

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**REGULATED INDUSTRIES**  
**Senator Stargel, Chair**  
**Senator Braynon, Vice Chair**

**MEETING DATE:** Thursday, April 10, 2014

**TIME:** 9:00 —11:00 a.m.

**PLACE:** 301 Senate Office Building

**MEMBERS:** Senator Stargel, Chair; Senator Braynon, Vice Chair; Senators Detert, Flores, Galvano, Gibson, Legg, Sachs, Sobel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 1106</b> Community Affairs / Simpson (Similar CS/CS/H 593)	Building Construction; Providing an additional method for local governments to provide notices to alleged code enforcement violators; requiring application for an operating permit before filing an application for a building permit for a public swimming pool; specifying inspection criteria for construction or modification of manufactured buildings or modules; authorizing use of smoke alarms powered by 10-year nonremovable, nonreplaceable batteries in certain circumstances, etc.  CA 03/19/2014 Fav/CS HP 04/01/2014 Favorable RI 04/10/2014 Fav/CS AP	Fav/CS Yeas 9 Nays 1
2	<b>SB 1550</b> Evers (Similar H 1353)	Tax-exempt Cigarettes; Authorizing agents and wholesale dealers to sell stamped and untaxed cigarettes to tribal business entities; repealing provisions relating to the sale of tax-exempt cigarettes to members of recognized Indian tribes; authorizing tribal business entities to purchase stamped and untaxed cigarettes from agents and wholesale dealers; requiring a certificate of authority to own or operate a tribal smoke shop, etc.  RI 04/10/2014 Fav/CS AFT AP	Fav/CS Yeas 9 Nays 1
3	<b>CS/SB 1212</b> Health Policy / Bean (Similar CS/CS/H 1085)	Behavior Analysts; Creating the Board of Applied Behavior Analysis; specifying the authority and duties of the board; establishing maximum fees for applications, initial licenses, and license renewals; providing penalties for practicing applied behavior analysis without a license or wrongfully identifying oneself as a licensed behavior analyst; requiring an applicant for licensure under ch. 470, F.S., to submit to certain fingerprinting requirements, etc.  HP 04/01/2014 Fav/CS RI 04/10/2014 Favorable AP	Favorable Yeas 9 Nays 1

**COMMITTEE MEETING EXPANDED AGENDA**

Regulated Industries

Thursday, April 10, 2014, 9:00 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 804</b> Galvano (Compare H 877)	Package Store Restrictions; Repealing provisions which prohibit certain vendors from selling certain merchandise and prohibits direct access from such vendor's place of business to other buildings, etc.  RI      04/10/2014 Temporarily Postponed CM	Temporarily Postponed
5	<b>SB 1624</b> Sobel (Similar H 1377)	Sale of Dogs or Cats; Requiring a person offering for sale within this state a dog or cat bred by certain breeders to continuously display certain information; requiring such information to be easily readable by a potential buyer; prohibiting a person from willfully selling, exchanging, or donating, or offering for sale, exchange, or donation a dog or cat at a flea market, etc.  RI      04/10/2014 Fav/CS CA AGG AP	Fav/CS Yeas 9 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 Committee on Regulated Industries

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BILL: CS/CS/SB 1106

INTRODUCER: Regulated Industries Committee, Community Affairs Committee, and Senator Simpson

SUBJECT: Building Construction

DATE: April 10, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	<b>Fav/CS</b>
2.	Looke	Stovall	HP	<b>Favorable</b>
3.	Niles	Imhof	RI	<b>Fav/CS</b>
4.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1106 amends several statutes related to building construction, codes, and permitting. The bill:

- Creates an exception to the rule that the Florida Building Commission may not accept a petition for waiver or variance for the Florida Accessibility Code for Building Construction and from the public swimming and public bathing places provisions, added to the Florida Building Code (code) under s. 553.77(7), F.S.;
- Requires the Florida Building Commission (commission) to provide criteria and procedures for granting variances from the Florida Building Code relating to public swimming pools and public bathing places;
- Gives local government the option of requiring a return receipt request when sending notices by certified mail to alleged violators of local codes and ordinances.
- Requires an application to the Department of Health (DOH) for an operating permit for a public swimming pool before an application may be filed for a building permit, and provides additional requirements for obtaining an operating permit;
- Specifies inspection criteria for construction or modification of manufactured buildings or building modules, and an order they should be met;
- Revises the allocation of funds from building permit surcharges to include \$250,000 allocated to the Future Builders of America Program;
- Prohibits an agency or local government from requiring that existing mechanical equipment located on or above the surface of a roof be installed in compliance with the requirements of

the Florida Building Code, except when the equipment is being replaced or moved during reroofing.

- Authorizes building officials, local enforcement agencies, and the Florida Building Commission to interpret the Florida Accessibility Code for Building Construction and provides specific procedures for those interpretations;
- Prohibits the local enforcing agency from issuing a building permit to construct, develop, or modify a public swimming pool without proof of application for an operating permit under s. 514.031, F.S. A certificate of completion or occupancy may not be issued until such operating permit is issued;
- Allows site plans or building permits to be maintained in the original form or in the form of an electronic copy at the worksite. These plans and permits must be open to inspection as required by the Florida Building Code;
- Requires counties and municipalities to expedite building construction permitting, building plans review, and inspections of projects of public schools that are subject to the Florida Building Code, rather than public school districts;
- Revises education and training requirements for the Florida Building Code Compliance and Mitigation Program;
- Provides homeowners doing renovations with an additional fire safety alarm option;
- Provides a criteria-based definition for “building energy-efficiency rating system”;
- Exempts certain tents from the Florida Fire Prevention Code;
- Removes the requirement that a member of the Fire Code Interpretation Committee must notify the committee that he or she is unable to respond before an alternate can respond to a request for a nonbinding interpretation of Florida Fire Prevention Code; and
- Provides an effective date of July 1, 2014.

## **II. Present Situation:**

### **Florida Building Commission**

The commission, which is housed within the Department of Business and Professional Regulation (department), is a 26-member technical body responsible for the development, maintenance and interpretation of the Florida Building Code. The commission also approves products for statewide acceptance and administers the Building Code Training Program. Members are appointed by the Governor and confirmed by the Senate and include design professionals, contractors, and government experts in the various disciplines covered by the code.<sup>1</sup>

### **Code Enforcement Notices**

Notices to alleged violators of local government codes and ordinances are governed by s. 162.12, F.S. Under s. 162.12(1), F.S., notices may be provided by:

- Certified mail to the address listed in the tax collector’s office for tax notices, or to any other address provided by the property owner in writing to the local government for the purpose of receiving notices. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not

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<sup>1</sup> Sections 553.74, 553.76 and 553.77, F.S.

signed as received within 30 days after the date of mailing, notice may be provided by posting as described in subparagraphs s. 162.12(2)(b)1. and 2., F.S.;<sup>2</sup>

- Hand delivery by the sheriff, code inspector, or other designated person;
- Leaving the notice at the violator's residence with any person residing there above the age of 15; or,
- For commercial premises, leaving the notice with the manager or other person in charge.<sup>3</sup>

In addition to the noticing provisions outlined in s. 162.12(1), F.S., the code enforcement board may serve notice through publication or posting methods.<sup>4</sup>

### **Pool Construction and Operation in Florida**

The DOH estimates that there are approximately 37,000 public pools in Florida.<sup>5</sup> A “public swimming pool” or “public pool” is defined as:

A watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. This term includes a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.<sup>6</sup>

A “public bathing place” is defined as:

A body of water, natural or modified by humans, for swimming, diving, and recreational bathing used by consent of the owner or owners and held out to the public by any person or public body, irrespective of whether a fee is charged for the use thereof. The bathing water areas of public bathing places include, but are not limited to, lakes, ponds, rivers, streams, artificial impoundments, and waters along the coastal and intracoastal beaches and shores of the state.<sup>7</sup>

In 2012, the Legislature determined that local building departments would have jurisdiction over permitting, plan reviews, and inspections of public swimming pools and public bathing places

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<sup>2</sup> Relating to publication of notices and the physical posting of notices, respectively.

<sup>3</sup> See ss. 162.12(1)(b)-(d), F.S.

<sup>4</sup> See s.162.12(2), F.S.

<sup>5</sup> E-mail from DOH staff (March 27, 2014).

<sup>6</sup> Section 514.011(2), F.S.

<sup>7</sup> Section 514.011(4), F.S.

and that the DOH would continue to have jurisdiction over the operating permits for public swimming pools and public bathing places.<sup>8</sup> In order to operate or continue to operate a public swimming pool, a valid operating permit from DOH must be obtained. Application for an operating permit must include the following:

- Description of the source or sources of water supply, and the amount and quality of water available and intended to be used;
- Method and manner of water purification, treatment, disinfection, and heating;
- Safety equipment and standards to be used; and
- Any other pertinent information deemed necessary by the DOH.<sup>9</sup>

If the DOH determines that the public swimming pool is, or may reasonably be expected to be, operated in compliance with state laws and departmental rules, the DOH will issue a permit. However, if the DOH determines that the pool is not in compliance with state laws and departmental rules, the DOH will deny the application for a permit. The denial must be in writing and must list the circumstances for the denial. Upon correction of those circumstances, the applicant may reapply for a permit.<sup>10</sup> The operating permit must be renewed annually and posted in a conspicuous place.<sup>11</sup>

### **Manufactured Buildings and Building Modules per the Florida Building Code**

Section 553.72, F.S., provides that the Florida Building Code (code) is “a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state,” and its enforcement “will allow effective and reasonable protection for public safety, health, and general welfare for all the people of Florida at the most reasonable cost to the consumer.” The Florida Building Commission adopts requirements, within the Florida Building Code, for construction or modification of manufactured buildings and building modules, to address:<sup>12</sup>

- Submission to and approval by the department of manufacturers’ drawings and specifications, including any amendments.
- Submission to and approval by the department of manufacturers’ internal quality control procedures and manuals, including any amendments.
- Minimum inspection criteria.

“Manufactured building” or “modular building” means a closed structure, building assembly, or system of subassemblies, which may include structural, electrical, plumbing, heating, ventilating, or other service systems manufactured for installation or erection as a finished building or as part of a finished building, including, but not limited to, residential, commercial, institutional, storage, and industrial structures. The term includes buildings not intended for human habitation such as lawn storage buildings and storage sheds manufactured and assembled offsite by a manufacturer certified in conformance with this part, but does not include a mobile home.<sup>13</sup>

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<sup>8</sup> Chapter 2012-184, Laws of Fla.

<sup>9</sup> Section 514.031(1), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Section 514.031(4), F.S.

<sup>12</sup> Section 553.37(1), F.S.

<sup>13</sup> Section 553.36(13), F.S.

“Module” means a separately transported three-dimensional component of a manufactured building which contains all or a portion of structural systems, electrical systems, plumbing systems, mechanical systems, fire systems, and thermal systems.<sup>14</sup>

### **Florida Building Code Surcharge**

The Florida Building Commission is authorized to adopt, modify, update, interpret, and maintain the Florida Building Code and provide that code enforcement will be performed by authorized state and local government enforcement agencies.<sup>15</sup> In order for the department to administer and carry out the code provisions, there is a surcharge that is assessed at 1.5 percent of the permit fees associated with enforcement of the code.<sup>16</sup>

The amount of revenue generated by the surcharge has ranged from approximately \$1,000,000 to \$5,000,000 per year over the past 10 years.<sup>17</sup> The funds that are collected from the surcharge and remitted to the department are deposited in the Professional Regulation Trust Fund and then allocated to fund the Florida Building Commission and the Florida Building Code Compliance and Mitigation Program.<sup>18</sup>

### **Future Builders of America**

The Future Builders of America Program is a non-profit workforce development and student leadership program of the Florida Home Builders Foundation. The program links students in school with local building communities and industries.<sup>19</sup> As of November 2013, there were 11 chapters in Florida, located in Charlotte, DeSoto, Manatee, Okaloosa, Polk, Sarasota, Volusia, and Walton Counties, and the Treasure Coast.<sup>20</sup>

### **Florida Building Code Interpretation**

Section 553.775, F.S., authorizes the Florida Building Code to be interpreted by building officials, local enforcement agencies, and the commission, and provides specific procedures to be used when interpreting the code.

The Florida Accessibility Code for Building Construction (accessibility code), an element of the code, is adopted by the commission and prescribes requirements related to ensuring access for the disabled for new construction activity, including things such as ramps, door widths, and particular plumbing fixtures. The accessibility code combines requirements imposed by the federal regulations that implement the Americans with Disabilities Act and Florida-specific requirements described in part I of ch. 553, F.S.

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<sup>14</sup> Section 553.36(15), F.S.

<sup>15</sup> Section 553.72(3), F.S.

<sup>16</sup> The minimum amount collected on any permit issued is \$2. Section 553.721, F.S.

<sup>17</sup> *2014 Legislative Bill Analysis for HB 593*, Department of Business and Professional Regulation (Feb. 20, 2014).

<sup>18</sup> The Florida Building Code Compliance and Mitigation Program is established in Section 553.841, F.S.

<sup>19</sup> Future Builders of America, <http://www.futurebuildersofamerica.org> (Last visited March 26, 2014).

<sup>20</sup> *Id.*

In accordance with s. 120.565, F.S., the commission may render declaratory statements relating to the provisions of the accessibility code not attributable to the Americans with Disabilities Act Accessibility Guidelines. However, the accessibility code may not be interpreted by building officials, local enforcement agencies, and the commission.

### **Florida Building Code Compliance and Mitigation Program**

The department administers the Florida Building Code Compliance and Mitigation Program, which was created to develop, coordinate, and maintain education and outreach to people who are required to comply with the Florida Building Code and ensure consistent education, training, and communication of the code's requirements, including, but not limited to, methods for mitigation of storm-related damage.<sup>21</sup> The program is geared toward persons *licensed* in the design and construction industries, but does not address those *employed* in the design and construction industries. The services and materials under the program must be provided by a private, nonprofit corporation under contract with department.<sup>22</sup>

### **Building Energy-Efficiency Rating System**

In 1993, the Legislature enacted the Florida Building Energy-Efficiency Rating Act<sup>23</sup> in order to identify systems for rating the energy efficiency of buildings, and encourage the consideration of energy-efficiency rating systems in the market.<sup>24</sup> The current statutory definition of such a rating system specifically relies upon identification by “the Residential Energy Services Network, the Commercial Energy Services Network, the Building Performance Institute, or the Florida Solar Center.”<sup>25</sup> Information about a building's energy-efficiency must be provided to a prospective purchaser of real property, if available. Prior to contracting for construction, renovation, or acquisition of a public building, the building must be rated pursuant to the system provided for in s. 553.995, F.S. Public bodies proposing to contract must consider energy-efficiency ratings when comparing contract alternatives.<sup>26</sup>

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

### **Public Swimming Pools and Public Bathing Places (Sections 1, 4, 5, 9, 11)**

The bill amends s. 514.03, F.S., to require those desiring to construct, develop, or modify a public swimming pool to apply to the DOH for an operating permit before applying for a building permit.

The bill amends s 514.031, F.S., to provide that a certificate of occupancy may not be issued until the operating permit is issued. Additional documentation is required in the operating permit application: proof of final inspection, and a description of the structure, its appurtenances, and its operation.

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<sup>21</sup> Section 553.841(2), F.S.

<sup>22</sup> Section 553.841(3), F.S.

<sup>23</sup> Chapter 93-249, s.12, Laws of Fla.

<sup>24</sup> Section 553.991, F.S.

<sup>25</sup> Section 553.993(3), F.S.

<sup>26</sup> Section 553.997(1), F.S.



The bill amends s. 120.80(16)(a), F.S., creating an exception to the rule that the Florida Building Commission may not accept a petition for waiver or variance for:

- Applications to waive the requirements of the Florida Accessibility Code for Building Construction provided under s. 553.512, F.S.; and
- Variances from the public swimming and public bathing places provisions added to the Florida Building Code under s. 553.77(7), F.S.

The bill creates subsection (7) under 553.77, F.S., requiring the commission to provide criteria and procedures for providing variances from provisions in the Florida Building Code relating to swimming pools and public bathing places. The commission can only grant a variance once it is shown that the individual applying for one has not intentionally caused the hardship, that no reasonable alternative exists, and that the health and safety of pool patrons is not at risk. Applications must be approved, approved with conditions, or denied based on a majority vote of the commission taken after a recommendation from the Swimming Pool Technical Advisory Committee, which may include a representative of the DOH who has knowledge of swimming pool regulations.

The bill amends s. 553.79, F.S., to prohibit the local enforcing agency from issuing a building permit to construct, develop, or modify a public swimming pool without proof of application for an operating permit under s. 514.031, F.S. A certificate of completion or occupancy may not be issued until such operating permit is issued.

### **Code Violation Notices (Section 2)**

The bill amends s. 162.12, F.S., to give local government the option of requiring a return receipt request when sending notices by certified mail to alleged violators of local codes and ordinances.

### **Construction or Modification of Manufactured Buildings and Building Modules (Section 6)**

The bill amends s. 553.37, F.S., to detail inspection criteria that must be adopted by the Florida Building Commission within the Florida Building Code. The criteria require the approved inspection agency to do the following:

- Inspect the first building built, or the first unit assembled with components, and all its subsystems, after certification of the manufacturer;
- Continue observation of the manufacturing process until the agency determines that the manufacturer's quality control program and the plans approved by the agency will result in a building and components that meet or exceed the applicable Florida Building Code requirements;
- Thereafter, with respect to manufactured buildings, inspect each module produced at least once during the manufacturing process and to inspect at least 75 percent of the subsystems of each module; and
- With respect to components, inspect at least 75 percent of the manufactured building components or 20 percent of storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less.

**Florida Building Code Surcharge (Section 7)**

The bill amends s. 553.721, F.S. to allocate \$250,000 per year, beginning in Fiscal Year 2014-2015, from the building permit fees remitted to the department to the Future Builders of America Program.

**Florida Building Code Restriction (Section 8)**

The bill amends s. 553.73(15), F.S., prohibiting an agency or local government from requiring that existing mechanical equipment located on or above the surface of a roof be installed in compliance with the requirements of the Florida Building Code except when it is not in compliance and is being replaced or removed during reroofing.

**Florida Building Code Interpretation (Section 10)**

The bill amends s. 553.775, F.S., to authorize building officials, local enforcement agencies, and the commission to interpret the accessibility code and to remove language restricting declaratory statements to Florida-specific requirements of the accessibility code.

**Worksite Plans and Inspection and Record Retention (Section 3, 11)**

The bill amends s. 440.103, F.S., to allow the evidence that is required as a condition to applying for a building permit, proving compensation has been secured for an employer's employees, to be presented electronically or physically. The bill cross references s. 553.79(19), F.S., as to the provision below.

The bill amends s. 553.79, F.S., to allow site plans or building permits to be maintained in the original form or in the form of an electronic copy at the worksite, and these plans and permits must be open to inspection as required by the Florida Building Code.

**Expedited Building Construction Requirements for Schools (Section 12)**

The bill amends s. 553.80(6)(b)(2), F.S., to require counties and municipalities to expedite building construction permitting, building plans review, and inspections of projects of public schools that are subject to the Florida Building Code, rather than for public school districts.

**Florida Building Code Compliance and Mitigation Program (Section 13)**

The bill amends s. 553.841, F.S., to revise education and training requirements of the Florida Building Code Compliance and Mitigation program. In addition to maintaining a thorough knowledge of the code, participants in the design and construction industry should have a thorough knowledge of:

- Code compliance and enforcement;
- Duties related to consumers;
- Project completion; and
- Compliance of design and construction to protect from consumer harm, and storm damage.

The bill expands the scope of the program to provide education and outreach concerning compliance with the Florida Fire Prevention Code, construction plan and permitting requirements, and construction liens. The bill further expands the applicability of the program to include people employed in the design and construction industries.

#### **Smoke Alarms (Section 14)**

The bill amends s. 553.883, F.S., to allow homeowners in the process of a renovation to install a smoke alarm with a non-removable, non-replaceable, 10-year battery, instead of hardwiring a smoke alarm into the electrical system. Currently, s. 553.88, F.S., provides for the adoption of electrical and alarm standards, which includes the adoption of the National Fire Alarm Code.<sup>27</sup>

#### **Building Energy-Efficiency Rating System (Section 15)**

The bill amends s. 553.993, F.S., to define the “Building energy-efficiency rating system” with specific criteria, including:

- The ability to provide reliable and scientifically-based analysis of a building’s energy consumption or energy features;
- The ability to compare similar building types in similar climate zones;
- Use of standard calculations, formulas, and scoring methods;
- National applicability;
- Clearly defined and researched baselines or benchmarks;
- Ratings that are performed by qualified professionals;
- A labeling and recognition program with specific criteria or levels;
- Residential program benchmarks that must be consistent with national building standards and home energy rating standards; and
- At least one level of oversight performed by a group of professionals with subject matter expertise in energy efficiency, energy rating, and evaluation methods.

#### **Tents (Section 16)**

The bill amends s. 633.202, F.S., to exempt tents smaller than 30 feet by 30 feet from the Florida Fire Prevention Code.

#### **Informal Interpretations of the Florida Fire Prevention Code (Section 17)**

The bill amends s. 633.212, F.S., removing the requirement that a member of the Fire Code Interpretation Committee must notify the committee that he or she is unable to respond, before an alternate member can respond to a request for a nonbinding interpretation.

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

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

None.

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<sup>27</sup> NFPA No. 72.

**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/CS/SB 1106 provides a clarification regarding the order in which permits must be obtained for public swimming pools and public bathing places. This may result in cost savings due to issues and problems being identified prior to construction.

According to the department, the bill will cause an indeterminate reduction in expenditures, due to decreased inspection requirements.

**C. Government Sector Impact:**

The bill allocates \$250,000 each fiscal year to the Future Builders of America Program from funds that are remitted to the Professional Regulation Trust Fund. These funds are generated from an existing 1.5 percent surcharge on each building permit application fee. The bill does not designate specifically how this \$250,000 will be used each year under the program.

According to the department, the bill will have an indeterminate impact on government expenditure.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 2 of the bill requires application to the DOH for an operating permit for a public swimming pool before applying for a building permit. Section 3 provides criteria for the application of the operating permit including proof of final inspection. It is unclear how an applicant is to provide proof of final inspection before applying for a building permit.

If an applicant is unable to provide a final inspection in their initial application, these provisions would cause that permit application to be submitted incomplete. Under s. 120.60, F.S., the DOH would be required to notify the applicant within 30 days of receipt of the application that the

application is incomplete. After receiving this notification, the applicant may request additional time to complete the application which the DOH must grant.

This back and forth process could create a logistical obstacle course for some people who are applying for swimming pool operating permits. This process could be streamlined by exempting the DOH from the timeframes under s. 120.60, F.S., for such permit applications and granting the DOH rulemaking authority to create a specific application process for these permits.

The Florida Building Code is required to include inspection criteria for manufactured buildings. The code would have to be amended to be consistent with the provisions added by section 4 of the bill.<sup>28</sup> The Florida Building Code's provisions relating to smoke alarms would have to be amended to incorporate the provisions of section nine of the bill.<sup>29</sup>

The expedited Building Construction process in Section 12 has been extended to projects of public schools, not the school district. This may no longer relate to buildings of the public school district which are not public schools, but may still be projects of the district.

## **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 162.12, 514.03, 514.031, 553.37, 553.721, 553.775, 553.79, and 553.841.

## **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 Regulated Industries Committee on April 10, 2014:**

The CS for CS for SB 1106:

- Adds a provision under s. 120.80(16), F.S., allowing the commission to grant a waiver or variance for applications to waive requirements of the Florida Building Code for construction provided in s. 553.512, F.S., and variances under s. 553.77(7), F.S.
- Creates a subsection (7) under 553.77, F.S., requiring the commission to provide criteria and procedures for providing variances from provisions in the Florida Building Code relating to swimming pools and public bathing places. The section provides requirements for the commission to grant variances, and requires them to receive a recommendation from the Pool Technical Advisory Committee before doing so.
- Requires that the inspection of manufactured buildings and building modules under s. 553.37(1)(c), F.S., be done after the required observation of the first unit built including inspection of the subsystems and the manufacturer's quality control system.
- Amends s. 553.73, F.S., the Florida Building Code, to include mechanical equipment located above the surface of a roof. An agency or local government may not require

<sup>28</sup> 2014 Legislative Bill Analysis for SB 1106, Department of Business and Professional Regulation (April 3, 2014).

<sup>29</sup> *Id.*

existing mechanical equipment to be installed in compliance with the requirements of the code, except when the equipment is being replaced or moved during reroofing.

- Adds building permits to what may be maintained at the worksite for purposes of inspection and record retention under s. 553.79, F.S., and allows them to be in the original or electronic form, which must be open to inspection.
- Amends s. 553.80(6)(b)(2), F.S., to require counties and municipalities to expedite building construction permitting, building plans review, and inspections of projects of public schools that are subject to the Florida Building Code, not public school districts.
- Allows an alternate member of the Fire Code Interpretation Committee to respond to a nonbinding interpretation if a member is unable to respond, without notifying the committee when he or she is unable to respond.

**CS by Community Affairs Committee on March 19, 2014:**

The CS for SB 1106:

- Adds proof of inspection to the list of items required as part of an application for a public swimming pool operating permit;
- Clarifies that final inspection of a pool can occur prior to obtaining an operating permit, but issuance of a certificate of completion may not;
- Clarifies that inspection is required of each subsystem of the first manufactured building assembled;
- Increases the percent of manufactured building components that must be inspected from 50 percent to 75 percent;
- Allows homeowners doing a renovation to install a smoke alarm with a 10-year battery, instead of hardwiring a smoke alarm into the electrical system;
- Defines “building energy-efficiency rating system”; and,
- Recognizes that a tent need not adhere to the Florida Fire Prevention Code.

**B. Amendments:**

None.



432646

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/11/2014	.	
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The Committee on Regulated Industries (Galvano) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 44 and 45  
insert:

Section 1. Paragraph (a) of subsection (16) of section  
120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.—

(16) FLORIDA BUILDING COMMISSION.—

(a) Notwithstanding ~~the provisions of~~ s. 120.542, the  
Florida Building Commission may not accept a petition for waiver



432646

or variance and may not grant any waiver or variance from the requirements of the Florida Building Code except for applications to waive the requirements of the Florida Accessibility Code for Building Construction provided under s. 553.512 and for variances from the public swimming pool and public bathing places provisions of the Florida Building Code provided under s. 553.77(7).

Section 2. Subsection (7) is added to section 553.77, Florida Statutes, to read:

553.77 Specific powers of the commission.—

(7) The commission shall provide criteria and procedures for granting variances from the provisions in the Florida Building Code relating to public swimming pools and public bathing places. After receiving a request for a variance from a pool owner or his, her, or its representative to relieve a hardship, the commission may grant a variance only if it is shown that the hardship was not caused intentionally by the action of the applicant, that no reasonable alternative exists, and that the health and safety of pool patrons is not at risk. Applications must be approved, approved with conditions, or denied based on a majority vote of the commission. Before voting, the commission must receive a recommendation from its Swimming Pool Technical Advisory Committee. The advisory committee membership must include a representative of the Department of Health who has knowledge and understanding of swimming pool regulations.

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

And the title is amended as follows:





432646

40 Delete line 2

41 and insert:

42 An act relating to building construction; amending s.  
43 120.80, F.S.; providing exceptions to the prohibition  
44 against the Florida Building Commission accepting a  
45 petition for waiver or variance from the Florida  
46 Building Code; amending s. 553.77, F.S.; requiring the  
47 Florida Building Commission to provide criteria and  
48 procedures for granting variances from certain  
49 provisions of the Florida Building Code; requiring an  
50 applicant for a variance to meet certain criteria to  
51 receive a variance; requiring the Florida Building  
52 Commission to receive a recommendation from its  
53 Swimming Pool Technical Advisory Committee; requiring  
54 such committee to include certain membership; amending  
55 s.



181256

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/11/2014	.	
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The Committee on Regulated Industries (Galvano) recommended the following:

**Senate Amendment**

Delete lines 151 - 160

and insert:

certification of the manufacturer, from start to finish,  
inspecting all subsystems: electrical, plumbing, structural,  
mechanical, or thermal.

2. Continue observation of the manufacturing process until  
the approved inspection agency determines that the  
manufacturer's quality control program, in conjunction with the



181256

11 application of the plans approved by the approved inspection  
12 agency, will result in a building and components that meet or  
13 exceed the applicable Florida Building Code requirements.

14 3. Thereafter, inspect each module produced during at least  
15 one point



473716

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/11/2014	.	
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The Committee on Regulated Industries (Galvano) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 204 and 205  
insert:

Section 6. Subsection (18) is added to section 553.73,  
Florida Statutes, to read:

553.73 Florida Building Code.—

(18) For a single-family dwelling, the Florida Building  
Code may require makeup air only if the dwelling has a range  
hood exhaust system capable of exhausting in excess of 1,200



473716

11 cubic feet per minute.

12

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

14 And the title is amended as follows:

15       Delete line 15

16 and insert:

17       surcharge; amending s. 553.73, F.S.; limiting the  
18       authority of the Florida Building Code to require  
19       makeup air; amending s. 553.775, F.S.; authorizing



488208

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/11/2014	.	
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The Committee on Regulated Industries (Galvano) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 204 and 205  
insert:

Section 6. Subsection (15) of section 553.73, Florida  
Statutes, is amended to read:

553.73 Florida Building Code.—

(15) An agency or local government may not require that  
existing mechanical equipment located on or above the surface of  
a roof be installed in compliance with the requirements of the



488208

Florida Building Code except when ~~until~~ the equipment is being  
~~required to be removed or~~ replaced or moved during reroofing and  
is not in compliance with the provisions of the Florida Building  
Code relating to roof-mounted mechanical units.

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

And the title is amended as follows:

Delete line 15

and insert:

surcharge; amending s. 553.73, F.S.; authorizing an  
agency or local government to require rooftop  
equipment to be installed in compliance with the  
Florida Building Code if the equipment is being  
replaced or removed during reroofing and is not in  
compliance with the Florida Building Code's roof-  
mounted mechanical units requirements; amending s.  
553.775, F.S.; authorizing



534656

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/11/2014	.	
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The Committee on Regulated Industries (Galvano) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 440 - 449  
and insert:

Section 7. Present subsections (11) through (18) of section 553.79, Florida Statutes, are redesignated as subsections (12) through (19), respectively, a new subsection (11) is added to that section, and present subsection (18) is amended, to read:

553.79 Permits; applications; issuance; inspections.—

(11) The local enforcing agency may not issue a building





534656

11 permit to construct, develop, or modify a public swimming pool  
12 without proof of application for an operating permit under s.  
13 514.031. A certificate of completion or occupancy may not be  
14 issued until such operating permit is issued.

15 (19)(18) For the purpose of inspection and record  
16 retention, site plans or building permits for a building may be  
17 maintained in the original form or in the form of an electronic  
18 copy at the worksite. These plans and permits must be open to  
19 inspection by the building official or a duly authorized  
20 representative, as required by the Florida Building Code.

21 Section 8. Section 440.103, Florida Statutes, is amended to  
22 read:

23 440.103 Building permits; identification of minimum premium  
24 policy.—Every employer shall, as a condition to applying for and  
25 receiving a building permit, show proof and certify to the  
26 permit issuer that it has secured compensation for its employees  
27 under this chapter as provided in ss. 440.10 and 440.38. Such  
28 proof of compensation must be evidenced by a certificate of  
29 coverage issued by the carrier, a valid exemption certificate  
30 approved by the department, or a copy of the employer's  
31 authority to self-insure and shall be presented, electronically  
32 or physically, each time the employer applies for a building  
33 permit. As provided in s. 553.79(19), for the purpose of  
34 inspection and record retention, site plans or building permits  
35 may be maintained at the worksite in the original form or in the  
36 form of an electronic copy. These plans and permits must be open  
37 to inspection by the building official or a duly authorized  
38 representative, as required by the Florida Building Code. As  
39 provided in s. 627.413(5), each certificate of coverage must



534656

show, on its face, whether or not coverage is secured under the minimum premium provisions of rules adopted by rating organizations licensed pursuant to s. 627.221. The words "minimum premium policy" or equivalent language shall be typed, printed, stamped, or legibly handwritten.

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

And the title is amended as follows:

Delete line 28

and insert:

issued; authorizing site plans or building permits to be maintained at the worksite in their original form or in the form of an electronic copy; requiring the permit to be open to inspection; amending s. 440.103, F.S.; authorizing an employer to present certain documents electronically or physically in order to show proof and certify to the permit issuer that it has secured compensation for its employees; authorizing site plans or electronically transferred building permits to be maintained at the worksite in their original form or by electronic copy; requiring such plans or permits to be open to inspection by the building official or authorized representative; amending s. 553.841, F.S.; revising education



107978

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/11/2014	.	
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The Committee on Regulated Industries (Galvano) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 449 and 450  
insert:

Section 8. Paragraph (b) of subsection (6) of section  
553.80, Florida Statutes, is amended to read:

553.80 Enforcement.—

(6) Notwithstanding any other law, state universities,  
community colleges, and public school districts shall be subject  
to enforcement of the Florida Building Code under this part.



107978

11 (b) If a state university, state community college, or  
12 public school district elects to use a local government's code  
13 enforcement offices:

14 1. Fees charged by counties and municipalities for  
15 enforcement of the Florida Building Code on buildings,  
16 structures, and facilities of state universities, state  
17 colleges, and public school districts may not be more than the  
18 actual labor and administrative costs incurred for plans review  
19 and inspections to ensure compliance with the code.

20 2. Counties and municipalities shall expedite building  
21 construction permitting, building plans review, and inspections  
22 of projects of state universities, state community colleges, and  
23 public schools ~~school districts~~ that are subject to the Florida  
24 Building Code according to guidelines established by the Florida  
25 Building Commission.

26 3. A party substantially affected by an interpretation of  
27 the Florida Building Code by the local government's code  
28 enforcement offices may appeal the interpretation to the local  
29 government's board of adjustment and appeal or to the commission  
30 under s. 553.775 if no local board exists. The decision of a  
31 local board is reviewable in accordance with s. 553.775.

32  
33 This part may not be construed to authorize counties,  
34 municipalities, or code enforcement districts to conduct any  
35 permitting, plans review, or inspections not covered by the  
36 Florida Building Code. Any actions by counties or municipalities  
37 not in compliance with this part may be appealed to the Florida  
38 Building Commission. The commission, upon a determination that  
39 actions not in compliance with this part have delayed permitting



107978

or construction, may suspend the authority of a county, municipality, or code enforcement district to enforce the Florida Building Code on the buildings, structures, or facilities of a state university, state community college, or public school district and provide for code enforcement at the expense of the state university, state community college, or public school district.

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

And the title is amended as follows:

Delete line 28

and insert:

issued; amending s. 553.80, F.S.; requiring counties and municipalities to expedite building construction permitting, building plans review, and inspections of projects of certain public schools, rather than certain public school districts; amending s. 553.841, F.S.; revising education



490770

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/11/2014	.	
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The Committee on Regulated Industries (Galvano) recommended the following:

**Senate Amendment**

Delete line 491  
and insert:  
Florida Building Code, may use smoke alarms



599770

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/11/2014	.	
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The Committee on Regulated Industries (Thrasher) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 545 and 546  
insert:

Section 12. Subsection (1) of section 633.212, Florida  
Statutes, is amended to read:

633.212 Legislative intent; informal interpretations of the  
Florida Fire Prevention Code.—It is the intent of the  
Legislature that the Florida Fire Prevention Code be interpreted  
by fire officials and local enforcement agencies in a manner



599770

that reasonably and cost-effectively protects the public safety, health, and welfare; ensures uniform interpretations throughout this state; and provides just and expeditious processes for resolving disputes regarding such interpretations. It is the further intent of the Legislature that such processes provide for the expeditious resolution of the issues presented and that the resulting interpretation of such issues be published on the website of the division.

(1) The division shall by rule establish an informal process of rendering nonbinding interpretations of the Florida Fire Prevention Code. The division may contract with and refer interpretive issues to a third party, selected based upon cost effectiveness, quality of services to be performed, and other performance-based criteria, which has experience in interpreting and enforcing the Florida Fire Prevention Code. It is the intent of the Legislature that the division establish a Fire Code Interpretation Committee composed of seven persons and seven alternates, equally representing each area of the state, to which a party can pose questions regarding the interpretation of the Florida Fire Prevention Code provisions. The alternate member may respond to a nonbinding interpretation if a ~~the~~ member ~~notifies the Fire Code Interpretation Committee that he or she~~ is unable to respond.

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

And the title is amended as follows:

Delete line 40

and insert:

Florida Fire Prevention Code; amending s. 633.212,





599770

40 F.S.; removing the requirement that an alternate  
41 member of the Fire Code Interpretation Committee  
42 provide notice to the committee in order to respond to  
43 a nonbinding interpretation when a member is unable to  
44 respond; providing an effective

By the Committee on Community Affairs; and Senator Simpson

578-02837-14

20141106c1

1 A bill to be entitled  
 2 An act relating to building construction; amending s.  
 3 162.12, F.S.; providing an additional method for local  
 4 governments to provide notices to alleged code  
 5 enforcement violators; amending s. 514.03, F.S.;  
 6 requiring application for an operating permit before  
 7 filing an application for a building permit for a  
 8 public swimming pool; amending s. 514.031, F.S.;  
 9 providing additional requirements for obtaining a  
 10 public swimming pool operating permit; amending s.  
 11 553.37, F.S.; specifying inspection criteria for  
 12 construction or modification of manufactured buildings  
 13 or modules; amending s. 553.721, F.S.; revising the  
 14 allocation of funds from the building permit  
 15 surcharge; amending s. 553.775, F.S.; authorizing  
 16 building officials, local enforcement agencies, and  
 17 the Florida Building Commission to interpret the  
 18 Florida Accessibility Code for Building Construction;  
 19 specifying procedures for such interpretations;  
 20 deleting provisions relating to declaratory statements  
 21 and interpretations of the Florida Accessibility Code  
 22 for Building Construction, to conform; amending s.  
 23 553.79, F.S.; prohibiting a local enforcing agency  
 24 from issuing a building permit for a public swimming  
 25 pool without proof of application for an operating  
 26 permit; requiring issuance of an operating permit  
 27 before a certificate of completion or occupancy is  
 28 issued; amending s. 553.841, F.S.; revising education  
 29 and training requirements of the Florida Building Code

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

578-02837-14

20141106c1

30 Compliance and Mitigation Program; creating s.  
 31 553.883, F.S.; authorizing use of smoke alarms powered  
 32 by 10-year nonremovable, nonreplaceable batteries in  
 33 certain circumstances; requiring use of such alarms by  
 34 a certain date; amending s. 553.993, F.S.; revising  
 35 the definition of the term "building energy-efficiency  
 36 rating system" to require consistency with certain  
 37 national standards for new construction and existing  
 38 construction; providing for oversight; amending s.  
 39 633.202, F.S.; exempting certain tents from the  
 40 Florida Fire Prevention Code; providing an effective  
 41 date.  
 42  
 43 Be It Enacted by the Legislature of the State of Florida:  
 44  
 45 Section 1. Section 162.12, Florida Statutes, is amended to  
 46 read:  
 47 162.12 Notices.—  
 48 (1) All notices required by this part must be provided to  
 49 the alleged violator by:  
 50 (a) Certified mail, and at the option of the local  
 51 government return receipt requested, to the address listed in  
 52 the tax collector's office for tax notices or to the address  
 53 listed in the county property appraiser's database. The local  
 54 government may also provide an additional notice to any other  
 55 address it may find for the property owner. For property owned  
 56 by a corporation, notices may be provided by certified mail to  
 57 the registered agent of the corporation. If any notice sent by  
 58 certified mail is not signed as received within 30 days after

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

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the postmarked date of mailing, notice may be provided by posting as described in subparagraphs (2)(b)1. and 2.;

(b) Hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the local governing body;

(c) Leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; or

(d) In the case of commercial premises, leaving the notice with the manager or other person in charge.

(2) In addition to providing notice as set forth in subsection (1), at the option of the code enforcement board or the local government, notice may be served by publication or posting, as follows:

(a)1. Such notice shall be published once during each week for 4 consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county where the code enforcement board is located. The newspaper shall meet such requirements as are prescribed under chapter 50 for legal and official advertisements.

2. Proof of publication shall be made as provided in ss. 50.041 and 50.051.

(b)1. In lieu of publication as described in paragraph (a), such notice may be posted at least 10 days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be, in the case of municipalities, at the

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primary municipal government office, and in the case of counties, at the front door of the courthouse or the main county governmental center in said county.

2. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

(c) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (1).

(3) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (1), together with proof of publication or posting as provided in subsection (2), shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice.

Section 2. Section 514.03, Florida Statutes, is amended to read:

514.03 Approval necessary to construct, develop, or modify public swimming pools or public bathing places.—

(1) A person or public body desiring to construct, develop, or modify a public swimming pool must apply to the department for an operating permit before filing an application for a building permit under s. 553.79.

(2) Local governments or local enforcement districts may determine compliance with the general construction standards of the Florida Building Code, pursuant to s. 553.80. Local governments or local enforcement districts may conduct plan reviews and inspections of public swimming pools and public bathing places for this purpose.

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Section 3. Paragraph (a) of subsection (1) of section 514.031, Florida Statutes, is amended to read:

514.031 Permit necessary to operate public swimming pool.—

(1) It is unlawful for any person or public body to operate or continue to operate any public swimming pool without a valid permit from the department, such permit to be obtained in the following manner:

(a) Any person or public body desiring to operate any public swimming pool shall file an application for an operating a permit with the department, on application forms provided by the department, and shall accompany such application with:

1. A description of the structure, its appurtenances, and its operation.

2.1- A description of the source or sources of water supply, and the amount and quality of water available and intended to be used.

3.2- The method and manner of water purification, treatment, disinfection, and heating.

4.3- The safety equipment and standards to be used.

5. A copy of the final inspection from the local enforcement agency as defined in chapter 553.

6.4- Any other pertinent information deemed necessary by the department.

Section 4. Paragraph (c) of subsection (1) of section 553.37, Florida Statutes, is amended to read:

553.37 Rules; inspections; and insignia.—

(1) The Florida Building Commission shall adopt within the Florida Building Code requirements for construction or modification of manufactured buildings and building modules, to

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address:

(c) ~~Minimum~~ Inspection criteria, which shall require the approved inspection agency to:

1. Observe the first building built, or with regard to components, observe the first unit assembled, after certification from the manufacturer, from start to finish, inspecting all subsystems: electrical, plumbing, structural, mechanical, or thermal.

2. Continue observation of the manufacturing process until the approved inspection agency determines that the manufacturer's quality control program, in conjunction with the application of the plans approved by the approved inspection agency, will result in a building and components that meet or exceed the applicable Florida Building Code requirements.

3. Inspect each module produced during at least one point of the manufacturing process and inspect at least 75 percent of the subsystems of each module: electrical, plumbing, structural, mechanical, or thermal.

4. With respect to components, inspect at least 75 percent of the manufactured building components and at least 20 percent of the storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less.

Section 5. Section 553.721, Florida Statutes, is amended to read:

553.721 Surcharge.—In order for the Department of Business and Professional Regulation to administer and carry out the purposes of this part and related activities, there is created a surcharge, to be assessed at the rate of 1.5 percent of the permit fees associated with enforcement of the Florida Building

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175 Code as defined by the uniform account criteria and specifically  
 176 the uniform account code for building permits adopted for local  
 177 government financial reporting pursuant to s. 218.32. The  
 178 minimum amount collected on any permit issued shall be \$2. The  
 179 unit of government responsible for collecting a permit fee  
 180 pursuant to s. 125.56(4) or s. 166.201 shall collect the  
 181 surcharge and electronically remit the funds collected to the  
 182 department on a quarterly calendar basis for the preceding  
 183 quarter and continuing each third month thereafter. The unit of  
 184 government shall retain 10 percent of the surcharge collected to  
 185 fund the participation of building departments in the national  
 186 and state building code adoption processes and to provide  
 187 education related to enforcement of the Florida Building Code.  
 188 All funds remitted to the department pursuant to this section  
 189 shall be deposited in the Professional Regulation Trust Fund.  
 190 Funds collected from the surcharge shall be allocated to fund  
 191 the Florida Building Commission, ~~and~~ the Florida Building Code  
 192 Compliance and Mitigation Program under s. 553.841, and the  
 193 Future Builders of America program. Beginning in the 2013-2014  
 194 ~~fiscal year,~~ Funds allocated to the Florida Building Code  
 195 Compliance and Mitigation Program shall be \$925,000 each fiscal  
 196 year. Beginning in the 2014-2015 fiscal year, funds allocated to  
 197 the Future Builders of America program shall be \$250,000 each  
 198 fiscal year. The funds collected from the surcharge may not be  
 199 used to fund research on techniques for mitigation of radon in  
 200 existing buildings. Funds used by the department as well as  
 201 funds to be transferred to the Department of Health shall be as  
 202 prescribed in the annual General Appropriations Act. The  
 203 department shall adopt rules governing the collection and

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204 remittance of surcharges pursuant to chapter 120.

205 Section 6. Section 553.775, Florida Statutes, is amended to  
 206 read:

207 553.775 Interpretations.—

208 (1) It is the intent of the Legislature that the Florida  
 209 Building Code and the Florida Accessibility Code for Building  
 210 Construction be interpreted by building officials, local  
 211 enforcement agencies, and the commission in a manner that  
 212 protects the public safety, health, and welfare at the most  
 213 reasonable cost to the consumer by ensuring uniform  
 214 interpretations throughout the state and by providing processes  
 215 for resolving disputes regarding interpretations of the Florida  
 216 Building Code and the Florida Accessibility Code for Building  
 217 Construction which are just and expeditious.

218 (2) Local enforcement agencies, local building officials,  
 219 state agencies, and the commission shall interpret provisions of  
 220 the Florida Building Code and the Florida Accessibility Code for  
 221 Building Construction in a manner that is consistent with  
 222 declaratory statements and interpretations entered by the  
 223 commission, except that conflicts between the Florida Fire  
 224 Prevention Code and the Florida Building Code shall be resolved  
 225 in accordance with s. 553.73(11)(c) and (d).

226 (3) The following procedures may be invoked regarding  
 227 interpretations of the Florida Building Code or the Florida  
 228 Accessibility Code for Building Construction:

229 (a) Upon written application by any substantially affected  
 230 person or state agency or by a local enforcement agency, the  
 231 commission shall issue declaratory statements pursuant to s.  
 232 120.565 relating to the enforcement or administration by local

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governments of the Florida Building Code or the Florida Accessibility Code for Building Construction.

(b) When requested in writing by any substantially affected person or state agency or by a local enforcement agency, the commission shall issue a declaratory statement pursuant to s. 120.565 relating to this part and ss. 515.25, 515.27, 515.29, and 515.37. Actions of the commission are subject to judicial review under s. 120.68.

(c) The commission shall review decisions of local building officials and local enforcement agencies regarding interpretations of the Florida Building Code or the Florida Accessibility Code for Building Construction after the local board of appeals has considered the decision, if such board exists, and if such appeals process is concluded within 25 business days.

1. The commission shall coordinate with the Building Officials Association of Florida, Inc., to designate panels composed of five members to hear requests to review decisions of local building officials. The members must be licensed as building code administrators under part XII of chapter 468 and must have experience interpreting and enforcing provisions of the Florida Building Code and the Florida Accessibility Code for Building Construction.

2. Requests to review a decision of a local building official interpreting provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction may be initiated by any substantially affected person, including an owner or builder subject to a decision of a local building official or an association of owners or builders having members

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who are subject to a decision of a local building official. In order to initiate review, the substantially affected person must file a petition with the commission. The commission shall adopt a form for the petition, which shall be published on the Building Code Information System. The form shall, at a minimum, require the following:

a. The name and address of the county or municipality in which provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction are being interpreted.

b. The name and address of the local building official who has made the interpretation being appealed.

c. The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any; and an explanation of how the petitioner's substantial interests are being affected by the local interpretation of the Florida Building Code or the Florida Accessibility Code for Building Construction.

d. A statement of the provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction which are being interpreted by the local building official.

e. A statement of the interpretation given to provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction by the local building official and the manner in which the interpretation was rendered.

f. A statement of the interpretation that the petitioner contends should be given to the provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction and a statement supporting the petitioner's

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291 interpretation.

292 g. Space for the local building official to respond in  
 293 writing. The space shall, at a minimum, require the local  
 294 building official to respond by providing a statement admitting  
 295 or denying the statements contained in the petition and a  
 296 statement of the interpretation of the provisions of the Florida  
 297 Building Code or the Florida Accessibility Code for Building  
 298 Construction which the local jurisdiction or the local building  
 299 official contends is correct, including the basis for the  
 300 interpretation.

301 3. The petitioner shall submit the petition to the local  
 302 building official, who shall place the date of receipt on the  
 303 petition. The local building official shall respond to the  
 304 petition in accordance with the form and shall return the  
 305 petition along with his or her response to the petitioner within  
 306 5 days after receipt, exclusive of Saturdays, Sundays, and legal  
 307 holidays. The petitioner may file the petition with the  
 308 commission at any time after the local building official  
 309 provides a response. If no response is provided by the local  
 310 building official, the petitioner may file the petition with the  
 311 commission 10 days after submission of the petition to the local  
 312 building official and shall note that the local building  
 313 official did not respond.

314 4. Upon receipt of a petition that meets the requirements  
 315 of subparagraph 2., the commission shall immediately provide  
 316 copies of the petition to a panel, and the commission shall  
 317 publish the petition, including any response submitted by the  
 318 local building official, on the Building Code Information System  
 319 in a manner that allows interested persons to address the issues

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320 by posting comments.

321 5. The panel shall conduct proceedings as necessary to  
 322 resolve the issues; shall give due regard to the petitions, the  
 323 response, and to comments posed on the Building Code Information  
 324 System; and shall issue an interpretation regarding the  
 325 provisions of the Florida Building Code or the Florida  
 326 Accessibility Code for Building Construction within 21 days  
 327 after the filing of the petition. The panel shall render a  
 328 determination based upon the Florida Building Code or the  
 329 Florida Accessibility Code for Building Construction or, if the  
 330 code is ambiguous, the intent of the code. The panel's  
 331 interpretation shall be provided to the commission, which shall  
 332 publish the interpretation on the Building Code Information  
 333 System and in the Florida Administrative Register. The  
 334 interpretation shall be considered an interpretation entered by  
 335 the commission, and shall be binding upon the parties and upon  
 336 all jurisdictions subject to the Florida Building Code or the  
 337 Florida Accessibility Code for Building Construction, unless it  
 338 is superseded by a declaratory statement issued by the Florida  
 339 Building Commission or by a final order entered after an appeal  
 340 proceeding conducted in accordance with subparagraph 7.

341 6. It is the intent of the Legislature that review  
 342 proceedings be completed within 21 days after the date that a  
 343 petition seeking review is filed with the commission, and the  
 344 time periods set forth in this paragraph may be waived only upon  
 345 consent of all parties.

346 7. Any substantially affected person may appeal an  
 347 interpretation rendered by a hearing officer panel by filing a  
 348 petition with the commission. Such appeals shall be initiated in

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accordance with chapter 120 and the uniform rules of procedure and must be filed within 30 days after publication of the interpretation on the Building Code Information System or in the Florida Administrative Register. Hearings shall be conducted pursuant to chapter 120 and the uniform rules of procedure. Decisions of the commission are subject to judicial review pursuant to s. 120.68. The final order of the commission is binding upon the parties and upon all jurisdictions subject to the Florida Building Code or the Florida Accessibility Code for Building Construction.

8. The burden of proof in any proceeding initiated in accordance with subparagraph 7. is on the party who initiated the appeal.

9. In any review proceeding initiated in accordance with this paragraph, including any proceeding initiated in accordance with subparagraph 7., the fact that an owner or builder has proceeded with construction may not be grounds for determining an issue to be moot if the issue is one that is likely to arise in the future.

This paragraph provides the exclusive remedy for addressing requests to review local interpretations of the Florida Building Code or the Florida Accessibility Code for Building Construction and appeals from review proceedings.

(d) Upon written application by any substantially affected person, contractor, or designer, or a group representing a substantially affected person, contractor, or designer, the commission shall issue or cause to be issued a formal interpretation of the Florida Building Code or the Florida

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Accessibility Code for Building Construction as prescribed by paragraph (c).

(e) Local decisions declaring structures to be unsafe and subject to repair or demolition are not subject to review under this subsection and may not be appealed to the commission if the local governing body finds that there is an immediate danger to the health and safety of the public.

(f) Upon written application by any substantially affected person, the commission shall issue a declaratory statement pursuant to s. 120.565 relating to an agency's interpretation and enforcement of the specific provisions of the Florida Building Code or the Florida Accessibility Code for Building Construction which the agency is authorized to enforce. This subsection does not provide any powers, other than advisory, to the commission with respect to any decision of the State Fire Marshal made pursuant to chapter 633.

(g) The commission may designate a commission member who has demonstrated expertise in interpreting building plans to attend each meeting of the advisory council created in s. 553.512. The commission member may vary from meeting to meeting, shall serve on the council in a nonvoting capacity, and shall receive per diem and expenses as provided in s. 553.74(3).

(h) The commission shall by rule establish an informal process of rendering nonbinding interpretations of the Florida Building Code and the Florida Accessibility Code for Building Construction. The commission is specifically authorized to refer interpretive issues to organizations that represent those engaged in the construction industry. The commission shall immediately implement the process before completing formal



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rulemaking. It is the intent of the Legislature that the commission create a process to refer questions to a small, rotating group of individuals licensed under part XII of chapter 468, to which a party may pose questions regarding the interpretation of code provisions. It is the intent of the Legislature that the process provide for the expeditious resolution of the issues presented and publication of the resulting interpretation on the Building Code Information System. Such interpretations shall be advisory only and nonbinding on the parties and the commission.

(4) In order to administer this section, the commission may adopt by rule and impose a fee for filing requests for declaratory statements and binding and nonbinding interpretations to recoup the cost of the proceedings which may not exceed \$125 for each request for a nonbinding interpretation and \$250 for each request for a binding review or interpretation. For proceedings conducted by or in coordination with a third party, the rule may provide that payment be made directly to the third party, who shall remit to the department that portion of the fee necessary to cover the costs of the department.

~~(5) The commission may render declaratory statements in accordance with s. 120.565 relating to the provisions of the Florida Accessibility Code for Building Construction not attributable to the Americans with Disabilities Act Accessibility Guidelines. Notwithstanding the other provisions of this section, the Florida Accessibility Code for Building Construction and chapter 11 of the Florida Building Code may not be interpreted by, and are not subject to review under, any of~~

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~~the procedures specified in this section. This subsection has no effect upon the commission's authority to waive the Florida Accessibility Code for Building Construction as provided by s. 553.512.~~

Section 7. Present subsections (11) through (18) of section 553.79, Florida Statutes, are redesignated as subsections (12) through (19), respectively, and a new subsection (11) is added to that section, to read:

553.79 Permits; applications; issuance; inspections.—

(11) The local enforcing agency may not issue a building permit to construct, develop, or modify a public swimming pool without proof of application for an operating permit under s. 514.031. A certificate of completion or occupancy may not be issued until such operating permit is issued.

Section 8. Subsections (1) and (2) of section 553.841, Florida Statutes, are amended to read:

553.841 Building code compliance and mitigation program.—

(1) The Legislature finds that knowledge and understanding by persons licensed or employed in the design and construction industries of the importance and need for complying with the Florida Building Code and related laws is vital to the public health, safety, and welfare of this state, especially for protecting consumers and mitigating damage caused by hurricanes to residents and visitors to the state. The Legislature further finds that the Florida Building Code can be effective only if all participants in the design and construction industries maintain a thorough knowledge of the code, code compliance and enforcement, duties related to consumers, and changes that additions thereto which improve construction standards, project

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completion, and compliance of design and construction to protect against consumer harm, storm damage, and other damage.

Consequently, the Legislature finds that there is a need for a program to provide ongoing education and outreach activities concerning compliance with the Florida Building Code, the Florida Fire Prevention Code, construction plan and permitting requirements, construction liens, and hurricane mitigation.

(2) The Department of Business and Professional Regulation shall administer a program, designated as the Florida Building Code Compliance and Mitigation Program, to develop, coordinate, and maintain education and outreach to persons required to comply with the Florida Building Code and related provisions as specified in subsection (1) and ensure consistent education, training, and communication of the code's requirements, including, but not limited to, methods for design and construction compliance and mitigation of storm-related damage. The program shall also operate a clearinghouse through which design, construction, and building code enforcement licensees, suppliers, and consumers in this state may find others in order to exchange information relating to mitigation and facilitate repairs in the aftermath of a natural disaster.

Section 9. Section 553.883, Florida Statutes, is created to read:

553.883 Smoke alarms in one-family and two-family dwellings and townhomes.—One-family and two-family dwellings and townhomes undergoing a repair, or a level 1 alteration as defined in the Florida Building Code, Existing Building, may use smoke alarms powered by 10-year nonremovable, nonreplaceable batteries in lieu of retrofitting such dwelling with smoke alarms powered by

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the dwelling's electrical system. Effective January 1, 2015, a battery-powered smoke alarm that is newly installed or replaces an existing battery-powered smoke alarm must be powered by a nonremovable, nonreplaceable battery that powers the alarm for at least 10 years.

Section 10. Subsection (3) of section 553.993, Florida Statutes, is amended to read:

553.993 Definitions.—For purposes of this part:

(3) "Building energy-efficiency rating system" means a whole building energy evaluation system that provides a reliable and scientifically-based analysis of a building's energy consumption or energy features and allows a comparison to similar building types in similar climate zones where applicable. Specifically, the rating system shall use standard calculations, formulas, and scoring methods; be applicable nationally; compare a building to a clearly defined and researched baseline or benchmark; require qualified professionals to conduct the rating or assessment; and provide a labeling and recognition program with specific criteria or levels. Residential program benchmarks for new construction must be consistent with national building standards. Residential building program benchmarks for existing construction must be consistent with national home energy rating standards. The building energy-efficiency rating system shall require at least one level of oversight performed by an organized and balanced group of professionals with subject matter expertise in energy efficiency, energy rating, and evaluation methods established by the Residential Energy Services Network, the Commercial Energy Services Network, the Building Performance Institute, or the

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523 ~~Florida Solar Energy Center.~~

524 Section 11. Subsection (15) of section 633.202, Florida  
525 Statutes, is amended to read:

526 633.202 Florida Fire Prevention Code.—

527 (15) ~~(a)~~ For one-story or two-story structures that are less  
528 than 10,000 square feet, whose occupancy is defined in the  
529 Florida Building Code and the Florida Fire Prevention Code as  
530 business or mercantile, a fire official shall enforce the wall  
531 fire-rating provisions for occupancy separation as defined in  
532 the Florida Building Code.

533 (16) (a) (b) A structure, located on property that is  
534 classified for ad valorem purposes as agricultural, which is  
535 part of a farming or ranching operation, in which the occupancy  
536 is limited by the property owner to no more than 35 persons, and  
537 which is not used by the public for direct sales or as an  
538 educational outreach facility, is exempt from the Florida Fire  
539 Prevention Code, including the national codes and Life Safety  
540 Code incorporated by reference. This paragraph does not include  
541 structures used for residential or assembly occupancies, as  
542 defined in the Florida Fire Prevention Code.

543 (b) A tent up to 30 feet by 30 feet is exempt from the  
544 Florida Fire Prevention Code, including the national codes  
545 incorporated by reference.

546 Section 12. This act shall take effect July 1, 2014.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### SENATOR WILTON SIMPSON

18th District

#### COMMITTEES:

Community Affairs, *Chair*  
Appropriations Subcommittee on General  
Government  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Commerce and Tourism  
Communications, Energy, and Public Utilities  
Environmental Preservation and Conservation

#### JOINT COMMITTEE:

Joint Legislative Auditing Committee

April 1, 2014

Senator Kelli Stargel, Chair  
Committee on Regulated Industries  
330 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Senator Stargel,

Please place Senate Bill 1106 relating to building construction, on the next Committee on Regulated Industries agenda.

Please contact my office with any questions.

A handwritten signature in black ink, appearing to read "Wilton Simpson".

Wilton Simpson  
Senator, 18<sup>th</sup> District

#### REPLY TO:

- ☐ 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- ☐ Post Office Box 938, Brooksville, Florida 34605
- ☐ Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

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

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE

# APPEARANCE RECORD

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

4-10-14

Meeting Date

Topic

Building Codes

Bill Number

SB 1106

(if applicable)

Name

HARI HERBRANK

Amendment Barcode

(if applicable)

Job Title

Address

113 EAST COLLEGE #200  
TALLAHASSEE FL 32301

Street

City

State

Zip

Phone

566-7824

E-mail

hherbrank@wilsonmgmt.com

Speaking:

☒

For

☐

Against

☐

Information

Representing

FLORIDA HOME BUILDERS

Appearing at request of Chair:

☒

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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

S-001 (10/20/11)

**COMMITTEE:** Regulated Industries  
**ITEM:** CS/SB 1106  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Thursday, April 10, 2014  
**TIME:** 9:00 —11:00 a.m.  
**PLACE:** 301 Senate Office Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting

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**MEETING DATE:** Thursday, April 10, 2014  
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**PLACE:** 301 Senate Office Building

	4/10/2014 Amendment 488208	4/10/2014 Amendment 534656	4/10/2014 Amendment 107978	4/10/2014 Amendment 490770
	Galvano	Galvano	Galvano	Galvano
SENATORS	Yea	Nay	Yea	Nay
Detert				
Flores				
Galvano				
Gibson				
Legg				
Sachs				
Sobel				
Thrasher				
Braynon, VICE CHAIR				
Stargel, CHAIR				
TOTALS	RCS Yea	- Nay	RCS Yea	- Nay

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	8	9						
	4/10/2014 Amendment 599770	4/10/2014 Motion to report as Committee Substitute						
	Thrasher	Galvano						
SENATORS	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Detert								
Flores								
Galvano								
Gibson								
Legg								
Sachs								
Sobel								
Thrasher								
Braynon, VICE CHAIR								
Stargel, CHAIR								
TOTALS	RCS	-	FAV	-				
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay

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

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

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: CS/SB 1550

INTRODUCER: Regulated Industries Committee and Senator Evers

SUBJECT: Tax-exempt Cigarettes

DATE: April 10, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Fav/CS</b>
2.			AFT	
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1550 repeals the method for providing the Indian tribes with a specific number of tax-exempt cigarettes each year for sale to members of a recognized Indian tribe. The bill permits the Indian tribes to sell a limited number of tax-exempt cigarettes at tribal smoke shops to members of a recognized Indian tribe and to persons who are not members of an Indian tribe. The maximum number of tax-exempt cigarettes that the tribal business entity may purchase and sell annually is calculated by multiplying the number of members of the tribe by five packs of cigarettes times 365.

The bill permits the agents or wholesale cigarettes dealers to continue to sell stamped and untaxed cigarettes to the Indian tribes. The dealers can only sell to one tribal business entity per Indian tribe. The stamping wholesaler must then request a refund for the excise taxes and surcharge taxes that are not collected from the Indian tribes.

The bill prohibits members of the public from purchasing or possessing more than three cartons of tax-exempt cigarettes from a tribal smoke shop within a 7-day period. A person who violates this prohibition commits a misdemeanor of the second degree, which is punishable by a term of imprisonment not exceeding 60 days and a fine not to exceed \$500.

The bill defines a tribal business entity as a federally chartered corporation charged with the duty of creating, expanding, and developing business enterprises for the economic betterment of a recognized Indian tribe. The bill requires that the tribal business entity issue a certificate of

authority to the tribal smoke shops for a reasonable fee. The bill requires that the tribal business entity regulate the conduct of reservation smoke shops, which at minimum, must include surveillance cameras at drive-through smoke shops that capture images or a video of each customer who purchases tax-exempt cigarettes and his or her car and license plate, and the recording of the driver license number of each customer who purchases tax-exempt cigarettes. The drive-through tribal smoke shop must also display a large sign inside the store that gives notice of the 3-carton limit and warns customers of the surveillance cameras in use. The drive-through tribal smoke shop must report at least monthly to the tribal business entity any violation or attempted violation of the three-carton limit.

The bill the tribal business entity to deposit all cigarette revenues into a fund dedicated exclusively to funding tribal health care, including the creation of a Tribal Comprehensive Tobacco Education and Use Prevention Program modeled after the program created under s. 381.84, F.S.

The bill adds two additional members to the 23-member Tobacco Education and Use Prevention Advisory Council. The bill requires that the two additional members of the council must be members of the Seminole Indian Tribe of Florida, one of whom must be a member of the Tribal Comprehensive Tobacco Education and Use Prevention Program.

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

## **II. Present Situation:**

### **Regulation and Taxation of Cigarettes and Other Tobacco Products**

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (department) oversees the collection of excise taxes from the sale of cigarettes and other tobacco products. Part I, ch. 210, F.S., consisting of ss. 210.01-210.22, F.S., provides for the taxation of cigarettes. Part II, ch.210, F.S., consisting of ss. 210.25-210.75, F.S., provides for the taxation of tobacco products other than cigarettes and cigars.

The retail sale and delivery of tobacco is governed by the division under the provisions of ch. 569, F.S.

### **Cigarette Regulation and Taxation**

Section 210.15(1)(a), F.S., requires a permit issued by the division before any person, firm, or corporation may engage in business as a manufacturer, importer, exporter, distributing agent, or wholesale dealer of cigarettes. A separate application and permit is required for each place of business located within the state or, in the absence of such place of business in this state, for wherever its principal place of business is located.

Section 210.01(1), F.S., defines the term “cigarette” to mean:

Any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the

inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.

The current excise tax in Florida ranges from 16.95 cents per package to 67.8 cents per package, depending on the number of cigarettes per package.<sup>1</sup> The current excise tax is 33.9 cents per standard 20-cigarette pack cigarettes.<sup>2</sup>

Section 210.011, F.S., imposes a surcharge on the sale, receipt, purchase, possession, consumption, handling, distribution, and use of cigarettes in this state. The amount of the surcharge varies depending on the weight of the cigarette, its length, and the number of cigarettes in a package. A one dollar surcharge is assessed for packages containing more than 10 but not more than 20 cigarettes.

A “distributing agent” is any person, firm, or corporation who receives cigarettes and distributes them to wholesalers or other distributing agents inside or outside the state.<sup>3</sup> An “agent” is any person authorized by the division to purchase and affix adhesive or meter stamps under part I of ch. 210, F.S.<sup>4</sup> A “wholesale dealer” sells cigarettes to retail dealers for resale only, or operates cigarette vending machines in more than one place of business.<sup>5</sup> An “exporter” is a person who transports tax-exempt cigarettes into Florida under bond for delivery beyond state borders.<sup>6</sup>

Section 210.06, F.S., requires that every dealer affix a tax stamp as evidence that the excise tax has been paid before the cigarettes can be offered for sale in this state. Sections 210.02 and 210.04, F.S., provide that excise taxes must be paid by the wholesale dealer upon the first sale or transaction within this state whether or not such sale or transfer is to the ultimate purchaser or consumer. Because wholesalers may purchase cigarettes from other wholesalers, only the first sale is taxed. Distributing agents, acting as agents to the manufacturers, are not required to pay taxes for the distribution of cigarettes to wholesalers. Collected excise taxes are paid to the division. Stamps representing various denominations of tax are purchased in bulk by wholesale dealers and are affixed to packages as proof of payment.<sup>7</sup> Cigarettes that are not properly stamped may not be sold in Florida.<sup>8</sup> The amount of the tax then becomes a part of the price of the cigarettes to be paid by the purchaser or consumer.

Cigarette manufacturers report information pertaining to the tobacco settlement agreement to the Attorney General’s Office rather than to the division. Section 210.09(2), F.S., requires a monthly report by “any distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting or possessing cigarettes for sale or distribution within the state.”

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<sup>1</sup> Section 210.02(3) and (4), F.S.

<sup>2</sup> Section 210.02(3)(b), F.S.

<sup>3</sup> Section 210.01(14), F.S.

<sup>4</sup> Section 210.01(9), F.S.

<sup>5</sup> Section 210.01(6), F.S.

<sup>6</sup> Section 210.01(17), F.S.

<sup>7</sup> Sections 210.05 and 210.06, F.S.

<sup>8</sup> Section 210.06, F.S.

All manufacturers must report to the division the amount of cigarettes, by invoice total, shipped to Florida cigarette stamping wholesalers, i.e., distributors.

Cigarette distributing agents file a monthly report with the division detailing the number of cigarettes shipped through their warehouse for the preceding month, including all cigarettes received from manufacturers and delivered to each stamping agent. Stamping agents file a monthly report listing all stamp purchases and usage for the preceding month, including ending and beginning inventories. Wholesale distributors that are not stamping agents file a similar report of all purchases and sales inside and outside the state for the preceding month, including ending and beginning inventories. Sales of cigarettes out-of-state are reported on a wholesale dealer's monthly report as exempt from the excise tax because the tax applies only to sales in Florida. The monthly report details the number of cigarette packages, but does not include any information about the quantity of each brand. There are no reporting requirements for retailers.

Revenues from the taxes as well as the license fees are then distributed by the Bureau of Auditing to the statutorily designated recipients on a monthly or quarterly basis.

### **Exempt cigarettes for Members of Recognized Indian Tribes**

Section 210.1801(1), F.S., provides that a member of an Indian tribe recognized in Florida who purchases cigarettes on an Indian reservation for his or her own use is exempt from paying a cigarette tax and surcharge. However, members of an Indian tribe must pay the cigarette tax or surcharge when they purchase cigarettes outside of an Indian reservation. Person who are not a member of an Indian tribe are not exempt from paying the cigarette tax or surcharge when purchasing cigarettes on an Indian reservation within this state.

Section 210.1801(2), F.S., provides the method of providing tax-exempt cigarettes to recognized Indian tribes. The state provides the recognized Indian tribes a number of tax-exempt coupons to use when buying regularly stamped cigarettes from the stamping wholesalers.

Section 210.1801(3), F.S., provides the method for calculating the number of coupons based on the "probable demand of tribal members on the tribe's reservation plus the number needed for official tribal use." This method requires that the recognized Indian tribes in Florida (the Seminole and Miccosukee tribes) annually provide the division with the number of members in their tribes. This number is used to calculate the maximum number of coupons for tax-exempt cigarettes the tribes may receive during the fiscal year. The total number is calculated by multiplying the number of members of the tribe (including children) by five packs of cigarettes by 365 (the number of days in a year).

The coupons are provided to the Indian tribes on a quarterly basis. Once the total number of packs is determined, the number of tax-exempt cigarette packs per quarter of the year is calculated. Coupons representing the total amount of tax-exempt packs are printed and disbursed to the Indian tribe council offices each quarter.

According to the department, the coupons are then distributed to the reservation smoke shops by the tribe councils. When the reservation smoke shops go to the stamping wholesalers to purchase cigarettes, the wholesaler redeems the coupons for tax-exempt cigarettes. Any cigarettes

purchased over and above the number represented by the tax-exempt coupons are purchased with the taxes applied. The coupons are then redeemed by the stamping wholesalers to the division when they purchase additional cigarette tax stamps. The redeemed coupons can be verified with the coupons issued to confirm the applicable coupons and the appropriate number of tax-exempt cigarettes being provided to the Indian tribes.

Section 210.1801(3)(b), F.S., requires that each wholesale dealer must keep records of transactions involving Indian-tax-and-surcharge-exemption coupons. It also specifies the documentation that wholesalers must submit to the division when claiming a refund.

### **Tobacco Education and Use Prevention Advisory Council**

Section 381.84, F.S., implements s. 27, Art. X of the State Constitution, which requires the funding of a comprehensive statewide tobacco education and prevention program. The program must be consistent with the recommendations for effective program components in the 1999 Best Practices for Comprehensive Tobacco Control Programs of the Centers for Disease Control and Prevention.<sup>9</sup>

Section 381.84(4), F.S., creates the Tobacco Education and Use Prevention Advisory Council (council). The council consists of 23 members. Its function is to advise the State Surgeon General as to the direction and scope of the Comprehensive Statewide Tobacco Education and Use Prevention Program, including providing advice on the program's priorities and emphases, and on the overall program budget.

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

### **Definitions**

The bill creates s. 210.01(23), F.S., to define the term "tax-exempt cigarettes" to mean cigarettes exempt from the cigarette excise tax under s. 210.02, F.S., and the cigarette surcharge under s. 210.011, F.S.

The bill creates s. 210.01(24), F.S., to define the term "tribal business entity" to mean a federally chartered corporation charged with the duty of creating, expanding, and developing business enterprises for the economic betterment of a recognized Indian tribe.

The bill creates s. 210.01(23), F.S., to define the term "tribal smoke shop" to mean an entity located on an Indian reservation which is authorized to sell tax-exempt cigarettes to members of an Indian tribe recognized by this state and to the public.

### **Sale of Tax-Exempt Cigarettes by a Tribal Business Entity**

The bill repeals s. 210.1801, F.S., and provides a method for providing the Indian tribes with an unlimited number of tax-exempt cigarettes for sale to members of the tribe and to persons who are not a member of the tribe.

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<sup>9</sup> See Centers for Disease Control and Prevention, *Best Practices for Comprehensive Tobacco Control Programs – 2014* at [http://www.cdc.gov/tobacco/stateandcommunity/best\\_practices/index.htm?source=govdelivery](http://www.cdc.gov/tobacco/stateandcommunity/best_practices/index.htm?source=govdelivery) (Last visited April 10, 2014).

The bill amends s. 210.05(5), F.S., to delete the requirement that cigarettes sold to the Seminole Tribe of Florida must be administered as provided in s. 210.1801, F.S.

The bill amends s. 210.05(5), F.S., to provide that an agent or wholesale dealer may sell stamped and untaxed cigarettes to no more than one tribal business entity per recognized Indian tribe for retail sale on an Indian reservation.

The agent or wholesale dealer must treat the stamped cigarettes and the sale of the stamped cigarettes in the same manner as other sales with respect to reporting and stamping. The bill prohibits that agent or wholesale dealer from collecting from the tribal business entity the cigarette excise tax imposed under s. 210.02, F.S., or the cigarette surcharge imposed under s. 210.011, F.S. The bill provides that the tribal business entity is responsible to the agent or wholesale dealer for the services and expenses incurred in affixing the stamps and accounting for the stamps.

Section 210.05(6), F.S., provides that the stamping wholesaler can file a claim for a refund for the cigarettes tax or surcharge that was not collected from the Indian tribe, and that the division may reimburse the wholesaler for those taxes.

The bill creates s. 210.221, F.S., to provide for the sale of cigarettes on Indian reservations.

Section 210.221(1), F.S., provides the legislative intent that the retail sale of tax-exempt cigarettes is permitted on Indian reservations by tribal smoke shops authorized to operate under s. 210.222, F.S. It provides that members of a recognized Indian tribe and members of the public are permitted to purchase tax-exempt cigarettes from authorized tribal smoke shops, and that tax-exempt cigarettes may be distributed to tribal smoke shops by tribal business entities as prescribed in this section.

Section 210.221(2), F.S., permits a tribal business entity to purchase stamped and untaxed cigarettes from agents or wholesale dealers for retail sale in accordance with subsections (5) and (6). The tribal business entity may sell or distribute the tax-exempt cigarettes only to a tribal smoke shop authorized to operate under s. 210.222, F.S. The bill limits the maximum number of tax-exempt cigarettes that the tribal business entity may purchase and sell annually. The maximum is calculated by multiplying the number of members of the tribe by five packs of cigarettes times 365. This calculation is comparable to method in s. 210.1801, F.S., for determining the number of tax-exempt coupons that the tribe may receive.

Section 210.221(3), F.S., authorizes tribal smoke shops to purchase tax-exempt cigarettes from a tribal business entity even though the cigarettes have an affixed cigarette tax-and-surcharge stamp. The tribal smoke shop may only sell tax-exempt cigarettes on an Indian reservation, and it may sell tax-exempt cigarettes at retail to members of an Indian tribe recognized in this state and to the public.

Section 210.221(4), F.S., requires that each agent, wholesale dealer, or tribal business entity that purchases or sells tax-exempt cigarettes must all keep records of each transaction. It must also submit documentation to the division that contains the identity of the parties involved in the

transaction, the identity and quantity of the product sold or purchased, and any other information that the division may deem appropriate.

Section 210.221(5), F.S., provides that a member of the public who purchases or possesses more than three cartons of tax-exempt cigarettes from a tribal smoke shop within a 7-day period commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S.<sup>10</sup> It is unclear whether the three cartons of untaxed cigarettes that are possessed during the 7-day period must have also been purchased during that period.

### **Tribal Smoke Shop Requirements**

The bill creates s. 210.222, F.S., to provide requirements for tribal smoke shops.

Section 210.222(1), F.S., provides that the tribal smoke shop must be issued a certificate of authority to operate by a tribal business entity. The tribal business entity may charge a tribal smoke shop owner or operator a reasonable fee for the certificate of authority.

Section 210.222(2), F.S., requires that each tribal business entity must adopt written procedures and criteria for authorizing tribal smoke shops to sell tax-exempt cigarettes. The written procedures may authorize tribal smoke shops to be individually owned and operated, or owned by the tribal business entity and operated by an authorized tribal smoke shop. The written procedures must also provide for the monitoring and enforcement of the three-carton purchase limit in s. 210.221(5), F.S. At a minimum, the monitoring for a drive-through tribal smoke shop must include surveillance cameras that capture images or a video of each customer who purchases tax-exempt cigarettes and his or her car and license plate, and the recording of the driver license number of each customer who purchases tax-exempt cigarettes. The tribal smoke shop must also display a large sign inside the store that gives notice of the 3-carton limit and warns customers of the surveillance cameras in use. The tribal smoke shop must also report at least monthly to the tribal business entity any violation or attempted violation of the limits in s. 210.221(5), F.S.

The bill does not limit tribal smoke shops to drive-through facilities. The bill does not specify the monitoring and reporting requirements for tribal smoke shops that are not drive-through smoke shops.

Section 210.222(3), F.S., requires that the tribal business entity adopt written requirements establishing procedures for imposing fines against, and for suspending and revoking the certificate of authority of, a tribal smoke shop that violates or fails to adhere to the requirements in s. 210.221, F.S.

### **Funds Depositing Revenue from the Sale of Tax-Exempt Cigarettes**

Section 210.222(4), F.S., requires the tribal business entity to deposit all cigarette revenues into a fund dedicated exclusively to funding tribal health care, including the creation of a Tribal

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<sup>10</sup> Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a term of imprisonment not exceeding 60 days. Section 775.083, F.S. provides that the penalty for a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

Comprehensive Tobacco Education and Use Prevention Program modeled after the program created under s. 381.84, F.S.

Section 210.222(5), F.S., requires that the accounts established by a tribal business entity that contain funds derived from tax-exempt cigarette sales must be open to inspection by the division.

### **Tobacco Education and Use Prevention Advisory Council**

The bill amends s. 381.84(4), F.S., to add two additional members to the council. The bill requires that the two additional members of the council must be members of the Seminole Indian Tribe of Florida, one of whom must be a member of the Tribal Comprehensive Tobacco Education and Use Prevention Program.

### **Effective Date**

The bill 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:**

None.

### **C. Government Sector Impact:**

The Revenue Estimating Conference adopted an estimate on April 11, 2014 that the bill would have no fiscal impact on cigarette tax revenues.



**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 210.01, 210.05, and 381.84.

This bill repeals section 210.1801 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 210.221 and 210.222.

**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 April 10, 2014:**

The committee substitute (CS) differs from the bill as follows:

The CS amends s. 210.05(5), F.S., to provide that an agent or wholesale dealer may sell stamped and untaxed cigarettes to no more than one tribal business entity per recognized Indian tribe.

The CS amends s. 210.221(2) to limit the maximum number of tax-exempt cigarettes that the tribal business entity may purchase and sell annually. The maximum amount is calculated by multiplying the number of members of the tribe by five packs of cigarettes times 365.

The CS removes tribal members from the prohibition in s. 210.221(5), F.S., against the purchase of more than three cartons of tax-exempt cigarettes from a tribal smoke shop within a 7-day period. The CS also prohibits members of the public from possessing more than three cartons of tax-exempt cigarettes from a tribal smoke shop within a 7-day period.

The CS amends s. 210.222(2), F.S., to limit the monitoring and reporting requirements only to drive-through tribal smoke shops.

The CS removes the requirement in s. 210.222(4), F.S., that three-fifths of all fees collected by a tribal business entity must be deposited into a fund to support medical clinics, to expand and create medical facilities, to purchase diagnostic equipment, to create systems that will improve the sharing of medical records by and between the various reservations, and to staff medical facilities that maintain a primary emphasis on

the needs of tribal members residing on remote reservations. The CS amends s. 210.222(4), to require the tribal business entity to deposit all cigarette revenues into a fund dedicated exclusively to funding tribal health care, including the creation of a Tribal Comprehensive Tobacco Education and Use Prevention Program modeled after the program created under s. 381.84, F.S.

The CS removes the provision in s. 210.222(5), F.S., which requires that the tribal business entity must use all profits derived from the sale of tax-exempt cigarettes to fund law enforcement, fire prevention, tribal housing, and youth recreation.

The CS amends s. 381.84(4), F.S., to add two additional members to the Tobacco Education and Use Prevention Advisory Council. The bill requires that the two additional members of the council must be members of the Seminole Indian Tribe of Florida, one of whom must be a member of the Tribal Comprehensive Tobacco Education and Use Prevention Program.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/11/2014	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsections (23), (24), and (25) are added to  
section 210.01, Florida Statutes, to read:

210.01 Definitions.—When used in this part the following  
words shall have the meaning herein indicated:

(23) "Tax-exempt cigarettes" means cigarettes exempt from  
the cigarette excise tax under s. 210.02 and the cigarette



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11 surcharge under s. 210.011.

12 (24) "Tribal business entity" means a federally chartered  
13 corporation charged with the duty of creating, expanding, and  
14 developing business enterprises for the economic betterment of a  
15 recognized Indian tribe.

16 (25) "Tribal smoke shop" means an entity located on an  
17 Indian reservation which is authorized to sell tax-exempt  
18 cigarettes to members of an Indian tribe recognized by this  
19 state and to the public.

20 Section 2. Subsection (5) of section 210.05, Florida  
21 Statutes, is amended, and subsection (6) is added to that  
22 section, to read:

23 210.05 Preparation and sale of stamps; discount.—

24 (5) An agent or wholesale dealer may sell stamped and  
25 untaxed cigarettes for retail sale on an Indian reservation to  
26 no more than one tribal business entity per recognized Indian  
27 tribe. With respect to reporting and stamping, the agent or  
28 wholesale dealer shall treat such cigarettes and the sale  
29 thereof in the same manner as other sales under this part. The  
30 agent or wholesale dealer may not collect from the tribal  
31 business entity the cigarette excise tax imposed under s. 210.02  
32 or the cigarette surcharge imposed under s. 210.011. The tribal  
33 business entity is responsible to the agent or wholesale dealer  
34 for the services and expenses incurred in affixing and  
35 accounting for the stamps ~~Cigarettes sold to the Seminole Indian~~  
36 ~~Tribe of Florida shall be administered as provided in s.~~  
37 ~~210.1801.~~

38 (6) An agent or wholesale dealer may file a claim for a  
39 refund from the division for any cigarette tax or surcharge paid



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on cigarettes that the wholesale dealer sells to a tribal business entity pursuant to this section. The division may reimburse the agent or wholesale dealer for cigarette taxes or surcharges paid on cigarettes sold to a tribal business entity under this section.

Section 3. Section 210.1801, Florida Statutes, is repealed.

Section 4. Section 210.221, Florida Statutes, is created to read:

210.221 Tax-exempt cigarettes sold on an Indian reservation.—

(1) It is the intent of the Legislature that:

(a) The retail sale of tax-exempt cigarettes be permitted on Indian reservations by tribal smoke shops authorized to operate under s. 210.222.

(b) Members of an Indian tribe recognized in this state and members of the public be permitted to purchase such tax-exempt cigarettes from authorized tribal smoke shops.

(c) Tax-exempt cigarettes be distributed to tribal smoke shops by tribal business entities as prescribed in this section.

(2) Notwithstanding any other law, a tribal business entity may purchase stamped and untaxed cigarettes from agents or wholesale dealers for retail sale in accordance with s. 210.05(5) and (6). A tribal business entity may sell or distribute such tax-exempt cigarettes only to a tribal smoke shop authorized to operate under s. 210.222. The maximum number of tax-exempt cigarettes that may be purchased and sold annually by a tribal business entity is calculated by multiplying the number of members of the tribe times five packs of cigarettes times 365.



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(3) An authorized tribal smoke shop may:

(a) Purchase tax-exempt cigarettes from a tribal business entity even though the cigarettes have an affixed cigarette tax-and-surcharge stamp.

(b) Sell tax-exempt cigarettes on an Indian reservation only.

(c) Sell tax-exempt cigarettes at retail to members of an Indian tribe recognized in this state and to the public.

(4) Each agent, wholesale dealer, or tribal business entity that purchases or sells tax-exempt cigarettes shall keep records of each such transaction and shall submit appropriate documentation to the division. Documentation must contain the identity of the parties involved in the transaction, the identity and quantity of the product sold or purchased, and any other information that the division may deem appropriate.

(5) A member of the public who purchases or possesses more than three cartons of tax-exempt cigarettes from a tribal smoke shop within a 7-day period commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 5. Section 210.222, Florida Statutes, is created to read:

210.222 Tribal smoke shop requirements.—

(1) A person may not own or operate a tribal smoke shop without being issued a certificate of authority to operate by a tribal business entity. A tribal business entity may charge a tribal smoke shop owner or operator a reasonable fee for the certificate of authority.

(2) Each tribal business entity shall adopt written procedures and criteria for authorizing tribal smoke shops to



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sell tax-exempt cigarettes. Such requirements:

(a) May authorize tribal smoke shops to be individually owned and operated, or owned by the tribal business entity and operated by an authorized tribal smoke shop.

(b) Must provide for monitoring and enforcing the purchase limit of three cartons within a 7-day period as specified in s. 210.221(5). In order to monitor the three-carton limit, authorized drive-through tribal smoke shops must, at a minimum:

1. Use surveillance cameras that capture images or a video of each customer who purchases tax-exempt cigarettes and his or her car and license plate.

2. Record the driver license number of each customer who purchases tax-exempt cigarettes.

3. Display a large sign inside the store which is clearly legible and conspicuous to customers and which gives notice of the 3-carton limit and warns customers of the surveillance cameras in use.

4. Report at least monthly to the tribal business entity any violation or attempted violation of s. 210.221(5).

(3) Each tribal business entity shall adopt written requirements establishing procedures for imposing fines against, and for suspending and revoking the certificate of authority of, a tribal smoke shop that violates or fails to adhere to the requirements in 210.221 relating to the retail sale of tax-exempt cigarettes adopted by the tribal business entity.

(4) Each tribal business entity that purchases stamped but untaxed cigarettes from an agent or wholesaler pursuant to s. 210.05(5), must deposit all cigarette revenues into a fund dedicated exclusively to funding tribal health care, including



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the creation of a Tribal Comprehensive Tobacco Education and Use Prevention Program modeled after the program created under s. 381.84.

(5) Any accounts established by a tribal business entity which contain funds derived from tax-exempt cigarette sales, including, but not limited to, an account established pursuant to subsection (4), and the use of such funds must be open to inspection by the division.

Section 6. Paragraph (a) of subsection (4) of section 381.84, Florida Statutes, is amended to read:

381.84 Comprehensive Statewide Tobacco Education and Use Prevention Program.—

(4) ADVISORY COUNCIL; MEMBERS, APPOINTMENTS, AND MEETINGS.— The Tobacco Education and Use Prevention Advisory Council is created within the department.

(a) The council shall consist of 25 ~~23~~ members, including:

1. The State Surgeon General, who shall serve as the chairperson.

2. One county health department director, appointed by the State Surgeon General.

3. Two members appointed by the Commissioner of Education, of whom one must be a school district superintendent.

4. The chief executive officer of the Florida Division of the American Cancer Society, or his or her designee.

5. The chief executive officer of the Greater Southeast Affiliate of the American Heart Association, or his or her designee.

6. The chief executive officer of the American Lung Association of Florida, or his or her designee.





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7. The dean of the University of Miami School of Medicine, or his or her designee.

8. The dean of the University of Florida College of Medicine, or his or her designee.

9. The dean of the University of South Florida College of Medicine, or his or her designee.

10. The dean of the Florida State University College of Medicine, or his or her designee.

11. The dean of Nova Southeastern College of Osteopathic Medicine, or his or her designee.

12. The dean of the Lake Erie College of Osteopathic Medicine in Bradenton, Florida, or his or her designee.

13. The chief executive officer of the Campaign for Tobacco Free Kids, or his or her designee.

14. The chief executive officer of the Legacy Foundation, or his or her designee.

15. Six ~~Four~~ members appointed by the Governor, of whom:

a. Two must have expertise in the field of tobacco-use prevention and education or tobacco-use cessation;

b. Two must be members of the Seminole Indian Tribe of Florida, of whom one must be a member of the Tribal

Comprehensive Tobacco Education and Use Prevention Program; and

c. One must ~~individual who shall~~ be between the ages of 16 and 21 at the time of his or her appointment.

16. Two members appointed by the President of the Senate, of whom one must have expertise in the field of tobacco-use prevention and education or tobacco-use cessation.

17. Two members appointed by the Speaker of the House of Representatives, of whom one must have expertise in the field of



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tobacco-use prevention and education or tobacco-use cessation.

Section 7. This act shall take effect July 1, 2014.

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to tax-exempt cigarettes; amending s.  
210.01, F.S.; defining terms; amending s. 210.05,  
F.S.; authorizing agents and wholesale dealers to sell  
stamped and untaxed cigarettes to tribal business  
entities; authorizing agents and wholesale dealers to  
file a claim with the Division of Alcoholic Beverages  
and Tobacco for a refund of specified taxes and  
surcharges; conforming a cross-reference; amending s.  
210.1801, F.S., relating to the sale of tax-exempt  
cigarettes to members of recognized Indian tribes;  
creating s. 210.221, F.S.; providing legislative  
intent; authorizing tribal business entities to  
purchase stamped and untaxed cigarettes from agents  
and wholesale dealers; providing a cap on the amount  
of cigarettes that may be purchased and sold annually;  
authorizing certain tribal smoke shops to purchase  
tax-exempt cigarettes from tribal business entities  
and to sell such cigarettes at retail on an Indian  
reservation to tribal members and the public;  
requiring specified entities to maintain documentation  
relating to the purchase or sale of tax-exempt



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cigarettes; prohibiting the purchase of more than a specified number of cartons of tax-exempt cigarettes within a specified period; providing a penalty; creating s. 210.222, F.S.; requiring a certificate of authority to own or operate a tribal smoke shop; requiring tribal business entities to adopt related requirements; requiring tribal business entities that purchase tax-exempt cigarettes to deposit all cigarette revenues into a fund to be used for tribal health care including the establishment of a Tribal Comprehensive Tobacco Education and Use Prevention Program; authorizing the division to inspect the accounts and the use of certain funds derived from the sale of tax-exempt cigarettes; amending s. 381.84, F.S.; adding two members of the Seminole Indian Tribe of Florida to the Tobacco Education and Use Prevention Program Council; providing an effective date.

WHEREAS, in April 1977, the first smoke shop operated by the Seminole Indian Tribe of Florida opened, selling tax-exempt cigarettes to the public, and

WHEREAS, authorized by the laws of this state, the Seminole Indian Tribe of Florida operated smoke shops selling tax-exempt cigarettes to the public from 1979 until 2009, and

WHEREAS, in 2009, the Legislature enacted chapter 2009-79, Laws of Florida, effectively revoking the Seminole Indian Tribe of Florida's authority to sell tax-exempt cigarettes to the public, and

WHEREAS, chapter 2009-79, Laws of Florida, preserved a



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portion of the Seminole Indian Tribe of Florida's tax-exempt  
cigarette revenues by allowing the sale of tax-exempt cigarettes  
to tribal members, and

WHEREAS, current law creates a system whereby the Seminole  
Indian Tribe of Florida is given excise tax and surcharge  
exemption coupons based on the probable demand of tribal members  
for cigarettes, with probable demand defined as five packages of  
cigarettes per day for every man, woman, and child member of the  
tribe, and the coupons are used to buy tax-exempt cigarettes  
from a wholesale dealer who submits such coupons to the division  
for a refund of taxes paid by the wholesale dealer, and

WHEREAS, the Seminole Indian Tribe of Florida desires to  
resume the sale of tax-exempt cigarettes to the public and to  
use the revenues generated from such sales for tribal health  
care services, including, but not limited to, the creation of a  
Tribal Comprehensive Tobacco Education and Use Prevention  
Program modeled after the program created under s. 381.84, F.S.,  
and the creation and expansion of medical facilities to increase  
the quality of health care for all tribal members, especially  
those members on remote reservations that are currently  
underserved, NOW, THEREFORE,

By Senator Evers

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1 A bill to be entitled  
 2 An act relating to tax-exempt cigarettes; amending s.  
 3 210.01, F.S.; defining terms; amending s. 210.05,  
 4 F.S.; authorizing agents and wholesale dealers to sell  
 5 stamped and untaxed cigarettes to tribal business  
 6 entities; authorizing agents and wholesale dealers to  
 7 file a claim with the Division of Alcoholic Beverages  
 8 and Tobacco for a refund of specified taxes and  
 9 surcharges; conforming a cross-reference; repealing s.  
 10 210.1801, F.S., relating to the sale of tax-exempt  
 11 cigarettes to members of recognized Indian tribes;  
 12 creating s. 210.221, F.S.; providing legislative  
 13 intent; authorizing tribal business entities to  
 14 purchase stamped and untaxed cigarettes from agents  
 15 and wholesale dealers; authorizing certain tribal  
 16 smoke shops to purchase tax-exempt cigarettes from  
 17 tribal business entities and to sell such cigarettes  
 18 at retail on an Indian reservation to tribal members  
 19 and the public; requiring specified entities to  
 20 maintain documentation relating to the purchase or  
 21 sale of tax-exempt cigarettes; prohibiting the  
 22 purchase of more than a specified number of cartons of  
 23 tax-exempt cigarettes within a specified period;  
 24 providing a penalty; creating s. 210.222, F.S.;  
 25 requiring a certificate of authority to own or operate  
 26 a tribal smoke shop; requiring tribal business  
 27 entities to adopt related requirements; requiring  
 28 tribal business entities that purchase tax-exempt  
 29 cigarettes to create a fund for a specified purpose;

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

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30 requiring such tribal business entities to use certain  
 31 profits for a specified purpose; authorizing the  
 32 division to inspect the accounts and the use of  
 33 certain funds derived from the sale of tax-exempt  
 34 cigarettes; providing an effective date.  
 35  
 36 WHEREAS, in April 1977, the first smoke shop operated by  
 37 the Seminole Indian Tribe of Florida opened, selling tax-exempt  
 38 cigarettes to the public, and  
 39 WHEREAS, authorized by the laws of this state, the Seminole  
 40 Indian Tribe of Florida operated smoke shops selling tax-exempt  
 41 cigarettes to the public from 1979 until 2009, and  
 42 WHEREAS, in 2009, the Legislature enacted chapter 2009-79,  
 43 Laws of Florida, effectively revoking the Seminole Indian Tribe  
 44 of Florida's authority to sell tax-exempt cigarettes to the  
 45 public, and  
 46 WHEREAS, chapter 2009-79, Laws of Florida, preserved a  
 47 portion of the Seminole Indian Tribe of Florida's tax-exempt  
 48 cigarette revenues by allowing the sale of tax-exempt cigarettes  
 49 to tribal members, and  
 50 WHEREAS, current law creates a system whereby the Seminole  
 51 Indian Tribe of Florida is given excise tax and surcharge  
 52 exemption coupons based on the probable demand for cigarettes,  
 53 with probable demand defined as five packages of cigarettes per  
 54 day for every man, woman, and child member of the tribe, and the  
 55 coupons are used to buy tax-exempt cigarettes from a wholesale  
 56 dealer who submits such coupons to the division for a refund of  
 57 taxes paid by the wholesale dealer, and  
 58 WHEREAS, the Seminole Indian Tribe of Florida desires to

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resume the sale of tax-exempt cigarettes to the public and to use the revenues generated from such sales for tribal health care services, which include, but are not limited to, the purchase of diagnostic and other medical equipment, the hiring and retention of medical personnel, the improvement of medical recordkeeping and the sharing of medical records between the various reservations, the use of telehealth, and the creation and expansion of medical facilities to increase the quality of health care for all tribal members, especially those members on remote reservations that are currently underserved, NOW, THEREFORE,

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

Section 1. Subsections (23), (24), and (25) are added to section 210.01, Florida Statutes, to read:

210.01 Definitions.—When used in this part the following words shall have the meaning herein indicated:

(23) "Tax-exempt cigarettes" means cigarettes exempt from the cigarette excise tax under s. 210.02 and the cigarette surcharge under s. 210.011.

(24) "Tribal business entity" means a federally chartered corporation charged with the duty of creating, expanding, and developing business enterprises for the economic betterment of a recognized Indian tribe.

(25) "Tribal smoke shop" means an entity located on an Indian reservation which is authorized to sell tax-exempt cigarettes to members of an Indian tribe recognized by this state and to the public.

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Section 2. Subsection (5) of section 210.05, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

210.05 Preparation and sale of stamps; discount.—

(5) An agent or wholesale dealer may sell stamped and untaxed cigarettes to a tribal business entity for retail sale on an Indian reservation. With respect to reporting and stamping, the agent or wholesale dealer shall treat such cigarettes and the sale thereof in the same manner as other sales under this part. The agent or wholesale dealer may not collect from the tribal business entity the cigarette excise tax imposed under s. 210.02 or the cigarette surcharge imposed under s. 210.011. The tribal business entity is responsible to the agent or wholesale dealer for the services and expenses incurred in affixing the stamps and accounting therefor. ~~Cigarettes sold to the Seminole Indian Tribe of Florida shall be administered as provided in s. 210.1801.~~

(6) An agent or wholesale dealer may file a claim for a refund from the division for any cigarette tax or surcharge paid on cigarettes that the wholesale dealer sells to a tribal business entity pursuant to this section. The division may reimburse the agent or wholesale dealer for cigarette taxes or surcharges paid on cigarettes sold to a tribal business entity under this section.

Section 3. Section 210.1801, Florida Statutes, is repealed.

Section 4. Section 210.221, Florida Statutes, is created to read:

210.221 Tax-exempt cigarettes sold on an Indian reservation.—

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117 (1) It is the intent of the Legislature that:  
 118 (a) The retail sale of tax-exempt cigarettes be permitted  
 119 on Indian reservations by tribal smoke shops authorized to  
 120 operate under s. 210.222.  
 121 (b) Members of an Indian tribe recognized in this state and  
 122 members of the public be permitted to purchase such tax-exempt  
 123 cigarettes from authorized tribal smoke shops.  
 124 (c) Tax-exempt cigarettes be distributed to tribal smoke  
 125 shops by tribal business entities as prescribed in this section.  
 126 (2) Notwithstanding any other law, a tribal business entity  
 127 may purchase stamped and untaxed cigarettes from agents or  
 128 wholesale dealers for retail sale in accordance with s.  
 129 210.05(5) and (6). A tribal business entity may sell or  
 130 distribute such tax-exempt cigarettes only to a tribal smoke  
 131 shop authorized to operate under s. 210.222.  
 132 (3) An authorized tribal smoke shop may:  
 133 (a) Purchase tax-exempt cigarettes from a tribal business  
 134 entity even though the cigarettes have an affixed cigarette tax-  
 135 and-surcharge stamp.  
 136 (b) Sell tax-exempt cigarettes on an Indian reservation  
 137 only.  
 138 (c) Sell tax-exempt cigarettes at retail to members of an  
 139 Indian tribe recognized in this state and to the public.  
 140 (4) Each agent, wholesale dealer, or tribal business entity  
 141 that purchases or sells tax-exempt cigarettes shall keep records  
 142 of each such transaction and shall submit appropriate  
 143 documentation to the division. Documentation must contain the  
 144 identity of the parties involved in the transaction, the  
 145 identity and quantity of the product sold or purchased, and any

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146 other information that the division may deem appropriate.  
 147 (5) A tribal member or member of the public who purchases  
 148 more than three cartons of tax-exempt cigarettes from a tribal  
 149 smoke shop within a 7-day period commits a misdemeanor of the  
 150 second degree, punishable as provided in s. 775.082 or s.  
 151 775.083.  
 152 Section 5. Section 210.222, Florida Statutes, is created to  
 153 read:  
 154 210.222 Tribal smoke shop requirements.-  
 155 (1) A person may not own or operate a tribal smoke shop  
 156 without being issued a certificate of authority to operate by a  
 157 tribal business entity. A tribal business entity may charge a  
 158 tribal smoke shop owner or operator a reasonable fee for the  
 159 certificate of authority.  
 160 (2) Each tribal business entity shall adopt written  
 161 procedures and criteria for authorizing tribal smoke shops to  
 162 sell tax-exempt cigarettes. Such requirements:  
 163 (a) May authorize tribal smoke shops to be individually  
 164 owned and operated, or owned by the tribal business entity and  
 165 operated by an authorized tribal smoke shop.  
 166 (b) Must provide for monitoring and enforcing the purchase  
 167 limit of three cartons within a 7-day period as specified in s.  
 168 210.221(5). In order to monitor the three-carton limit,  
 169 authorized tribal smoke shops must, at a minimum:  
 170 1. Use surveillance cameras that capture images or a video  
 171 of each customer who purchases tax-exempt cigarettes and his or  
 172 her car and license plate.  
 173 2. Record the driver license number of each customer who  
 174 purchases tax-exempt cigarettes.

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175 3. Display a large sign inside the store which is clearly  
176 legible and conspicuous to customers and which gives notice of  
177 the 3-carton limit and warns customers of the surveillance  
178 cameras in use.

179 4. Report at least monthly to the tribal business entity  
180 any violation or attempted violation of s. 210.221(5).

181 (3) Each tribal business entity shall adopt written  
182 requirements establishing procedures for imposing fines against,  
183 and for suspending and revoking the certificate of authority of,  
184 a tribal smoke shop that violates or fails to adhere to the  
185 requirements in 210.221 relating to the retail sale of tax-  
186 exempt cigarettes adopted by the tribal business entity.

187 (4) Each tribal business entity that purchases stamped but  
188 untaxed cigarettes from an agent or wholesaler pursuant to s.  
189 210.05(5), must create a fund dedicated exclusively to funding  
190 tribal health care. Three-fifths of all fees collected by a  
191 tribal business entity shall be deposited into the fund. The  
192 fund shall be used to support medical clinics, to expand and  
193 create medical facilities, to purchase diagnostic equipment, to  
194 create systems that will improve the sharing of medical records  
195 by and between the various reservations, and to staff medical  
196 facilities that maintain a primary emphasis on the needs of  
197 tribal members residing on remote reservations.

198 (5) Each tribal business entity that purchases stamped and  
199 untaxed cigarettes from an agent or wholesaler pursuant to s.  
200 210.05(5) must use all profits derived from the sale of tax-  
201 exempt cigarettes to fund law enforcement, fire prevention,  
202 tribal housing, and youth recreation.

203 (6) Any accounts established by a tribal business entity

2-01195A-14 20141550\_\_

204 containing funds derived from tax-exempt cigarette sales,  
205 including, but not limited to, an account established pursuant  
206 to subsection (4) or subsection (5), and the use of such funds  
207 must be open to inspection by the division.

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





## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Criminal Justice, *Chair*  
Appropriations Subcommittee on Finance and Tax  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Communications, Energy, and Public Utilities  
Military and Veterans Affairs, Space, and  
Domestic Security  
Transportation

### JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

### SENATOR GREG EVERS

2nd District

March 5, 2014

Honorable Senator Stargel  
Senate Regulated Industries Committee  
324 SB  
404 S. Monroe St.  
Tallahassee, FL 32399

### RE: SB 1550

Dear Chairman Stargel:

Please allow this letter to serve as my respectful request to include SB 1550 regarding Tax-Exempt Cigarettes on the agenda for your next Regulated Industries Committee meeting.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Greg Evers".

Greg Evers  
State Senator, District 2

### REPLY TO:

- ☐ 209 East Zaragoza Street, Pensacola, Florida 32502-6048 (850) 595-0213 FAX: (888) 263-0013
- ☐ 308 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002

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

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4-10-14

Meeting Date

Topic TAX EXEMPT Cigarettes Indians Bill Number 1550  
Name JACK SKEDING Amendment Barcode \_\_\_\_\_ (if applicable)  
Job Title ATTORNEY for Seniors Tribe of Fla. Inc.  
Address P.O. 669 Phone 850-510-6855  
Street \_\_\_\_\_  
City Tallahassee State FL Zip 32302 E-mail JSKeding@BPhaw.Firm.net  
Speaking: ☒ For ☐ Against ☐ Information  
Representing Seniors Tribe of Florida, Inc  
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)

4-10-14  
Meeting Date

Topic Re-Authorization of Seminole Tribe

Bill Number 1550

Name RAMON MALEY

Amendment Barcode 612 938  
(if applicable)

Job Title \_\_\_\_\_

Address PO Box 10245

Phone 800 222 1568

Street TALL H  
City 32302 State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail mrgroup@atl

Speaking: ☒ For ☐ Against ☐ Information

Representing J. Skelley PA - SEMINOLE INDIAN TRIBE, INC.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

## The Florida Senate COMMITTEE VOTE RECORD

**COMMITTEE:** Regulated Industries  
**ITEM:** SB 1550  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Thursday, April 10, 2014  
**TIME:** 9:00 —11:00 a.m.  
**PLACE:** 301 Senate Office Building

FINAL VOTE			Amendment 612938	1		2		
				Motion to report as Committee Substitute				
Yea	Nay	SENATORS	Braynon	Yea	Nay	Braynon	Yea	Nay
X		Detert						
X		Flores						
X		Galvano						
X		Gibson						
X		Legg						
X		Sachs						
X		Sobel						
X		Thrasher						
X		Braynon, VICE CHAIR						
	X	Stargel, CHAIR						
9	1	TOTALS	RCS	-	FAV	-	Yea	Nay
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting

**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 Committee on Regulated Industries

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BILL: CS/SB 1212

INTRODUCER: Health Policy Committee and Senator Bean

SUBJECT: Behavior Analysts

DATE: April 10, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Stovall	HP	<b>Fav/CS</b>
2.	Niles	Imhof	RI	<b>Favorable</b>
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1212 creates ch. 470, F.S., titled “Behavior Analysts,” for the purpose of regulating the practice of applied behavior analysis. The bill provides definitions of terms used in the chapter and creates a seven-member Board of Applied Behavior Analysis, which is appointed by the Governor and confirmed by the Senate.

The bill establishes eligibility criteria for persons applying for initial or renewal licensure as a behavior analyst or assistant behavior analyst, which require board-certification and background screening for both. The board is authorized to issue a reciprocal license to a person licensed in another state under certain circumstances. The bill contains a lengthy series of exemptions from licensure.

The bill authorizes the board to discipline licensees as provided in ch. 456, F.S. The board is authorized to adopt rules to implement the act, including rules defining standards of practice and required supervision. The department is authorized to adopt rules related to procedures for licensure and renewal of licensure, educational requirements, and continuing education.

## II. Present Situation:

### Behavior Analysis

Behavior analysis grew out of the scientific study of principles of learning and behavior. It has two main branches: experimental and applied behavior analysis. The experimental analysis of behavior is the basic science which provides the scientific foundation for applied behavior analysis.<sup>1</sup> Florida law defines applied behavior analysis as “the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including, but not limited to, the use of direct observation, measurement, and functional analysis of the relations between environment and behavior.”<sup>2</sup> Examples of applied behavior analysis practice include: building the skills and achievements of children in school settings and enhancing the development, abilities, and choices of children and adults with different kinds of emotional and behavioral disabilities.<sup>3</sup>

### Certification of Behavior Analysts

The Behavior Analyst Certification Board (BACB) is the exclusive entity that certifies behavior analysts. The BACB is a nonprofit 501(c)(3) corporation established in 1998 based on the behavior analysis certification program developed in Florida. Similar programs were established in California, Texas, Pennsylvania, New York and Oklahoma. All of these programs transferred their certificants and credentialing responsibilities to the BACB and closed.<sup>4</sup>

As part of its credentialing program, the BACB has developed:<sup>5</sup>

- Eligibility standards.
- Renewal and recertification standards to maintain certification.
- Guidelines for responsible conduct.
- Professional disciplinary standards with appeal procedures.
- A certificant registry.
- A process to approve university course sequences and practica.
- Procedures to approve continuing education providers.
- Certification examinations.

Currently, the BACB offers two certifications: Board Certified Behavior Analyst and Board Certified Assistant Behavior Analyst. The Board Certified Behavior Analyst conducts descriptive and systematic behavioral assessments, including functional analyses, and provides

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<sup>1</sup> Behavior Analyst Certification Board, *About Behavior Analysis* <http://www.bacb.com/index.php?page=2> (Last visited April 7, 2014).

<sup>2</sup> Sections 627.6686(2)(a) and 641.31098(2)(a), F.S. The definitions are part of a mandate for health care coverage for individuals with autism spectrum disorder. Applied behavior analysis is one of the required services.

<sup>3</sup> *Supra* note 1.

<sup>4</sup> Behavior Analyst Certification Board, *About the BACB* <http://www.bacb.com/index.php?page=1> (Last visited April 7, 2014).

<sup>5</sup> *Id.*

behavior analytic interpretations of the results.<sup>6</sup> The Board Certified Behavior Analyst also designs and supervises behavior analytic interventions.<sup>7</sup> To be eligible for certification as a behavior analyst, an applicant must have a master's degree in behavior analysis or other natural science, education, human services, engineering, medicine or a field related to behavior analysis approved by the BACB. In addition, the applicant must have 225 hours of graduate level instruction; 1-year, full time faculty appointment at a college or university teaching behavior analysis; or a doctoral degree conferred 10 years prior to applying for certification and meet certain experience requirements.<sup>8</sup>

The Board Certified Assistant Behavior Analyst conducts descriptive behavioral assessments, interprets their results, and designs behavior analytic interventions under the supervision of a Board Certified Behavior Analyst.<sup>9</sup> To be eligible for certification as a Board Certified Assistant Behavior Analyst, an applicant must have a bachelor's degree and 135 hours of instruction, and meet certain experience requirements.<sup>10</sup>

Currently, there are 1,821 behavior analysts or assistant behavior analysts in Florida who are board-certified by the BACB.<sup>11</sup>

### **Florida-Certified Behavior Analysts**

Florida began training and certifying behavior analysts in 1983, through the Department of Health and Rehabilitative Services. In 2001, the Florida program was discontinued and all credentialing responsibilities were transferred to the BACB.<sup>12</sup> Behavior analysts certified through the Florida program are authorized to use only the designation Florida Certified Behavior Analyst. Recertification as a Florida Certified Behavior Analyst occurs every three years and requires 36 hours of continuing education.<sup>13</sup>

### **Recognition of Behavior Analysis in Florida Law**

Although Florida does not license behavior analysts, its laws do recognize them in ways that may provide for some oversight. Specific references are as follows:

- Section 381.75, F.S., requires that transitional living facilities that provide services to patients in the brain and spinal cord injury program must offer behavior analysis services.

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<sup>6</sup> Behavior Analyst Certification Board, *About BACB Credentials*, available at <http://www.bacb.com/index.php?page=4> (Last visited April 7, 2014).

<sup>7</sup> *Id.*

<sup>8</sup> Behavior Analyst Certification Board, *Standards for Board Certified Behavior Analysts (BCBA)*, available at <http://www.bacb.com/index.php?page=158> (Last visited March 30, 2014).

<sup>9</sup> Behavior Analyst Certification Board, *About BACB Credentials*, available at <http://www.bacb.com/index.php?page=4> (Last visited March 29, 2014).

<sup>10</sup> Behavior Analyst Certification Board, *Standards for Board Certified Assistant Behavior Analysts (BCABA)*, <http://www.bacb.com/index.php?page=52> (Last visited March 31, 2014).

<sup>11</sup> Behavior Analyst Certification Board, *Certificant Registry* <http://www.bacb.com/index.php?page=100155&by=state> (Last visited March 30, 2014).

<sup>12</sup> See *Infra* note 20 at 2.

<sup>13</sup> Behavior Analyst Certification Board, *Florida Behavior Analyst Certification Committee* <http://www.bacb.com/index.php?page=100202> (Last visited March 29, 2014).

The law does not specify credentials, but the services will be provided under contract and by a facility that is subject to state licensure.

- Section 393.17, F.S., authorizes the Agency for Persons with Disabilities to establish a certification process for behavior analysts who serve its clients, and requires the agency to recognize the certification “awarded by a nonprofit corporation that adheres to the national standards of boards that determine professional credentials and whose mission is to meet professional credentialing needs identified by behavior analysts, state governments, and consumers of behavior analysis services.” This language describes the BACB.<sup>14</sup> The agency has opted not to create a separate certification process.<sup>15</sup>
- Section 393.18, F.S., requires a behavior analyst who provides services as part of a comprehensive transitional education program for persons with developmental disabilities to be certified as provided under s. 393.17, F.S.
- Section 409.906(26), F.S., authorizes the Agency for Health Care Administration to obtain federal approval to provide behavior analysis services to children 5 years old and younger who have a developmental disability, autism spectrum disorder, or Down syndrome through the Medicaid program.
- Sections 627.6686 and 641.31098, F.S., mandate coverage for autism spectrum disorder which includes applied behavior analysis services. The services must be provided by a person who is licensed under ch. 490 or 491, F.S., or certified pursuant to s. 393.17, F.S.
- Section 1002.66, F.S., includes applied behavioral analysis among the specialized instructional services a parent may select for a child with disabilities who is eligible for prekindergarten. As part of the exceptional student education legislation, the 2013 Legislature created a definition of private instructional personnel which includes persons certified under s. 393.17, F.S., or licensed under ch. 490 or 491, F.S., to provide behavior analysis.

Currently, Florida Department of Law Enforcement does not undergo criminal history record checks on persons seeking licensure as a behavior analyst.<sup>16</sup>

### **Regulation of Health Care Professions**

The DOH is responsible for licensing and regulating health care practitioners in order to preserve the health, safety, and welfare of the public.<sup>17</sup> General licensing provisions applicable to health care practitioners are contained in ch. 456, F.S., which also sets out in more detail the policy framework for regulation. Specifically, regulation is to occur when:<sup>18</sup>

- Unregulated practice can harm or endanger the health, safety, and welfare of the public, and the potential for harm outweighs the potentially anticompetitive effect of regulation.
- The public is not adequately protected by other means, including other statutes, federal law, or local ordinances.
- Less restrictive means of regulation are not available.

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<sup>14</sup> See *Supra* note 4.

<sup>15</sup> Rule 65G-4.0011, F.A.C.

<sup>16</sup> *2104 Legislative Bill Analysis for SB 1212*, Florida Department of Law Enforcement (April 3, 2014).

<sup>17</sup> Section 20.43(1)(g), F.S.

<sup>18</sup> Section 456.003(2), F.S.



The Division of Medical Quality Assurance (MQA) within the DOH has responsibility for licensing health care practitioners, and certain facilities and businesses; enforcing health care practitioner standards; and providing licensure and disciplinary information to enable health care consumers to make more informed health care decisions.<sup>19</sup>

Regulation of some professions occurs under the purview of a board or council. A board is a statutorily created entity that is authorized to exercise regulatory or rulemaking functions within the MQA.<sup>20</sup> In general, boards are responsible for approving or denying applications for licensure, establishing continuing education requirements, and disciplining practitioners for violations of the relevant practice act.<sup>21</sup> Currently, The MQA regulates seven types of facilities and 200-plus license types in 43 health care professions through coordination with 22 boards and six councils.<sup>22</sup>

### **The Sunrise Act**

Section 11.62, F.S., “The Sunrise Act,” sets forth policy and minimum requirements for legislative review of bills proposing regulation of an unregulated function. In general, the act states that regulation should not occur unless:

- Necessary to protect the public health, safety, or welfare from significant and discernible harm or damage;
- Exercised only to the extent necessary to prevent the harm; and,
- Limited so as not to unnecessarily restrict entry into the practice of the profession or adversely affect public access to the professional services.

The act directs the Legislature to consider the following factors:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and,
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The act requires proponents of legislation proposing new regulation to provide detailed information regarding the need and potential impact of the regulation. The act also requires the

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<sup>19</sup> Fla. Dept. of Health, *Resource Manual for the Florida Department of Health*, 252 (FY 2012–2013)

<sup>20</sup> Section 456.001(1), F.S.

<sup>21</sup> See, e.g. s. 491.004, F.S., creating the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling and authorizing it to adopt rules necessary to implement and enforce provisions of ch. 491, F.S.

<sup>22</sup> *Supra* note 16 at 167.

agency that will be responsible for its implementation to assess the cost of implementation, the technical sufficiency of the proposal, and whether alternatives to regulation exist.

In determining whether to recommend regulation, the legislative committee reviewing the proposal is directed to assess whether the proposed regulation is:

- Justified based on the statutory criteria and the information provided by both the proponents of regulation and the agency responsible for its implementation;
- The least restrictive and most cost-effective regulatory scheme necessary to protect the public; and,
- Technically sufficient and consistent with the regulation of other professions under existing law.

### **Summary of Sunrise Act Questionnaire and Responses**

The following summarizes information submitted by the proponent of the legislation in its responses to questions in the Sunrise Questionnaire.<sup>23</sup> The responses summarized relate to the five factors the Sunrise Act directs the Legislature to consider.

#### ***Substantial Harm or Endangerment***

The proponent states that a majority of persons treated by applied behavior analysis services are highly vulnerable because of their age, the nature of their disability or illness, or the magnitude of the stress experienced by the caretaker. This makes them susceptible to fraudulent, ineffective practices, or unethical interventions. Because there is not a regulatory system currently in place, the proponent indicates that quantifying the need for regulation is difficult. The proponent uses complaints filed with the BACB as a proxy for need, but believes the number underestimates the problem. In the past 13 years, 26 events of unethical or improper practice have been investigated by the certifying agency in Florida. These violations involved negligence, incompetence, malpractice, or misconduct.<sup>24</sup>

#### ***Specialized Skill or Training, and Measurability***

The proponent states that board certification defines and measures the requisite knowledge, skills, and abilities. These fall into 10 general content areas which are tested by examination in multiple-choice format with specific questions in each of the content areas. To be eligible for examination, a person must have at least a master's degree in behavior analysis or other natural science, education, human services, medicine, or a field related to behavior analysis. Currently, nine universities in Florida offer programs that would qualify a person to sit for the certification exam.<sup>25</sup>

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<sup>23</sup> The Sunrise Questionnaire is a questionnaire developed by Legislative staff to solicit the responses required by the proponent of new regulation pursuant to s. 11.62(4), F.S. A copy of the questionnaire is on file with the Senate Health Policy Committee. The legislation has been proposed by the Florida Association for Behavioral Analysis.

<sup>24</sup> *Id.* at 4 – 7.

<sup>25</sup> *Id.* at 19 – 23.

***Unreasonable Effect on Job Creation or Job Retention***

The proponent indicates that the requirements for licensure under the proposed legislation align with current credentialing requirements for certification as a behavior analyst. Thus, the legislation does not create a more onerous standard. Currently, this credentialing function is handled by the BACB.<sup>26</sup>

Other persons who may implement behavioral interventions and provide counseling services similar to that of behavioral analysts include schoolteachers, school psychologists, parents, physicians, school faculty, priests, and ministers. These persons are not required to obtain certification under the bill.<sup>27</sup> In addition, behavior analysis is an element of the practice of psychology, thus it may be provided by a psychologist.<sup>28</sup>

***Can the Public Be Effectively Protected by Other Means?***

The proponent indicates that the certification entity receives and responds to complaints it receives about board certified behavioral analysts and those who are fraudulently claiming to be board certified. Over the past 13 years, the certifying entity has investigated 26 claims of unethical or improper practice in Florida. The proponent indicates that the requirements for filing a complaint with the certifying entity, however, are time consuming, requiring consumers to produce written records of correspondence to the behavior analyst, correspondence to fiscal agencies or funding sources, and correspondence with state regulatory agencies (which is currently unavailable in Florida).<sup>29</sup>

***Favorable Cost-effectiveness and Economic Impact***

The proponent does not anticipate that licensure will result in any changes to the current costs of services for consumers because the number of persons seeking certification as a behavioral analyst is growing.<sup>30</sup>

***Statutory Creation of Advisory Bodies, Commissions, or Boards***

The statutory creation of any collegial body to serve as an adjunct to an executive agency is subject to certain provisions in s. 20.052, F.S. Such a body may only be created when it is found to be necessary and beneficial to the furtherance of a public purpose, and it must be terminated by the Legislature when it no longer fulfills such a purpose. The Legislature and the public must be kept informed of the numbers, purposes, memberships, activities, and expenses of any collegial or advisory bodies.

A board of trustees is defined as “a board created by specific statutory enactment and appointed to function adjunctively to a department, the Governor, or the Executive Office of the Governor to administer public property or a public program.”<sup>31</sup> Private citizen members of a board of

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<sup>26</sup> *Id.* at 25.

<sup>27</sup> *Id.* at 18.

<sup>28</sup> Section 490.003(4), F.S.

<sup>29</sup> *Supra* note 20 at 4 – 5.

<sup>30</sup> *Id.* at 23.

<sup>31</sup> Section 20.03(12), F.S.

trustees may only be appointed by the Governor, must be confirmed by the Senate, and are subject to the dual-office-holding prohibition of Art. II, s. 5(a) of the State Constitution.

Members of a board of trustees serve for 4-year staggered terms, unless expressly provided otherwise in the State Constitution, and are ineligible for any compensation other than travel expenses. Unless an exemption is specified by law, all meetings are public, and records of minutes and votes must be maintained.

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

CS/SB 1212 creates ch. 470, F.S., titled “Behavior Analysts,” for the purpose of regulating the practice of applied behavior analysis.

The bill creates the following definitions:

- “Applied behavior analysis” means the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior and includes functional assessment and analysis.” The definition expressly excludes certain acts that are within the definition of “practice of psychology” in ch. 490, F.S. The definition is consistent with, but not identical to, the current definition in chs. 627 and 641, F.S., relating to health care coverage for persons with autism spectrum disorder.
- “Board” means the Board of Applied Behavior Analysis, as created by the bill, unless the term appears in the context of board certification.
- “Board-certified behavior analyst” and “Board-certified assistant behavior analyst” are practitioners certified by the BACB or its successor.
- “Department” is the Department of Health.
- “Licensed behavior analyst” and “licensed assistant behavior analyst” are practitioners licensed by the board created by the bill.

The bill creates the Board of Applied Behavior Analysis, which is a seven-member board appointed by the Governor and confirmed by the Senate. Three members must be board-certified behavior analysts, at least two of whom are recommended by the Florida Association for Behavior Analysis. One member must be a board-certified assistant behavior analyst; one member a health care practitioner whose practice primarily includes treatment of behavior disorders; and two member-laypersons. The bill provides for staggered 4-year terms and requires that subsequent appointees be licensed under the act. A person may not serve more than two consecutive terms.

The bill directs the board to adopt rules to implement the act, which must include rules related to:

- Standards of practice;
- Supervision, including the number of persons that a licensed behavior analyst may supervise; and,
- Fees, not to exceed \$100 for an application and \$300 for licensure. Fees must be based on the actual cost to regulate.

In the event that the BACB discontinues certification, the board is directed to approve a successor entity that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute.

The bill authorizes the DOH to adopt rules to implement its duties under the act, including, rules related to:

- Initial and renewal licensure application processes and fees;
- Educational qualifications for licensure; and,
- Continuing education requirements for renewal, not to exceed 30 hours.

The bill requires a person applying for initial or renewal licensure as a behavior analyst to provide evidence that he or she:

- Is board-certified;
- Has paid the licensure or renewal licensure fee; and,
- Has passed a criminal background check.

The bill requires a person applying for initial or renewal licensure as an assistant behavior analyst to provide evidence that he or she:

- Is board-certified;
- Is supervised by a licensed behavior analyst;
- Has paid the licensure or renewal licensure fee; and,
- Has passed a criminal background check.

The bill authorizes the board to issue a reciprocal license to a person licensed in another state if the person:

- Provides proof of licensure and board certification;
- Passes a background check; and,
- Pays the licensure fee.

The bill authorizes the board to discipline licensees as provided in ch. 456, F.S.

The bill prohibits the practice of applied behavior analysis or the use of the titles without first obtaining a license under ch. 470, F.S. Unlicensed practice is a third degree felony and unauthorized use of the title is a second degree misdemeanor. Both violations are punishable as provided in ch. 775, F.S. A third degree felony is punishable by a fine of up to \$5,000 or up to 5 years in prison. A second degree misdemeanor is punishable by a fine of up to \$500 or up to 60 days in prison.

The bill contains a lengthy series of exemptions from licensure, including:

- Psychologists licensed under ch. 490, F.S.;
- A certified teacher, for behavior analysis services delivered in the course of employment as a teacher that are within the scope of the teacher's education, training, and experience, provided the teacher does not hold him or herself out as a behavior analyst, and a teaching assistant who is supervised by a qualified certified teacher;
- Applied behavior analysts who work with animals;

- A person who teaches behavior analysis or conducts related research not involving direct patient care;
- A college graduate or postdoctoral fellow, working under the direct supervision of a licensed behavior analyst or instructor in an accredited program, whose activities are part of a defined behavior analysis program of study or practicum approved by the BACB, and subject to specified title restrictions;
- A person pursuing training experience required for board certification if supervised by a licensee who has been approved by the BACB to supervise;
- A board-certified behavior analyst or behavior analyst licensed in another state who provides services to a resident in this state for less than 12 days per year;
- A family member of a patient who implements procedures provided the family member does not hold him or herself out as a behavior analyst;
- A behavior analyst who provides services to an organization and not to individuals;
- A physician licensed under ch. 458, 459, or 491, F.S.;
- An occupational therapist licensed under ch. 468, F.S., provided he or she does not hold him or herself out as a behavior analyst;
- A clinical social worker, marriage and family therapist, or mental health counselor licensed under ch. 491, F.S.;
- An employee of a nonprofit organization that provides behavior analysis services to children at no charge, provided the person does not hold him or herself out as a behavior analyst;
- A certified school psychologist who performs behavior analysis as an employee of a public or private school; and,
- A member of the clergy acting within the scope of his or her religious duties.

Conforming provisions of the bill include amendments to:

- Section 20.43, F.S., which sets forth the organizational structure of the DOH, to add the Board of Applied Behavior Analysis;
- Section 456.0135, F.S., related to the general background screening procedures for certain health care practitioners, to add a reference to chapter 470; and,
- The definition of “health care practitioner” in ch. 456, F.S., to add practitioners licensed under ch. 470, F.S.

The bill has an effective date of January 1, 2015.

#### **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 1212 will have a negative impact on persons who are providing behavior analysis services who do not meet the qualifications for licensure. Persons currently certified by the BACB will need to obtain a state license and pay the licensure fee to practice behavior analysis.

The Department of Law Enforcement estimates an expenditure of \$310,000 for the cost of state and national record check and state national fingerprint retention fee in the fiscal year 2014-2015.

**C. Government Sector Impact:****Revenue<sup>32</sup>**

The DOH estimates it will receive 4,000 applications,<sup>33</sup> which will be subject to an application fee of \$100; a licensure fee of \$300; and an unlicensed activity fee of \$5,<sup>34</sup> for a total of \$1,620,000 in fee. Collections are subject to the eight percent general revenue surcharge, which results in estimated revenue to the DOH of \$1,490,400.

The Department of Law Enforcement estimates that the cost of state record checks and fingerprint retention fees will be \$192,000 for fiscal year 2014-1015.

**Expenses<sup>35</sup>**

The DOH estimates it will need four FTE positions and one OPS position to implement the provisions of the bill. OPS expenses were computed at the base of the position plus 1.45 percent for Medicare tax. Salary was computed at base of the position plus 35 percent for benefits.

The OPS position and 1.5 FTE of the four total FTE positions will manage the licensing requirements. The requested expenses are 1.5 FTE Regulatory Specialist II, no travel (\$77,326) and one OPS Regulatory Specialist II, no travel (\$38,483) for a total cost of \$115,809.

The DOH estimates it will receive 61 complaints filed against certified behavior analysts and assistant behavior analysts and 25 of those complaints will be deemed legally sufficient for investigation and prosecution. The DOH requests expenses for two FTE:

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<sup>32</sup> Fla. Dept. of Health, *Senate Bill 1212 Fiscal Analysis* (Feb. 25, 2014)

<sup>33</sup> The proponent of the legislation estimates a considerably lower number of 1,700 initial applicants, then 125 – 150 applications annually thereafter, based on an average graduation rate of 10 – 15 students from each of the nine schools in Florida that have a behavior analysis program. (*See Supra* note 21 at 24–25.)

<sup>34</sup> Section 456.065(3), F.S.

<sup>35</sup> *See Supra* note 29.

One Investigation Specialist II, medium travel, and one Senior Attorney, no travel, for a total of \$144,219.

The DOH estimates it will receive approximately 2,400 additional telephone calls in the Communication Center. It requests .5 Regulatory Specialist II, no travel, with total expenses of \$29,238.

The DOH anticipates holding four, 1.5 day meetings per year with seven board members and two staff. Total estimated meeting costs are \$34,641.

The DOH currently contracts for processing of initial and renewal applications and related fees. The cost of the contracted service is based on a \$7.69 per application for the estimated 4,000 applications for a total cost of \$30,760.

The DOH will incur non-recurring costs for rulemaking, which current budget authority is adequate to absorb.

Consistent with adding any new profession, the DOH will update the Customer Oriented Medical Practitioner Administration System (COMPAS) to accommodate the new Certified Behavior Analyst and Assistant Behavior Analyst license, which current resources are adequate to absorb.

The DOH will incur an increase in workload associated with the development and maintenance of a new website, online renewals, online applications, and related functions, which current resources are adequate to absorb.

Combined the total estimated costs to implement the bill are: \$354,667:

- Salary - \$189,237.
- OPS – \$31,172.
- Expense - \$78,972/Recurring + \$22,638/Non-Recurring.
- Contracted Services - \$30,760.
- Human Resources - \$1,888.

According to the Department of Law Enforcement, this bill in combination with additional background screening bills could rise to the level requiring additional staffing and other resources.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

The Legislature may wish to consider whether to amend the existing statutes that mandate the provision of behavior analysis services to cross-reference and require compliance with ch. 470, F.S., and the licensing standards created by this bill.



**VIII. Statutes Affected:**

The bill substantially amends the following sections of the Florida Statutes: 20.43, 456.001 and 456.0135.

This bill creates the following sections of the Florida Statutes: 470.40, 470.41, 470.415, 470.42, 470.43, 470.44, 470.45, 470.46, and 470.47.

**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 Health Policy on April 1, 2014:**

The Committee Substitute:

- Rewrites the bill in a format that conforms it to other practice acts and eliminates provisions that conflict with or duplicate provisions in ch. 456, F.S. Specifically, the CS:
  - Changes the term of a member of the Board of Applied Behavior Analysis to 4 years, consistent with the requirements of s. 20.052, F.S.
  - Revises the rules the board must adopt to include standards of practice and supervision requirements, only.
  - Authorizes the DOH to adopt rules related to licensure and renewal licensure procedures and fees; educational qualifications for licensure; and continuing education.
  - Deletes language that specified certain administrative responsibilities of the board, including: adopting a code of ethics; maintaining minutes and a registry and directory of licensees; and adopting a seal.
  - Substitutes the DOH, in lieu of the board, as the entity that receives and processes applications for licensure and conforms the terms to standard language used elsewhere.
  - Removes language expressly limiting the board's disciplinary authority.
  - Removes language that requires licensees and employers of licensees to report certain information about criminal acts of a licensee or actions against a licensee's certification.
- Deletes the definition of "supervised experience," which is not used elsewhere in the bill.
- Removes exemptions for an unlicensed person working under the extended authority of a licensed behavior analyst; and Florida-certified behavior analysts.
- Adds an exemption for occupational therapists licensed under ch. 491, F.S.
- Changes the effective date to January 1, 2015.

**B. Amendments:**

None.

By the Committee on Health Policy; and Senator Bean

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1 A bill to be entitled  
 2 An act relating to behavior analysts; creating ch.  
 3 470, F.S.; entitling the chapter; creating s. 470.40,  
 4 F.S.; providing a purpose; creating s. 470.41, F.S.;  
 5 defining terms; creating s. 470.415, F.S.; creating  
 6 the Board of Applied Behavior Analysis; creating s.  
 7 470.42, F.S.; specifying the authority and duties of  
 8 the board; creating s. 470.43, F.S.; providing  
 9 requirements for licensure and renewal; creating s.  
 10 470.44, F.S.; establishing maximum fees for  
 11 applications, initial licenses, and license renewals;  
 12 providing for the deposit of funds; creating s.  
 13 470.45, F.S.; providing grounds for disciplinary  
 14 action by the board; creating s. 470.46, F.S.;  
 15 providing penalties for practicing applied behavior  
 16 analysis without a license or wrongfully identifying  
 17 oneself as a licensed behavior analyst; creating s.  
 18 470.47, F.S.; providing exceptions to applicability of  
 19 the chapter; amending s. 20.43, F.S.; making the  
 20 Division of Medical Quality Assurance within the  
 21 Department of Health responsible for the board;  
 22 amending s. 456.001, F.S.; including licensed behavior  
 23 analysts and licensed assistant behavior analysts in  
 24 the definition of "health care practitioner"; amending  
 25 s. 456.0135, F.S.; requiring an applicant for  
 26 licensure under ch. 470, F.S., to submit to certain  
 27 fingerprinting requirements; providing an effective  
 28 date.  
 29

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30 Be It Enacted by the Legislature of the State of Florida:  
 31  
 32 Section 1. Chapter 470, Florida Statutes, is created and  
 33 entitled "Behavior Analysts."  
 34 Section 2. Section 470.40, Florida Statutes, is created to  
 35 read:  
 36 470.40 Purpose.—The practice of applied behavior analysis  
 37 in this state affects the public health, safety, and welfare of  
 38 its residents, and this act is intended to protect the public  
 39 from any harmful conduct of unqualified, unprofessional, or  
 40 unethical applied behavior analysts.  
 41 Section 3. Section 470.41, Florida Statutes, is created to  
 42 read:  
 43 470.41 Definitions.—As used in this chapter, the term:  
 44 (1) "Applied behavior analysis" means the design,  
 45 implementation, and evaluation of instructional and  
 46 environmental modifications to produce socially significant  
 47 improvements in human behavior and includes functional  
 48 assessment and analysis. The term does not include psychological  
 49 testing, the diagnosis of a mental or physical disorder,  
 50 neuropsychology, psychotherapy, cognitive therapy, sex therapy,  
 51 psychoanalysis, hypnotherapy, or long-term counseling.  
 52 (2) "Board" means the Board of Applied Behavior Analysis  
 53 established in s. 470.415, except when the term is used in the  
 54 context of board certification.  
 55 (3) "Board-certified behavior analyst" means a practitioner  
 56 who is certified as a Board Certified Behavior Analyst, or is  
 57 recognized as a "Florida-certified behavior analyst," by the  
 58 national Behavior Analyst Certification Board (BACB), or its

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59 successor pursuant to s. 470.42.

60 (4) "Board-certified assistant behavior analyst" means a  
 61 practitioner who is certified by the national Behavior Analyst  
 62 Certification Board, or its successor pursuant to s. 470.42, as  
 63 a Board Certified Assistant Behavior Analyst.

64 (5) "Department" means the Department of Health.

65 (6) "Licensed behavior analyst" means an individual who is  
 66 licensed by the board and meets the requirements of this  
 67 chapter.

68 (7) "Licensed assistant behavior analyst" means an  
 69 individual who:

70 (a) Is licensed by the board as an assistant behavior  
 71 analyst and meets the requirements of this chapter; and

72 (b) Works under the supervision of a licensed behavior  
 73 analyst.

74 Section 4. Section 470.415, Florida Statutes, is created to  
 75 read:

76 470.415 Board of Applied Behavior Analysis.—

77 (1) The Board of Applied Behavior Analysis is created  
 78 within the department. The board consists of seven members who  
 79 must be appointed by the Governor and confirmed by the Senate.

80 (2) The initial board members, who are not required to be  
 81 licensed as a condition of appointment, shall be appointed as  
 82 follows:

83 (a) Three board-certified behavior analysts, which may  
 84 include board-certified behavior analysts who are at the  
 85 doctoral level, two of whom shall be selected from a list of six  
 86 nominations submitted by the Florida Association for Behavior  
 87 Analysis. One shall be appointed to a 1-year term, and two shall

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88 be appointed to 3-year terms;

89 (b) One board-certified assistant behavior analyst, who  
 90 shall be appointed to a 1-year term;

91 (c) One health care practitioner licensed in this state,  
 92 who shall be appointed to a 2-year term. The majority of the  
 93 appointed health care practitioner's practice must be related to  
 94 the treatment of behavior disorders, including, but not limited  
 95 to, autism spectrum disorders; and

96 (d) Two laypersons, who may include a parent or guardian of  
 97 an individual who is a recipient of applied behavior analysis  
 98 services, one of whom shall serve a 1-year term, and one of whom  
 99 shall serve a 2-year term.

100 (3) As the terms of the initial members expire, the  
 101 Governor shall appoint successors for 4-year terms. Each  
 102 successor, except for the laypersons, must be licensed. A member  
 103 may not serve more than two consecutive terms.

104 Section 5. Section 470.42, Florida Statutes, is created to  
 105 read:

106 470.42 Authority of the board; board duties; authority of  
 107 the department.—

108 (1) The board may adopt rules pursuant to ss. 120.536(1)  
 109 and 120.54 to implement the provisions of this chapter  
 110 conferring duties upon it. Such rules must include, but are not  
 111 limited to, rules relating to all of the following:

112 (a) Standards of practice for licensed behavior analysts  
 113 and licensed assistant behavior analysts.

114 (b) Supervision of licensed assistant behavior analysts or  
 115 students in training to be licensed behavior analysts, including  
 116 the number of persons that a licensed behavior analyst or

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licensed assistant behavior analyst may supervise at one time.

(2) If the Behavior Analyst Certification Board stops certifying practitioners of applied behavior analysis in this state, the board shall approve a successor certification board that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute to certify applied behavior analysts.

(3) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter conferring duties upon it. Such rules must include, but are not limited to, rules relating to all of the following:

(a) Licensure and licensure renewal applications and processes, including licensure fees.

(b) Educational qualifications for licensure.

(c) Continuing education requirements for biennial renewal of licensure not to exceed 30 hours biennially as a condition for renewal of a license.

Section 6. Section 470.43, Florida Statutes, is created to read:

470.43 Licensure and renewal.—

(1) A person applying for an initial or renewal license as a licensed behavior analyst or licensed assistant behavior analyst shall apply to the department on such form and in such manner as the department prescribes. The person shall furnish evidence to the department that he or she:

(a) Is a board-certified behavior analyst;

(b) Has paid the licensure fee or the biennial renewal fee;

and

(c) Has passed a criminal background check after submitting

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fingerprints and a fee pursuant to s. 456.0135.

(2) A person applying for an initial or renewal license as an assistant behavior analyst shall apply to the department upon such form and in such manner as the department prescribes and shall furnish evidence to the department that such person:

(a) Is a board-certified assistant behavior analyst;

(b) Is supervised by a licensed behavior analyst in a manner consistent with BACB requirements and this chapter;

(c) Has paid the licensure fee or the biennial renewal fee; and

(d) Has passed a criminal background check after submitting fingerprints and a fee pursuant to s. 456.0135.

(3) The board may issue a license to a person who holds an active license as a behavior analyst or assistant behavior analyst in another state if the person:

(a) Submits proof of licensure and board certification;

(b) Passes a criminal background check after submitting fingerprints and a fee pursuant to s. 456.0135; and

(c) Pays the licensure fee.

Section 7. Section 470.44, Florida Statutes, is created to read:

470.44 Fees.—

(1) The board shall establish by rule a fee not to exceed \$100 for an application and a fee not to exceed \$300 for an initial license or license renewal.

(2) All moneys collected by the department under this chapter shall be deposited as provided under s. 456.025.

Section 8. Section 470.45, Florida Statutes, is created to read:

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175 470.45 Disciplinary grounds and actions.—The board may  
 176 enter an order imposing any of the penalties provided under s.  
 177 456.072(2) against a licensee who violates any provision of s.  
 178 456.072(1).

179 Section 9. Section 470.46, Florida Statutes, is created to  
 180 read:

181 470.46 Violations and penalties.—

182 (1) Unless licensed or authorized under this chapter, a  
 183 person who engages in the practice of applied behavior analysis,  
 184 assists in the practice of applied behavior analysis, renders  
 185 services designated as applied behavior analysis, or represents  
 186 himself or herself as a practitioner of applied behavior  
 187 analysis in this state commits a felony of the third degree,  
 188 punishable as provided under s. 775.082, s. 775.083, or s.  
 189 775.084.

190 (2) Unless licensed or authorized under this chapter, a  
 191 person who uses the title “licensed behavior analyst,” “licensed  
 192 assistant behavior analyst,” or any other title that is  
 193 substantially similar commits a misdemeanor of the second  
 194 degree, punishable as provided in s. 775.082 or s. 775.083.

195 Section 10. Section 470.47, Florida Statutes, is created to  
 196 read:

197 470.47 Exceptions to applicability.—This chapter does not  
 198 prohibit or restrict the practice of the following:

199 (1) An individual licensed under chapter 490 to practice  
 200 psychology.

201 (2) A certified teacher authorized to practice in this  
 202 state who is not a behavior analyst if he or she does not  
 203 represent himself or herself as a behavior analyst. The services

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204 provided by a certified teacher must be within his or her  
 205 authorized scope of practice and within the scope of his or her  
 206 education, training, and experience and must be provided in the  
 207 course of his or her employment in a program approved by the  
 208 Department of Education. Teaching assistants, other than those  
 209 engaged in pupil personnel services, and student support  
 210 professionals are exempt from the requirements of this chapter  
 211 if they provide applied behavior analysis services under the  
 212 supervision of a certified teacher who meets the requirements of  
 213 this paragraph.

214 (3) A behavior analyst who practices with nonhuman clients,  
 215 including, but not limited to, applied animal behaviorists and  
 216 animal trainers.

217 (4) An individual who teaches applied behavior analysis or  
 218 who conducts behavior analytic research if such teaching or  
 219 research does not involve the delivery of applied behavior  
 220 analysis.

221 (5) A matriculated college or university student or  
 222 postdoctoral fellow whose activities are part of a defined  
 223 behavior analysis program of study, practicum, or intensive  
 224 practicum if his or her practice under this subsection is  
 225 directly supervised by a licensed behavior analyst or an  
 226 instructor of an accredited course sequence approved by the  
 227 Behavior Analyst Certification Board (BACB). A student or intern  
 228 may not represent himself or herself as a professional behavior  
 229 analyst but may use a title indicating his or her trainee  
 230 status, such as “behavior analyst student,” “behavior analyst  
 231 intern,” or “behavior analyst trainee.”

232 (6) An unlicensed individual pursuing supervised

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233 experiential training to meet eligibility requirements for BACB  
 234 certification if such training is supervised by an individual  
 235 who is licensed to practice applied behavior analysis and who  
 236 meets BACB supervisor requirements and if the supervised  
 237 experiential training is conducted in accordance with other BACB  
 238 standards and requirements.

239 (7) A board-certified behavior analyst, a doctoral level  
 240 board-certified behavior analyst, or an individual licensed to  
 241 practice applied behavior analysis in another state who resides  
 242 in another state and provides applied behavior analysis in this  
 243 state or to a resident of this state for less than 12 days per  
 244 year.

245 (8) A family member of a recipient of applied behavior  
 246 analysis services who implements certain procedures with the  
 247 recipient. Such a family member may not represent himself or  
 248 herself as a professional behavior analyst.

249 (9) A behavior analyst who provides general behavior  
 250 analysis services to organizations if the services are for the  
 251 benefit of the organizations and do not involve direct services  
 252 to individuals.

253 (10) A physician licensed pursuant to chapter 458 or  
 254 chapter 459.

255 (11) An occupational therapist licensed pursuant to chapter  
 256 468 if he or she does not represent himself or herself as a  
 257 behavior analyst.

258 (12) An individual licensed pursuant to chapter 491 as a  
 259 clinical social worker, marriage and family therapist, or mental  
 260 health counselor.

261 (13) A salaried employee of a private, nonprofit

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262 organization providing behavior analysis services to children,  
 263 youth, and families if the services are provided for no charge,  
 264 the employee is performing duties for which he or she was  
 265 trained and hired, and the employee does not represent himself  
 266 or herself as a professional behavior analyst.

267 (14) A school psychologist certified in school psychology  
 268 by the Department of Education who performs behavior analysis  
 269 services as an employee of a public or private educational  
 270 institution. Such exemption does not authorize unlicensed  
 271 practice that is not performed directly as an employee of an  
 272 educational institution.

273 (15) A rabbi, priest, minister, or member of the clergy of  
 274 a religious denomination or sect if engaging in activities that  
 275 are within the scope of the performance of his or her regular or  
 276 specialized ministerial duties and for which no separate fee is  
 277 charged, or if such activities are performed, with or without a  
 278 fee, for or under the auspices or sponsorship, individually or  
 279 in conjunction with others, of an established and legally  
 280 cognizable church, denomination, or sect; and if the person  
 281 rendering service remains accountable to the established  
 282 authority thereof.

283 Section 11. Paragraph (g) of subsection (3) of section  
 284 20.43, Florida Statutes, is amended to read:

285 20.43 Department of Health.—There is created a Department  
 286 of Health.

287 (3) The following divisions of the Department of Health are  
 288 established:

289 (g) Division of Medical Quality Assurance, which is  
 290 responsible for the following boards and professions established

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291 within the division:  
 292 1. The Board of Acupuncture, created under chapter 457.  
 293 2. The Board of Medicine, created under chapter 458.  
 294 3. The Board of Osteopathic Medicine, created under chapter  
 295 459.  
 296 4. The Board of Chiropractic Medicine, created under  
 297 chapter 460.  
 298 5. The Board of Podiatric Medicine, created under chapter  
 299 461.  
 300 6. Naturopathy, as provided under chapter 462.  
 301 7. The Board of Optometry, created under chapter 463.  
 302 8. The Board of Nursing, created under part I of chapter  
 303 464.  
 304 9. Nursing assistants, as provided under part II of chapter  
 305 464.  
 306 10. The Board of Pharmacy, created under chapter 465.  
 307 11. The Board of Dentistry, created under chapter 466.  
 308 12. Midwifery, as provided under chapter 467.  
 309 13. The Board of Speech-Language Pathology and Audiology,  
 310 created under part I of chapter 468.  
 311 14. The Board of Nursing Home Administrators, created under  
 312 part II of chapter 468.  
 313 15. The Board of Occupational Therapy, created under part  
 314 III of chapter 468.  
 315 16. Respiratory therapy, as provided under part V of  
 316 chapter 468.  
 317 17. Dietetics and nutrition practice, as provided under  
 318 part X of chapter 468.  
 319 18. The Board of Athletic Training, created under part XIII

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320 of chapter 468.  
 321 19. The Board of Orthotists and Prosthetists, created under  
 322 part XIV of chapter 468.  
 323 20. The Board of Applied Behavior Analysis, created under  
 324 chapter 470.  
 325 21.20. Electrolysis, as provided under chapter 478.  
 326 22.21. The Board of Massage Therapy, created under chapter  
 327 480.  
 328 23.22. The Board of Clinical Laboratory Personnel, created  
 329 under part III of chapter 483.  
 330 24.23. Medical physicists, as provided under part IV of  
 331 chapter 483.  
 332 25.24. The Board of Opticianry, created under part I of  
 333 chapter 484.  
 334 26.25. The Board of Hearing Aid Specialists, created under  
 335 part II of chapter 484.  
 336 27.26. The Board of Physical Therapy Practice, created  
 337 under chapter 486.  
 338 28.27. The Board of Psychology, created under chapter 490.  
 339 29.28. School psychologists, as provided under chapter 490.  
 340 30.29. The Board of Clinical Social Work, Marriage and  
 341 Family Therapy, and Mental Health Counseling, created under  
 342 chapter 491.  
 343 31.30. Emergency medical technicians and paramedics, as  
 344 provided under part III of chapter 401.  
 345 Section 12. Subsection (4) of section 456.001, Florida  
 346 Statutes, is amended to read:  
 347 456.001 Definitions.—As used in this chapter, the term:  
 348 (4) "Health care practitioner" means any person licensed

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 349 under chapter 457; chapter 458; chapter 459; chapter 460;  
 350 chapter 461; chapter 462; chapter 463; chapter 464; chapter 465;  
 351 chapter 466; chapter 467; part I, part II, part III, part V,  
 352 part X, part XIII, or part XIV of chapter 468; chapter 470;  
 353 chapter 478; chapter 480; part III or part IV of chapter 483;  
 354 chapter 484; chapter 486; chapter 490; or chapter 491.

355 Section 13. Section 456.0135, Florida Statutes, is amended  
 356 to read:

357 456.0135 General background screening provisions.—

358 (1) An application for initial licensure received on or  
 359 after January 1, 2013, under chapter 458, chapter 459, chapter  
 360 460, chapter 461, chapter 464, ~~or~~ s. 465.022, or chapter 470  
 361 shall include fingerprints pursuant to procedures established by  
 362 the department through a vendor approved by the Department of  
 363 Law Enforcement and fees imposed for the initial screening and  
 364 retention of fingerprints. Fingerprints must be submitted  
 365 electronically to the Department of Law Enforcement for state  
 366 processing, and the Department of Law Enforcement shall forward  
 367 the fingerprints to the Federal Bureau of Investigation for  
 368 national processing. Each board, or the department if there is  
 369 no board, shall screen the results to determine if an applicant  
 370 meets licensure requirements. For any subsequent renewal of the  
 371 applicant's license that requires a national criminal history  
 372 check, the department shall request the Department of Law  
 373 Enforcement to forward the retained fingerprints of the  
 374 applicant to the Federal Bureau of Investigation.

375 (2) All fingerprints submitted to the Department of Law  
 376 Enforcement as required under subsection (1) shall be retained  
 377 by the Department of Law Enforcement as provided under s.

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 378 943.05(2)(g) and (h) and (3). The department shall notify the  
 379 Department of Law Enforcement regarding any person whose  
 380 fingerprints have been retained but who is no longer licensed.

381 (3) The costs of fingerprint processing, including the cost  
 382 for retaining fingerprints, shall be borne by the applicant  
 383 subject to the background screening.

384 Section 14. This act shall take effect January 1, 2015.





## 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

April 4, 2014

Senator Kelli Stargel  
Chairman, Committee on Regulated Industries  
324 Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Stargel,

This letter is to request that CS/SB 1212 relating to an act of behavioral analysts be placed on the agenda of the next possible committee meeting if received.

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: Patrick Imhof, Staff Director  
Lynn Koon, 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**  
**APPEARANCE RECORD**

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

4-10-2014

*Meeting Date*

Topic Applied Behavior Analysts

Bill Number SB1212  
(if applicable)

Name Debbie McDaniel

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

Job Title parent

Address 507 Date Palm Court  
*Street*

Phone (850) 625-1805

Panama City Beach FL 32408  
*City State Zip*

E-mail skibit+@msn.com

Speaking: ☒ For ☐ Against ☐ Information

Representing self

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

4/2014  
Meeting Date

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

Topic Behavior Analysts

Bill Number SB1212  
(if applicable)

Name Deborah Linton

Amendment Barcode  
(if applicable)

Job Title Chief Executive Officer

Address 2898 Mahan Drive  
Street Tallahassee FL 3238  
City State Zip

Phone 850-921-0460

E-mail deborah@arcflorida.org

Speaking: ☒ For ☐ Against ☐ Information

Representing The Arc of 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.

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)

4-10-14

Meeting Date

Topic Behavioral Analyst

Bill Number 1212  
(if applicable)

Name Connie Galietti

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

Job Title Executive Director

Address \_\_\_\_\_

Phone 850-877-2751

Street

Tallahassee, FL

City

State

Zip

E-mail connie@flapsych.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida Psychological 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)

4/10/14

Meeting Date

Topic Licensure of Behavior Analysts Bill Number SB 1212  
(if applicable)

Name Dr. Amy Polick Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Behavior Analyst

Address 1732 Annabellas Drive  
Street  
Panama City FL 32407  
City State Zip

Phone 850 334 6635 ext 33

E-mail amypolick@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Association for Behavior Analysis

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4/10/14

Meeting Date

Topic Licensing Behavior Analysts

Name Dr Andrew Scherbarth

Job Title Licensed Psychologist / Behavior Analyst

Address 8550 Touchton Rd, Apt 233

Street

Jacksonville FL 32216

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

Bill Number 1202  
(if applicable)

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

Phone 940-594-3172

E-mail andrew.scherbarth  
@gmail.com

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4/10/14  
Meeting Date

Topic BEHAVIOR ANALYSTS

Bill Number 1212  
(if applicable)

Name DR. MARY RIORIAN

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

Job Title Behavior Analyst

Address 1010 REDBUD

Phone 850 933-6654

Tallahassee FL 32303  
City State Zip

E-mail \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Representing Association of Professional Behavior Analysts

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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4-10-14

Meeting Date

Topic Licensing Behavior Analysts

Bill Number SB1212  
(if applicable)

Name Jon S. Bailey

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

Job Title Professor Emeritus

Address 2213 Napoleon Bonaparte DR.

Phone (850) 877-6623

Street

Tallahassee, FL

State

32308

Zip

E-mail jon.bailey@mc.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)



THE FLORIDA SENATE

APPEARANCE RECORD

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

4/10/14

Meeting Date

Topic Behavior Analysts

Bill Number SB 1212  
(if applicable)

Name Michelle Dunham

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

Job Title Parent

Address 8132 Mar Del Plata St.

Phone \_\_\_\_\_

Jacksonville, FL 32256  
City State Zip

E-mail \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/10/14

Meeting Date

Topic Behavior Analysis Bill Number SB1212  
(if applicable)  
Name Dr. Bryon Neff Amendment Barcode \_\_\_\_\_  
(if applicable)  
Job Title student advisor - behavior analyst  
Address 150 W. University Blvd. Phone 813-267-2213  
*Street*  
Melbourne FL E-mail bneff@fit.edu  
*City State Zip*  
Speaking: ☒ For ☐ Against ☐ Information  
Representing FABA  
Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4/10/14  
Meeting Date

Topic Behavior Analysts

Bill Number 1212  
(if applicable)

Name Doug Bell

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

Job Title \_\_\_\_\_

Address 215 S. Monroe St.  
Tallahassee  
City State Zip

Phone 850 222 3533

E-mail \_\_\_\_\_

Speaking: ☐ For ☐ Against ☒ Information

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

4/10/14

Meeting Date

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

Topic Behavior Analysis

Bill Number SB 1212

(if applicable)

Name Eric Prutsman

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title \_\_\_\_\_

Address P.O. Box 10448

Phone \_\_\_\_\_

Street

Tallahassee, FL 32302

City

State

Zip

E-mail \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

Representing Florida Assn. for Behavior Analysis

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

**COMMITTEE:** Regulated Industries  
**ITEM:** CS/SB 1212  
**FINAL ACTION:** Favorable  
**MEETING DATE:** Thursday, April 10, 2014  
**TIME:** 9:00 —11:00 a.m.  
**PLACE:** 301 Senate Office Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting

**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 Committee on Regulated Industries

---

BILL: SB 804

INTRODUCER: Senator Galvano

SUBJECT: Package Store Restrictions

DATE: April 3, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Pre-meeting</b>
2.			CM	

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## **I. Summary:**

SB 804 repeals the package store restriction in s. 565.02(1)(a), F.S. The bill repeals the restriction that prohibits package stores that are licensed to sell beer, wine, and distilled spirits (liquor) from having openings that permit direct access to any other building or room, except to a private office or storage room of the place of business from which patrons are excluded. The repeal permits package stores to sell, offer, or expose for sale other merchandise in addition to the beer, wine and distilled spirits authorized under their alcoholic beverage license. Current law permits package stores to only sell bitters, grenadine, nonalcoholic mixer-type beverages (not to include fruit juices produced outside this state), fruit juices produced in this state, home bar, and party supplies and equipment (including but not limited to glassware and party-type foods), miniatures of no alcoholic content, and tobacco products.

## **II. Present Situation:**

Alcoholic beverages are regulated by the Beverage Law,<sup>1</sup> which regulates the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.<sup>2</sup> The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation (department) administers and enforces the Beverage Law.<sup>3</sup>

### **Quota Licenses**

Section 561.20, F.S., limits, per county, the number of alcoholic beverage licenses that may be issued that permit the sale of liquor (distilled spirits) along with beer and wine. Section 561.20, F.S., limits the number of licenses in a county to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as “quota” licenses. New quota licenses are created and issued when there is an increase in the population of a county. The

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<sup>1</sup> The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. *See* s. 561.01(6), F.S.

<sup>2</sup> *See* s. 561.14, F.S.

<sup>3</sup> Section 561.02, F.S.

licenses can also be issued when a county initially changes from a county which does not permit the sale of intoxicating liquor to one that does permit their sale. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation.

Section 565.02(1)(a)-(f), F.S., prescribes the license taxes for vendors who are permitted to sell any alcoholic beverages, including beer, wine, and distilled spirits, regardless of alcoholic content. This includes licensees who are authorized to sell:

- Any alcoholic beverages, where the beverages are sold only in sealed containers for consumption off the premises,
- Any alcoholic beverages, where the sale is limited to consumption on the premises; and
- Any alcoholic beverages for consumption on premises where off-premises sales are permitted.

Section 565.01, F.S., provides that “the words ‘liquor,’ ‘distilled spirits,’ ‘spirituous liquors,’ ‘spirituous beverages,’ or ‘distilled spirituous liquors’ mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.”

### **Package Stores**

Section 565.02(1)(a), F.S., permits the sale of alcoholic beverage (beer, wine, and distilled spirits) only in sealed containers for consumption off the premises. These type of licensees are known as “package stores.”

Section 565.04, F.S., provides sales restrictions for vendors licensed as a package store under s. 565.02(1)(a), F.S. Package stores may have no openings that permit direct access to any other building or room, except to a private office or storage room of the place of business from which patrons are excluded. Package stores are also prohibited from selling, offering, or exposing for sale any merchandise other than the alcoholic beverages authorized under their alcoholic beverage license. Package stores must be devoted exclusively to such sales. However, package stores may sell bitters, grenadine, nonalcoholic mixer-type beverages (not to include fruit juices produced outside this state), fruit juices produced in this state, home bar, and party supplies and equipment (including but not limited to glassware and party-type foods), miniatures of no alcoholic content, and tobacco products.

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

The bill repeals the package store restriction in s. 564.04, F.S.

The bill repeals the restriction that prohibits package stores that are licensed to sell beer, wine, and distilled spirits (liquor) from having openings that permit direct access to any other building or room, except to a private office or storage room of the place of business from which patrons are excluded. The repeal permits package stores to sell, offer, or expose for sale other merchandise in addition to the beer, wine and distilled spirits authorized under their alcoholic beverage license. Current law permits package stores to only sell bitters, grenadine, nonalcoholic mixer-type beverages (not to include fruit juices produced outside this state), fruit juices

produced in this state, home bar, and party supplies and equipment (including but not limited to glassware and party-type foods), miniatures of no alcoholic content, and tobacco products.

#### **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:

According to the department, it anticipates that the bill would result in a reduction in the number of licenses and associated license fees, and that the state, cities, and counties could lose license fee revenue. The department estimates an annual reduction in state revenue of \$118,580.

Current law requires that 24 percent of the license tax collected for the license issued in the county under ss. 561.14(6), 563.02, 564.02, 565.02(1), (4), and (5), and 565.03, F.S., must be returned to the appropriate county tax collector.<sup>4</sup> Thirty-eight percent of the license taxes imposed under these provisions and collected within an incorporated municipality must also be returned to the appropriate municipal officer.<sup>5</sup> According to the department, a reduction in license taxes to counties of up to \$41,456 and to the municipalities of up to \$26,182 for a total annual loss of \$67,638.

#### **VI. Technical Deficiencies:**

None.

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<sup>4</sup> Section 561.342(1), F.S.

<sup>5</sup> Section 561.342(2), F.S.



**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill repeals section 565.04 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.

---

By Senator Galvano

26-00767A-14

2014804\_\_

A bill to be entitled

An act relating to package store restrictions;  
repealing s. 565.04, F.S., which prohibits certain  
venders from selling certain merchandise and prohibits  
direct access from such vendor's place of business to  
other buildings; providing an effective date.

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

Section 1. Section 565.04, Florida Statutes, is amended to  
read:

~~565.04 Package store restrictions. Vendors licensed under  
s. 565.02(1)(a) shall not in said place of business sell, offer,  
or expose for sale any merchandise other than such beverages,  
and such places of business shall be devoted exclusively to such  
sales; provided, however, that such vendors shall be permitted  
to sell bitters, grenadine, nonalcoholic mixer-type beverages  
(not to include fruit juices produced outside this state), fruit  
juices produced in this state, home bar, and party supplies and  
equipment (including but not limited to glassware and party-type  
foods), miniatures of no alcoholic content, and tobacco  
products. Such places of business shall have no openings  
permitting direct access to any other building or room, except  
to a private office or storage room of the place of business  
from which patrons are excluded.~~

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Subcommittee on Education, *Chair*  
Agriculture  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Education  
Gaming  
Health Policy  
Regulated Industries  
Rules

### SENATOR BILL GALVANO

26th District

February 6, 2014

Senator Kelli Stargel  
330 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Madam Chair Stargel:

I respectfully request that SB 804, Package Store Restrictions, be scheduled for a hearing in the Committee on Regulated Industries at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bill", is written over a light blue rectangular background.

Bill Galvano

cc: Patrick "Booter" Imhof  
Lynn Koon

#### REPLY TO:

- ☐ 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
- ☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

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

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

1

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4/10/14

Meeting Date

Topic PACKAGE STORES

Bill Number SB 804  
(if applicable)

Name CHARLES E BAILES III

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

Job Title C.E.O. ABC FINE WINE & SPIRITS

Address 8989 S. ORANGE AV

Phone 407

Street

ORLANDO

City

FL

State

32824

Zip

E-mail CEB3@ABCWWS.COM

Speaking: ☐ For ☒ Against ☐ Information

Representing ABC FINE WINE & SPIRITS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

2

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

10 APR 2014

Meeting Date

Topic PACKAGE STORE RESTRICTIONS

Bill Number SB 804

(if applicable)

Name BRUCE GRANT

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title CHAIRMAN, LEON COUNTY DRUG PREVENTION COALITION

Address 1316 CONSERVACY DR E

Street

Phone \_\_\_\_\_

TALLAHASSEE

FL

32312

City

State

Zip

E-mail \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

Representing FLORIDA COALITION ALLIANCE

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

3

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4/10/14  
Meeting Date

Topic \_\_\_\_\_

Bill Number SB804  
(if applicable)

Name Wesley Sapp

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

Job Title \_\_\_\_\_

Address 1325 W Tharpe St. Apt. 431  
Street  
Tallahassee, FL 32303  
City State Zip

Phone \_\_\_\_\_

E-mail wcs13b@my.fsu.edu

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida Teen Safe Driving Coalition & Florida SADD

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/10/14  
Meeting Date

Topic Package Sales  
Name RORY EGGER  
Job Title \_\_\_\_\_

Bill Number SB 804 (if applicable)  
Amendment Barcode \_\_\_\_\_ (if applicable)

Address 308 Sun March Ct  
St. Johns FL 32259  
City State Zip

Phone \_\_\_\_\_  
E-mail \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

Representing Florida Independent Spirits Assoc.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4.10.14

*Meeting Date*

Topic PACKAGE STORE RESTRICTIONS

Bill Number 804  
*(if applicable)*

Name BILL BUNKLEY

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

Job Title PRESIDENT

Address PO BOX 341644  
*Street*

Phone 813.264.2977

TAMPA FL 33694  
*City State Zip*

E-mail \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

Representing FLORIDA ETHICS AND RELIGIOUS LIBERTY COMMISSION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)



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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)

Meeting Date \_\_\_\_\_

Topic Package Store Restrictions Bill Number \_\_\_\_\_  
Name DENNIS STRANGE - Sheriff's Office Amendment Barcode \_\_\_\_\_  
Job Title Lieutenant (if applicable)

Address 2500 West Colonial Dr Phone \_\_\_\_\_  
City Orlando State FL Zip 32804 E-mail \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

Representing Orange County Sheriff's Office

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

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S-001 (10/20/11)

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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)

04-10-14  
Meeting Date

Topic Package Stores Bill Number 804  
(if applicable)

Name Scott Dick Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title lobbyist

Address 210 S. Monroe St. Phone 850 421-9100  
Street

Tallahassee, FL 32301 E-mail \_\_\_\_\_  
City State Zip

Speaking: ☐ For ☒ Against ☐ Information

Representing ABC Liquors and Fla Independent Sports Association

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

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
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4-10-14  
Meeting Date

Topic Package Store Restrictions

Bill Number 0804  
(if applicable)

Name John Harris

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

Job Title Consultant - Fed State Local Alcohol Beverage

Police Gray Robinson P.A.

Address 301 South Bronough Street Suite 600  
Street

Phone 850-577-5491

Tallahassee FL 32301  
City State Zip

E-mail john.harris@gray-robinson.com

Speaking: ☐ For ☐ Against ☒ Information

Representing Floridians For Fair Business Practices

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

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4-10-14

Meeting Date

Topic Package Stores

Bill Number SB 804  
(if applicable)

Name Christina Johnson

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

Job Title Spokesperson

Address 200 W. College Ave, Ste 210  
Street  
Tallahassee FL 32301  
City State Zip

Phone 850-391-5040

E-mail christina@on3pr.com

Speaking: ☐ For ☐ Against ☒ Information

Representing Floridians for Fair Business Practices

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

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**APPEARANCE RECORD**

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

9-10-14

Meeting Date

Topic Package Store Restrictions

Bill Number 804  
(if applicable)

Name Sara Johnson

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

Job Title Legislative Assistant to the President

Address 4853 S. Orange Ave.  
Street

Phone 850-567-8143

Orlando FL 32808  
City State Zip

E-mail sara.j@flfamily.org

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida Family Action

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

**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)

4/10/14  
Meeting Date

Topic \_\_\_\_\_

Bill Number 804  
(if applicable)

Name Tim Nungesser

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

Job Title Legislative Director

Address 110 E. Jefferson St.

Phone 850-681-0416

Tallahassee FL 32301  
City State Zip

E-mail tim.nungesser@nfib.org

Speaking: ☐ For ☒ Against ☐ Information

Representing National Federation of Independent Business

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

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

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

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Prepared By: The Professional Staff of the Committee on Regulated Industries

---

BILL: CS/SB 1624

INTRODUCER: Regulated Industries Committee and Senator Sobel

SUBJECT: Sale of Dogs or Cats

DATE: April 10, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Niles	Imhof	RI	<b>Fav/CS</b>
2.			CA	
3.			AGG	
4.			AP	

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1624 defines “flea market” as an organized event of two or more persons offering merchandise for sale or exchange, such as a swap meet or open air market.

The bill prohibits the willful sale, exchange, or donation, or offer of sale, exchange, or donation of a dog or cat in a flea market, except by a county or city operated animal control agency or a registered non-profit humane organization.

The bill provides that a violation of this section for the first time constitutes a misdemeanor of the second degree, and a violation of a subsequent time constitutes a misdemeanor of a first degree punishable under s. 775.082, F.S., or s. 775.083, F.S.

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

**II. Present Situation:**

**Animal Welfare**

In 1966 Congress passed the Animal Welfare Act (AWA), regulating treatment of animals by dealers and enforced by the United States Department of Agriculture (USDA). Under the AWA, the term “dealer” means any person who, in commerce, for compensation or profit, delivers for

transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of an animal as a pet, which does not include a retail pet store.<sup>1</sup> The USDA Animal and Plant Health Inspection Service has established two regulated classes that meet the definition of “dealer,” Class A licensees as breeders that deal only in animals they breed and raise, and Class B licensees conduct business as brokers and operators of auction sales, and they do not usually hold animals in a facility.<sup>2</sup> Facilities that breed and sell their animals to pet stores, brokers, or research facilities are covered under the AWA. The AWA requires that the following breeders/dealers obtain USDA licenses:<sup>3</sup>

- People who breed dogs and cats for use as pets or for other purposes and sell them sight unseen at the retail level; and
- The wholesale dealers who supply these animals to pet stores, brokers, or research facilities.

In order to engage in regulated activities and receive a license from USDA Animal Care Program, a dog/cat breeder or dealer must apply for an AWA license from USDA, pass a pre-license inspection, be in full compliance with all of the AWA standards and regulations, and pay a licensing fee.<sup>4</sup>

As USDA's entity for animal welfare, the Animal Care Program makes sure that proper care is provided to most warm-blooded animals used in research or exhibition, sold for use as pets, or transported in commerce.<sup>5</sup> According to the USDA, the Animal Care Program employs professionals with a range of scientific, technical, and administrative skills to accomplish its mission and facilitate enforcement of the AWA and Horse Protection Act.<sup>6</sup> These professionals are veterinarians, animal care inspectors, computer specialists, program specialists, and other administrative and program support personnel.<sup>7</sup> Enforcement of the AWA is accomplished by field-based employees who are strategically located throughout the 50 states and territories.<sup>8</sup>

The AWA does not cover all animals in all situations, including household pets sold face-to-face at retail, pets owned by individuals, and pets housed in shelters or pounds.<sup>9</sup> USDA's jurisdiction is limited to the authority granted by the AWA, but states and local governments may create and enforce their own laws and regulations to protect animals, which may exceed the AWA standards.<sup>10</sup>

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<sup>1</sup> 7 U.S.C. s. 2132.

<sup>2</sup> USDA, *Animal Welfare Act and Animal Welfare Regulations* (Nov. 2013) available at [http://www.aphis.usda.gov/animal\\_welfare/downloads/Animal%20Care%20Blue%20Book%20-%202013%20-%20FINAL.pdf](http://www.aphis.usda.gov/animal_welfare/downloads/Animal%20Care%20Blue%20Book%20-%202013%20-%20FINAL.pdf) (Last visited April 8, 2014).

<sup>3</sup> Animal and Plant Health Inspection Services, *Animal Care Factsheet* (Feb. 2014), available at [http://www.aphis.usda.gov/publications/animal\\_welfare/content/printable\\_version/faq\\_animal\\_dealers.pdf](http://www.aphis.usda.gov/publications/animal_welfare/content/printable_version/faq_animal_dealers.pdf) (Last visited April 8, 2014).

<sup>4</sup> *Id.*

<sup>5</sup> USDA Animal and Plant Health Inspection Service, *Animal Welfare Act* (last modified Feb. 20, 2014), available at [http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/animalwelfare?1dmy&urile=wcm%3apath%3a%2Faphis\\_content\\_library%2Fsa\\_our\\_focus%2Fsa\\_animal\\_welfare%2Fsa\\_landing\\_page%2Fsa\\_spotlights%2Fct\\_awa\\_program\\_information](http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/animalwelfare?1dmy&urile=wcm%3apath%3a%2Faphis_content_library%2Fsa_our_focus%2Fsa_animal_welfare%2Fsa_landing_page%2Fsa_spotlights%2Fct_awa_program_information).

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

<sup>7</sup> *Id.*

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

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

<sup>10</sup> *Id.*



The Division of Animal Industry under the Florida Department of Agriculture and Consumer Services is responsible for enforcing animal health regulations in Florida and protecting the state from animal pests and diseases.<sup>11</sup>

Several petitions opposing flea market sales of pets in Florida have been created, including those on Change.org and the Care2 Petition site.

### **Pet Purchase Protection Laws**

According to the American Veterinary Medical Association, 21 states have lemon laws that provide legal recourse to people who purchase animals from pet dealers, later found to have a disease or defect.<sup>12</sup>

Section 828.29, F.S. provides that the official certificate of veterinary inspection certifying the appropriate administration of tests, vaccines, and anthelmintics<sup>13</sup> must accompany each dog and cat transported into the state for sale. The tests, vaccines, and anthelmintics<sup>14</sup> required by this section must be administered by or under the direction of a veterinarian, licensed by the state and accredited by the United States Department of Agriculture, who issues the official certificate of veterinary inspection.<sup>15</sup> The tests, vaccines, and anthelmintics must be administered before the dog or cat is offered for sale in the state, unless the licensed, accredited veterinarian certifies on the official certificate of veterinary inspection that to inoculate or deworm the dog is not in the best medical interest of the dog, in which case the vaccine or anthelmintic may not be administered to that particular dog.<sup>16</sup> Time frames required for such administrations are also provided for depending on the age of a dog or cat.<sup>17</sup>

If a veterinarian finds an animal was unfit for purchase within fourteen days of the purchase or finds within one year of the purchase that there was a misrepresentation as to the animal's breed, sex or health, the buyer has the right to return the animal for a refund plus medical expenses up to the purchase price, replacement plus medical expense up to the purchase price, or reimbursement of veterinary expenses to treat the animal up to the purchase price.<sup>18</sup> Section 828.29(13), F.S., defines "pet dealer" as any person, firm, partnership, corporation, or other association which, in the ordinary course of business, engages in the sale of more than two litters, or 20 dogs or cats, per year, whichever is greater, to the public, which includes breeders of animals who sell such animals directly to a consumer.

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<sup>11</sup> Division of Animal Industry, Florida Department of Agriculture and Consumer Services, *available at* <http://www.freshfromflorida.com/Divisions-Offices/Animal-Industry>.

<sup>12</sup> See American Veterinary Medical Association, *Pet Purchase Protection Laws* (April 2014), *available at* <https://www.avma.org/Advocacy/StateAndLocal/Pages/pet-lemon-laws.aspx> (Last visited April 4, 2014).

<sup>13</sup> Section 828.29(1)(a), F.S., requires these to be administered within the spectrum of fourteen and thirty days before the dog's entry into the state, s. 828.29(2)(a), F.S., makes these same requirements for the sale of cats.

<sup>14</sup> Anthelmintic are medicines for "expelling or destroying parasitic worms especially of the intestine," *available at* <http://www.merriam-webster.com/dictionary/anthelmintic> (Last visited April 4, 2014).

<sup>15</sup> Section 828.29(1)(b), F.S., and s. 828.29(2)(b), F.S.

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

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

<sup>18</sup> Section 828.29(5), F.S.

### III. Effect of Proposed Changes:

The bill creates s. 828.295, F.S., defining “flea market” as an organized event of two or more persons offering merchandise for sale or exchange, such as a swap meet or open air market. Neither “swap meet” nor “flea market” are currently defined in statute.<sup>19</sup>

The bill prohibits the willful sale, exchange, or donation, or offer of sale, exchange, or donation of a dog or cat in a flea market, except by a county or city operated animal control agency or a registered non-profit humane organization.

The bill provides that a violation of this section for the first time constitutes a misdemeanor of the second degree, and a violation of a subsequent time constitutes a misdemeanor of a first degree punishable under s. 775.082, F.S., or s. 775.083, F.S.<sup>20</sup>

**Section 3** of the bill 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:

Unknown

#### B. Private Sector Impact:

This will have an impact on flea market retail sites of dogs and cats, as well as the flea markets who may lose rent from those individuals who are no longer able to sell their inventory in the markets. It is unclear if other events where two or more persons offering merchandise for sale or exchange will be impacted.

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<sup>19</sup> A “swap meet” is defined as “an event at which people can buy, sell, or trade used item.” <http://www.merriam-webster.com/dictionary/swap%20meet> (Last visited April 4, 2014).

<sup>20</sup> Section 775.082, F.S., provides that the penalty for misdemeanor of the second degree is punishable by a term of imprisonment not exceeding 60 days and a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year. Section 775.083, F.S. provides that the penalty for misdemeanor of the second degree is punishable by a fine not to exceed \$500 and a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

C. Government Sector Impact:

Indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill does not include a provision prohibiting display of cats and dogs. Therefore, those business owners with an established location other than the flea market may be able to continue displaying their animals to promote their business.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 828.291 and 828.295

**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 April 10, 2014:**

CS removes the portion of the bill that requires a person selling a dog or cat under a Class A or Class B license issued by the U.S. Department of Agriculture (USDA) to continuously display the breeder's printed name, city and state of residence, and USDA license number.

B. Amendments:

None.



313204

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/11/2014	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete lines 18 - 28.

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

And the title is amended as follows:

Delete lines 3 - 7

and insert:

s. 828.295, F.S.; defining

By Senator Sobel

33-00700B-14

20141624\_\_

A bill to be entitled

An act relating to the sale of dogs or cats; creating s. 828.291, F.S.; requiring a person offering for sale within this state a dog or cat bred by certain breeders to continuously display certain information; requiring such information to be easily readable by a potential buyer; creating s. 828.295, F.S.; defining the term "flea market"; prohibiting a person from willfully selling, exchanging, or donating, or offering for sale, exchange, or donation a dog or cat at a flea market; providing exceptions; establishing criminal penalties; establishing enhanced criminal penalties for certain violations; providing an effective date.

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

Section 1. Section 828.291, Florida Statutes, is created to read:

828.291 Dogs or cats offered for sale; disclosure of source.—A person offering for sale within this state a dog or cat bred by a holder of a Class A or Class B license issued by the United States Department of Agriculture shall continuously display on or next to the enclosure of or in any print or electronic advertisement for the dog or cat being offered for sale the breeder's printed name, city and state of residence, and USDA license number. Such information must be easily readable by a potential buyer.

Section 2. Section 828.295, Florida Statutes, is created to

Page 1 of 2

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

33-00700B-14

20141624\_\_

read:

828.295 Sales of dogs or cats prohibited at flea markets.—

(1) As used in this section, the term "flea market" means an organized event at which two or more persons offer merchandise for sale or exchange, such as a swap meet or an open air market.

(2) A person may not willfully sell, exchange, or donate, or offer for sale, exchange, or donation a dog or cat at a flea market.

(3) A county-operated or city-operated animal control agency or a registered nonprofit humane organization is exempt from this section.

(4) (a) A person who violates this section for the first time commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who violates this section for a second or subsequent time commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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

Page 2 of 2

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR ELEANOR SOBEL**  
33rd District

**COMMITTEES:**  
Children, Families, and Elder Affairs, *Chair*  
Ethics and Elections, *Vice Chair*  
Health Policy, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Appropriations Subcommittee on  
Transportation,  
Tourism, and Economic Development  
Regulated Industries  
Rules

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

March 27, 2014

Senator Kelli Stargel, Chair  
Regulated Industries  
324 Senate Office Building  
404 South Monroe Street  
Tallahassee, Florida 32399

Dear Chair Stargel,

This letter is to request that **SB 1624** relating to the Sale of Dogs and Cats be placed on the agenda of the next scheduled meeting of the Regulated Industries Committee.

Thank you for your consideration of this request.

With Best Regards,

A handwritten signature in cursive script that reads "Eleanor Sobel".

Eleanor Sobel  
State Senator, 33<sup>rd</sup> District

cc: Lynn Koon, Committee Administrative Assistant

**REPLY TO:**

- ☐ The "Old" Library, First Floor, 2600 Hollywood Boulevard, Hollywood, Florida 33020 (954) 924-3693
- ☐ 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5097

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

Don Gaetz  
President of the Senate

Garrett Richter  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4/10/14

Meeting Date

Topic Sale of Dog & Cats  
Flea Market Pet Sales

Bill Number 1624

Name Kate MacFall

Amendment Barcode 313204  
(if applicable)

Job Title FL State Director for the HSUS

Address 1624 Metropole Circle

Phone 850 508-1001

Street

Tallahassee FL 32308

City

State

Zip

E-mail kmacfall@homsociety.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Humane Society of the United States

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)

Meeting Date

Topic Pet Adoption

Bill Number SB 1624  
(if applicable)

Name JACK CORY

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

Job Title \_\_\_\_\_

Address 110 E. College St

Phone 893 0995

Tallahassee FL

E-mail JACK CORY @ ACons1

City State Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing Fry Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4/10/14

Meeting Date

Topic Salus of Dogs or Cats

Bill Number 1624  
(if applicable)

Name Kate MacFall

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

Job Title FL state director for HSUS

Address 1624 Metropolitan Circle

Phone 850 508-1001

Tallahassee Fl. 32308  
City State Zip

E-mail KMacFall@humane.society.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Humane Society of the United States

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)

4/10/14

Meeting Date

Topic Flea Market Pet Sales

Bill Number 1624  
(if applicable)

Name Elisabeth Whetstone

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

Job Title Self employed

Address 3330 Cherokee Ridge Trail

Phone 850.339.5782

Street

Tallahassee FL 32312

E-mail tallypetpal@nettally.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

## The Florida Senate COMMITTEE VOTE RECORD

**COMMITTEE:** Regulated Industries  
**ITEM:** SB 1624  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Thursday, April 10, 2014  
**TIME:** 9:00 —11:00 a.m.  
**PLACE:** 301 Senate Office Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting

# CourtSmart Tag Report

**Room:** SB 301  
**Caption:** Senate Regulated Industries Committee

**Case:**

**Type: ]**  
**Judge:**

**Started:** 4/10/2014 9:03:21 AM  
**Ends:** 4/10/2014 10:28:34 AM      **Length:** 01:25:14

9:03:35 AM Meeting called to order  
9:03:39 AM Roll call  
9:04:07 AM CS/SB 1106 - Senator Simpson  
9:04:29 AM Bill presented by Leg. aide, Rachel Perrin Rogers  
9:05:15 AM Amentment 432646 - Se. Galvano  
9:05:21 AM Amendment adopted  
9:05:33 AM Amendment 181256  
9:05:39 AM Amendment adopted  
9:05:55 AM Amendment 473716 W/D  
9:06:08 AM Amendment 488208  
9:06:20 AM Amendment adopted  
9:06:34 AM Amendment 534656  
9:06:52 AM Amendment adopted  
9:07:18 AM Amendment 107978 Senator Galvano  
9:07:20 AM Amendment 107978 Senator Galvano  
9:07:28 AM Amendment Adopted  
9:07:44 AM Amendment 490770  
9:07:56 AM Amendment adopted  
9:08:17 AM Amendment 599770 - Senator Thrasher  
9:08:43 AM Amendment adopted  
9:08:54 AM Senator Detert questioning  
9:09:45 AM Kerri Hebrank, Florida Home Builders  
9:11:37 AM Senator Gibson questioning  
9:12:14 AM Guest speaker responding  
9:13:56 AM Moved as a CS  
9:14:19 AM CS/CS/SB 1106 - Passed  
9:14:51 AM SB 1624 - Senator Sobel  
9:15:09 AM Leg. aide, Yale Olenick, Legislative Assistant Presents the Bill  
9:16:11 AM Amendment 313204  
9:16:29 AM Yale Olenick to explain the amendment  
9:16:57 AM Amendment adopted  
9:17:15 AM Jack Cory, Fix Florida  
9:18:57 AM Elizabeth Whetstone, representing herself  
9:24:49 AM Kate MacFall, Humane Society of the United States  
9:27:29 AM Senator Galvano questioning  
9:28:03 AM Leg aide, Yale Olenick responding  
9:28:31 AM Moved as a CS  
9:28:49 AM CS/SB 1624 - Passed  
9:29:27 AM CS/SB 1212 - Senator Bean  
9:29:47 AM Senator Bean to explain the bill  
9:30:39 AM Senator Detert questioning  
9:31:36 AM Senator Bean responding  
9:32:35 AM Senator Sobel questioning  
9:33:23 AM Senator Gibson questioning  
9:33:55 AM Senator Legg with questions  
9:35:19 AM Connie Galietti, FL Psychological Association  
9:41:08 AM Dr. Andrew Scherbarth, Licensed Psychologist/Behavior Analyst  
9:43:47 AM Jon Bailey, representing himself  
9:47:36 AM Michelle Dunham, representing herself  
9:53:54 AM Bryon Neff, FABA  
9:58:34 AM Senator Gibson commenting and questioning  
9:59:26 AM Senator Bean responding

**10:00:07 AM** Eric Prutsman, Florida Association for Behavior Analyst  
**10:01:09 AM** Senator Braynon questioning  
**10:01:23 AM** Eric Prutisman responding  
**10:02:00 AM** Senator Sobel questioning  
**10:02:14 AM** Eric Prutsman responding  
**10:05:00 AM** Debbie McDaniel, representing herself  
**10:07:53 AM** Doug Bell  
**10:08:20 AM** Senator Sobel questioning  
**10:10:11 AM** Senator Thrasher commenting  
**10:12:29 AM** Senator Legg commenting  
**10:13:31 AM** Senator Sachs commenting  
**10:13:50 AM** Senator Sobel commenting  
**10:14:54 AM** Senator Bean to close on the bill  
**10:15:33 AM** CS/SB 1212 - Passes  
**10:16:07 AM** SB 804 - Senator Galvano  
**10:16:21 AM** Senator Galvano to explain the bill  
**10:20:18 AM** SB 804 TP  
**10:20:35 AM** SB 1550 - Senator Evers  
**10:20:53 AM** Dave Murzin, Leg. aide presenting the bill  
**10:21:44 AM** Strike-all amendment 612938 - Senator Braynon  
**10:24:59 AM** Amendment adopted  
**10:25:16 AM** Bill moved as a CS  
**10:25:40 AM** CSSB 1550 - Passed  
**10:26:09 AM** Senator Stargel closing comments  
**10:26:23 AM** Senator Braynon commenting  
**10:26:48 AM** Senator Sachs commenting  
**10:27:22 AM** Senator Gibson commenting  
**10:27:48 AM** Senator Sobel commenting  
**10:28:26 AM** Meeting adjourned