It is unlawful for a site owner or operator, or his or~~  
 875 ~~her designee, to receive any remuneration, in cash or in kind,~~  
 876 ~~directly or indirectly from the rehabilitation contractor.~~

877 ~~2. Nothing in this subsection shall be construed to~~  
 878 ~~authorize reimbursement to any person for costs of contaminated~~  
 879 ~~soil treatment or disposal that does not meet the applicable~~  
 880 ~~rules of this state for such treatment or disposal, including~~  
 881 ~~all general permitting, state air emission standards,~~  
 882 ~~monitoring, sampling, and reporting rules more specifically~~  
 883 ~~described in department rules.~~

884 ~~(c) Legislative intent. Due to the value of the potable~~  
 885 ~~water of this state, it is the intent of the Legislature that~~  
 886 ~~the department initiate and facilitate as many cleanups as~~  
 887 ~~possible utilizing the resources of the state, local~~  
 888 ~~governments, and the private sector, recognizing that source~~  
 889 ~~removal, wherever it is technologically feasible and cost-~~  
 890 ~~effective, shall be considered the primary initial response to~~  
 891 ~~protect public health, safety, and the environment.~~

892 ~~(d) Amount of reimbursement. The department shall reimburse~~  
 893 ~~actual and reasonable costs for site rehabilitation. The~~  
 894 ~~department shall not reimburse interest on the amount of~~  
 895 ~~reimbursable costs for any reimbursement application. However,~~  
 896 ~~nothing herein shall affect the department's authority to pay~~  
 897 ~~interest authorized under prior law.~~

898 ~~(e) Records. The person responsible for conducting site~~  
 899 ~~rehabilitation, or his or her agent, shall keep and preserve~~

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900 ~~suitable records as follows:~~

901 ~~1. Hydrological and other site investigations and~~  
 902 ~~assessments; site rehabilitation plans; contracts and contract~~  
 903 ~~negotiations; and accounts, invoices, sales tickets, or other~~  
 904 ~~payment records from purchases, sales, leases, or other~~  
 905 ~~transactions involving costs actually incurred related to site~~  
 906 ~~rehabilitation. Such records shall be made available upon~~  
 907 ~~request to agents and employees of the department during regular~~  
 908 ~~business hours and at other times upon written request of the~~  
 909 ~~department.~~

910 ~~2. In addition, the department may from time to time~~  
 911 ~~request submission of such site specific information as it may~~  
 912 ~~require, unless a waiver or variance from such department~~  
 913 ~~request is granted pursuant to paragraph (k).~~

914 ~~3. All records of costs actually incurred for cleanup shall~~  
 915 ~~be certified by affidavit to the department as being true and~~  
 916 ~~correct.~~

917 ~~(f) Application for reimbursement. Any eligible person who~~  
 918 ~~performs a site rehabilitation program or performs site~~  
 919 ~~rehabilitation program tasks such as preparation of site~~  
 920 ~~rehabilitation plans or assessments; product recovery; cleanup~~  
 921 ~~of groundwater or inland surface water; soil treatment or~~  
 922 ~~removal; or any other tasks identified by department rule~~  
 923 ~~developed pursuant to subsection (5), may apply for~~  
 924 ~~reimbursement. Such applications for reimbursement must be~~  
 925 ~~submitted to the department on forms provided by the department,~~  
 926 ~~together with evidence documenting that site rehabilitation~~  
 927 ~~program tasks were conducted or completed in accordance with~~  
 928 ~~department rule developed pursuant to subsection (5), and other~~



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929 such records or information as the department requires. The  
 930 reimbursement application and supporting documentation shall be  
 931 examined by a certified public accountant in accordance with  
 932 standards established by the American Institute of Certified  
 933 Public Accountants. A copy of the accountant's report shall be  
 934 submitted with the reimbursement application. Applications for  
 935 reimbursement shall not be approved for site rehabilitation  
 936 program tasks which have not been completed, except for the task  
 937 of remedial action and except for uncompleted program tasks  
 938 pursuant to chapter 95-2, Laws of Florida, and this subsection.  
 939 Applications for remedial action may be submitted semiannually  
 940 at the discretion of the person responsible for cleanup. After  
 941 an applicant has filed an application with the department and  
 942 before payment is made, the applicant may assign the right to  
 943 payment to any other person, without recourse of the assignee or  
 944 assignor to the state, without affecting the order in which  
 945 payment is made. Information necessary to process the  
 946 application shall be requested from and provided by the  
 947 assigning applicant. Proper notice of the assignment and  
 948 assignment information shall be made to the department which  
 949 notice shall be signed and notarized by the assigning applicant.

950 ~~(g) Review.~~

951 ~~1. Provided there are sufficient unencumbered funds~~  
 952 ~~available in the Inland Protection Trust Fund, or to the extent~~  
 953 ~~proceeds of debt obligations are available for the payment of~~  
 954 ~~existing reimbursement obligations pursuant to s. 376.3075, the~~  
 955 ~~department shall have 60 days to determine if the applicant has~~  
 956 ~~provided sufficient information for processing the application~~  
 957 ~~and shall request submission of any additional information that~~

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958 the department may require within such 60-day period. If the  
 959 applicant believes any request for additional information is not  
 960 authorized, the applicant may request a hearing pursuant to ss.  
 961 120.569 and 120.57. Once the department requests additional  
 962 information, the department may request only that information  
 963 needed to clarify such additional information or to answer new  
 964 questions raised by or directly related to such additional  
 965 information.

966 ~~2. The department shall deny or approve the application for~~  
 967 ~~reimbursement within 90 days after receipt of the last item of~~  
 968 ~~timely requested additional material, or, if no additional~~  
 969 ~~material is requested, within 90 days of the close of the 60-day~~  
 970 ~~period described in subparagraph 1., unless the total review~~  
 971 ~~period is otherwise extended by written mutual agreement of the~~  
 972 ~~applicant and the department.~~

973 ~~3. Final disposition of an application shall be provided to~~  
 974 ~~the applicant in writing, accompanied by a written explanation~~  
 975 ~~setting forth in detail the reason or reasons for the approval~~  
 976 ~~or denial. If the department fails to make a determination on an~~  
 977 ~~application within the time provided in subparagraph 2., or~~  
 978 ~~denies an application, or if a dispute otherwise arises with~~  
 979 ~~regard to reimbursement, the applicant may request a hearing~~  
 980 ~~pursuant to ss. 120.569 and 120.57.~~

981 ~~(h) Reimbursement.~~ Upon approval of an application for  
 982 reimbursement, reimbursement for reasonable expenditures of a  
 983 site rehabilitation program or site rehabilitation program tasks  
 984 documented therein shall be made in the order in which the  
 985 department receives completed applications. Effective January 1,  
 986 1997, all unpaid reimbursement applications are subject to

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987 payment on the following terms: The department shall develop a  
 988 schedule of the anticipated dates of reimbursement of  
 989 applications submitted to the department pursuant to this  
 990 subsection. The schedule shall specify the projected date of  
 991 payment based on equal monthly payments and projected annual  
 992 revenue of \$100 million. Based on the schedule, the department  
 993 shall notify all reimbursement applicants of the projected date  
 994 of payment of their applications. The department shall direct  
 995 the Inland Protection Financing Corporation to pay applicants  
 996 the present value of their applications as soon as practicable  
 997 after approval by the department, subject to the availability of  
 998 funds within the Inland Protection Financing Corporation. The  
 999 present value of an application shall be based on the date on  
 1000 which the department anticipates the Inland Protection Financing  
 1001 Corporation will settle the reimbursement application and the  
 1002 schedule's projected date of payment and shall use 3.5 percent  
 1003 as the annual discount rate. The determination of the amount of  
 1004 the claim and the projected date of payment shall be subject to  
 1005 s. 120.57.

1006 ~~(i) Liberal construction.~~ With respect to site  
 1007 rehabilitation initiated prior to July 1, 1986, the provisions  
 1008 of this subsection shall be given such liberal construction by  
 1009 the department as will accomplish the purposes set forth in this  
 1010 subsection. With regard to the keeping of particular records or  
 1011 the giving of certain notice, the department may accept as  
 1012 compliance action by a person which meets the intent of the  
 1013 requirements set forth in this subsection.

1014 ~~(j) Reimbursement review contracts.~~ The department may  
 1015 contract with entities capable of processing or assisting in the

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1016 review of reimbursement applications. Any purchase of such  
 1017 services shall not be subject to chapter 287.  
 1018 ~~(k) Audits.~~  
 1019 1. The department is authorized to perform financial and  
 1020 technical audits in order to certify site restoration costs and  
 1021 ensure compliance with this chapter. The department shall seek  
 1022 recovery of any overpayments based on the findings of these  
 1023 audits. The department must commence any audit within 5 years  
 1024 after the date of reimbursement, except in cases where the  
 1025 department alleges specific facts indicating fraud.  
 1026 2. Upon determination by the department that any portion of  
 1027 costs which have been reimbursed are disallowed, the department  
 1028 shall give written notice to the applicant setting forth with  
 1029 specificity the allegations of fact which justify the  
 1030 department's proposed action and ordering repayment of  
 1031 disallowed costs within 60 days of notification of the  
 1032 applicant.  
 1033 3. In the event the applicant does not make payment to the  
 1034 department within 60 days of receipt of such notice, the  
 1035 department shall seek recovery in a court of competent  
 1036 jurisdiction to recover reimbursement overpayments made to the  
 1037 person responsible for conducting site rehabilitation, unless  
 1038 the department finds the amount involved too small or the  
 1039 likelihood of recovery too uncertain.  
 1040 4. In addition to the amount of any overpayment, the  
 1041 applicant shall be liable to the department for interest of 1  
 1042 percent per month or the prime rate, whichever is less, on the  
 1043 amount of overpayment, from the date of overpayment by the  
 1044 department until the applicant satisfies the department's

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1045 ~~request for repayment pursuant to this paragraph. The~~  
 1046 ~~calculation of interest shall be tolled during the pendency of~~  
 1047 ~~any litigation.~~

1048 ~~5. Financial and technical audits frequently are conducted~~  
 1049 ~~under this section many years after the site rehabilitation~~  
 1050 ~~activities were performed and the costs examined in the course~~  
 1051 ~~of the audit were incurred by the person responsible for site~~  
 1052 ~~rehabilitation. During the intervening span of years, the~~  
 1053 ~~department's rule requirements and its related guidance and~~  
 1054 ~~other nonrule policy directives may have changed significantly.~~  
 1055 ~~The Legislature finds that it may be appropriate for the~~  
 1056 ~~department to provide relief to persons subject to such~~  
 1057 ~~requirements in financial and technical audits conducted~~  
 1058 ~~pursuant to this section.~~

1059 ~~a. The department is authorized to grant variances and~~  
 1060 ~~waivers from the documentation requirements of subparagraph~~  
 1061 ~~(e)2. and from the requirements of rules applicable in technical~~  
 1062 ~~and financial audits conducted under this section. Variances and~~  
 1063 ~~waivers shall be granted when the person responsible for site~~  
 1064 ~~rehabilitation demonstrates to the department that application~~  
 1065 ~~of a financial or technical auditing requirement would create a~~  
 1066 ~~substantial hardship or would violate principles of fairness.~~  
 1067 ~~For purposes of this subsection, "substantial hardship" means a~~  
 1068 ~~demonstrated economic, technological, legal, or other type of~~  
 1069 ~~hardship to the person requesting the variance or waiver. For~~  
 1070 ~~purposes of this subsection, "principles of fairness" are~~  
 1071 ~~violated when the application of a requirement affects a~~  
 1072 ~~particular person in a manner significantly different from the~~  
 1073 ~~way it affects other similarly situated persons who are affected~~

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1074 ~~by the requirement or when the requirement is being applied~~  
 1075 ~~retroactively without due notice to the affected parties.~~

1076 ~~b. A person whose reimbursed costs are subject to a~~  
 1077 ~~financial and technical audit under this section may file a~~  
 1078 ~~written request to the department for grant of a variance or~~  
 1079 ~~waiver. The request shall specify:~~

1080 ~~(I) The requirement from which a variance or waiver is~~  
 1081 ~~requested.~~

1082 ~~(II) The type of action requested.~~

1083 ~~(III) The specific facts which would justify a waiver or~~  
 1084 ~~variance.~~

1085 ~~(IV) The reason or reasons why the requested variance or~~  
 1086 ~~waiver would serve the purposes of this section.~~

1087 ~~e. Within 90 days after receipt of a written request for~~  
 1088 ~~variance or waiver under this subsection, the department shall~~  
 1089 ~~grant or deny the request. If the request is not granted or~~  
 1090 ~~denied within 90 days of receipt, the request shall be deemed~~  
 1091 ~~approved. An order granting or denying the request shall be in~~  
 1092 ~~writing and shall contain a statement of the relevant facts and~~  
 1093 ~~reasons supporting the department's action. The department's~~  
 1094 ~~decision to grant or deny the petition shall be supported by~~  
 1095 ~~competent substantial evidence and is subject to ss. 120.569 and~~  
 1096 ~~120.57. Once adopted, model rules promulgated by the~~  
 1097 ~~Administration Commission under s. 120.542 shall govern the~~  
 1098 ~~processing of requests under this provision.~~

1099 ~~6. The Chief Financial Officer may audit the records of~~  
 1100 ~~persons who receive or who have received payments pursuant to~~  
 1101 ~~this chapter in order to verify site restoration costs, ensure~~  
 1102 ~~compliance with this chapter, and verify the accuracy and~~

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1103 ~~completeness of audits performed by the department pursuant to~~  
 1104 ~~this paragraph. The Chief Financial Officer may contract with~~  
 1105 ~~entities or persons to perform audits pursuant to this~~  
 1106 ~~subparagraph. The Chief Financial Officer shall commence any~~  
 1107 ~~audit within 1 year after the department's completion of an~~  
 1108 ~~audit conducted pursuant to this paragraph, except in cases~~  
 1109 ~~where the department or the Chief Financial Officer alleges~~  
 1110 ~~specific facts indicating fraud.~~

1111 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage  
 1112 detection, reporting, and cleanup of contamination caused by  
 1113 discharges of petroleum or petroleum products, the department  
 1114 shall, within the guidelines established in this subsection,  
 1115 implement a cost-sharing cleanup program to provide  
 1116 rehabilitation funding assistance for all property contaminated  
 1117 by discharges of petroleum or petroleum products occurring  
 1118 before January 1, 1995, subject to a copayment provided for in a  
 1119 Petroleum Cleanup Participation Program ~~preapproved~~ site  
 1120 rehabilitation agreement. Eligibility ~~is shall be~~ subject to an  
 1121 annual appropriation from the ~~Inland Protection Trust~~ fund.  
 1122 Additionally, funding for eligible sites ~~is shall be~~ contingent  
 1123 upon annual appropriation in subsequent years. Such continued  
 1124 state funding ~~is shall not be deemed~~ an entitlement or a vested  
 1125 right under this subsection. Eligibility shall be determined in  
 1126 the program, ~~shall be~~ notwithstanding any other provision of  
 1127 law, consent order, order, judgment, or ordinance to the  
 1128 contrary.

1129 (a)1. The department shall accept any discharge reporting  
 1130 form received before ~~prior to~~ January 1, 1995, as an application  
 1131 for this program, and the facility owner or operator need not

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1132 reapply.

1133 2. Owners or operators of property contaminated by  
 1134 petroleum or petroleum products from a petroleum storage system  
 1135 may apply for such program by filing a written report of the  
 1136 contamination incident, including evidence that such incident  
 1137 occurred before ~~prior to~~ January 1, 1995, with the department.  
 1138 Incidents of petroleum contamination discovered after December  
 1139 31, 1994, at sites which have not stored petroleum or petroleum  
 1140 products for consumption, use, or sale after such date shall be  
 1141 presumed to have occurred before ~~prior to~~ January 1, 1995. An  
 1142 operator's filed report shall be ~~deemed~~ an application of the  
 1143 owner for all purposes. Sites reported to the department after  
 1144 December 31, 1998, are ~~shall not be~~ eligible for the this  
 1145 program.

1146 (b) Subject to annual appropriation from the ~~Inland~~  
 1147 ~~Protection Trust~~ fund, sites meeting the criteria of this  
 1148 subsection are eligible for up to \$400,000 of site  
 1149 rehabilitation funding assistance in priority order pursuant to  
 1150 subsections ~~subsection~~ (5) and (6) ~~s. 376.30711~~. Sites meeting  
 1151 the criteria of this subsection for which a site rehabilitation  
 1152 completion order was issued before ~~prior to~~ June 1, 2008, do not  
 1153 qualify for the 2008 increase in site rehabilitation funding  
 1154 assistance and are bound by the pre-June 1, 2008, limits. Sites  
 1155 meeting the criteria of this subsection for which a site  
 1156 rehabilitation completion order was not issued before ~~prior to~~  
 1157 June 1, 2008, regardless of whether ~~or not~~ they have previously  
 1158 transitioned to nonstate-funded cleanup status, may continue  
 1159 state-funded cleanup pursuant to this section ~~s. 376.30711~~ until  
 1160 a site rehabilitation completion order is issued or the

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1161 increased site rehabilitation funding assistance limit is  
 1162 reached, whichever occurs first. ~~The department may not pay At~~  
 1163 ~~no time shall~~ expenses incurred ~~beyond outside~~ the scope of an  
 1164 ~~approved contract preapproved site rehabilitation program under~~  
 1165 ~~s. 376.30711 be reimbursable.~~

1166 (c) Upon notification by the department that rehabilitation  
 1167 funding assistance is available for the site pursuant to  
 1168 ~~subsections subsection~~ (5) and ~~(6) s. 376.30711~~, the owner,  
 1169 operator, or person otherwise responsible for site  
 1170 rehabilitation shall provide the department with a limited  
 1171 contamination assessment report and shall enter into a Petroleum  
 1172 Cleanup Participation Program ~~preapproved~~ site rehabilitation  
 1173 agreement with the department ~~and a contractor qualified under~~  
 1174 ~~s. 376.30711(2)(b)~~. The agreement must ~~shall~~ provide for a 25-  
 1175 percent copayment by the owner, operator, or person otherwise  
 1176 responsible for conducting site rehabilitation. The owner,  
 1177 operator, or person otherwise responsible for conducting site  
 1178 rehabilitation shall adequately demonstrate the ability to meet  
 1179 the copayment obligation. The limited contamination assessment  
 1180 report and the copayment costs may be reduced or eliminated if  
 1181 the owner and all operators responsible for restoration under s.  
 1182 376.308 demonstrate that they cannot ~~are~~ financially ~~unable to~~  
 1183 comply with the copayment and limited contamination assessment  
 1184 report requirements. The department shall take into  
 1185 consideration the owner's and operator's net worth in making the  
 1186 determination of financial ability. In the event the department  
 1187 and the owner, operator, or person otherwise responsible for  
 1188 site rehabilitation cannot ~~are unable to~~ complete negotiation of  
 1189 the cost-sharing agreement within 120 days after beginning

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1190 ~~commencing~~ negotiations, the department shall terminate  
 1191 negotiations, and the site shall be ~~deemed~~ ineligible for state  
 1192 funding under this subsection and all liability protections  
 1193 provided for in this subsection shall be revoked.

1194 (d) A ~~No~~ report of a discharge made to the department by a  
 1195 ~~any person pursuant to in accordance with~~ this subsection, or  
 1196 any rules adopted pursuant to this subsection may not hereto,  
 1197 ~~shall~~ be used directly as evidence of liability for such  
 1198 discharge in any civil or criminal trial arising out of the  
 1199 discharge.

1200 (e) ~~Nothing in~~ This subsection does not shall be construed  
 1201 ~~to~~ preclude the department from pursuing penalties under in  
 1202 ~~accordance with~~ s. 403.141 for violations of any law or any  
 1203 rule, order, permit, registration, or certification adopted or  
 1204 issued by the department pursuant to its lawful authority.

1205 (f) Upon the filing of a discharge reporting form under  
 1206 paragraph (a), ~~neither~~ the department or nor any local  
 1207 government may not shall pursue any judicial or enforcement  
 1208 action to compel rehabilitation of the discharge. This paragraph  
 1209 does shall not prevent any such action with respect to  
 1210 discharges determined ineligible under this subsection or to  
 1211 sites for which rehabilitation funding assistance is available  
 1212 pursuant to subsections in accordance with subsection (5) and  
 1213 (6) s. 376.30711.

1214 (g) The following are shall be excluded from participation  
 1215 in the program:

- 1216 1. Sites at which the department has been denied reasonable
- 1217 site access to implement ~~the provisions of~~ this section.
- 1218 2. Sites that were active facilities when owned or operated

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1219 by the Federal Government.

1220 3. Sites that are identified by the United States

1221 Environmental Protection Agency to be on, or which qualify for

1222 listing on, the National Priorities List under Superfund. This

1223 exception does not apply to those sites for which eligibility

1224 has been requested or granted as of the effective date of this

1225 act under the Early Detection Incentive Program established

1226 pursuant to s. 15, chapter 86-159, Laws of Florida.

1227 4. Sites for which ~~The~~ contamination is covered under the

1228 Early Detection Incentive Program, the Abandoned Tank

1229 Restoration Program, or the Petroleum Liability and Restoration

1230 Insurance Program, in which case site rehabilitation funding

1231 assistance shall continue under the respective program.

1232 (14) LEGISLATIVE APPROVAL AND AUTHORIZATION.—~~Before~~ Prior

1233 ~~to~~ the department enters ~~entering~~ into a service contract with

1234 the Inland Protection Financing Corporation which includes

1235 payments by the department to support any existing or planned

1236 note, bond, certificate of indebtedness, or other obligation or

1237 evidence of indebtedness of the corporation pursuant to s.

1238 376.3075, the Legislature, by law, must specifically authorize

1239 the department to enter into such a contract. The corporation

1240 may issue bonds in an amount not to exceed \$104 million, with a

1241 term up to 15 years, and annual payments not in excess of \$10.4

1242 million. The department may enter into a service contract in

1243 conjunction with the issuance of such bonds which provides for

1244 annual payments for debt service payments or other amounts

1245 payable with respect to bonds, plus any administrative expenses

1246 of the corporation to finance the rehabilitation of petroleum

1247 contamination sites pursuant to ss. 376.30-376.317.

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1248 Section 2. Section 376.30711, Florida Statutes, is

1249 repealed.

1250 Section 3. Subsections (4) and (30) of section 376.301,

1251 Florida Statutes, are amended to read:

1252 376.301 Definitions of terms used in ss. 376.30-376.317,

1253 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and

1254 376.75, unless the context clearly requires otherwise, the term:

1255 ~~(4) "Backlog" means reimbursement obligations incurred~~

1256 ~~pursuant to s. 376.3071(12), prior to March 29, 1995, or~~

1257 ~~authorized for reimbursement under the provisions of s.~~

1258 ~~376.3071(12), pursuant to chapter 95-2, Laws of Florida. Claims~~

1259 ~~within the backlog are subject to adjustment, where appropriate.~~

1260 ~~(30) "Person responsible for conducting site~~

1261 ~~rehabilitation" means the site owner, operator, or the person~~

1262 ~~designated by the site owner or operator on the reimbursement~~

1263 ~~application. Mortgage holders and trust holders may be eligible~~

1264 ~~to participate in the reimbursement program pursuant to s.~~

1265 ~~376.3071(12).~~

1266 Section 4. Subsection (5) of section 376.302, Florida

1267 Statutes, is amended to read:

1268 376.302 Prohibited acts; penalties.—

1269 (5) Any person who commits fraud in representing his or her

1270 ~~their~~ qualifications as a contractor ~~for reimbursement~~ or in

1271 submitting a payment invoice ~~reimbursement request~~ pursuant to

1272 s. 376.3071 ~~s. 376.3071(12)~~ commits a felony of the third

1273 degree, punishable as provided in s. 775.082, s. 775.083, or s.

1274 775.084.

1275 Section 5. Subsection (6) of section 376.305, Florida

1276 Statutes, is amended to read:

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1277 376.305 Removal of prohibited discharges.-

1278 (6) The Legislature created the Abandoned Tank Restoration  
1279 Program in response to the need to provide financial assistance  
1280 for cleanup of sites that have abandoned petroleum storage  
1281 systems. For purposes of this subsection, the term "abandoned  
1282 petroleum storage system" means a ~~shall mean any~~ petroleum  
1283 storage system that has not stored petroleum products for  
1284 consumption, use, or sale since March 1, 1990. The department  
1285 shall establish the Abandoned Tank Restoration Program to  
1286 facilitate the restoration of sites contaminated by abandoned  
1287 petroleum storage systems.

1288 (a) To be included in the program:

1289 1. An application must be submitted to the department by  
1290 June 30, 1996, certifying that the system has not stored  
1291 petroleum products for consumption, use, or sale at the facility  
1292 since March 1, 1990.

1293 2. The owner or operator of the petroleum storage system  
1294 when it was in service must have ceased conducting business  
1295 involving consumption, use, or sale of petroleum products at  
1296 that facility on or before March 1, 1990.

1297 3. The site is not otherwise eligible for the cleanup  
1298 programs pursuant to s. 376.3071 or s. 376.3072.

1299 (b) In order to be eligible for the program, petroleum  
1300 storage systems from which a discharge occurred must be closed  
1301 pursuant to in accordance with department rules before ~~prior to~~  
1302 an eligibility determination. However, if the department  
1303 determines that the owner of the facility cannot ~~is~~ financially  
1304 ~~unable to~~ comply with the department's petroleum storage system  
1305 closure requirements and all other eligibility requirements are

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1306 met, the petroleum storage system closure requirements shall be  
1307 waived. The department shall take into consideration the owner's  
1308 net worth and the economic impact on the owner in making the  
1309 determination of the owner's financial ability. The June 30,  
1310 1996, application deadline shall be waived for owners who cannot  
1311 ~~are~~ financially ~~unable to~~ comply.

1312 (c) Sites accepted in the program are ~~will be~~ eligible for  
1313 site rehabilitation funding as provided in s. 376.3071 ~~or~~  
1314 ~~376.3071(12) or s. 376.30711, as appropriate.~~

1315 (d) The following sites are excluded from eligibility:

- 1316 1. Sites on property of the Federal Government;  
1317 2. Sites contaminated by pollutants that are not petroleum  
1318 products;  
1319 3. Sites where the department has been denied site access;  
1320 or  
1321 4. Sites which are owned by a ~~any~~ person who had knowledge  
1322 of the polluting condition when title was acquired unless the  
1323 ~~that~~ person acquired title to the site after issuance of a  
1324 notice of site eligibility by the department.

1325 (e) Participating sites are subject to a deductible as  
1326 determined by rule, not to exceed \$10,000.

1327 ~~The provisions of~~ This subsection does ~~de~~ not relieve a ~~any~~  
1328 person who has acquired title after ~~subsequent to~~ July 1, 1992,  
1329 from the duty to establish by a preponderance of the evidence  
1330 that he or she undertook, at the time of acquisition, all  
1331 appropriate inquiry into the previous ownership and use of the  
1332 property consistent with good commercial or customary practice  
1333 in an effort to minimize liability, as required by s.  
1334

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1335 376.308(1)(c).

1336 Section 6. Section 376.30713, Florida Statutes, is amended

1337 to read:

1338 376.30713 ~~Preapproved~~ Advanced cleanup.—

1339 (1) In addition to the legislative findings provided in s.

1340 376.3071 ~~s. 376.30711~~, the Legislature finds and declares:

1341 (a) That the inability to conduct site rehabilitation in

1342 advance of a site's priority ranking pursuant to s.

1343 376.3071(5)(a) may substantially impede or prohibit property

1344 transactions or the proper completion of public works projects.

1345 (b) While the first priority of the state is to provide for

1346 protection of ~~the water resources of the state, human health,~~

1347 ~~and the environment, and the public health, safety, and welfare,~~

1348 the viability of commerce is of equal importance to the state.

1349 (c) It is in the public interest and of substantial

1350 economic benefit to the state to provide an opportunity for site

1351 rehabilitation to be conducted on a limited basis at

1352 contaminated sites, in advance of the site's priority ranking,

1353 to facilitate property transactions or public works projects.

1354 (d) It is appropriate for a person who is persons

1355 responsible for site rehabilitation to share the costs

1356 associated with managing and conducting ~~preapproved~~ advanced

1357 cleanup, to facilitate the opportunity for ~~preapproved~~ advanced

1358 cleanup, and to mitigate the additional costs that will be

1359 incurred by the state in conducting site rehabilitation in

1360 advance of the site's priority ranking. Such cost sharing will

1361 result in more contaminated sites being cleaned up and greater

1362 environmental benefits to the state. ~~The provisions of This~~

1363 section ~~is shall only be~~ available only for sites eligible for

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1364 restoration funding under EDI, ATRP, or PLRIP PLIRP. This

1365 section is available for discharges eligible for restoration

1366 funding under the petroleum cleanup participation program for

1367 the state's cost share of site rehabilitation. Applications must

1368 ~~shall~~ include a cost-sharing commitment for this section in

1369 addition to the 25-percent-copayment requirement of the

1370 petroleum cleanup participation program. This section is not

1371 available for any discharge under a petroleum cleanup

1372 participation program where the 25-percent-copayment requirement

1373 of the petroleum cleanup participation program has been reduced

1374 or eliminated pursuant to s. 376.3071(13)(c).

1375 (2) The department may ~~is authorized~~ to approve an

1376 application for ~~preapproved~~ advanced cleanup at eligible sites,

1377 before ~~prior to~~ funding based on the site's priority ranking

1378 established pursuant to s. 376.3071(5)(a), pursuant to ~~in~~

1379 ~~accordance with the provisions of~~ this section. Only the

1380 facility owner or operator or the person otherwise responsible

1381 for site rehabilitation qualifies ~~Persons who qualify~~ as an

1382 applicant under ~~the provisions of~~ this section ~~shall only~~

1383 ~~include the facility owner or operator or the person otherwise~~

1384 ~~responsible for site rehabilitation.~~

1385 (a) ~~Preapproved~~ Advanced cleanup applications may be

1386 submitted between May 1 and June 30 and between November 1 and

1387 December 31 of each fiscal year. Applications submitted between

1388 May 1 and June 30 shall be for the fiscal year beginning July 1.

1389 An application must ~~shall~~ consist of:

1390 1. A commitment to pay ~~no less than~~ 25 percent or more of

1391 the total cleanup cost deemed recoverable under ~~the provisions~~

1392 ~~of~~ this section along with proof of the ability to pay the cost



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1393 share.

1394 2. A nonrefundable review fee of \$250 to cover the  
1395 administrative costs associated with the department's review of  
1396 the application.

1397 3. A limited contamination assessment report.

1398 4. A proposed course of action.

1399

1400 The limited contamination assessment report ~~must shall~~ be  
1401 sufficient to support the proposed course of action and to  
1402 estimate the cost of the proposed course of action. ~~Any~~ Costs  
1403 incurred related to conducting the limited contamination  
1404 assessment report are not refundable from the Inland Protection  
1405 Trust Fund. Site eligibility under this subsection, or any other  
1406 provision of this section ~~is, shall~~ not constitute an  
1407 entitlement to ~~preapproved~~ advanced cleanup or continued  
1408 restoration funding. The applicant shall certify to the  
1409 department that the applicant has the prerequisite authority to  
1410 enter into ~~an a preapproved~~ advanced cleanup contract with the  
1411 department. ~~The This~~ certification ~~must shall~~ be submitted with  
1412 the application.

1413 (b) The department shall rank the applications based on the  
1414 percentage of cost-sharing commitment proposed by the applicant,  
1415 with the highest ranking given to the applicant ~~who that~~  
1416 proposes the highest percentage of cost sharing. If the  
1417 department receives applications that propose identical cost-  
1418 sharing commitments and ~~that which~~ exceed the funds available to  
1419 commit to all such proposals during the ~~preapproved~~ advanced  
1420 cleanup application period, the department shall proceed to  
1421 rerank those applicants. Those applicants submitting identical

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1422 cost-sharing proposals ~~that which~~ exceed funding availability  
1423 ~~must shall~~ be so notified by the department and ~~shall be~~ offered  
1424 the opportunity to raise their individual cost-share  
1425 commitments, in a period ~~of time~~ specified in the notice. At the  
1426 close of the period, the department shall proceed to rerank the  
1427 applications ~~pursuant to in accordance with~~ this paragraph.

1428 (3) (a) Based on the ranking established under paragraph  
1429 (2) (b) ~~and the funding limitations provided in subsection (4),~~  
1430 the department shall begin ~~commence~~ negotiation with such  
1431 applicants. If the department and the applicant agree on the  
1432 course of action, the department may enter into a contract with  
1433 the applicant. The department ~~may is authorized to~~ negotiate the  
1434 terms and conditions of the contract.

1435 (b) ~~Preapproved~~ Advanced cleanup ~~must shall~~ be conducted  
1436 pursuant to s. 376.3071(5) (b) and (6) and rules adopted under  
1437 ~~ss. 287.0595 and 376.3071 under the provisions of ss.~~  
1438 ~~376.3071(5) (b) and 376.30711.~~ If the terms of the ~~preapproved~~  
1439 advanced cleanup contract are not fulfilled, the applicant  
1440 forfeits any right to future payment for any site rehabilitation  
1441 work conducted under the contract.

1442 (c) The department's decision not to enter into ~~an a~~  
1443 ~~preapproved~~ advanced cleanup contract with the applicant is  
1444 ~~shall not be~~ subject to ~~the provisions of~~ chapter 120. If the  
1445 department ~~cannot is not able to~~ complete negotiation of the  
1446 course of action and the terms of the contract within 60 days  
1447 after beginning ~~commencing~~ negotiations, the department shall  
1448 terminate negotiations with that applicant.

1449 (4) The department ~~may is authorized to~~ enter into  
1450 contracts for a total of up to \$15 million of ~~preapproved~~

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1451 advanced cleanup work in each fiscal year. However, a facility  
 1452 may not be ~~approved~~ preapproved for more than \$5 million of  
 1453 cleanup activity in each fiscal year. For the purposes of this  
 1454 section, the term "facility" ~~includes~~ shall include, but is not  
 1455 ~~be~~ limited to, multiple site facilities such as airports, port  
 1456 facilities, and terminal facilities even though such enterprises  
 1457 may be treated as separate facilities for other purposes under  
 1458 this chapter.

1459 (5) All funds collected by the department pursuant to this  
 1460 section shall be deposited into the Inland Protection Trust Fund  
 1461 to be used as provided in this section.

1462 Section 7. Paragraph (a) of subsection (1) and subsections  
 1463 (3), (4), and (9) of section 376.30714, Florida Statutes, are  
 1464 amended to read:

1465 376.30714 Site rehabilitation agreements.—

1466 (1) In addition to the legislative findings provided in s.  
 1467 376.3071, the Legislature finds and declares:

1468 (a) The provisions of s. 376.3071(5) (a) ~~ss. 376.3071(5) (a)~~  
 1469 ~~and 376.30711~~ have delayed cleanup of low-priority sites  
 1470 determined to be eligible for state funding under that section  
 1471 and ~~ss. 376.305, 376.3071,~~ and 376.3072.

1472 (3) Free product attributable to a new discharge shall be  
 1473 removed to the extent practicable and pursuant to in accordance  
 1474 ~~with~~ department rules adopted pursuant to s. 376.3071(5) at the  
 1475 expense of the owner, operator, or other responsible party. Free  
 1476 product attributable to existing contamination shall be removed  
 1477 pursuant to in accordance with s. 376.3071(5) and (6), or s.  
 1478 ~~376.30711(1) (b),~~ and department rules adopted pursuant thereto.

1479 (4) Beginning January 1, 1999, the department may is

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1480 ~~authorized to~~ negotiate and enter into site rehabilitation  
 1481 agreements with applicants at sites with eligible existing  
 1482 contamination at which a new discharge occurs. The site  
 1483 rehabilitation agreement ~~must~~ shall include, but is not ~~be~~  
 1484 limited to, allocation of the funding responsibilities of the  
 1485 department and the applicant for cleanup of the qualified site,  
 1486 establishment of a mechanism to guarantee the applicant's  
 1487 commitment to pay its agreed amount of site rehabilitation as  
 1488 set forth in the agreement, and establishment of the priority in  
 1489 which cleanup of the qualified site will occur. Under ~~any~~ such a  
 1490 negotiated site rehabilitation agreement, the applicant may not  
 1491 ~~shall~~ be responsible for ~~no~~ more than the cleanup costs that are  
 1492 attributable to the new discharge. However, the payment of ~~any~~  
 1493 applicable deductibles, copayments, or other program eligibility  
 1494 requirements under ss. 376.305, 376.3071, and 376.3072 shall  
 1495 continue to apply to the existing contamination and must be  
 1496 accounted for in the negotiated site rehabilitation agreement.  
 1497 The department ~~may is~~ is further authorized, pursuant to this  
 1498 section, ~~to preapprove or~~ conduct additional assessment  
 1499 activities at the site.

1500 (9) Site rehabilitation conducted at qualified sites shall  
 1501 be conducted pursuant to s. 376.3071(5) (b) and (6) ~~under the~~  
 1502 ~~provisions of ss. 376.3071(5) (b) and 376.30711~~. If the terms of  
 1503 the agreement are not fulfilled by the applicant, the applicant  
 1504 forfeits the any right to continued funding for ~~any~~ site  
 1505 rehabilitation work under the agreement and is ~~shall be~~ subject  
 1506 to enforcement action by the department or local government to  
 1507 compel cleanup of the new discharge.

1508 Section 8. Subsection (2) of section 376.3072, Florida

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1509 Statutes, is amended to read:

1510 376.3072 Florida Petroleum Liability and Restoration  
1511 Insurance Program.—

1512 (2) (a) ~~An Any~~ owner or operator of a petroleum storage  
1513 system may become an insured in the restoration insurance  
1514 program at a facility if provided:

1515 1. A site at which an incident has occurred ~~is shall be~~  
1516 eligible for restoration if the insured is a participant in the  
1517 third-party liability insurance program or otherwise meets  
1518 applicable financial responsibility requirements. After July 1,  
1519 1993, the insured must also provide the required excess  
1520 insurance coverage or self-insurance for restoration to achieve  
1521 the financial responsibility requirements of 40 C.F.R. s.  
1522 280.97, subpart H, not covered by paragraph (d).

1523 2. A site ~~that which~~ had a discharge reported ~~before prior~~  
1524 ~~to~~ January 1, 1989, for which notice was given pursuant to s.  
1525 376.3071(10) s. 376.3071(9) or (12), and that which is  
1526 ineligible for the third-party liability insurance program  
1527 solely due to that discharge ~~is shall be~~ eligible for  
1528 participation in the restoration program for ~~an any~~ incident  
1529 occurring on or after January 1, 1989, pursuant to in accordance  
1530 with subsection (3). Restoration funding for an eligible  
1531 contaminated site will be provided without participation in the  
1532 third-party liability insurance program until the site is  
1533 restored as required by the department or until the department  
1534 determines that the site does not require restoration.

1535 3. Notwithstanding paragraph (b), a site where an  
1536 application is filed with the department ~~before prior to~~ January  
1537 1, 1995, where the owner is a small business under s.

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1538 288.703(6), a state community college with less than 2,500 FTE,  
1539 a religious institution as defined by s. 212.08(7)(m), a  
1540 charitable institution as defined by s. 212.08(7)(p), or a  
1541 county or municipality with a population of less than 50,000, is  
1542 ~~shall be~~ eligible for up to \$400,000 of eligible restoration  
1543 costs, less a deductible of \$10,000 for small businesses,  
1544 eligible community colleges, and religious or charitable  
1545 institutions, and \$30,000 for eligible counties and  
1546 municipalities, if provided that:

1547 a. Except as provided in sub-subparagraph e., the facility  
1548 was in compliance with department rules at the time of the  
1549 discharge.

1550 b. The owner or operator has, upon discovery of a  
1551 discharge, promptly reported the discharge to the department,  
1552 and drained and removed the system from service, if necessary.

1553 c. The owner or operator has not intentionally caused or  
1554 concealed a discharge or disabled leak detection equipment.

1555 d. The owner or operator proceeds to complete initial  
1556 remedial action as specified defined by department rules.

1557 e. The owner or operator, if required and if it has not  
1558 already done so, applies for third-party liability coverage for  
1559 the facility within 30 days after ~~of~~ receipt of an eligibility  
1560 order issued by the department pursuant to this subparagraph  
1561 provision.

1562 However, the department may consider in-kind services from  
1563 eligible counties and municipalities in lieu of the \$30,000  
1564 deductible. The cost of conducting initial remedial action as  
1565 defined by department rules ~~is shall be~~ an eligible restoration  
1566

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1567 cost pursuant to this subparagraph ~~provision~~.

1568 4.a. By January 1, 1997, facilities at sites with existing  
1569 contamination ~~must shall be required to~~ have methods of release  
1570 detection to be eligible for restoration insurance coverage for  
1571 new discharges subject to department rules for secondary  
1572 containment. Annual storage system testing, in conjunction with  
1573 inventory control, shall be considered to be a method of release  
1574 detection until the later of December 22, 1998, or 10 years  
1575 after the date of installation or the last upgrade. Other  
1576 methods of release detection for storage tanks which meet such  
1577 requirement are:

1578 (I) Interstitial monitoring of tank and integral piping  
1579 secondary containment systems;

1580 (II) Automatic tank gauging systems; or

1581 (III) A statistical inventory reconciliation system with a  
1582 tank test every 3 years.

1583 b. For pressurized integral piping systems, the owner or  
1584 operator must use:

1585 (I) An automatic in-line leak detector with flow  
1586 restriction meeting the requirements of department rules used in  
1587 conjunction with an annual tightness or pressure test; or

1588 (II) An automatic in-line leak detector with electronic  
1589 flow shut-off meeting the requirements of department rules.

1590 c. For suction integral piping systems, the owner or  
1591 operator must use:

1592 (I) A single check valve installed directly below the  
1593 suction pump ~~if, provided~~ there are no other valves between the  
1594 dispenser and the tank; or

1595 (II) An annual tightness test or other approved test.

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1596 d. Owners of facilities with existing contamination which  
1597 ~~that~~ install internal release detection systems pursuant to ~~in~~  
1598 ~~accordance with~~ sub-subparagraph a. shall permanently close  
1599 their external groundwater and vapor monitoring wells pursuant  
1600 ~~to in accordance with~~ department rules by December 31, 1998.  
1601 Upon installation of the internal release detection system, such  
1602 ~~these~~ wells must shall be secured and taken out of service until  
1603 permanent closure.

1604 e. Facilities with vapor levels of contamination meeting  
1605 the requirements of or below the concentrations specified in the  
1606 performance standards for release detection methods specified in  
1607 department rules may continue to use vapor monitoring wells for  
1608 release detection.

1609 f. The department may approve other methods of release  
1610 detection for storage tanks and integral piping which have at  
1611 least the same capability to detect a new release as the methods  
1612 specified in this subparagraph.

1613 (b)1. To be eligible to be certified as an insured  
1614 facility, for discharges reported after January 1, 1989, the  
1615 owner or operator must shall file an affidavit upon enrollment  
1616 in the program. The affidavit must shall state that the owner or  
1617 operator has read and is familiar with this chapter and the  
1618 rules relating to petroleum storage systems and petroleum  
1619 contamination site cleanup adopted pursuant to ss. 376.303 and  
1620 376.3071 and that the facility is in compliance with this  
1621 chapter and applicable rules adopted pursuant to s. 376.303.  
1622 Thereafter, the facility's annual inspection report shall serve  
1623 as evidence of the facility's compliance with department rules.  
1624 The facility's certificate as an insured facility may be revoked

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1625 only if the insured fails to correct a violation identified in  
1626 an inspection report before a discharge occurs. The facility's  
1627 certification may be restored when the violation is corrected as  
1628 verified by a reinspection.

1629 2. Except as provided in paragraph (a), to be eligible to  
1630 be certified as an insured facility, the applicant must  
1631 demonstrate to the department that the applicant has financial  
1632 responsibility for third-party claims and excess coverage, as  
1633 required by this section and 40 C.F.R. s. 280.97(h), and that  
1634 the applicant maintains such insurance during the applicant's  
1635 participation as an insured facility.

1636 3. Should a reinspection of the facility be necessary to  
1637 demonstrate compliance, the insured shall pay an inspection fee  
1638 not to exceed \$500 per facility to be deposited in the Inland  
1639 Protection Trust Fund.

1640 4. Upon report of a discharge, the department shall issue  
1641 an order stating that the site is eligible for restoration  
1642 coverage unless the insured has intentionally caused or  
1643 concealed a discharge or disabled leak detection equipment, has  
1644 misrepresented facts in the affidavit filed pursuant to  
1645 subparagraph 1., or cannot demonstrate that he or she has  
1646 obtained and maintained the financial responsibility for third-  
1647 party claims and excess coverage as required in subparagraph 2.

1648 ~~This paragraph does not. Nothing contained herein shall prevent~~  
1649 ~~the department from assessing civil penalties for noncompliance~~  
1650 ~~pursuant to this subsection as provided herein.~~

1652 (c) A lender that has loaned money to a participant in the  
1653 Florida Petroleum Liability and Restoration Insurance Program

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1654 and has held a mortgage lien, security interest, or ~~any~~ lien  
1655 rights on the site primarily to protect the lender's right to  
1656 convert or liquidate the collateral in satisfaction of the debt  
1657 secured, or a financial institution ~~that which~~ serves as a  
1658 trustee for an insured in the program for the purpose of site  
1659 rehabilitation, ~~is shall be~~ eligible for a state-funded cleanup  
1660 of the site, if the lender forecloses the lien or accepts a deed  
1661 in lieu of foreclosure on that property and acquires title, and  
1662 as long as the following has occurred, as applicable:

1663 1. The owner or operator provided the lender with proof  
1664 that the facility is eligible for the restoration insurance  
1665 program at the time of the loan or before the discharge  
1666 occurred.

1667 2. The financial institution or lender ~~completes site~~  
1668 ~~rehabilitation and seeks reimbursement pursuant to s.~~  
1669 ~~376.3071(12) or~~ conducts ~~preapproved~~ site rehabilitation  
1670 pursuant to s. 376.3071 ~~s. 376.30711, as appropriate.~~

1671 3. The financial institution or lender did not engage in  
1672 management activities at the site ~~before~~ prior to foreclosure  
1673 and does not operate the site or otherwise engage in management  
1674 activities after foreclosure, except to comply with  
1675 environmental statutes or rules or to prevent, abate, or  
1676 remediate a discharge.

1677 (d)1. With respect to eligible incidents reported to the  
1678 department ~~before~~ prior to July 1, 1992, the restoration  
1679 insurance program shall provide up to \$1.2 million of  
1680 restoration for each incident and shall have an annual aggregate  
1681 limit of \$2 million of restoration per facility.

1682 2. For any site at which a discharge is reported on or

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1683 after July 1, 1992, and for which restoration coverage is  
 1684 requested, the department shall pay for restoration in  
 1685 accordance with the following schedule:

1686 a. For discharges reported to the department from July 1,  
 1687 1992, to June 30, 1993, the department shall pay up to \$1.2  
 1688 million of eligible restoration costs, less a \$1,000 deductible  
 1689 per incident.

1690 b. For discharges reported to the department from July 1,  
 1691 1993, to December 31, 1993, the department shall pay up to \$1.2  
 1692 million of eligible restoration costs, less a \$5,000 deductible  
 1693 per incident. However, if, before ~~prior to~~ the date the  
 1694 discharge is reported and by September 1, 1993, the owner or  
 1695 operator can demonstrate financial responsibility in effect in  
 1696 accordance with 40 C.F.R. s. 280.97, subpart H, for coverage  
 1697 under sub-subparagraph c., the deductible will be \$500. The \$500  
 1698 deductible shall apply for a period of 1 year from the effective  
 1699 date of a policy or other form of financial responsibility  
 1700 obtained and in effect by September 1, 1993.

1701 c. For discharges reported to the department from January  
 1702 1, 1994, to December 31, 1996, the department shall pay up to  
 1703 \$400,000 of eligible restoration costs, less a deductible of  
 1704 \$10,000.

1705 d. For discharges reported to the department from January  
 1706 1, 1997, to December 31, 1998, the department shall pay up to  
 1707 \$300,000 of eligible restoration costs, less a deductible of  
 1708 \$10,000.

1709 e. Beginning January 1, 1999, ~~no~~ restoration coverage may  
 1710 not shall be provided.

1711 f. In addition, a supplemental deductible shall be added as

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1712 follows:

1713 (I) A supplemental deductible of \$5,000 if the owner or  
 1714 operator fails to report a suspected release within 1 working  
 1715 day after discovery.

1716 (II) A supplemental deductible of \$10,000 if the owner or  
 1717 operator, within 3 days after discovery of an actual new  
 1718 discharge, fails to take steps to test or empty the storage  
 1719 system and complete such activity within 7 days.

1720 (III) A supplemental deductible of \$25,000 if the owner or  
 1721 operator, after testing or emptying the storage system, fails to  
 1722 proceed within 24 hours thereafter to abate the known source of  
 1723 the discharge or to begin free product removal relating to an  
 1724 actual new discharge and fails to complete abatement within 72  
 1725 hours, although free product recovery may be ongoing.

1726 (e) The following are not eligible to participate in the  
 1727 Petroleum Liability and Restoration Insurance Program:

1728 1. Sites owned or operated by the Federal Government during  
 1729 the time the facility was in operation.

1730 2. Sites where the owner or operator has denied the  
 1731 department reasonable site access.

1732 3. Any third-party claims relating to damages caused by  
 1733 discharges discovered before ~~prior to~~ January 1, 1989.

1734 4. Any incidents discovered before ~~prior to~~ January 1,  
 1735 1989, ~~are not eligible to participate in the restoration~~  
 1736 ~~insurance program~~. However, this exclusion does shall not be  
 1737 ~~construed to~~ prevent a new incident at the same location from  
 1738 participation in the restoration insurance program if the owner  
 1739 or operator is otherwise eligible. This exclusion does shall not  
 1740 affect eligibility for participation in the Early Detection

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1741 Incentive EDI Program.

1742

1743 Sites meeting the criteria of this subsection for which a site  
1744 rehabilitation completion order was issued before ~~prior to~~ June  
1745 1, 2008, do not qualify for the 2008 increase in site  
1746 rehabilitation funding assistance and are bound by the pre-June  
1747 1, 2008, limits. Sites meeting the criteria of this subsection  
1748 for which a site rehabilitation completion order was not issued  
1749 before ~~prior to~~ June 1, 2008, regardless of whether ~~or not~~ they  
1750 have previously transitioned to nonstate-funded cleanup status,  
1751 may continue state-funded cleanup pursuant to s. 376.3071(6) ~~s.~~  
1752 ~~376.30711~~ until a site rehabilitation completion order is issued  
1753 or the increased site rehabilitation funding assistance limit is  
1754 reached, whichever occurs first. ~~At no time shall expenses~~  
1755 ~~incurred outside the preapproved site rehabilitation program~~  
1756 ~~under s. 376.30711 be reimbursable.~~

1757 Section 9. Subsections (1) and (4) of section 376.3073,  
1758 Florida Statutes, are amended to read:

1759 376.3073 Local programs and state agency programs for  
1760 control of contamination.—

1761 (1) The department shall, to the greatest extent possible  
1762 and cost-effective, contract with local governments to provide  
1763 for the administration of its departmental responsibilities  
1764 under ss. 376.305, 376.3071(4)(a)-(e), (h), (k), and (m) and (6)  
1765 ~~(l), (n), 376.30711~~, 376.3072, and 376.3077 through locally  
1766 administered programs. The department may also contract with  
1767 state agencies to carry out the restoration activities  
1768 authorized pursuant to ss. 376.305, 376.3071, and 376.3072-  
1769 ~~376.305, and 376.30711~~. However, ~~no~~ such a contract may not

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1770 ~~shall~~ be entered into unless the local government or state  
1771 agency is deemed capable of carrying out such responsibilities  
1772 to the department's satisfaction.

1773 (4) Under no circumstances shall the cleanup criteria  
1774 employed in locally administered programs or state agency  
1775 programs or pursuant to local ordinance be more stringent than  
1776 the criteria established by the department pursuant to s.  
1777 376.3071(5) or (6) ~~s. 376.30711~~.

1778 Section 10. Subsections (4) and (5) of section 376.3075,  
1779 Florida Statutes, are amended to read:

1780 376.3075 Inland Protection Financing Corporation.—

1781 (4) The corporation may enter into one or more service  
1782 contracts with the department to provide services to the  
1783 department in connection with financing the functions and  
1784 activities provided in ss. 376.30-376.317. The department may  
1785 enter into one or more such service contracts with the  
1786 corporation and provide for payments under such contracts  
1787 pursuant to s. 376.3071(4)(n) ~~s. 376.3071(4)(e)~~, subject to  
1788 annual appropriation by the Legislature. The proceeds from such  
1789 service contracts may be used for the corporation's  
1790 administrative costs and expenses after payments as set forth in  
1791 subsection (5). Each service contract may have a term of up to  
1792 20 years. Amounts annually appropriated and applied to make  
1793 payments under such service contracts may not include any funds  
1794 derived from penalties or other payments received from any  
1795 property owner or private party, including payments received  
1796 under s. 376.3071(7)(b) ~~s. 376.3071(6)(b)~~. In compliance with s.  
1797 287.0641 and other applicable provisions of law, the obligations  
1798 of the department under such service contracts do not constitute

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 1799 a general obligation of the state or a pledge of the faith and  
 1800 credit or taxing power of the state, and ~~nor may~~ such  
 1801 obligations are not obligations ~~be construed in any manner as an~~  
 1802 ~~obligation~~ of the State Board of Administration or entities for  
 1803 which it invests funds, other than the department as provided in  
 1804 this section, but are payable solely from amounts available in  
 1805 the Inland Protection Trust Fund, subject to annual  
 1806 appropriation. In compliance with this subsection and s.  
 1807 287.0582, the service contract must expressly include the  
 1808 following statement: "The State of Florida's performance and  
 1809 obligation to pay under this contract is contingent upon an  
 1810 annual appropriation by the Legislature."

1811 (5) The corporation may issue and incur notes, bonds,  
 1812 certificates of indebtedness, or other obligations or evidences  
 1813 of indebtedness payable from and secured by amounts payable to  
 1814 the corporation by the department under a service contract  
 1815 entered into pursuant to subsection (4) for the purpose of  
 1816 financing the rehabilitation of petroleum contamination sites  
 1817 pursuant to ss. 376.30-376.317. The term of any such note, bond,  
 1818 certificate of indebtedness, or other obligation or evidence of  
 1819 indebtedness may not have a financing term that exceeds 15  
 1820 years. The corporation may select its financing team and issue  
 1821 its obligations through competitive bidding or negotiated  
 1822 contracts, whichever is most cost-effective. ~~Any~~ Indebtedness of  
 1823 the corporation does not constitute a debt or obligation of the  
 1824 state or a pledge of the faith and credit or taxing power of the  
 1825 state, ~~but is payable from and secured by payments made by the~~  
 1826 department under the service contract pursuant to s.  
 1827 376.3071(4)(n) ~~s. 376.3071(4)(e)~~.

Page 63 of 64

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

5-00511A-14 20141582\_\_  
 1828 Section 11. This act shall take effect July 1, 2014.

Page 64 of 64

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



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/2/14  
Meeting Date

Topic Petroleum Contamination Sites Bill Number 1582  
(if applicable)  
Name Phil Leary Amendment Barcode ~~740840~~ 740840  
(if applicable)  
Job Title Lobbyist  
Address 1821 Crea St. Phone \_\_\_\_\_  
Street  
City Palatka State FL Zip 32971 E-mail \_\_\_\_\_  
City State Zip  
Speaking:  For  Against  Information  
Representing Florida Ground Water Association  
Amendments  
Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

11/2/14  
Meeting Date

Topic UNDERGROUND STORAGE TANKS Bill Number SB 1582  
Name RANDY MILLERZ Amendment Barcode \_\_\_\_\_ (if applicable)  
Job Title EX VICO PRESIDENT (if applicable)  
Address 227 S. ADAMS ST Phone 222-4082  
Street  
City TALLAHASSEE State FL Zip 32301 E-mail \_\_\_\_\_

Speaking:  For  Against  Information  
Representing FLORIDA RETAIL FEDERATION / FLA POTOMAC MARKETING  
(FPMA)  
Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.  
This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/2/14  
Meeting Date

Topic \_\_\_\_\_ Bill Number 1592  
*(if applicable)*

Name Jeff Littlejohn Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Deputy Secretary - Regulatory Programs

Address 3700 Commonwealth Dr Phone 245-2011  
*Street*

Tallahassee - FL 32397 E-mail \_\_\_\_\_  
*City State Zip*

Speaking:  For  Against  Information

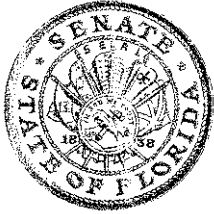
Representing DEP

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Environmental Preservation and Conservation, *Chair*  
Appropriations Subcommittee on Criminal and Civil Justice  
Appropriations Subcommittee on General Government  
Children, Families, and Elder Affairs  
Criminal Justice  
Gaming  
Military Affairs, Space, and Domestic Security

**SENATOR CHARLES S. DEAN, SR.**  
5th District

March 20, 2014

The Honorable Alan Hays  
320 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Hays,

I respectfully request you place Senate Bill 1582, relating to Rehabilitation of Petroleum Contamination Sites, on your Appropriations Subcommittee on General Government agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean  
State Senator District 5

cc: Jamie DeLoach, Staff Director

SENATE APPROPRIATIONS  
RECEIVED  
14 MAR 20 PM 2:30  
ALAN HAYS, CHAIRMAN  
STAFF DIR. \_\_\_\_\_ STAFF \_\_\_\_\_

REPLY TO:

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Regulated Industries, *Vice Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Appropriations Subcommittee on General  
Government  
Children, Families, and Elder Affairs  
Ethics and Elections  
Gaming  
Health Policy

## SENATOR OSCAR BRAYNON II

*Democratic Whip*  
36th District

April 2, 2014

Senator Hays, Chair  
Budget Subcommittee on General Government Appropriations  
324 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1300

Dear Chair Hays:

I respectfully request an excused absence for the General Government Appropriations meeting on, April 02, 2014.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Oscar Braynon II".

A large, stylized handwritten mark or signature in black ink, possibly representing "OK" or similar initials.

Senator Oscar Braynon II,  
District 36

cc. Senator Chris Smith, Minority Leader  
Jamie DeLoach, Staff Director  
Lisa Waddell, Committee Administrative Asst.

**REPLY TO:**

- 606 NW 183rd Street, Miami Gardens, Florida 33169 (305) 654-7150 FAX: (305) 654-7152
- 213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

# CourtSmart Tag Report

**Room:** EL 110  
**Case:** Senate Appropriations Subcommittee on General Government

**Type:**  
**Judge:**

**Started:** 4/2/2014 1:06:42 PM  
**Ends:** 4/2/2014 2:19:52 PM **Length:** 01:13:11

1:06:44 PM Sen. Hays  
1:08:00 PM TAB 2- SB 956, Coastal Management  
1:08:13 PM SB 956  
1:08:25 PM Sen. Bean  
1:09:08 PM Sen. Hays  
1:09:22 PM Sen. Joyner  
1:10:31 PM Sen. Bean  
1:11:21 PM Sen. Hays  
1:11:24 PM Mark Thomasson, Director of Division of Water Management, Department of Environmental Protection  
1:11:47 PM Sen. Joyner  
1:12:34 PM M. Thomasson  
1:12:57 PM Sen. Joyner  
1:13:29 PM M. Thomasson  
1:14:08 PM Sen. Joyner  
1:14:33 PM M. Thomason  
1:15:07 PM Sen. Joyner  
1:15:19 PM M. Thomasson  
1:15:26 PM Sen. Joyner  
1:16:12 PM M. Thomasson  
1:16:51 PM Sen. Joyner  
1:17:15 PM Sen. Hays  
1:17:45 PM Sen. Joyner  
1:18:12 PM Sen. Hays  
1:18:30 PM Sen. Thompson  
1:18:53 PM Sen. Bean  
1:19:15 PM Sen. Thompson  
1:19:23 PM Sen. Bean  
1:19:37 PM Sen. Thompson  
1:19:42 PM Sen. Bean  
1:19:59 PM Sen. Soto  
1:20:30 PM Sen. Bean  
1:20:56 PM Sen. Soto  
1:21:14 PM Sen. Bean  
1:21:51 PM Sen. Hays  
1:22:00 PM Mary Jean Yon, Legislative Director, Audubon Florida (waives in support)  
1:22:07 PM Andrew Ketchel, Deputy Legislative Affairs Director, Department of Environment Protection (waives in support)  
1:22:59 PM TAB 5- SB 1210, Division of Insurance Agents and Agency Services  
1:23:00 PM SB 1210  
1:23:16 PM Sen. Bean  
1:24:37 PM Sen. Hays  
1:24:42 PM Sen. Joyner  
1:25:27 PM Sen. Bean  
1:25:47 PM Greg Thomas, Director Insurance Agents Agency Services, Chief Financial Officer's Office  
1:26:45 PM Sen. Joyner  
1:26:47 PM Sen. Hays  
1:26:54 PM Sen. Thompson  
1:27:15 PM G. Thomas  
1:27:58 PM Sen. Thompson  
1:28:07 PM Sen. Joyner  
1:28:26 PM Sen. Hays  
1:28:30 PM Logan McFaddin, Director of Legislative Affairs, Chief Financial Officer's Office (waives in support)

1:28:34 PM Leslie Dughi, Enterprise National and Alamo (waives in support)  
1:28:42 PM Alan Suskey, Consultant, Florida Association of Insurance Agents (waives in support)  
1:29:41 PM TAB 3- SB 1014, Pharmacy Benefit Managers  
1:29:42 PM SB 1014  
1:29:44 PM Sen. Garcia  
1:31:20 PM Sen. Hays  
1:31:23 PM Sen. Joyner  
1:31:39 PM Sen. Garcia  
1:31:44 PM Sen. Hays  
1:31:50 PM Sally West, Director of Government Affairs, Walgreens (waives in support)  
1:31:57 PM Larry Gonzalez, General Council, Florida Society of Health- System Pharmacists (waives in support)  
1:32:03 PM Michael Jackson, EVP & CEO, Florida Pharmacy Association (waives in support)  
1:32:16 PM Jorge Chamizo, Attorney, Independent Pharmacy Cooperative (waives in support)  
1:32:53 PM Sen. Joyner  
1:33:10 PM Sen. Hays  
1:33:57 PM TAB 1- 914, State Contracting  
1:34:12 PM SB 914  
1:34:18 PM Sen. Latvala  
1:35:29 PM Sen. Hays  
1:35:39 PM Sen. Thompson  
1:35:52 PM Sen. Latvala  
1:36:25 PM Sen. Thompson  
1:36:35 PM Sen. Latvala  
1:36:59 PM Sen. Joyner  
1:38:10 PM Sen. Latvala  
1:38:42 PM Sen. Bradley  
1:39:02 PM Sen. Latvala  
1:39:19 PM Sen. Hays  
1:40:09 PM TAB 4- SB 1098- Florida Homeowner's Construction Recovery Fund  
1:40:45 PM SB 1098  
1:40:51 PM Sen. Dean  
1:41:04 PM Sen. Joyner  
1:41:27 PM Sen. Dean  
1:41:47 PM Sen. Joyner  
1:42:03 PM Sen. Thompson  
1:42:32 PM Sen. Dean  
1:42:57 PM Sen. Joyner  
1:43:56 PM Niki Davis  
1:45:04 PM Cam Fentriss, Legislative Counsel, FL Roofing, Sheet Metal, and Air Conditioning Contractors Association  
1:47:00 PM Sen. Hays  
1:47:14 PM Sen. Dean  
1:47:54 PM Sen. Hays  
1:48:35 PM TAB 6- SB 1582, Rehabilitation of Petroleum Contamination Sites  
1:48:47 PM SB 1582  
1:48:50 PM Sen. Dean  
1:49:32 PM Sen. Hays  
1:49:39 PM Am. 196092  
1:49:46 PM Sen. Legg  
1:49:50 PM Sen. Hays  
1:49:55 PM Sen. Joyner  
1:50:31 PM Sen. Legg  
1:50:55 PM Sen. Hays  
1:50:59 PM Sen. Legg  
1:51:01 PM Sen. Hays  
1:51:15 PM Am. 740840  
1:51:31 PM Sub Am. 186996  
1:51:39 PM Sen. Simpson  
1:52:02 PM Sen. Hays  
1:52:32 PM Sen. Joyner  
1:53:32 PM Sen. Hays  
1:53:41 PM Sen. Simpson

<b>1:54:32 PM</b>	Sen. Joyner
<b>1:55:07 PM</b>	Sen. Simpson
<b>1:55:15 PM</b>	Sen. Joyner
<b>1:56:47 PM</b>	Sen. Simpson
<b>1:58:26 PM</b>	Sen. Joyner
<b>1:59:12 PM</b>	Sen. Simpson
<b>1:59:34 PM</b>	Sen. Joyner
<b>1:59:39 PM</b>	Sen. Simpson
<b>1:59:49 PM</b>	Sen. Joyner
<b>1:59:55 PM</b>	Sen. Hays
<b>2:00:00 PM</b>	Sen. Soto
<b>2:00:06 PM</b>	Sen. Simpson
<b>2:00:12 PM</b>	Sen. Soto
<b>2:00:17 PM</b>	Sen. Simpson
<b>2:01:01 PM</b>	Sen. Soto
<b>2:01:12 PM</b>	Sen. Simpson
<b>2:02:26 PM</b>	Sen. Joyner
<b>2:04:31 PM</b>	Sen. Simpson
<b>2:05:43 PM</b>	Sen. Joyner
<b>2:06:27 PM</b>	Sen. Simpson
<b>2:08:20 PM</b>	Sen. Joyner
<b>2:08:28 PM</b>	Jeff Littlejohn, Deputy Secretary Regulating Program, Department of Environmental Protection
<b>2:12:10 PM</b>	Sen. Joyner
<b>2:12:22 PM</b>	Sen. Hays
<b>2:12:46 PM</b>	Phil Leary, Lobbyist, Florida Ground Water Association
<b>2:13:21 PM</b>	Sen. Hays
<b>2:13:57 PM</b>	J. Littlejohn
<b>2:15:23 PM</b>	Sen. Hays
<b>2:15:58 PM</b>	Randy Miller, Ex Vice President, Florida Retail Federation
<b>2:16:41 PM</b>	Sen. Soto
<b>2:16:48 PM</b>	R. Miller
<b>2:17:53 PM</b>	Sen. Hays
<b>2:18:06 PM</b>	Sen. Dean
<b>2:18:44 PM</b>	Sen. Hays